

C A N A D A

PROVINCE OF QUÉBEC

DISTRICT OF MONTRÉAL

N° C.A.: 500-

N° S.C.: 500-06-001029-194

COURT OF APPEAL

---

**MARTIN DIONNE**, residing and domiciled at  
1320 Boulevard de la Grande Allée, Boisbriand,  
District of Terrebonne, Province of Québec,  
J7G 2T4

APPELLANT – Plaintiff

v.

**HEXO CORP.**, a moral person incorporated  
pursuant to the laws of Québec, having a place  
of business at 120 chemin de la Rive, Gatineau,  
Québec, J8M 1V2

and

**SÉBASTIEN ST-LOUIS**, residing and domiciled  
at 1 Renfrew Avenue, Ottawa, Ontario, K1S 3Z1

RESPONDENTS – Defendants

---

**NOTICE OF APPEAL**

**(Article 352 CCP)**

Appellant

Dated March 14, 2023

---

**I. INTRODUCTION**

1. The Appellant appeals from a judgment dated January 23, 2023 by the Honourable Silvana Conte (“**Judge**”) of the Superior Court of Québec, District of Montréal, that dismisses the Appellant’s motion for authorization to (a) bring an action pursuant to Section 225.4 of the *Securities Act*, chapter V-1.1 (“**QSA**”) and (b) institute a class action pursuant to Article 574 of the *Code of Civil Procedure* (“**CCP**”), against the Respondents (“**Originating Application**”). A copy of the judgment is appended hereto as **Schedule 1** (“**Judgment**”).

2. The authorization hearing took place over two days, on November 15 and 16, 2022.
3. The deadline to file this Notice of Appeal is March 20, 2023. A copy of the notice of judgment is appended hereto as **Schedule 2**.
4. No confidential materials were filed at the authorization hearing.

## II. BACKGROUND

5. The Appellant alleges that the Respondents made several misrepresentations concerning the business, operations and revenues of HEXO Corp. (“**HEXO**”), in core and non-core documents, as well as in public oral statements, to the effect that:
  - a. HEXO had a supplier agreement with *the Société québécoise du cannabis* (“**SQDC**”) which guaranteed that HEXO would obtain the revenues associated with the sale of 20,000 kilograms of cannabis in the first year following the legalization of recreational cannabis in Canada;
  - b. The acquisition of a new licensed facility (Newstrike) would, *inter alia* with the agreement with the SQDC, double HEXO’s revenue between Q2 and Q4 2019 to approximately \$26 million, enable HEXO to achieve a net revenue of greater than \$400 million for fiscal 2020, and generate over ten million dollars in annual synergies;
  - c. HEXO’s inventories were accurate; and
  - d. Its internal controls were effective.
6. Through a series of public corrections, it was revealed that the above statements were untrue, which led to a significant drop in the price of HEXO’s securities, losing for instance 87.4% on the TSX between the first and last public corrections.<sup>1</sup>

---

<sup>1</sup> Exhibit R-9.

7. HEXO investors in Québec, and throughout the world, suffered hundreds of millions of dollars of losses.
8. The Appellant lost his entire retirement fund due to the Respondents' illicit conduct.
9. If the Judgment is allowed to stand, thousands of putative class members will see their rights of action and meritorious claims extinguished.

### **III. GROUNDS OF APPEAL**

10. The Judge made errors of law, and palpable and overriding errors in fact, which raise three issues to be dealt with in this appeal:
  - a. Was the Judge's analysis consistent with the principles governing the screening mechanism established under section 225.4 of the QSA?

The Judge erred in law by:

- i. Misapplying the authorization test under 225.4 of the QSA;
  - ii. Failing to address the actual arguments raised by the Plaintiff;
  - iii. Incorrectly analyzing alleged defences;
  - iv. Ignoring key evidence, drawing incorrect inferences, and misapprehending the definition of material fact; and
  - v. Applying the incorrect evidentiary standard when the same misrepresentations are contained in core and non-core documents.
- b. Did the Judge err in her analysis by tying authorization of the primary market and civil code claims to the authorization test under the QSA?
  - c. Should authorizations under 225.4 of the QSA and 574 CCP be granted?

**A. The Judge erred in law by conducting an analysis that was inconsistent with the principles governing the screening mechanism established under section 225.4 of the QSA**

**i. The Judge misapplied the authorization test under S. 225.4 of the QSA**

11. Despite the fact that the judgment rendered by this Honourable Court in *Nseir v. Barrick Gold Corp.*, 2022 QCCA 1718 (“*Nseir*”) was brought to the Judge’s attention while this matter was under advisement, she failed to rely on it, referring to it only parenthetically and incorrectly as a judgment on leave to appeal.<sup>2</sup>
12. In line with the teachings of the Supreme Court of Canada, the judgment in *Nseir* confirmed that the Appellant’s burden under section 225.4 of the QSA “*is limited to offer[ing] both a plausible analysis of the applicable legislative provisions, and some credible evidence in support of the claim”.* It reiterated that while the Judge has to engage in some weighing of the evidence adduced by all parties, her role is “*not to do the best [she] could on the available record, treating the motion as if it were a mini-trial*”. And that she must bear in mind “*that there is a real risk that the evidentiary record before the Court will not only be incomplete, but also tilted in favour of the defendant*”.<sup>3</sup>
13. The Judge’s analysis failed to respect each of these principles and exceeded the scope and inherent limitations of the screening mechanism.
14. A first example of this can be found at paragraph 127 of the Judgment. In discussing the misrepresentation relating to the licencing of the Newstrike facility, the Judge stated:

[127] With regard to the Impugned Statements contained in core documents, made or released prior to July 30 2019, this same evidence filed by Plaintiff **could also be used by Defendants to argue on the merits** that they had no reasonable grounds to believe that the documents or public oral statements contained a misrepresentation. [emphasis added]

---

<sup>2</sup> Judgment, page 8, footnote 19.

<sup>3</sup> *Nseir*, par. 40-43.

15. The foregoing demonstrates the Judge not only went beyond an analysis of the evidence before her, the depth of which in and of itself is problematic, but she hypothesized as to what arguments the Respondents “could” make “on the merits”, on the basis of an incomplete record.
16. This error of law underscores the incorrect approach taken by the Judge and demonstrates her analysis was in keeping with a merits-based assessment of the evidence, inappropriate for the authorization stage of the proceedings.
17. Further examples of this error are also identified in the sections below.

**ii. The Judge did not address the actual arguments raised by the Appellant**

18. The Judgment does not respond to the actual arguments and evidence advanced by the Appellant, but rather rules on an alternative case not before the Court.
19. Regarding the 20,000 kg commitment allegedly included in the SQDC agreement, the Judge held that:

[100] The fact that the SQDC did not fulfill its first year purchase commitment or that Defendants decided not to enforce the take or pay feature, are not evidence that the public statement [*sic*] were untrue or misleading at the time they were made. As stated previously, the Court does not make assessments with the benefit of hindsight.<sup>4</sup>

20. As decided twice<sup>5</sup> by one of the case management judges in this file, prior to his replacement by the Judge, and as explicitly confirmed by the Appellant at the authorization hearing<sup>6</sup>, the soundness of the decision not to enforce the alleged take or pay feature is not relevant to the case at hand; it is not called into question by the Appellant; nor did the Originating Application require the Court to engage in any hindsight or after the fact analysis in this regard.

---

<sup>4</sup> Judgment, Schedule 1, par. 100.

<sup>5</sup> *Miller v. Hexo Corp.*, 2022 QCCS 963, par. 54; *Miller v. Hexo Corp.*, March 21, 2022, Thomas M. Davis, J.C.S., par. 10-11, 13 [unreported].

<sup>6</sup> Appellant’s Reply Argument Plan at authorization, par. 5 and ss.

21. The Appellant's argument is that Respondents could not promise market revenue "certainty" and guarantee first year revenues when there was, at all relevant times, a risk that they would not enforce the alleged take or pay feature of the SQDC agreement.

22. For instance, the Respondents stated that:

In the past quarter, we finalized a long-term supply contract as the preferred supplier to the Société québécoise du cannabis (SQDC) for approximately 200,000 kg of cannabis, over a five-year period. This gives us the second highest **recreational revenue certainty** among licensed producers for the **first year** of the adult-use market in Canada, **with 20 metric tons committed** [...] <sup>7</sup> [emphasis added]

23. The Judgment dismisses this statement on the basis that it "does not reference the first year commitment at all"<sup>8</sup>, which is patently incorrect. Alternatively, the Judgment discounts this statement as being a mere descriptor of the SQDC agreement<sup>9</sup>. The Judge reaches this conclusion despite the fact that the SQDC agreement was not produced into evidence by the Respondents (which is their right at this preliminary stage). In any event, a clause that may not be enforced for known risks does not provide revenue "certainty".

