

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**NO: 500-06-001020-193**

**SUPERIOR COURT  
(Collective Action)**

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**JON-ERIK DILLON**, 575 rue Dupret, Verdun,  
Québec, H3E 1X2

and

**NICOLE DILLON**, 1160 Ch. du Golf, Apt 203,  
Verdun, Québec, H3H 1H4

Applicants

vs.

**WAYLAND GROUP CORP.**, formerly  
located at 3-845 Harrington Court  
Burlington, Ontario L7N 3P3  
*prior to liquidating*

- and -

**MINISTER OF ENERGY AND NATURAL  
RESOURCES**, 5700, 4e avenue O, Quebec,  
Quebec G1H 6R1

Defendant

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ORIGINATING APPLICATION INSTITUTING A COLLECTIVE ACTION  
(Articles 571 ff. CCP and 1457 CCQ)

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**TO THE HONOURABLE MR. JUSTICE DONALD BISSON OF THE SUPERIOR  
COURT, SITTING AND FOR THE DISTRICT OF MONTREAL, THIS APPLICANT  
STATES:**

**PREAMBLE**

1. On May 4, 2022, this Class Action was authorized (“Authorization Judgment”) by the Honourable Donald Bisson J.S.C. against the Defendants on behalf of the members of the Class defined below, other than “Excluded Persons”:

All Québec residents, other than Excluded Persons, who acquired Wayland’s Securities, on or after January 24, 2018, and who held some or all of those Securities until after the release of at least one of the Public Corrective Disclosures.

2. Jon-Erik Dillon and Nicole Dillon were ascribed the status of representatives of the Class described above;

3. The issues to be resolved collectively were ordered to be:

- (a) Are the Class Members entitled to damages and in what amount?
- (b) Did the Defendant commit a fault, including under Article 1457 CCQ?
- (c) Did the Defendant’s fault result in financial losses to Class Members?
- (d) Did each of the Impugned Statements contain one or more misrepresentations within the meaning of the Quebec *Securities Act*?
- (e) Did Defendant’s officers and directors commit a fault when failing to disclose material facts to the Class Members?
- (f) Is the Defendant liable to the Class Members under Article 1457 CCQ?
- (g) Is the Defendant vicariously liable for the acts or omissions of its officers and directors?

4. The conclusions sought by the Class Action were identified as the following:

- (a) **GRANT** the present class action;
- (b) **CONDEMN** the Defendant Wayland and its insurers to pay the Representative Plaintiffs and the Class Members an amount equal to their share price losses incurred during the Class Period, beginning on January 24, 2018 and ending April 23, 2019, said amount presently being estimated at \$25.9 million;
- (c) **ORDER** that the above condemnation be subject to collective recovery;

- (d) **ORDER** the Defendant and their representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or under their control permitting to identify Class members, including their names, addresses, phone numbers and email addresses;
- (e) **CONDEMN** the Defendant and its insurers to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders as well as costs, interest, and the additional indemnity from the date the Defendant is served;
- (f) **ORDER** the Registrars of the Montreal and Quebec City Land Registry Offices to register a legal hypothec against the Intact Tower and the Intact Complexes located at 2020 blvd. Robert-Bourassa, Montreal, Quebec H3A 2A5 and 5700 blvd. des Galeries, Quebec, Quebec G2K 2H6 and described in those registries as lot number 1 514 389 and lot number 5 495 495 and that said legal hypothecs persist until full payment of all amounts awarded herein, notwithstanding Appeal;
- (g) **ORDER** Applicants and Class Members to pay Lorax Litigation thirty-three percent (33.3%) of all amounts collected by Applicants and Class Members;
- (h) **RENDER** any decisions this Honourable Court considers just, in particular given the expertise of Mr. Justice Bisson on this subject.

## A. THE DEFINED TERMS

5. In addition to the terms defined in the *Securities Act*, RSQ c V-1.1, as amended, and elsewhere herein, the following capitalized terms used throughout this document have the meanings indicated below:

- (a) “**AIF**” means Annual Information Form;
- (b) “**Authorization Judgment**” means Dillon c. Wayland Group Corp., 2022 QCCS 1553;
- (c) “**CCAA Proceeding**” means Wayland’s application and proceeding identified as In the Matter of the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, CV-19-00632079-00CL;
- (d) “**CCP**” means the *Code of Civil Procedure*, CQLR c C-25.01;
- (e) “**CCQ**” means the *Civil Code of Québec*, CQLR c CCQ-1991;

