

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action)

No.: 500-06-001029-194

ANNE MILLER

-and-

MARTIN DIONNE

Plaintiffs

v.

HEXO CORP.

-and-

SÉBASTIEN ST-LOUIS

Defendants

**DE BENE ESSE APPLICATION OF THE DEFENDANTS TO PRODUCE THE
EXPERT REPORT OF VINITA M. JUNEJA DATED AUGUST 4, 2021 AND
MATERIALS RELIED UPON THEREIN
(Arts. 574 & 575 CCP)**

TO THE HONOURABLE JUSTICE THOMAS M. DAVIS, SITTING IN AND FOR THE DISTRICT OF MONTREAL, AS DESIGNATED JUDGE FOR THIS INSTANCE, THE DEFENDANTS HEXO CORP. ("HEXO") AND SÉBASTIEN ST-LOUIS RESPECTFULLY SUBMIT THE FOLLOWING:

A. CONTEXT

1. On or around November 19, 2019, plaintiff Anne Miller filed a *Motion for authorization to institute a collective action and to obtain representative status* against Defendants, as appears from the Court record.
2. On March 10, 2020, an Amended Motion for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act and Application for Authorization to Institute a Class Action (the "**Amended Motion**") was filed. On May 6, 2020, this Court authorized the amendments sought therein and by virtue of which, among others, Martin Dionne was added as a second representative plaintiff and CIBC World Markets Inc. and BMO Nesbitt Burns Inc. were added as defendants.
3. On or around September 15, 2020, representative plaintiffs Anne Miller and Martin Dionne (collectively, the "**Plaintiffs**") sought leave to amend the Amended Motion.

4. On November 16, 2020, this Court authorized amendments to the Amended Motion by virtue of which the proposed class and class period were amended, the proceedings were discontinued against CIBC World Markets Inc. and BMO Nesbitt Burns Inc. and new facts were alleged against Defendants, as appears from the Court record.
5. As appears from paragraph 2 of the judgment rendered by this Court on November 16, 2020, the Defendants did not oppose these amendments but under reserve of their rights and grounds of contestation at the authorization stage.
6. On or around November 18, 2020, Plaintiffs notified Defendants' attorneys copy of the *Re-Amended Motion for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act and Application for Authorization to Institute a Class Action* (the "**Re-Amended Motion**").
7. Based on the definition found in the Re-Amended Motion, the putative class includes:
 - (i) Primary Market Sub-Class: All persons and entities [...] who acquired HEXO securities in an Offering on or after April 11, 2018, and held some or all of those securities until after the close of trading on: (1) June 12, 2019; [...] (2) October 9, 2019; (3) October 28, 2019; [...] (4) November 15, 2019, (5) December 13, 2019, (6) December 30, 2019, (7) March 16, 2020; or (8) March 27, 2020; excluding investors who acquired HEXO securities in an Offering in the United States between January 23, 2019 and March 30, 2020; and
 - (ii) Secondary Market Sub-Class: All persons and entities [...] who acquired HEXO securities on the secondary market on or after April 11, 2018, and held some or all of those securities until after the close of trading on: (1) June 12, 2019; [...] (2) October 9, 2019; (3) October 28, 2019; [...] (4) November 15, 2019, (5) December 13, 2019, (6) December 30, 2019, (7) March 16, 2020; or (8) March 27, 2020; excluding investors who acquired HEXO securities on a U.S. exchange between January 23, 2019 and March 30, 2020.

(the "**Putative Class**")
8. As appears from the allegations contained in the Re-Amended Motion, the proposed class action stems from Defendants' alleged misrepresentations and failure to make timely disclosures of material facts, which would have allegedly caused HEXO's investors to suffer monetary damages. Plaintiffs allege that in order to encourage investors to purchase HEXO securities, Defendants made statements, and/or approved the release of core and non-core documents, containing alleged misrepresentations and omissions of material facts regarding HEXO's business, operations, and expected revenue.
9. According to the Re-Amended Motion, Defendants' misrepresentations and omissions relate to two main interrelated themes, namely (1) HEXO's 5-year supply agreement with the SDQC, the "take-or-pay" clause guaranteeing a minimum 20,000 kg of supply in the first year of the supply agreement and the revenues associated therewith, and (2) the acquisition of Newstrike and, more particularly, the licensing of the Newstrike facilities and the forecasted synergies and/savings from the Newstrike acquisition.
10. More specifically and with respect to HEXO's supply agreement with the SQDC, Plaintiffs allege that Defendants would have misrepresented the fact that HEXO would not enforce the "take or pay" clause, and that the reasons for not enforcing the clause were known to Defendants throughout the class period.