**iii. The Judge performed an incorrect analysis of potentially available defences**

24. The Judge erred by performing an incorrect analysis of the Respondents' potential forward-looking statement defence at paragraphs 117 to 120, 165, 217-220 of the Judgment. It is well established that the defendant bears the burden of establishing any defences it will invoke and more specifically, in the immediate context, authorization must be granted where there is no "certainty" a defence will succeed.<sup>10</sup>

25. The evidence before the Judge was that the cautionary language in the Respondents' public disclosures contained conflicting information and boilerplate

---

<sup>7</sup> Exhibit R-14.

<sup>8</sup> Judgment, Schedule 1, par. 108.

<sup>9</sup> *Id.*, par. 101, 214-216.

<sup>10</sup> *Rahimi v. SouthGobi Resources Ltd.*, 2017 ONCA 719, par. 50.

generalizations, as well as specific and unequivocal statements by the Respondents relating to the SQDC agreement and revenue certainty.<sup>11</sup> The Judgment fails to take into consideration the conflicting cautionary language and the explicit references in the evidence that were brought to her attention, including language explicitly excluding the alleged SQDC first year commitment from the Respondents' cautionary language:

**Other than the agreement with the SQDC, pursuant to which the SQDC has agreed to purchase 20,000 kg of HEXO's products for the first year** of the agreement, the agreements with the SQDC, the OCRC and the BCLDB do not contain purchase commitments or otherwise obligate the purchaser to buy a minimum or fixed volume of products from HEXO. The amount of cannabis that the SQDC, the OCRC and the BCLDB may purchase under HEXO's agreements with them may therefore vary from what HEXO expects or has planned for.<sup>12</sup> [emphasis added]

26. The Judge erred by ignoring this evidence and concluding, on a limited record composed of conflicting evidence, that there was the requisite "certainty" that the Respondents' forward-looking statement defence would succeed on the merits.<sup>13</sup> This error mirrors one of the errors highlighted by this Honourable Court in *Nseir*.<sup>14</sup>

**iv. The Judge ignored key evidence, drew incorrect inferences and misapprehended the definition of material fact**

27. The Judge also erred in her analysis at paragraphs 103, 104, 121 and 216 of the Judgment relating to the impact of the possibility that the SQDC could terminate its agreement with HEXO. The Judge stated at paragraph 104:

[104] The fact that the SQDC could terminate the Agreement directly contradicts the argument that an investor would be misled to believe that the revenues to be generated in the first year were guaranteed.

28. This conclusion is based on an inappropriate and untenable evidentiary analysis. Even if, hypothetically, one was to accept the Judge's conclusion that there were no guarantees of revenue in year 1 post-legalization in any of the Respondents' public

---

<sup>11</sup> Judgment, Schedule 1, Schedule II showing Impugned Statements.

<sup>12</sup> Exhibit R-24, p. S-17 and Exhibit R-2, p. S-17.

<sup>13</sup> Judgment, Schedule 1, par. 120.

<sup>14</sup> *Nseir*, par. 49 and 87.

statements (which is denied), and that these statements constituted mere descriptors of the agreement, her conclusion would still constitute an error. The conditions upon which the agreement could be terminated were not disclosed.<sup>15</sup> The Judge read this absence of evidence about the conditions of termination to mean the contract could be terminated without penalty, i.e. utterly neutering the meaning of the “take or pay” provision. There was no evidence before her allowing this conclusion. The evidence before her was to the contrary: if the SQDC did not “take” the 20,000 kg of product, it would still need to “pay” for it.

29. Not only did the Judge err by engaging in an evidentiary analysis that is antithetical to the approach to be taken at authorization, but she also read the absence of evidence or at best, conflicting evidence, in favour of the Respondents, in contravention of the guiding principles.<sup>16</sup>
30. Additionally, the Judge erred in her conclusion about what constitutes a material fact. At paragraphs 129 to 134 of the Judgment, the Judge posits, based on “common sense”, that the failure to disclose that a portion of the Newstrike Facility was unlicensed is not a material fact.
31. The Judge’s conclusion ignores and is squarely contradicted by the available evidence proffered by the Appellant’s expert who concluded that upon the announcement that the Newstrike facility had been operating without an adequate licence, HEXO stock immediately fell 10.2% which was (effectively) statistically significant.<sup>17</sup> Moreover, in referring to a grouping of the public corrections relating to the Newstrike licencing issue by the Respondents’ expert (which Appellant’s expert did not entirely agree with), Appellant’s expert concluded there was a cumulative abnormal market return of -60%.<sup>18</sup>

---

<sup>15</sup> Judgment, Schedule 1, par. 121.

<sup>16</sup> *Rahimi v. SouthGobi Resources Ltd.*, 2017 ONCA 719, par. 50; *Nseir*, par. 40-43.

<sup>17</sup> Expert Report of Dr. Craig McCann, February 1, 2021, par. 47 and 52.

<sup>18</sup> Rebuttal Expert Report of Dr. Craig McCann, September 9, 2022, par. 44.

32. The Judge's error further appears to stem from a misapprehension of the definition of "material fact" and a misapplication of the decision rendered by the Supreme Court of Canada in *Sharbern*.<sup>19</sup> Section 5 of the QSA defines "material fact" as:

A fact that may reasonably be expected to have a significant effect on the market price or value of securities issued or securities proposed to be issued.

33. Whereas this definition is primarily focused on market impact, the Judge ignored the expert evidence before her of this market impact to focus exclusively on other factors raised in *Sharburn*, which was not a securities act case.

**v. Applying the incorrect evidentiary standard when the same misrepresentations are contained in core and non-core documents**

34. At paragraph 47 of the Judgment, the Judge makes a finding of fact:

[47] In subsequent **core and non-core documents**, the first year volume commitment in the Quebec Supply Agreement was couched in **similar, if not identical, language**, the extracts of the texts relied upon by Plaintiff and completed by Defendants appear in Schedule II attached hereto. [emphasis added]

35. Despite this finding, the Judge held that, for non-core documents, the Appellant had the additional burden of establishing that:

[110] [...] at the time the public statements were made, Defendants knew or should have known that the SQDC would not respect its first year commitment or that the take or pay feature of the Quebec Supply Agreement would likely not be enforced.<sup>20</sup> [References omitted]

36. This conclusion is contradicted by *Nseir*, where this Honourable Court held that the distinction between core and non-core documents is not significant when the same misrepresentation is contained in both types of documents:

[53] [...] However, this distinction [between core and no-core documents] is not significant in the present case, as it is undisputed that each aspect of the appellant's claim is based on a least some core documents.<sup>21</sup>

---

<sup>19</sup> *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23.

<sup>20</sup> Judgment, Schedule 1, par. 110.

<sup>21</sup> *Nseir*, par. 53.

37. The Judge therefore incorrectly held that specific knowledge of a misrepresentation in each non-core document had to be demonstrated by the Appellant.<sup>22</sup>

**B. The Judge erred in her analysis by tying authorization of the primary market and civil code claims to the authorization test under the QSA**

38. Many of the errors above were imported into the Judge's analysis of fault relating to the civil claim, but overarchingly, the Judge erred by analyzing the Respondents' fault through the lens of the burden of the QSA and applied it to authorization under the CCP.<sup>23</sup>

39. It has been repeatedly held that the authorizations under 225.4 of the QSA and 574 of the CCP are distinct.<sup>24</sup> This error of law caused the Judge to deny authorization under the CCP when it should have been granted.

**C. The Judge erred in refusing to grant authorization under articles 225.4 QSA and 574 CCP and this Honourable Court should consider the issues *de novo***

40. Errors of law in failing to grant authorization should be treated *de novo* by this Honourable Court:

[50] These examples, which touch on central aspects of the case, suffice to conclude that the motion judge's analysis of the record is not consistent with the limits inherent to the authorization process set out in section 225.4 para. 3 of the [Act](#). Because he erred in law, the Court must consider *de novo* whether the appellant ought to be authorized to assert causes of action based on sections 225.2 *et seq.* of the [Act](#).<sup>25</sup>

**IV. CONCLUSIONS**

41. The Appellant will ask this Honourable Court to:

(a) **ALLOW** the appeal;

---

<sup>22</sup> Judgment, Schedule 1, *inter alia*, par. 110, 113, 125 and 152.