- (f) “**CEO**” means Chief Executive Officer;
- (g) “**CFO**” means Chief Financial Officer;
- (h) “**Class**” means all Québec residents, other than Excluded Persons, who acquired Wayland’s Securities, on or after January 24, 2018, and who held some or all of those Securities until after the release of at least one of the Public Corrective Disclosures;
- (i) “**Class Period**” means January 24, 2018 through April 23, 2019, inclusive;
- (j) “**Company**” means the Defendant, Wayland Group Corp.;
- (k) “**CSE**” means the Canadian Securities Exchange;
- (l) “**Excluded Persons**” means any person who was an insider of Wayland for any portion of the Class Period and their immediate family;
- (m) “**Impugned Statements**” means the documents or statements released on January 24, 2018 (**Exhibit P-1**), March 28, 2018 (**Exhibit P-2**), April 27, 2018 (**Exhibit P-3**), May 29, 2018 (**Exhibit P-4**), June 29, 2018 (**Exhibit P-5**), August 24, 2018 (**Exhibit P-6**), October 1, 2018 (**Exhibit P-7**), October 15, 2018 (**Exhibit P-8**), October 24, 2018 (**Exhibit P-9**), November 28, 2018 (**Exhibit P-10**), February 21-22, 2019 (**Exhibit P-11**), concerning the Defendant’s Misrepresentations;
- (n) “**kg**” means kilograms;
- (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) “**Misrepresentations**” means Wayland’s faulty representations and omissions regarding 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, how the proceeds from the Company’s public offerings would be used, and how much cannabis the Company would produce beginning in 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) “**OSC**” means the Ontario Securities Commission;

- (u) “**Prospectus Offering**” means Wayland’s public offering of securities, which closed on or about October 31, 2018;
- (v) “**Prospectuses**” means the preliminary short form Prospectus released October 15, 2018 (**Exhibit P-8**), and the corresponding final short form Prospectus released October 24, 2018 (**Exhibit P-9**) (and each individually being a “Prospectus”), pertaining to the Company’s “Prospectus Offering”;
- (w) “**Public Corrective Disclosures**” means the material facts released to the market on October 1, 2018 (**Exhibit P-7**), November 28, 2018 (**Exhibit P-10**), February 21-22, 2019 (**Exhibit P-11**), and April 23, 2019 (**Exhibit P-12**), publicly correcting the Defendant’s Misrepresentations;
- (x) “**Q1**”, “**Q2**”, “**Q3**”, and “**Q4**” means the three-month interim period ended March 31, June 30, September 30, and December 31, respectively;
- (y) “**QSA**” means the *Securities Act*, RSQ c V-1.1, as amended;
- (z) “**Securities**” means Wayland’s common shares and/or special warrants;
- (aa) “**SEDAR**” means the Canadian Securities Administrators’ System for Electronic Document Analysis and Retrieval;
- (bb) “**SW Offering**” means Wayland’s offering of special warrants that closed on January 9, 2018, and subsequently had a corresponding prospectus filed on March 6 and March 28, 2018 qualifying those special warrants;
- (cc) “**Wayland**” means Wayland Group Corp. (formerly known as Maricann Group, Inc.).

## **B. THE PARTIES**

6. The Applicant, Jon-Erik Dillon, is an investor who resides in Québec, Canada.

During the Class Period, he:

- (a) Opened an online brokerage account within Quebec, which provided him with the ability to purchase equity securities listed on the CSE, including Wayland’s securities;
- (b) Used the internet from Quebec and reviewed Wayland’s website and SEDAR to review its investment documents concerning its business, operations, and capital structure; and

- (c) Without any disclosures or warnings from Wayland that the disclosure documents did not apply to Quebec-based investors he purchased shares of Wayland listed on the CSE and suffered a loss in Québec by holding some of those securities until after the Public Corrective Disclosures, as shown and produced herewith as **Exhibit P-13 en liasse**.
  
- 7. The Applicant, Nicole Dillon, is an investor who resides in Québec, Canada. During the Class Period, she:
  - (a) Opened an online brokerage account in Quebec, which provided her with the ability to purchase equity securities listed on the CSE, including Wayland's securities;
  - (b) Used the internet from Quebec and reviewed Wayland's website and SEDAR to review its investment documents concerning its business, operations, and capital structure; and
  - (c) Without any disclosures or warnings from Wayland that the disclosure documents did not apply to Quebec-based investors, she purchased shares of Wayland listed on the CSE and suffered a loss in Québec by holding those securities until after the Public Corrective Disclosures, as shown and produced herewith as **Exhibit P-14 en liasse**.
  
- 8. The Defendant Wayland, a company incorporated pursuant to Ontario's *Business Corporations Act*, which maintained its headquarters in Burlington, Ontario. Wayland was a *Canadian federally licensed* producer and distributor of cannabis with production facilities in Canada and also held separate licenses in Germany, Switzerland, Italy, United Kingdom, Columbia, and Argentina.