11. With respect to the Newstrike acquisition, Plaintiffs allege that Defendants omitted to inform investors of the licencing issues at their Niagara facility, failed to inform investors that their \$400 million 2020 net revenue guidance would not be met and that Defendants overvalued HEXO's assets in failing to write off inventories throughout the class period.
12. Based on the foregoing, the Plaintiffs assert three distinct causes of action:
 - a. A statutory claim under sections 217 and following of the *Québec Securities Act* (the "**QSA**") for alleged misrepresentations in the primary market;
 - b. A statutory claim under sections 225.4 and following of the QSA for alleged misrepresentations in the secondary market (the "**Statutory Claim**"); and
 - c. A civil negligence claim under article 1457 of the *Civil Code of Québec* (the "**CCQ Claim**").
13. Plaintiffs advance that as a result of the Defendants' alleged faults, the members of the Putative Class acquired HEXO securities at artificially inflated prices, and suffered damages when the value of the securities declined upon the release of what Plaintiff's have identified as eight (8) Corrective Disclosures related to HEXO's Quebec Supply Agreement and/or acquisition of Newstrike.
14. On or around March 11, 2020, Defendants filed an *Amended Application To Obtain Leave To Produce Relevant Evidence and Examine Plaintiffs*.
15. On March 24, 2021, this honourable Court granted in part the Defendants' *Amended Application To Obtain Leave To Produce Relevant Evidence and Examine Plaintiffs*, and authorized the examination of Plaintiffs Anne Miller and Martin Dionne.
16. On or around February 1, 2021, Plaintiffs filed the expert report of Craig J. McCann ("**McCann Report**"), in which Mr. McCann considered whether the alleged Corrective Disclosures (as identified by Plaintiffs in the Re-Amended Motion) had significantly affected the price of HEXO's securities.
17. Plaintiffs Anne Miller and Martin Dionne were examined on May 27, 2021.
18. On August 4, 2021, Defendants' counsel notified Plaintiffs' counsel copy of the expert report of Vinita M. Juneja, Ph.D., of the firm NERA Economic Consulting (the "**Juneja Report**"). In the Juneja Report, Dr. Juneja notably opines on the economic materiality of the alleged misstatements by the Defendants for the period from April 11, 2018 to March 30, 2020, and also comments on the McCann Report.
19. The filing by Defendants of an expert report prior to the authorization hearing is consistent with the procedural steps that had been agreed to by the parties in the lead-up to the authorization hearing, as appears from the Court record and a letter dated December 10, 2020 by Plaintiffs' counsel to the attention of the Honourable Chantal Tremblay, J.S.C.

B. LEAVE TO ADDUCE THE JUNEJA REPORT AND MATERIALS RELIED UPON THEREIN

20. The Defendants take the position that no leave to produce the Juneja Report (**Exhibit R-1**) as well as the materials relied upon by Dr. Juneja (as detailed in Appendix III of the Juneja Report, *en liasse*, **Exhibit R-2**), is required with respect to the Statutory Claim.
21. As such, the present *De Bene Esse* Application is made under reserve of the Defendants' right to file the Juneja Report (Exhibit R-1) and materials relied upon by Dr. Juneja (as detailed in

Appendix III of the Juneja Report, Exhibit R-2) for the purpose of the authorization hearing relating to the Statutory Claim without having to obtain the Court's permission.