<sup>23</sup> *Id.*, par. 208-230.

<sup>24</sup> *Gauthier v. Baazov*, 2020 QCCS 2452, par. 41; *Catucci v. Valeant Pharmaceuticals International Inc.*, 2017 QCCS 3870 (requests for leave to the Court of Appeal dismissed); *Kegel v. National Bank of Canada*, 2013 QCCS 7168, par. 13 & 20.

<sup>25</sup> *Nseir*, par. 50.

- (b) **SET ASIDE** the judgment in first instance;
- (c) **AUTHORIZE** the class action proceedings under articles 225.4 of the *Securities Act* and 574 of the *Civil Code of Procedure*;

(d) **AUTHORIZE** the Class as:

“**Class**” and “**Class Members**” are comprised of the following, other than the “**Excluded Persons**”:

- (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;
- (e) **DECLARE** that the following persons are excluded from the Class (“**Excluded Persons**”): (a) HEXO and its subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, (b) St-Louis, and any member of St-Louis’ immediate family, (c) any senior level employee of any insurance company providing directors’ and officers’ insurance to defend this proceeding, and (d) any licensee employed by the Defendants’ law firms defending this proceeding;
- (f) **NAME** Martin Dionne as Class Representative;
- (g) **DECLARE** that the following questions of fact and law are to be dealt with collectively:
- (i) During the Class Period, did the Defendants publish documents or make statements that contained misrepresentations within the meaning of the Québec *Securities Act* (“QSA”) and, if necessary, other Securities Legislation?
  - (ii) If so, which document or statement contains which misrepresentation?
  - (iii) Were the misrepresentations intentional?

- (iv) Are any of the Defendants liable to the Class or any of its Members under the QSA, and if necessary, any concordant provisions of the other Securities Legislation and/or under art. 1457 of the CCQ?
  - (v) If so, which Defendant is liable and to whom?
  - (vi) Is Defendants' liability solidary? and
  - (vii) What is the amount of the damages sustained by the Class Members?
- (h) **AUTHORIZE** the class action proceedings to seek the following conclusions:
- GRANT** this class action on behalf of the Class;
  - GRANT** the Representative Plaintiff's action against Defendants in respect of the rights of action asserted against Defendants under Title VIII, Chapter II, Divisions I and II of the QSA and, if necessary, the concordant provisions of the other Securities Legislation, and under article 1457 of the *Civil Code of Québec*;
  - CONDEMN** Defendants to solidarily pay to the Representative Plaintiff and Class Members compensatory damages for all monetary losses;
  - ORDER** collective recovery in accordance with articles 595 to 598 of the *Code of Civil Procedure*;
  - THE WHOLE** with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;
- (i) **APPROVE** the notice to the members of the Class in the form to be submitted to the Court;
  - (j) **ORDER** the publication of the notice to the Class no later than thirty (30) days after the date of the judgment authorizing the class proceedings;
  - (k) **ORDER** that the deadline for a member of the Class to exclude himself or itself from the class action proceedings shall be sixty (60) days from the publication of the notice to the members of the Class.
  - (l) **THE WHOLE WITH COSTS** in first instance and in appeal, including all costs related to the publication of the notices to class members and all costs of expertise.

Notice of this appeal is given to Hexo Corp., Sébastien St-Louis, their attorneys Norton Rose Fulbright LLP (Mtre François-David Paré and Mtre Francesca Taddeo), as well as to the Superior Court of Québec registry, District of Montréal.

Montréal, this 14 day of March 2023

*(S) FAGUY & CO.*

---

**FAGUY & CO.**

329 de la Commune W., Suite 200

Montréal, Québec, H2Y 2E1

Telephone: 514.285.8100

Fax: 514.285.8050

Lawyers for the Appellant/Appellant

Mtres Shawn Faguy/Elizabeth Meloche

[sfaguy@faguyco.com](mailto:sfaguy@faguyco.com)/[emeloche@faguyco.com](mailto:emeloche@faguyco.com)

Our file: 10239-001

**C A N A D A**  
**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**

**COURT OF APPEAL**

---

**MARTIN DIONNE**

APPELLANT – Plaintiff

N° C.A.: 500-

v.

N° S.C.: 500-06-001029-194

**HEXO CORP.**

and

**SÉBASTIEN ST-LOUIS**

RESPONDENTS – Defendants

---

**LIST OF SCHEDULES IN SUPPORT OF NOTICE OF APPEAL**

Appellant

Dated March 14, 2023

---

	<u>Page</u>
<b>SCHEDULE 1:</b> Judgment rendered on January 23, 2023 by the Honourable Silvana Conte of the Superior Court of Québec, District of Montréal.....	16
<b>SCHEDULE 2:</b> Notice of judgment dated February 17, 2023.....	111

**NOTICE FOLLOWING ARTICLE 26 OF THE CIVIL PRACTICE REGULATION**

Pursuant to article 358(2) *CCP*, within 10 days after notification, the respondent, the intervenors and the impleaded parties must file a representation statement giving the name and contact information of the attorney representing them or, if they are not represented, a statement indicating as much. If an application for leave to appeal is attached to the notice of appeal, the intervenors and the impleaded parties are only required to file such a statement within 10 days after the judgment granting leave or after the date the judge takes note of the filing of the notice of appeal (Article 358, para. 2 *C.C.P.*).

If a party fails to file a representation by an attorney (or a non-representation statement), it shall be precluded from filing any other pleading in the file. The appeal shall be conducted in the absence of such party. The Clerk is not obliged to notify any notice to such party, If the statement is filed after the expiry of the time limit, the Clerk may accept the filing subject to conditions that the Clerk may determine (Article 30 *Civil Practice Regulation*).

The parties shall notify their proceedings (*including briefs and memoranda*) to the appellants and to the other parties who have filed a representation (*or non-representation statement*) (Article 25, para. 1 *Civil Practice Regulation*).

**SCHEDULE 1**

Judgment rendered on January 23, 2023 by the Honourable Silvana Conte  
of the Superior Court of Québec, District of Montréal

## SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-001029-194

DATE: January 23, 2023

---

**PRESIDED BY: THE HONORABLE JUSTICE SILVANA CONTE, J.S.C.**

---

**MARTIN DIONNE**  
Plaintiff

v.

**HEXO CORP.**

and

**SÉBASTIEN ST-LOUIS**  
Defendants

---

### JUDGMENT

---

[1] Plaintiff seeks authorization to institute a class action against Defendants for damages resulting from misrepresentations and breaches of disclosure obligations in both the primary and secondary markets, under Division II of the *Quebec Securities Act*<sup>1</sup> (QSA) and under article 1457 of the *Civil Code of Quebec* (CCQ). In accordance with section

225.4 QSA, Plaintiff must first seek prior authorization to institute a secondary market claim.

## I. OVERVIEW

[2] Defendant HEXO Corp (HEXO) is a licensed producer and distributor of medical and recreational cannabis incorporated under the *Ontario Business Corporations Act*<sup>2</sup>, with its headquarters in Gatineau, Québec<sup>3</sup>.

[3] Defendant, Sébastien St-Louis (St-Louis), is HEXO's co-founder, and was, at all relevant times during the Class Period, HEXO's Chief Executive Officer. He is alleged to have authorized, permitted or otherwise acquiesced to the release and publication of HEXO public statements, which he knew or ought to have known contained false and misleading information.

[4] Plaintiff claims that between April 11, 2018 and March 30, 2020 (Class Period) Defendants misrepresented material facts, in both documents and oral statements (Impugned Statements) and failed to disclose material changes in a timely manner as it relates to :

- 4.1. A five year commercial agreement entered into with the Société québécoise du cannabis (SQDC) in April 2018 for the supply of cannabis products in Quebec post legalization (October 2018) (the Quebec Supply Agreement or Agreement);
- 4.2. The acquisition of Newstrike on May 24, 2019 and estimated synergies from same; Revenue Projections for Q4 2019 and fiscal year 2020; and
- 4.3. HEXO Inventory and Internal Controls.

[5] Plaintiff claims that the misrepresentations were material and had the effect of artificially inflating the price and value of HEXO's securities at the time they were purchased by putative class members.

[6] Plaintiff further claims that eight subsequent corrective disclosures issued between June 13, 2019 and March 30, 2020, resulted in the decline in value of the share price of HEXO securities by 87.4% thereby causing damages to the members of the class.