9. Wayland distributed or otherwise sold cannabis and cannabis products across Canada, including in Quebec.
10. During and prior to the Class Period, Wayland listed its common shares, which have a CUSIP identifier number of 944204, under the ticker symbol “WAYL” on the CSE, “75M” on the Frankfurt Stock Exchange, and “MRRCF” on the U.S. OTC Market.
11. At the commencement of the Class Period, Wayland had approximately 107 million shares outstanding. (Exhibit P-15).<sup>1</sup>
12. During the Class Period, Wayland was subject to continuous disclosure requirements to report, free from misrepresentations, its quarterly financial statements and managements’ analysis of its business, operations, and capital structure.
13. Wayland took steps to release these continuous disclosure documents to the Class by:
  - (a) Publishing them on its website;
  - (b) Publishing them on SEDAR;
  - (c) Encouraging investment banks analysts, including in Montreal, Quebec, to publish research reports on Wayland with the intent to encourage members of the Class to purchase Wayland’s securities. (Exhibit P-16).
14. To protect itself, as a company, and its individual directors and officers from personal financial loss from claims of professional fault, negligence, or otherwise wrongdoing, during the Class Period, with coverage up through July 18, 2020,

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<sup>1</sup> CNTRL00056466.

Wayland engaged Marsh Canada Limited as an insurance broker and purchased insurance policies from the following insurance companies in following amounts:

- (a) Guarantee Company of North America, 113442 (Primary) (Exhibit P-17);
- (b) Encon Group, DOX544759 (1st Excess) (Exhibit P-18);
- (c) StarStone Insurance SE, AT0528A19FZA (2nd Excess) (Exhibit P-19);
- (d) HDI Global SE, CC0038219000 (co-3rd Excess) (Exhibit P-20);
- (e) Berkley Insurance Company, BCDO2500 (co-3rd Excess) (Exhibit P-21);  
and
- (f) XL Specialty Insurance Company, ELU162793-19 (4th Excess) (Exhibit P-22).

15. On the following dates, Wayland released statements that contradicted its earlier released continuous disclosure documents about its business, operations, and capital structure (and corresponding needs) concerning 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, how the proceeds from the Company's public offerings would be used, and how much cannabis the Company would produce beginning in 2019:

- (a) October 1, 2018 (Exhibit P-7);
- (b) November 28, 2018 (Exhibit P-10); and
- (c) February 21-22, 2019 (Exhibit P-11).

16. On April 23, 2019, Wayland released a statement that it would delay the release of its F/2018 annual financial statement and associated MD&A. (Exhibit P-23).



17. On May 6, 2019, Wayland released a statement that the OSC issued a failure-to-file case trade order, which resulted in Wayland's securities not being able to trade on the CSE. (Exhibit P-24).
18. On December 2, 2019, Wayland filed for and was granted protection under the CCAA Proceeding, which was commenced with the immediate placement of multiple stay of litigation orders.
19. On April 23, 2020, Wayland, through PricewaterhouseCoopers Inc., in its capacity as the court-appointed monitor in the CCAA Proceeding, released a statement that Wayland's remaining assets were sold to a third party (Exhibit P-25).
20. Wayland's securities never resumed trading and on October 9, 2020, were delisted from trading on the CSE. (Exhibit P-26).

**C. THE PROCEDURAL HISTORY**

21. On September 19, 2019, the Applicants issued their motion for authorization to institute a collective action and to obtain representative status. (Exhibit P-27).
22. On September 24, 2019, the Applicants' pleading was served on Wayland. (Exhibit P-28).
23. The Applicants seek to advance a claim under Article 1457 CCQ on behalf of the Class in a representative capacity against Wayland for releasing the Impugned Statements containing Misrepresentations and require Wayland to make reparations to the members of the Class for the economic injuries. The injuries correlate to how much Wayland's securities were artificially priced during the Class Period and how much the price dropped upon the release of the Public Corrective Statements.

24. On November 7, 2019, The Guarantee Company of North America, Wayland's primary insurance carrier, sent a letter to Wayland acknowledging the Applicants' claim on behalf of certain Quebec residents, who purchased Wayland's securities, on or after January 24, 2018, and who held some or all of those shares after the release of at least one of the Public Corrective Disclosures concerning the Langton, Ontario facility expansion. (Exhibit P-29).
25. On November 20, 2019, the Autorité Des Marchés Financiers sent the Class Counsel a letter acknowledging that the within action had been filed with them in accordance with Art. 225.5 of the QSA. (Exhibit P-30).
26. The CCAA Proceeding application expressly references the Quebec Proceeding. (Exhibit P-31).
27. The court with carriage of the CCAA Proceeding granted multiple stays of litigation in favour of the Defendants and its former directors and officers.
28. On May 4, 2022, this Court released its Judgement for Default Authorization finding (Exhibit P-32):
  - (a) At the authorization stage, taking the facts alleged as true, that a fault was committed in Quebec pursuant to Article 3148(3) of the CCQ;
  - (b) That on a *prima facie* basis, there is an argument to be made that the loss alleged to have been incurred by the Plaintiffs was not merely a loss recorded in Québec, but rather an injury that was suffered in Québec;
  - (c) That the Applicants demonstrated that (i) Wayland committed a fault by making Misrepresentations about its business, operations and finances; (ii) Applicants purchased Wayland's securities and suffered damages from the loss of value once the Public Corrective Disclosures were published; and (iii) there