22. The present *De Bene Esse* Application is presented strictly pursuant to article 574 CCP, to allow the Court to determine whether the conditions of application of article 575 CCP are met as it concerns the CCQ Claim.
23. More specifically, as it concerns the authorization of the CCQ Claim, this Court will have to determine whether the facts alleged appear to justify the conclusions sought and, by extension, conclude as to whether or not the criterion of article 575(2) CCP is met in the present case.
24. The civil fault that Plaintiffs allege against Defendants as part of the CCQ Claim is succinctly laid out in a handful of paragraphs of the Re-Amended Motion, and constitutes nothing more than the alleged violations that form the object of Plaintiffs' Statutory Claim.¹
25. As such, Defendants expect that this Court's determination of whether or not the criterion of article 575(2) CCP is met under the CCQ Claim will have the same conclusion as the Court's determination of whether or not the threshold for the Statutory Claim will have been met in the present case.
26. Considering that it notably opines on the economic materiality of the alleged misstatements by the Defendants for the period from April 11, 2018 to March 30, 2020 and comments the McCann Report, it follows that the Juneja Report (and by extension, the materials relied upon therein) will be useful in the Court's determination of whether or not the syllogism put forth by Plaintiffs discloses an arguable case.
27. Presuming that they will have informed the Court's analysis of whether there is sufficient grounds to authorize the Statutory Claim, the contents of the Juneja Report (Exhibit R-1) and the materials relied upon by Dr. Juneja for the purposes of her report (as detailed in Appendix III of the Juneja Report, Exhibit R-2) will – by extension – necessarily be determinative to the Court's assessment of whether the criterion of 575(2) CCP is met in the present case as it concerns the CCQ Claim.
28. It would therefore be incongruous for this Court to render its decision on whether or not the CCQ Claim meets the criterion of article 575(2) CCP in abstraction of the very same evidence that it will have relied upon to determine whether there is a reasonable possibility that the Statutory Claim will be resolved in favour of the Plaintiffs.
29. Defendants also reserve their rights to rely upon the Juneja Report (Exhibit R-1) - and by extension, the materials relied upon by Dr. Juneja for the purposes of her report, Exhibit R-2) - to make arguments concerning the scope of the Putative Class.
30. For the reasons detailed above, Defendants hereby seek permission of this Court to obtain leave to produce the Juneja Report (Exhibit R-1) as well as the materials relied upon by Dr. Juneja (as detailed in Appendix III of the Juneja Report, Exhibit R-2), for the purposes of allowing the Court to determine whether the Re-Amended Motion meets the criteria of 575 CCP.

WHEREFORE THE DEFENDANTS PRAY THAT THIS HONOURABLE COURT:

- [1] GRANT** the present *De Bene Esse* Application of the Defendants for Leave produce the expert report by Vinita M. Juneja, Ph.D., of the firm NERA Economic Consulting dated August 4, 2021, as well as the materials relied upon by Dr. Juneja (as detailed in Appendix III of the Juneja Report), being Exhibit R-1 and Exhibit R-2, respectively.

¹ See Re-Amended Motion, paras. 192-198, 201-207.

[2] **AUTHORIZE** Defendants to rely upon the expert report by Vinita M. Juneja, Ph.D., of the firm NERA Economic Consulting dated August 4, 2021 (Exhibit R-1) as well as the materials relied upon by Dr. Juneja (as detailed in Appendix III of the Juneja Report, Exhibit R-2), to contest that the criteria of 575 CCP have been met in the present case as it concerns Plaintiffs' civil negligence claim under article 1457 of the *Civil Code of Québec*;

THE WHOLE without costs except if this application is contested.

Montréal, September 15, 2021

*Norton Rose Fulbright
Canada LLP*

NORTON ROSE FULBRIGHT CANADA LLP
(M^{es} François-David Paré, Caroline Larouche and
Francesca Taddeo)
Counsel to Defendants
HEXO CORP. and **SÉBASTIEN ST-LOUIS**

1 Place Ville Marie, Suite 2500

Montréal QC H3B 1R1

Telephone : 514.847.4747

Fax : 514.286.5474

Email: francois-david.pare@nortonrosefulbright.com

caroline.larouche@nortonrosefulbright.com

francesca.taddeo@nortonrosefulbright.com

Notification: Notifications-mtl@nortonrosefulbright.com

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Mtre. François-David Paré

Mtre. Caroline Larouche

Mtre. Francesca Taddeo

NORTON ROSE FULBRIGHT CANADA LLP

BARRISTERS & SOLICITORS

1 Place Ville Marie, suite 2500

Montréal (Quebec) H3B 1R1 CANADA

Telephone: 514.847.4948

Fax: +1 514.286.5474

Notifications-mtl@nortonrosefulbright.com