[7] Plaintiff acquired HEXO securities, including shares and call options during the Class Period. He alleges that he relied on Defendants' misrepresentations when making his investment decisions and estimates his losses at approximately \$50,000.

---

<sup>2</sup> R.S.O. 1990, c. B-16.

<sup>3</sup> Exhibit R-1.

[8] Plaintiff is therefore seeking leave to institute a secondary market claim as well as authorization to institute a class action against Defendants on behalf of the following persons and entities:

8.1. 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

8.2. 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.

[9] Defendants deny that the Impugned Statements contained material misrepresentations or that they breached their disclosure obligations under the QSA. Defendants argue that there is no reasonable possibility that the secondary market liability claim will be resolved in Plaintiff's favour such that authorization under section 225.4 QSA should not be granted.

[10] Moreover, Defendants argue that the class action should not be authorized as the facts alleged do not appear to justify the conclusions sought (article 575(2) CCP) and that Plaintiff does not have the requisite capacity to act as class representative (article 575(4) CCP). In particular, that the primary market claim is untenable given the absence of a misrepresentation in the prospectus supplement. In addition, in the absence of a misrepresentation in any of the Impugned Statements, there can be no fault.

[11] As the threshold for authorization under section 225.4 QSA is different and more onerous than the burden of proof under article 575 CCP, as regards the primary market and civil liability claim, the Court will first proceed with the analysis of the Motion for authorization of a secondary market claim<sup>4</sup>.

## **II. MOTION FOR AUTHORIZATION OF A SECONDARY MARKET CLAIM**

[12] Under section 225.4 QSA, the Court authorizes a secondary market claim where plaintiff satisfies the following criteria:

<sup>4</sup> *Amaya Inc. v. Derome*, 2018 QCCA 120 (CanLII) at para 54.

500-06-001029-194

PAGE : 4

- 12.1. The action is being brought in good faith; and
- 12.2. There is a reasonable possibility that the action will be resolved in favour of the plaintiff.

[13] The origins of the statutory civil liability regime contained in Division II of the Quebec *Securities Act* are explained in the Supreme Court of Canada decision *Theratechnologies Inc. v. 121851 Canada Inc.*<sup>5</sup>:

[33] Under this regime, when a security is acquired or transferred at the time of a false declaration or omission of information that should have been disclosed, the fluctuation in the value of the security is presumed to be attributable to that fault. Investors were thereby released from the heavy burden of demonstrating that the variation in the market price of the security was linked to the misinformation or omission, and from demonstrating that they personally relied on that information or omission in buying or transferring the security.

[34] The scheme also establishes an authorization mechanism to permit only actions in good faith with a “reasonable possibility of success”. As the Court of Appeal noted, Quebec’s new regime therefore reflected an attempt to strike a balance between preventing unmeritorious litigation and strike suits and, at the same time, ensuring that investors have a meaningful remedy when issuers breach disclosure obligations.

[14] The reasonable possibility of success threshold requires Plaintiff to offer both a plausible analysis of the applicable legislative provisions and some credible evidence in support of the claim. The burden of proof is explained in *Theratechnologies*<sup>6</sup> as follows:

[38] In my view, as Belobaba J. suggested in *Ironworkers*, the threshold should be more than a “speed bump” (para. 39), and the courts must undertake a reasoned consideration of the evidence to ensure that the action has some merit. In other words, to promote the legislative objective of a robust deterrent screening mechanism so that cases without merit are prevented from proceeding, the threshold requires that there be a reasonable or realistic chance that the action will succeed.

[39] A case with a reasonable possibility of success requires the claimant to offer both a plausible analysis of the applicable legislative provisions, and some credible evidence in support of the claim. This approach, in my view, best realizes the legislative intent of the screening mechanism: to ensure that cases with little chance of success — and the time and expense they impose — are avoided. I agree with the Court of Appeal, however, that the authorization stage under s. 225.4 should not be treated as a mini-trial. A full analysis of the evidence is unnecessary. If the goal of the screening mechanism is to prevent costly strike

<sup>5</sup> *Theratechnologies Inc. v. 121851 Canada inc.*, 2015 SCC 18 (CanLII) at paras 33-34.

<sup>6</sup> *Theratechnologies Inc.*, supra, note 5, at paras 38-39.

suits and litigation with little chance of success, it follows that the evidentiary requirements should not be so onerous as to essentially replicate the demands of a trial. To impose such a requirement would undermine the objective of the screening mechanism, which is to protect reporting issuers from unsubstantiated strike suits and costly unmeritorious litigation. What is required is sufficient evidence to persuade the court that there is a reasonable possibility that the action will be resolved in the claimant's favour.

[15] In *Mask v. Silvercorp Metals Inc.*<sup>7</sup>, cited with approval by the Court of Appeal in *Amaya v. Derome*<sup>8</sup>, the Ontario Court of Appeal held that the "reasonable possibility" leg of the leave test requires scrutiny of merits of the action "based on all the evidence proffered by the parties".

[16] In the present case, Plaintiff and Defendants have filed exhibits mainly regarding the public documents containing the written or transcribed oral statements relevant to the QSA claims, press articles regarding same or other disclosures during the Class Period and the transcript of Plaintiff's examination on discovery<sup>9</sup>.

[17] In addition, Plaintiff filed the expert report of Dr. Craig McCann dated February 1, 2021<sup>10</sup>; Defendants filed the expert report of Dr. Vinita Juneja dated August 4, 2021<sup>11</sup> and Plaintiff filed a rebuttal expert report by Dr. McCann on September 9, 2022<sup>12</sup>.

[18] On March 16, 2022, the Court struck portions of Dr. Juneja's expert report further to Plaintiff's application to dismiss same<sup>13</sup>.

[19] Both experts opined on the market impact of the alleged corrective disclosures in order to ascertain the materiality of the facts disclosed. While the Court has taken into consideration Dr. Juneja's competing report and method of analysis, the leave stage is not the proper venue to engage in an analysis of conflicting opinions and should be left to the judge hearing the merits of the case<sup>14</sup>.

## **ANALYSIS**

### **i) Good Faith**

<sup>7</sup> *Mask v. Silvercorp Metals Inc.*, 2016 ONCA 641 at para 41.

<sup>8</sup> Phrase coined in *Amaya Inc. supra* at note 4.

<sup>9</sup> Exhibit D-16.

<sup>10</sup> Exhibit R-83.

<sup>11</sup> Exhibit D-15.

<sup>12</sup> Exhibit R-84.

<sup>13</sup> *Miller v. HEXO Corp.*, 2022 QCCS 963 (CanLII).

<sup>14</sup> *Catucci v. Valeant Pharmaceutical International Inc.*, 2017 QCCS 3870 at paras 182, 186; *Swisscanto v. Blackberry*, 2015 ONSC 6434 at para 48.

500-06-001029-194

PAGE : 6

[20] Defendants do not contest the good faith criterion for the purpose of the authorization hearing. As good faith is presumed<sup>15</sup> and the evidence does not rebut that presumption, the Court will examine the second criterion for leave under section 225.4 QSA, the reasonable possibility that the action will be resolved in Plaintiff's favour.

**ii) Reasonable Possibility Test**

[21] The relevant provisions of the QSA relied upon by the parties are contained in Schedule I hereto.

[22] Plaintiff argues that:

22.1. Defendants' documents and oral statements contained misrepresentations of material facts that artificially increased the price or value of HEXO securities and that were relied upon by Plaintiff when he acquired or disposed of same; and

22.2. Defendants breached their continuous disclosure obligation under section 73 QSA.

**Misrepresentation**

[23] Sections 225.8 and 225.9 QSA, create a statutory cause of action for secondary market misrepresentation for any person who acquires or disposes of an issuer's securities between the time that documents or oral statements containing the misrepresentations were publicly released and the time when the misrepresentations were publicly corrected.

[24] A misrepresentation is defined under section 5 QSA as "any misleading information on a material fact as well as any pure and simple omission of a material fact".

[25] A material fact is defined in section 5 QSA as "a fact that may reasonably be expected to have a significant effect on the market price or value of securities issued or securities proposed to be issued".

[26] The question of materiality is a mixed question of fact and law to be determined objectively from the perspective of the reasonable investor<sup>16</sup>. In *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*<sup>17</sup>, the Supreme Court of Canada provided the following guidance regarding the materiality test<sup>18</sup>:

<sup>15</sup> Art. 2805 CCQ.

<sup>16</sup> *Cappelli v. Nobilis Health Corp.*, 2019 ONSC 2266, at para 177.

<sup>17</sup> *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23 (CanLII),

<sup>18</sup> *Sharbern*, supra at paras 58-61.