is a causal link between the Misrepresentations, Public Corrective Disclosures, and injury.

**D. THE ACTS CONTRIBUTING TO THE FAULT OF THE DEFENDANT**

29. Wayland was a Canadian-federal licensed cannabis producer, which at all times relevant to this proceeding was in the process of expanding its main cannabis production facility, the Langton Facility.
30. Wayland also engaged investment banks, including at least one in Montreal, Quebec, to promote its securities to Quebec investors. (Exhibit P-33).<sup>2</sup>
31. Immediately prior to and during the Class Period, Wayland conducted multiple offerings thereby raising tens of millions of dollars and made representations:
- (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; and
  - (d) regarding 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.
32. In or about December 5, 2017, Wayland filed a Form 45-106F1, included as **Exhibit P-34**, on SEDAR disclosing an exempt distribution to raise CDN \$30.5 million. Page 4 of this Form indicates that CDN \$2.73 million of this offering was distributed in Quebec.

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<sup>2</sup> CNTRL00088452.

33. During the Class Period, Wayland also released core and non-core documents to investors and made representations:
- (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; and
  - (e) the business, operations, and financial structures of various acquisitions.
34. Despite the Company's repeated representations of material fact identified in the preceding paragraphs, in a series of public corrective disclosure statements released between October 1, 2018 and April 23, 2019 (the "**Public Corrective Disclosures**"), Wayland revealed that:
- (a) the expansion of the Langton Facility was not fully-funded;
  - (b) the proceeds from the public offerings had not been used as promised (i.e., to fully fund the expansion of the Langton Facility);
  - (c) the expansion would not be completed when the Company had represented it would be and would cost more than the Company represented;
  - (d) it would not achieve the production or revenue targets the Company had represented it would achieve in 2019; and
  - (e) it would not be able to release its annual 2018, Q1 2019, and Q2 2019 financial statements and MD&A, which among reasons, the purchase price paid for various acquisitions were not accurately reported to investors which contributed to why, on April 23, 2019, Wayland

announced that it could not release its audited F/2018 financial statements and corresponding MD&A.

35. Shortly after the end of the Class Period, Wayland's:
- (a) Securities were subject to a Failure-to-File-Cease-Trade-Order issued by the OSC (for failing to file timely financial statements as announced by the Company on April 23, 2019);
  - (b) MNP LLP, Wayland's auditor, resigned because of undisclosed problems, the board of directors ("Board") were firing the Company's CEO, and two members of the Board, one of whom was on the Audit Committee and the other on the Corporate Governance and Compensation Committee, were resigning under suspicious circumstances;
  - (c) MNP resigned in part because it refused to certify the accuracy of Wayland's annual 2018 financial statement;
  - (d) Cryptologic Inc., a company that proposed to acquire Wayland for \$230 million during August 2019, abandoned the acquisition while conducting its due diligence, and submitted into Wayland's CCAA Proceeding that it walked away from the acquisition because Wayland's investment qualify was materially overstated; and
  - (e) Wayland sold-off its Class Period acquisitions for a small fraction of the purchase prices, and, in a few situations, sold back to the original sellers.
36. The Public Corrective Disclosures had the foreseeable effect of removing the artificial inflation in the Company's stock price, as shown and communicated here in the Trade Data at **Exhibits P-17**:
- (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, communicated herein at **Exhibit P-7**, Wayland disclosed, in contradiction to prior statements, that its Phase One expansion was delayed and would now 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%;
  - (b) **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, communicated herein at **Exhibit P-8**, 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, communicated herein at **Exhibit P-9**, 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%;
- (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%.