[61] In sum, the important aspects of the test for materiality are as follows:

i. Materiality is a question of mixed law and fact, determined objectively, from the perspective of a reasonable investor;

ii. An omitted fact is material if there is a substantial likelihood that it would have been considered important by a reasonable investor in making his or her decision, rather than if the fact merely might have been considered important. In other words, an omitted fact is material if there is a substantial likelihood that its disclosure would have been viewed by the reasonable investor as having significantly altered the total mix of information made available;

iii. The proof required is not that the material fact would have changed the decision, but that there was a substantial likelihood it would have assumed actual significance in a reasonable investor's deliberations;

iv. Materiality involves the application of a legal standard to particular facts. It is a fact-specific inquiry, to be determined on a case-by-case basis in light of all of the relevant considerations and from the surrounding circumstances forming the total mix of information made available to investors; and

v. The materiality of a fact, statement or omission must be proven through evidence by the party alleging materiality, except in those cases where common sense inferences are sufficient. A court must first look at the disclosed information and the omitted information. A court may also consider contextual evidence which helps to explain, interpret, or place the omitted information in a broader factual setting, provided it is viewed in the context of the disclosed information. As well, evidence of concurrent or subsequent conduct or events that would shed light on potential or actual behaviour of persons in the same or similar situations is relevant to the materiality assessment. However, the predominant focus must be on a contextual consideration of what information was disclosed, and what facts or information were omitted from the disclosure documents provided by the issuer.

[27] As for the document containing the misrepresentation, section 225.13 QSA provides that unless the misrepresentation is contained in a core document, as defined in section 225.3, the plaintiff will also have to show that the defendant:

- (1) knew, at the time that the document was released or the public oral statement was made, that the document or public oral statement contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time; or
- (2) was guilty of a gross fault in connection with the release of the document or the making of the public oral statement.

[28] Section 225.3 QSA defines core and non core documents as follows :

**core document** means a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take-over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, a proxy solicitation circular, the issuer's annual and interim financial statements and any other document determined by regulation, and a material change report, but only where used in relation to the issuer or the investment fund manager and their officers;

**document** means any writing that is filed or required to be filed with the Authority, with a government or an agency of a government under applicable securities or corporate law, or with a stock exchange or quotation and trade reporting system under its by-laws, or the content of which would reasonably be expected to affect the market price or value of a security of the issuer;

[29] The Court evaluates the misrepresentation or omission at the time the public statement was made or released<sup>19</sup>. As stated in *Cornish v. Ontario Securities Commission*,<sup>20</sup> "assessments of materiality are not to be made against a standard of perfection or with the benefit of hindsight"<sup>21</sup>.

[30] The Court has the discretion to treat several misrepresentations as a single misrepresentation or a single failure to make timely disclosure. As provided for in section 225.16 QSA, there must be a common subject matter or content in the multiple representations or common subject matter for the disclosure and this determination is best left for the trial judge<sup>22</sup>.

[31] As for the public correction, it is not defined by the QSA. The courts have held that the date of the correction acts as a time-post for the purposes of a proposed class period and any eventual damages calculation<sup>23</sup>.

[32] Where the alleged public correction does not, on its face, clearly reveal the existence of the alleged misrepresentation, the judge must engage in a reasoned consideration of evidence of the context in which the alleged public corrections were made and how the alleged public corrections would be understood in the secondary market<sup>24</sup>.

<sup>19</sup> *Kerr v. Danier Leather Inc.*, 2007 SCC 44 (CanLII) at para 40; *121851 Canada Inc. v. Theratechnologies inc.*, 2012 QCCS 699 at para. 86; *Nseir v. Barrick Gold Corporation*, 2020 QCCS 1697, at para 220, leave to appeal granted on December 19, 2022.

<sup>20</sup> *Cornish v. Ontario Securities Commission*, 2013 ONSC 1310 (CanLII).

<sup>21</sup> *Cornish*, *supra* at para 49.

<sup>22</sup> *Badesha v. Cronos Group Inc.*, 2022 ONCA 663 at para 57; overturning *Badesha v. Cronos Group*, 2021 ONSC 4346, at para 67.

<sup>23</sup> *Nseir*, *supra* note 19 at para 263.

<sup>24</sup> *Drywall Acoustic Lathing and Insulation, Local 675 Pension Fund v. Barrick Gold Corporation*, 2021 ONCA 104 (CanLII), at para 48.

500-06-001029-194

PAGE : 9

[33] In light of the foregoing, under sections 225.8 and 225.9 QSA, Plaintiff needs to offer sufficient and credible evidence of the following elements:

- 33.1. The document or public statement released by the Defendants contained a misrepresentation, that is, a misrepresentation or omission of a fact that may reasonably be expected to have a significant effect on the market price or value of securities issued or securities proposed to be issued;
- 33.2. The misrepresentation was publicly corrected;
- 33.3. Plaintiff acquired or disposed of Hexo's securities during the period between the time when the issuer released a document or statement containing a misrepresentation and the time when it was publicly corrected; and
- 33.4. If the document is a non-core document, Plaintiff must also show that Defendants had knowledge of the alleged misrepresentation at the time the misrepresentation was made, deliberately avoided acquiring such knowledge at or before that time or committed a gross fault in connection with the release of the document or the making of the misrepresentation.

#### **Continuous disclosure obligation under section 73 QSA**

[34] The second cause of action concerns a breach of an issuer's obligation to make continuous disclosures under section 73 QSA.

[35] In *Theratechnologies*<sup>25</sup>, the Supreme Court of Canada held that continuous disclosure obligations was designed to create a "level playing field" where all investors have access to the same information. These obligations fall into two categories: periodic disclosure and timely disclosure<sup>26</sup>:

[23] [...] Periodic disclosure must be made at regular intervals, typically through the regular provision of documents such as proxy circulars, financial statements and insider trading reports. In these regularly issued documents, companies must disclose all material facts — that is, anything "that may reasonably be expected to have a significant effect on the market price or value of securities issued"; Securities Act (Quebec), s. 5 "material fact".

[24] Timely disclosure obligations, on the other hand, are imposed only when there has been a material change in the issuer's affairs. Material changes, which arise from changes in the issuers' business, operations or capital, must be disclosed at the time they occur: Securities Act (Quebec), s. 5.3; Mark R. Gillen, *Securities Regulation in Canada* (3rd ed. 2007), at p. 211; David Johnston,

<sup>25</sup> *Theratechnologies Inc.*, *supra* note 5.

<sup>26</sup> *Theratechnologies Inc.*, *supra* note 5, at paras 23-24.

Kathleen Doyle Rockwell and Cristie Ford: Canadian Securities Regulation (5th ed. 2014), at p. 249.

[36] A material change is defined in section 5.3 QSA and has two components. There must be a change in the business, operations or capital of the issuer and the change must be material, which means it would reasonably be expected to have a significant effect on the market price or value of the securities of the issuer.

[37] In *Kerr v. Danier Leather Inc.*,<sup>27</sup> the Supreme Court explains the distinction between material change and material fact as follows:

The distinction between "material change" and "material fact" is deliberate and policy-based, as explained by a former chairman of the O.S.C.:

The term "material fact" is necessary when an issuer is publishing a disclosure document, such as a prospectus or a take-over bid circular, where all material information concerning the issuer at a point in time is published in one document which is convenient to the investor. The term "material change" is limited to a change in the business, operations or capital of the issuer. This is an attempt to relieve reporting issuers of the obligation to continually interpret external political, economic and social developments as they affect the affairs of the issuer, unless the external change will result in a change in the business, operations or capital of the issuer, in which case, timely disclosure of the change must be made.

[38] As stated previously, a plaintiff is not required to prove that the plaintiff relied on the document or public oral statement containing a misrepresentation or on the issuer having complied with its timely disclosure obligations when the plaintiff acquired or disposed of the issuer's security<sup>28</sup>.

[39] A defendant may defeat both causes of action by showing, amongst other things, that<sup>29</sup>:

39.1. The plaintiff knew that the document or public oral statement contained a misrepresentation or was aware of the material change that should have been disclosed; or

39.2. The defendant conducted or caused to be conducted a reasonable investigation and had no reasonable grounds to believe that the document or public oral statement would contain a misrepresentation or that the failure to make timely disclosure would occur.

<sup>27</sup> *Kerr, supra* note 19 at p. 333.

<sup>28</sup> Section 225.12 QSA.

<sup>29</sup> Section 225.17 QSA.

500-06-001029-194

PAGE : 11

[40] In addition, under section 225.22 QSA, a defendant may defeat an action for a misrepresentation in forward-looking information in a document or a public oral statement by proving that<sup>30</sup>:

- (1) the document or public oral statement containing the forward-looking information contained, proximate to that information,
  - (a) reasonable cautionary language clearly identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information; and
  - (b) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection; and
- (2) the defendant had a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information.

[41] In light of the foregoing, Plaintiff must offer sufficient and credible evidence as follows:

- 41.1. Defendants failed to make a periodic disclosure of a material fact, that is a fact that may reasonably be expected to have a significant effect on the market price or value of securities issued or securities proposed to be issued; or
- 41.2. Defendants failed to make a timely disclosure of a material change, that is, a change in the business, operations or capital of HEXO that would reasonably be expected to have a significant effect on the market price or value of the securities of HEXO;
- 41.3. The material fact or material change was disclosed; and
- 41.4. Plaintiff acquired or disposed of Hexo securities during the period between the time when HEXO failed to make timely disclosure of a material change and the time when the material fact or material change was disclosed.

## FACTS

### Quebec Supply Agreement

<sup>30</sup> Section 225.22 QSA: This section does not apply to forward-looking information in a financial statement required to be filed under this Act or the regulations or in a document released in connection with an initial public offering.

[42] On April 11, 2018, in anticipation of the legalization of of adult-use recreational cannabis in Canada on October 17, 2018, HEXO (formerly known as Hydrothecary<sup>31</sup>) announced in a press release that it had entered into a commercial agreement with a future subsidiary of the Société des alcools du Québec, later known as the Société québécoise du cannabis (SQDC), to be the preferred supplier of cannabis products for the Quebec market for five years with an option to extend for a sixth year (Quebec Supply Agreement or Agreement)<sup>32</sup>.

[43] A key feature of the Quebec Supply Agreement was the commitment by the SQDC to purchase 20,000 kg of product in the first year post-legalization of cannabis for adult use.

[44] In the April 11, 2018 press release<sup>33</sup> Defendants stated as follows:

Under the agreement, Hydrothecary will supply 20,000 kg of products in the first year of the agreement and is expected to supply 35,000 kg in the second year and 45,000 kg in the third. [...]

The SAQ has the right to terminate the agreement in certain circumstances.

[45] The press release contained cautionary language regarding forward looking statements that "should not be read as assurances of future performance or results", "including the actual product volumes that will be supplied by the Company under the agreement"<sup>34</sup>.

[46] Following HEXO's announcement of the Québec Supply Agreement on April 11, 2018, the value and price of its common shares increased by 13.24% on the TSX in one day<sup>35</sup>.

[47] In subsequent core and non-core documents, the first year volume commitment in the Quebec Supply Agreement was couched in similar, if not identical, language, the extracts of the texts relied upon by Plaintiff and completed by Defendants appear in Schedule II attached hereto.

[48] Following the legalization of cannabis on October 17, 2018, the October 26, 2018 annual report and October 25, 2018 Management Discussion and Analysis (MD&A) underlined the strategic importance of the SQDC relationship<sup>36</sup>:

---

<sup>31</sup> Exhibit R-1, On August 29, 2018, the name was changed to HEXO Corp..

<sup>32</sup> Exhibit R-8.

<sup>33</sup> Exhibit R-8.

<sup>34</sup> Exhibit R-8.

<sup>35</sup> Exhibit R-9.

<sup>36</sup> Exhibit R-18.

The strategic value of our SQDC relationship cannot be understated. (sic) We hold the single largest forward contract in the history of the emerging cannabis industry with the SQDC and are the preferred supplier for cannabis products for the Quebec market for the first five years following legalization. We will supply the SQDC with 20,000 kg of products in the first year, and we expect to supply 35,000 kg and 45,000 kg in years two and three, respectively. Thereafter, based on an expected market growth rate of 10%, we intend to supply 49,500 kg and 54,450 kg in years four and five, respectively. The Company estimates the total volume to be supplied over the five-year term of the agreement to be in excess of 200,000 kg.

[49] In the December 12, 2018 MD&A HEXO estimated that the Quebec Supply Agreement represented \$1 billion in potential revenues as follows<sup>37</sup>:

In Quebec, which has a population of 8.45 million, or approximately 23% of the Canadian population, the Société québécoise du cannabis ("SQDC") operates the distribution and sale of adult-use cannabis.

The SQDC has established 12 retail locations throughout the province, for in-store cannabis sales. It expects to increase this number to 50 locations within the first year of legalization. It will also sell cannabis online.

In the first year of legalization, we hold a 35% market share in Quebec. Our agreement with the SQDC spans a potential five-year period, with us supplying an estimated 200,000 kg or more of cannabis, representing \$1 billion in potential revenues.

In addition, we hold a distribution agreement with the SQDC, in which we house and distribute all of the SQDC's online [...]

[50] The January 21, 2019 Corporate presentation<sup>38</sup> and January 24, 2019 prospectus supplement<sup>39</sup> also referenced the SQDC first year purchase commitment as being subject to a take or pay feature.

### Acquisition of Newstrike

[51] In a March 13, 2019 press release<sup>40</sup>, HEXO announced that it would acquire Newstrike, another publicly traded Canadian cannabis company.

[52] With this acquisition, HEXO stated that it would access markets in 8 other provinces, and boost production with the addition of approximately 470,000 sq. ft. in production space including "Newstrike's **licensed** indoor facility" generating "accretive synergies estimated to realize annual synergies of \$10 million".

<sup>37</sup> Exhibit R-20.

<sup>38</sup> Exhibit R-23.

<sup>39</sup> Exhibit R-2.

<sup>40</sup> Exhibit R-26.

500-06-001029-194

PAGE : 14

[53] Moreover, HEXO announced in the March 13, 2019 press release that "Based on the completion of the Transaction, for fiscal 2020, HEXO estimates net and gross revenues from the sale of cannabis in Canada will be in excess of \$400 million and \$479 million respectively"<sup>41</sup>.

[54] This information also appears in the March 13, 2019 MD&A<sup>42</sup> where HEXO also represented that the net revenues with regard to adult-use sales were expected to double in the fourth quarter 2019 (Q4 2019)<sup>43</sup>.

[55] On the March 14, 2019 earnings call with analysts, Defendant St. Louis referenced the Newstrike acquisition stating that "of the total 450,000 square feet that we're adding, there's 250,000 feet that are licensed operational" and as regards the synergies on listing fees, legal fees, some key executives "above \$10 million"<sup>44</sup>. With regard to doubling of net revenues in Q4 2019, Defendant St. Louis responded to an analyst inquiry as to the ability to meet the Q4 target as follows:

I'm absolutely confident about that Rob. Look at historically what we've done in terms of rampup, so if you look at the multiples we've put forth on previous sales; I think there has always been a doubt for HEXO's ability to rampup and we've executed every single time. So I'm telling everybody now we will execute again. Are there risks? Yes. So there is some licensing risk around our Belleville facility. So that Belleville facility and the infrastructure and the backing is critical towards getting this done. But we've given ourselves adequate buffer, the license application is already in, we're already in conversation with Health Canada, and we have of course, phenomenal relationship. So we think that's adequately mitigated.

[56] On May 24, 2019, HEXO closed on the acquisition of Newstrike<sup>45</sup>.

[57] In the June 12, 2019 MD&A Defendants represented, that net revenues for adult use cannabis would double in Q4 2019 for the reasons stated therein which included the anticipated regulations regarding the sale of derivative cannabis products (edibles etc) expected to take effect in October 2019, the Quebec Supply Agreement, the Newstrike acquisition and increase in consumer demands<sup>46</sup>.

[58] The volume of cannabis supplied to the SQDC, for the quarter ending on April 30, 2019, as also reported by HEXO in its June 12, 2019 MD&A<sup>47</sup>, fell short of expectations and amounted to approximately 5,500 kg.

<sup>41</sup> Exhibit R-26.

<sup>42</sup> Exhibit R-32.

<sup>43</sup> Exhibit R-31.

<sup>44</sup> Exhibit R-30.

<sup>45</sup> Exhibit R-42.

<sup>46</sup> Exhibit R-32.

<sup>47</sup> Exhibit R-32.