37. After the end of the Class Period:

- (a) **May 6, 2019:** Wayland released a statement announcing that the OSC had issued a Failure-to-File-Cease-Trade-Order resulting in the Company's shares being halted from trading within Canada and Germany. This statement, communicated herein at **Exhibit P-15**, caused Wayland's shares on the CSE to be halted at a price of \$0.74 per share;
- (b) **On August 2, 2019:** Wayland released statements that its auditor MNP LLP was resigning because of the conduct of Wayland's CEO, Ben Ward, in respect of its audit, during the Class Period, of Wayland's annual 2018 financial statements, communicated herein at **Exhibit P-16**;
- (c) **On December 3, 2019:** Wayland filed for protection from its creditors pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 ("**CCAA**"); and
- (d) **On February 22, 2022:** the stay of proceedings that resulted from Wayland filing for CCAA protection finally expired after multiple extensions.

## **E. THE MISREPRESENTATIONS DURING THE CLASS PERIOD**

38. On **January 24, 2018**, Wayland released **Exhibit P-1**, 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. 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 three phases 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 online by the end of 2018 [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.
39. This core document, communicated herein at **Exhibit P-1**, contained misrepresentations because it omitted the material facts that Phase One was not fully-funded and not within 2% of budget, as well as why Phase One would not be completed during Q2 2018, and, at a minimum, the Defendant's statement that it expected those completion dates to be reached was unreasonable when made.
40. Indeed, this misrepresentation was recognized by a member of Wayland's board of directors, and the reason for the misrepresentation was because Wayland's investor relation documents, including MD&A, were prepared by a third-party

that did little confirmation of the representations as communicated herein at Exhibit P-35.1,<sup>3</sup> P-35.2,<sup>4</sup> P-35.3<sup>5</sup>, and P-35.4<sup>6</sup>

41. On **March 28, 2018**, Wayland released a final short form prospectus thereby qualifying the exempt distribution of special warrants distributed pursuant to its SW Offering that had closed on January 9, 2018, which the CEO, CFO and Board certified contained all material facts. In this prospectus, communicated herein at **Exhibit P-2**, the Company represented that:

- (i) The vast majority of the net proceeds from the SW 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 for 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), the Company expected annual production capacity to be in excess of 95,000kg of cannabis per year.

42. 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

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<sup>3</sup> CNTRL00055441, January 16, 2018.

<sup>4</sup> CNTRL00011921.

<sup>5</sup> CNTRL00012770, Fax from the OSC to WAYL, April 8, 2018.

<sup>6</sup> CNTRL00053070, Email from Ben Ward to Board, October 27, 2017, referring to KAM writing the MD&A (this policy did not change until the cease-trade-order during spring 2019).



represented that Phase One of the Langton Facility was expected to be completed in Q2 2018 (at pp.4 and 16). However, a different page of the same MD&A stated that Phase One would be “fully completed” in Q4 2018 (at p.9).

43. This core document, communicated herein at **Exhibit P-3**, 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 Defendant’s statements that it expected either purported completion date to be achieved were unreasonable when made.
44. 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).
45. This core document, communicated herein at **Exhibit P-4**, 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 Defendant’s statements that it expected either purported completion date to be achieved were unreasonable when made.
46. 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 completed

in Q4 2018, and that Phase Two was expected to bring additional cannabis production capacity on-line in Q1 2019.

47. This core document, communicated herein as **Exhibit P-5**, contained a misrepresentation because it omitted the material fact that Phase One was not fully-funded and the reasons why it was not completed during Q2 2018 as well as the reasons why Phase Two would not be completed in Q4 2018 as previously represented. Further, the Defendant's statements that it expected Phase One to be finished in Q4 2018 and Phase Two in Q1 2019 were unreasonable when made.
48. 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 indicated that Phase One of the Langton Facility was expected to be fully completed in Q4 2018.
49. This core document, communicated herein at **Exhibit P-6**, contained a misrepresentation because it omitted the material facts that Phase One was not fully-funded and the reasons why it was not completed during Q2 2018, and, at a minimum, the Defendant's statements that it expected either purported completion date to be achieved were unreasonable when made.
50. On **October 1, 2018**, Wayland released a prospectus, thereby qualifying the exempt distribution of units distributed pursuant to the Company's offering that had previously closed on August 10, 2018, along with the corresponding CEO and CFO certifications. This prospectus 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, and the first-part of the Phase Two expansion was now not expected to be completed until Q3 2019.

51. This core document, communicated herein at **Exhibit P-7**, contained a misrepresentation because it omitted the material facts that Phase One was not fully-funded as previously represented as well as the reasons why it was not completed during Q2 2018 and would be even further delayed from Q4 2018 to now 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 now not be completed until Q3 2019.
52. 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 news sent Wayland's share price down 12.2%.
53. 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 Prospectus also represented 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. The Prospectus represented 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.

54. This core document, communicated herein at **Exhibit P-10**, contained a misrepresentation because it omitted the material facts that Phase One was not fully-funded as previously represented and 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 now 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.
55. On **October 24, 2018**, Wayland released the final short form Prospectus for its Prospectus Offering, which would close on October 31, 2018. This Prospectus 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 done 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.

56. This core document, communicated herein at **Exhibit P-11**, contained a misrepresentation because it omitted the material facts that Phase One was not fully-funded as previously represented and 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 now 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.
57. 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. With respect to Phases One and Two of the expansion, this MD&A now omitted the status of and completion date of both, as well as omitting to disclose 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).
58. This core document, communicated herein at **Exhibit P-9**, 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 omitted the material facts that Phase One was not fully-funded nor why it was not completed during Q2 2018 (and whether it was going to be completed in Q4 2018 as represented). This news sent Wayland's share price down 8.3%.

59. On **February 21 and 22, 2019**, Wayland released statements that its directors Michael Stein, who was also a member of Wayland's Audit Committee, and Eric Silver, who was also a member of Wayland's Corporate Governance and Compensation Committee, were resigning effective immediately.
60. This non-core document, communicated herein at **Exhibit P-9**, 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 news sent Wayland's share price down 16%.
61. 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 authorized the content of this impugned document.
62. This non-core document, communicated herein at **Exhibit P-12**, served as a public corrective disclosure because it confirmed that there were problems with Wayland's corporate governance, that there were material problems with Wayland's books and records and that Wayland's CEO, Ben Ward, was part of those problems. This disclosure sent Wayland's share price down 20%.
63. Each of the misrepresentations set out in paragraphs 9 to 38 constitute fault within the meaning of Article 1457 CCQ.

## F. THE MATERIAL EVENTS FOLLOWING THE CLASS PERIOD

64. On **April 30, 2019**, Wayland released a statement that it would be forced to further delay the release of its annual 2018 financial statements and MD&A and implicitly its Q1 2019 financial statements and MD&A. This news sent Wayland's share price down 20%.
65. On **May 6, 2019**, Wayland announced that it was subject to a Failure to File Cease Trade Order issued by the OSC because it was unable to release its annual 2018 Financial Statements and MD&A. The trading of Wayland's securities listed on the CSE ceased at \$0.74 per share.
66. In June 2019, MNP LLP advised Wayland that it would be ceasing its relationship with Wayland, not complete the F/2018 audit, and, in doing so, identified numerous financial concerns about the Board of Directors' oversight or negligence. (Exhibit P-36.1, Exhibit P-36.2, and Exhibit P-36.3).<sup>7</sup>
67. On **August 2, 2019**, Wayland released a statement that its auditor MNP LLP was resigning because of the conduct of Wayland's former CEO in respect of the audit of Wayland's annual 2018 financial statements. Wayland further announced in this statement that it was selling its (still incomplete) Langton Facility, and that it required a \$5 million bridge loan from the purchaser "to continue the build out of Wayland's...facility in Langton Ontario".
68. On **December 3, 2019**, Wayland filed for protection from its creditors under the CCAA, resulting in a stay of proceedings against the Company's former

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<sup>7</sup> CNTRL00220871 (June 23, 2019 email and email regarding Columbia purchase).

directors and officers that was extended multiple times before finally expiring on February 22, 2022.

69. Wayland then engaged Canaccord to assist it with selling off its assets. (Exhibit P-37).<sup>8</sup>
70. PWC, as the Proceeding's monitor, also attempted to sell off Wayland's assets. This engagement resulted in a brochure reflecting that Phase 1 was only 65% completed by January 2020, and still required approximately \$20 million to complete. (Exhibit P-38).<sup>9</sup>
71. Following the CCAA filing, Wayland no longer exists as a company. Its only remaining assets are insurance policies responsive to the allegations made in this action. (Exhibit P-39)
72. As of the issuance date of this document, Wayland had not released its annual 2018, Q1 2019, and Q2 2019 financial statements and MD&A.

#### **G. LEGAL HYPOTHEC ON INTACT TOWER AND INTACT COMPLEXE**

73. The Defendant's Insurers are aware of the claim made against Wayland and have elected not to defend or represent Wayland. (Exhibit P-40.1, Exhibit P-40.2 and Exhibit P-40.3).
74. Article 2500 of the CCQ permits the Applicants and Class Members to recover damages from the insurer of the defendant. The Applicants and Class Members seek to recover the damages suffered by Wayland's fault through a legal hypothec for the full amount of any Judgement on the properties described below.

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<sup>8</sup> CNTRL00181340 (December 18, 2018, Engagement Letter).

<sup>9</sup> CNTRL0011414 (Winter 2020).