500-06-001029-194

PAGE : 15

[59] In the transcript of the June 13, 2019 earnings call with analysts, Defendant St Louis acknowledged the risk that the 20,000 kg commitment would not be met and indicated that it valued the relationship with the SQDC and would not be enforcing the take or pay feature in the Agreement in that quarter (pp140-145.7)<sup>48</sup>:

Hey, good morning. Thanks for taking my question. When I think about Quebec, which is obviously an important market for you, you're expecting 20,000 kilograms of sales to Quebec in the first year for ag (ph). I think we're over halfway through that year now and sales within about 5,500 kilograms to that province. So it seems to me like it could be a bit challenging for the SQDC sales to triple over the remaining five months. Do you see a risk that the SQDC doesn't need that much product, but picks it anyway and that leads to significant inventory builds and maybe even impacts demand on your year two contract?

Sebastien St-Louis - Co-founder and Chief Executive Officer

Yeah. So definitely a risk. I think the demand is there in Quebec. I think SQDC has been doing a fantastic job, but since there were inventory supply shortages on the early days from most LPs, so HEXO was delivering on its purchase orders, but SQDC weren't getting fully supplied. They slowed their store ramps. So the original plan called for about 25 stores in Quebec by this day. And last quarter we were at about 13. Now the good news is SQDC has now gone back to seven days of full time selling. So that adds significant demand. They've added more stores now. So we have a brand new store in Gatineau, right next to an Ottawa population center.

I do think there could be some timing risk around a few of those tons -- of those 20 tons. Now of course, as you pointed out, it is to take or pay contract, but we value our relationship with SQDC more than the few million dollars in revenue we could get this quarter. So we're working very closely with them. We ramped (ph) our SKU mix to create more interesting products. We plan on launching a whole bunch of new products over the following couple quarters, which we think will help that, but expect some timing risk whether it's an October, November, December timeline to hit the full 20 I think would be a reasonable assumption. We're confident we can completely offset that in more of course in other provinces.

[60] With regard to the Q4 2019 target to double Q2 net revenues from \$12.9 million to approximately \$27 million Defendant St. Louis stated<sup>49</sup> :

We're going to reach the target. I mean, I'd ask you and I continuously, I welcome a challenge-as I think that the analyst community is doing a phenomenal job in our space. I welcome more transparency in our space. I welcome a broader discussion for investors. If you ever hear me say something and not deliver, you have to call me out. And in reverse, I would tell you today, nobody has ever called me out on

<sup>48</sup> Exhibit R-36.

<sup>49</sup> Exhibit R-36.

anything because HEXO has always delivered what we said we would. We're delivering a double this quarter.

[61] The price of HEXO common shares fell 8.4% on June 13, 2019<sup>50</sup>. Dr. McCann opines that the abnormal return was statistically significant.

[62] On October 4, 2019 HEXO announced that the Chief Financial Officer had resigned<sup>51</sup>.

[63] On October 10, 2019, HEXO issued a press release advising that it was withdrawing its fiscal 2020 revenue guidance and Q4 estimates stating, in part,<sup>52</sup>:

Fourth quarter revenue is below our expectation and guidance, primarily due to lower than expected product sell through [...]

Slower than expected store rollouts, a delay in government approval for cannabis derivative products and early signs of pricing pressure are being felt nationally. The delay in retail store openings in our major markets has meant that the access to a majority of the target customers has been limited. Additionally, regulatory uncertainty across the pan-Canadian system and jurisdictional decisions to limit the availability and types of cannabis derivative products have contributed to an increased level of unpredictability. As a result, HEXO is withdrawing its previously issued financial outlook for fiscal year 2020.

[64] The price of HEXO's common shares in Canada fell 23.0% on October 10, 2019 and another 10.9% on October 11, 2019<sup>53</sup>. Dr. McCann opined that the abnormal return was statistically significant.

[65] On October 24, 2019, HEXO announced it was right-sizing its operations and winding down operations at the Niagara Facility<sup>54</sup>.

[66] In the October 28, 2019 MD&A<sup>55</sup>, Defendants represented the following:

The Niagara facility is a 240,000 sq. ft fully automated, modern "Dutch-Tray" facility, **consisting of 186,400 sq. ft licensed for production and cultivation**, with the remaining space allocated to administration, packaging and shipping/receiving areas. The facility is currently capable of producing up to 20,000 kg of dried cannabis annually. **This facility is situated on approximately 16.6 acre of land and received its cultivation licence under the Cannabis Act on March 29, 2018.**

<sup>50</sup> Exhibits R-9 and R-82.

<sup>51</sup> Exhibit R-83.

<sup>52</sup> Exhibit R-39.

<sup>53</sup> Exhibits R-9 and R-83.

<sup>54</sup> Exhibit R-48.

<sup>55</sup> Exhibit R-42.

500-06-001029-194

PAGE : 17

[...]

The actions taken are intended to rightsize the organization to the revenue the Company expects to achieve in fiscal 2020. As part of the changes to its operations, **cultivation has been suspended at the Niagara facility** acquired from Newstrike, and in 200,000 sq ft. at the Company's main facility in Gatineau. The Company determined that this cultivation space is not required at this time given the current market conditions in Canada.

[67] The annual report dated October 28, 2019<sup>56</sup> and AIF of October 29, 2019<sup>57</sup> also referenced this information.

[68] The Consolidated Financial Statements dated October 28, 2019 issued for the year ending July 31, 2019 also recorded an impairment loss on inventory in Q4 of \$16.9 million<sup>58</sup>.

[69] On the October 29, 2019 earnings call, Defendant St. Louis attributed this loss to price compression in the market and explained that their original cost of this inventory exceeded the net realizable value<sup>59</sup>.

[70] Defendant St. Louis also explained that the slow roll out of retail stores coupled with inventory shortages resulted in the failure of the SQDC to fulfill the 20,000 kg purchase in the first year. Mr. St. Louis reiterated that HEXO valued a long term SQDC relationship and confirmed HEXO would not be enforcing the take or pay feature in the SQDC Agreement<sup>60</sup>:

So shipping about 10 tons in of our 22-ton initial commitment. But what I think is more important is to point out that HEXO maintained a 33% market share in Quebec. So our original 20-ton commitment out of the 58 ton, we've held that market share if not the volume. Our contract required SQDC to purchase that tonnage. And while we didn't achieve those quantities, we don't think it would be responsible as a partner to demand that full 20 tons. We're in this for the long haul, with our partner SQDC and we're more interested in what we can do with revenues over the next 5 to 20 years versus the next five quarters.

[71] Defendant St. Louis also announced that HEXO has scaled back its cultivation facilities to 1.1 million square feet, with a temporary suspension of activity at the Niagara facility and reduction of 200,000 square feet in Gatineau<sup>61</sup>.

---

<sup>56</sup> Exhibit R-45.

<sup>57</sup> Exhibit R-44.

<sup>58</sup> Exhibit R-43.

<sup>59</sup> Exhibit R-47.

<sup>60</sup> Exhibit R-47.

<sup>61</sup> Exhibit R-47.

[72] The price of HEXO's common shares in Canada fell 3.0% on October 29, 2019<sup>62</sup>. Dr. McCann opined, however, that the abnormal return was not statistically significant as the information regarding the Quebec Supply Agreement and net revenue projections was already disclosed on June 13, 2019 and October 10, 2019 respectively and incorporated in the price<sup>63</sup>.

[73] On November 15, 2019, HEXO issued a press release wherein it disclosed that on July 30, 2019, HEXO discovered that Block B of the Niagara Facility was not adequately licensed as follows<sup>64</sup>:

In November 2018, prior to HEXO Corp's acquisition of Newstrike Brands Ltd., the UP Cannabis cultivation facility in Niagara was licenced by Health Canada and production from that facility began shortly after. Block B – the space in question – was included in the licence application. In October 2018, Health Canada requested additional information for the application, pertaining specifically to the building where Block B is housed. When the licence was received, the team was under the impression that Block B was included in the licence. In February 2019, Health Canada conducted an inspection of the facility, which included Block B and no observations were made about cultivation in this space. This further reinforced the assumption that it was indeed a licensed growing space.

On July 30, 2019, shortly after the Newstrike Brand Ltd. acquisition closed, HEXO discovered that cannabis was being grown in Block B, which was not adequately licensed. HEXO management immediately ceased cultivation and production activities in the unlicensed space.

[...]

Today, the facility is no longer operational. On October 24, 2019, HEXO announced it was right-sizing its operations and winding down operations in Niagara.

[74] The price of HEXO's common shares in Canada fell 10.2% on November 18, 2019. Dr. McCann opined that the abnormal return was statistically significant<sup>65</sup>.

[75] On or around November 19, 2019, the first Motion for authorization was filed.