75. The Defendant's Insurer, Intact Compagnie d'Assurance [Intact], have their company name on the Intact Tower, located at 2020 Blvd. Robert-Bourassa in Montreal, Quebec and the Intact Complex, located at 5700 Blvd. des Galeries, in Quebec City.
76. Intact Tower in Montreal is not owned by Intact. It is currently owned by the company 7739907 Canada Inc. In 2011, a legal hypothec of \$36 000 000, 00 was issued to the company 7739907 Canada Inc. and Industrial Alliance Insurance and Financial Services Inc. (Exhibit P-41).
77. However, Intact is a tenant of the Intact Tower, with a lease valid until 30 September 2026. (Exhibit P-42).
78. Intact Complex in Quebec City is also not owned by Intact. The building is currently owned by the company Société en commandite complexe de la Capitale no. 2. (Exhibit P-43.1 and P-43.2).
79. The Intact Tower and Intact Complexe title chain of ownership demonstrate that Intact is shielding or attempting to shield their assets in Quebec with the goal of making them unseizable as both properties are owned by other insurance companies other than Intact. It is inequitable that the Applicants and Class Members should be unable to recover from Wayland's Insurer for the damages suffered because of Intact's elaborate shell game.
80. There are substantial, precise and concordant facts that sustain a presumption that Intact is shielding or attempting to shield their Quebec assets to prevent victims from collecting damages. Applicants and Class Members should therefore be entitled to realize their claims under the damages suffered in the form of a legal hypothec placed on the Intact Tower and Intact Complex.

81. In addition, Intact benefits from the naming of the 2020 blvd. Robert-Bourassa and 5700 blvd. des Galeries properties with their company name. These names suggest to the public that Intact are the owners of the properties. One may reasonably infer and presume Intact's proprietary interest in that real estate. Given these benefits, the Applicants and Class Members should be entitled to realize their claims against the properties via a legal hypothec.

**I. PROPOSED REVISED COMMON QUESTIONS OF FACT AND LAW**

82. The Defendant has failed to comply with its duties to make full, frank, and honest disclosure to the proposed representative Class Members, as reflected in its disclosure obligations under the QSA;

83. The misrepresentations made by the Defendant were identical to every Class Member;

84. The impact of the Public Corrective Disclosures on the value of the Defendant's securities is identical for every Class Member;

85. The formula for calculating the loss in value of the share price is identical for every Class Member;

86. The only individual question pertains to the number of securities held and purchased during the Class Period by each member of the Class, which can be easily identified;

87. After The Honourable Mr. Justice Donald Bisson rendered the Authorization Decision in the present matter, Mr. Andrew Morganti of Morganti and Co. discovered via access to previously unavailable documents significant relevant facts that color this Collective Action. Applicants therefore ask this Honourable Court to recast the questions of fact and law. The revised Common Questions of Fact and Law should be articulated as the following:

- (a) What was the duty of conduct prescribed to the Defendant, under the circumstances of the allegations of a corporation that releases its Core Documents, within the meaning of the QSA, on the System for Electronic Document Analysis and Retrieval ("SEDAR") that is intended to provide the Class, which is limited to Quebec-based investors, with all material change and material fact information about the Defendant?
- (b) Did the Impugned Documents, released by the Defendant on SEDAR, contain one or more misrepresentations within the meaning of the OSA?
- (c) Did the Defendant commit fault of this duty by releasing the Impugned Documents on SEDAR for the Class containing one or more misrepresentations?
- (d) If so, on which date(s) did the Defendant's one or more misrepresentations become publicly corrected so that Defendant's alleged prior misrepresentation was corrected to the Class?
- (e) Upon the release of the public corrective statement(s):
- (i) October 1, 2018;
  - (ii) November 28, 2018;
  - (iii) February 21-22, 2019; and
  - (iv) April 23, 20219.
- did the Defendant's fault cause financial injury to the Class?
- (f) If so, what is the measure of financial injury to the Class after each of the alleged Public Corrective Statements?
- (g) Is the Defendant responsible for the damage it caused, if any, to the Class by the alleged fault?
- (h) If so, is the Defendant required to make reparation for the financial injury to the Class?

## **II. THE DAMAGES**

88. By issuing the Impugned Statements, as described herein, Defendant misrepresented the benefits and risks of holding its securities during the Class Period, causing losses to investors;
89. The Applicants' damages resulting from the Defendant's fault amount to approximately \$76,000 at present. An expert estimate of the Class Members' aggregate losses will be filed prior to trial;
90. In light of the foregoing, the Applicants are entitled to claim damages on behalf of all Class Members equivalent to the loss of share value incurred as a result of the Defendant's misrepresentations during the Class Period, as attributable to the drop in share price following the public corrections, as referenced at above especially at paragraphs 29, 37, 39, 40, and 46.

## **III. JURISDICTION**

91. The Applicants ask that this action be tried in the City of Montréal, in the Province of Québec, as a collective action proceeding, because the Applicant and the Class members are situated and purchased the relevant shares in this district, and because the Defendant did conduct business and offered its securities in this district.
92. The Applicants suggest that this action has a real and substantial connection with Québec in that:
  - a. The Applicants resided and continue to reside in Quebec, opened their brokerage accounts in Quebec, which are registered in Quebec;

- b. Class Members were able to access Wayland's website and investor relations webpage and review all of Wayland's continuous disclosure documents containing the Misrepresentations, which did not contain any disclosure that said documents were not intended to be read and relied upon by Quebec investors;
- c. Wayland sold cannabis products into Quebec during the Class Period;
- d. Wayland's D&O insurance carriers have operations and assets in Quebec;
- e. Wayland's investment banks that it relied upon to sell its securities to investors have operations in Quebec and distributed or should have presumed distributed research reports on Wayland from Quebec;
- f. Wayland actively sought to distribute securities in Quebec;
  - i. For example, on July 27, 2018, Ben Ward hosted Martin Landry, GMP Securities (along with 4 other people) to Wayland's offices in order to encourage them (research analyst) to start publishing bullish reports on Wayland.
- g. Wayland had many shares outstanding in Quebec:
  - i. In or about December 5, 2017, Wayland filed a Form 45-106F1 on SEDAR disclosing an exempt distribution to raise approximately CDN \$30 million. Page 4 of this Form indicates that CDN \$2.73 million of this offering was distributed in Quebec; and
- h. Quebec investors suffered loss in Quebec and typically represent approximately 15% of the Canadian trading in any TSX-listed security. As such, it is estimated that there will be hundreds of Québec class members.

93. Section 236.1 of the QSA reads:

Any action under this Title or **any action under the ordinary rules of law in respect of facts related to the distribution of a security** or to a take-over bid or issuer bid **may be brought before the court of the plaintiff's residence.**

In matters pertaining to the distribution of a security, the laws of Québec are applicable where the subscriber or purchaser resides in Québec, regardless of the place of the contract.

**Any contrary stipulation as to the jurisdiction of the courts or the applicable legislation is without effect.** [emphasis added]

94. Section 236.1, read plainly, gives Quebec jurisdiction *simpliciter* when the plaintiff resides in Quebec and when it is an action “in respect of facts related to the distribution of a security. Even choice of jurisdiction clauses will not supplant this.
95. Wayland distributed securities in Quebec and actively sought to distribute shares in Quebec as described above. It is therefore a “distributor” per the definitions in section of the QSA.
96. Material misrepresentations about the value of the shares and the endeavour to sell shares using, in part and possibly indirectly, these misrepresentations are then plainly “facts related to the distribution of a security.”
97. As the plaintiffs in this action reside in Quebec and as the action is in respect of facts related to the distribution of a security, Quebec has jurisdiction.
98. This action differs from *Chandler* as the Court of Appeal refused to find jurisdiction because Volkswagen did not meet the definition distributing shares in s.5 QSA because Volkswagen’s subsidiary VCCI distributed shares in Quebec and Volkswagen did not.
99. In this case, Wayland distributed securities and actively sought to market its securities to Quebec residents.

**FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**GRANT** the present class action;

**CONDEMN** the Defendant and its insurers to pay the Representative Plaintiffs and the Class Members an amount equal to their share price losses incurred during the Class Period, beginning on January 24, 2018 and ending April 23, 2019, said amount presently being estimated at \$25.9 million;

**ORDER** that the above condemnation be subject to collective recovery;

**ORDER** the Defendant and their representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or under their control permitting to identify Class members, including their names, addresses, phone numbers and email addresses;

**CONDEMN** the Defendant and its insurers to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders as well as costs, interest, and the additional indemnity from the date the Defendant is served;

**ORDER** the Registrars of the Montreal and Quebec City Land Registry Offices to register a legal hypothec against the Intact Tower and the Intact Complexes located at 2020 blvd. Robert-Bourassa, Montreal, Quebec H3A 2A5 and 5700 blvd. des Galeries, Quebec, Quebec G2K 2H6 and described in those registries as lot number 1 514 389 and lot number 5 495 495 and that said legal hypothecs persist until full payment of all amounts awarded herein, notwithstanding Appeal;

**ORDER** Applicants and Class Members to pay Lorax Litigation thirty-three percent (33.3%) of all amounts collected by Applicants and Class Members;

**RENDER** any decisions this Honourable Court considers just, in particular given the expertise of Mr. Justice Bisson on this subject.

Montreal, August 9, 2022

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**LORAX LITIGATION**

Counsel for the Applicants

Me Charles O'Brien  
1890 Sherbrooke St West, Suite 450  
Montreal, Québec  
H3H 1E8  
Tel: (514) 484-0045  
bluegreenlaw@gmail.com