[76] In the December 16, 2019 MD&A for the year ended October 31, 2019<sup>66</sup> Defendants disclosed that HEXO's final Q4 2019 results were approximately 40% lower

<sup>62</sup> Exhibits R-9 and R-83.

<sup>63</sup> Exhibit R-83.

<sup>64</sup> Exhibit R-48.

<sup>65</sup> Exhibits R-9 and R-83.

<sup>66</sup> Exhibit R-50.

than forecasted. It also identified material weaknesses in its internal controls with regard to its financial reporting.

[77] On December 16, 2019, the Defendants also disclosed that HEXO had incurred an additional impairment loss on inventory of \$25.5 million<sup>67</sup>.

[78] On December 16, 2019, the price of HEXO's common shares in Canada fell 3.4% on December 16, 2019. Dr. McCann opined that the abnormal return was not statistically significant<sup>68</sup>.

[79] On December 31, 2019, the Defendants' MD&A restated the Q4 2019 and Q1 2020 statements and moved \$2.4M of the impairment loss on inventory from Q1 2020 to Q4 2019<sup>69</sup>.

[80] The price of HEXO's common shares in Canada increased 3.5% on December 31, 2019<sup>70</sup>.

[81] On March 17, 2020, the Defendants announced that they were delaying the filing of HEXO's Q2 2020 interim financial statements, because HEXO shortly would be recording a third impairment loss in the range of \$265 million to \$280 million<sup>71</sup>.

[82] The price of HEXO's common shares in Canada fell 33.7% on March 17, 2020. Dr. McCann opined that the abnormal return was statistically significant<sup>72</sup>.

[83] In the March 30, 2020 MD&A HEXO provided further information on the licensing deficiency of Block B of the Niagara Facility and the reasons it did not file a material change report<sup>73</sup>:

On November 15, 2019, the Company announced that following its acquisition of Newstrike, it had discovered that cannabis being grown in "Block B" of the Niagara facility was not adequately licensed. Following this discovery, which occurred on July 29, 2019, as a result of the Company's application to Health Canada requesting the designation of a new alternate quality assurance person at the facility 7, it was promptly reported to Health Canada, and the Company ceased cultivation and production activities in Block B and took other appropriate corrective actions, with which Health Canada was satisfied. Health Canada eventually renewed the licence for the facility in November 2019, including Block B. While operations at the facility were suspended in October 2019 due to the Company's cost-cutting measures, it is fully licensed. The deficiencies in the

<sup>67</sup> Exhibit R-50.

<sup>68</sup> Exhibits R-9 and R-83.

<sup>69</sup> Exhibits R-57 and R-59.

<sup>70</sup> Exhibit R-9.

<sup>71</sup> Exhibit R-62.

<sup>72</sup> Exhibits R-9 and R-83.

<sup>73</sup> Exhibit R-68.

On November 15, 2019, the Company announced that following its acquisition of Newstrike, it had discovered that cannabis being grown in "Block B" of the Niagara facility was not adequately licensed. Following this discovery, which occurred on July 29, 2019, as a result of the Company's application to Health Canada requesting the designation of a new alternate quality assurance person at the facility 7, it was promptly reported to Health Canada, and the Company ceased cultivation and production activities in Block B and took other appropriate corrective actions, with which Health Canada was satisfied. Health Canada eventually renewed the licence for the facility in November 2019, including Block B. While operations at the facility were suspended in October 2019 due to the Company's cost-cutting measures, it is fully licensed. The deficiencies in the

licensing of Block B were not considered by the Company to have a material impact on its operations and business. The Company did not file a material change report with respect to this matter on the basis that it did not consider this matter to be a change in its business or operations that would reasonably be expected to have a significant effect on the market price or value of any of its securities in the particular circumstances. The Company regards the Block B licensing issue as a technical matter that is not and was not material. Block B was only one section of the Niagara facility, representing approximately 17% of the facility (i.e., 77,000 sq. ft. of 455,000 sq. ft.), or approximately 4% of the Issuer's total cultivation facilities (i.e., 77,000 sq. ft. of 1,779,000 sq. ft.). Health Canada did not require destruction of any inventory, nor did they prevent the Company from selling any of the inventories produced from the Niagara facility as part of the Block B licensing issue.

[84] The March 30, 2020 MD&A <sup>74</sup> also disclosed that HEXO would sell the Niagara Facility and recorded impairments to goodwill, intangible assets and property, plant and equipment of \$111,877, \$106,189 and \$32,082, respectively noting as follows:

As the result of changes in the market conditions in Canada, the Company completed a strategic review of its cultivation capacity and assets and determined that it would list its Niagara facility for sale and record an impairment on property, plant and equipment and intangible assets. After a shift in the market capitalization of the Company, we determined that the total net assets significantly exceeded the Company's market capitalization. Based on this assessment, we performed an indicator-based impairment test of goodwill and recorded an impairment as at January 31, 2020.

[85] In the March 30, 2020 MD&A, HEXO references the October 2019 decision not to enforce the 20 ton commitment as follows<sup>75</sup>:

Although total sales for the first year did not reach the 20 tonnes originally expected under the contract, our actual sales relative to expectations were proportionate to total sales by the SQDC, which only had initial sell-through in year one of roughly half of the total amount it had expected to purchase for all licensed producers. While the Company had a right under the contract to require the SQDC to purchase the full 20 tonnes of the outstanding commitment during the first year of the agreement, the Company did not seek to enforce this right on the belief that it would be short sighted given the general results in the industry and the SQDC's initial sell-through and from the perspective of its overall business relationship with the SQDC and its position in Quebec. While HEXO did not achieve the expected volume for year 1. HEXO met its goal of achieving a premiere market share in Quebec and remains a preferred supplier to the SQDC.

In a footnote, it is disclosed that <sup>76</sup>:

<sup>74</sup> Exhibit R-68.

<sup>75</sup> Exhibit R-68.

<sup>76</sup> Exhibit R-68.

500-06-001029-194

PAGE : 21

By amendment effective on January 17, 2020, the Company contractually relieved the SQDC of the 1st year obligation to purchase the full 20 tons of the outstanding commitment.

[86] The price of HEXO's common shares in Canada fell 28.1% on March 30, 2020. Dr. McCann opined that the abnormal return was statistically significant<sup>77</sup>.

[87] Plaintiff's Motion for authorization was amended on May 6, 2020, November 16, 2020 and March 21, 2022.

### IMPUGNED STATEMENTS

[88] Plaintiff argues that Defendants made the following misrepresentations:

88.1. The Quebec Supply Agreement with the SQDC provided guaranteed revenues associated with the sale of 20,000 kilograms of cannabis in the first year following the legalization of cannabis;

88.2. The acquisition of Newstrike:

- i) included fully licensed and operational facilities;
- ii) would generate over ten million dollars in annual synergies;
- iii) along with the Québec Supply Agreement, HEXO's net revenue between Q2 and Q4 2019 would double to approximately \$26 million;
- iv) HEXO would achieve a net revenue of greater than \$400 million for fiscal 2020 (ending July 31, 2020); and

88.3. HEXO's inventories were accurate and its internal controls were effective.

[89] The specific extracts of the Impugned Statements are detailed in Schedule II attached hereto.

[90] As a preliminary argument, Defendants argue that Plaintiff does not have the requisite legal interest to institute a secondary market claim with respect to the Quebec Supply Agreement<sup>78</sup>.

[91] The Court will examine the preliminary argument and each of the Impugned Statements.

<sup>77</sup> Exhibits R-9 and R-83.

<sup>78</sup> Art. 85 CCP.

## 1. THE QUEBEC SUPPLY AGREEMENT

### Interest or Standing

[92] Plaintiff purchased securities on June 26, 2018, July 11 and 23, 2018, August 2, 2018 and September 6, 2018 on the basis of the April 11, 2018 statements regarding the Quebec Supply Agreement. He then purchased shares on April 5, 2019 and April 26, 2019 based on the March 13, 2019 press release and statements regarding the Newstrike Acquisition.

[93] On April 29, 2019, Plaintiff sold all his shares in HEXO at a profit.

[94] On October 21, 2019, Plaintiff purchased 25 call options and shares on the basis that the take or pay feature would be exercised, which he sold on November 6, 2019 and November 7, 2019 as a result of the October 28, 2019 disclosure that the take or pay feature would not be exercised. He sold that balance of his call options on March 4, 2020.

[95] Plaintiff therefore purchased and sold shares between the time that the Impugned Statements were made and the date of the alleged corrective disclosures on October 28, 2019 and March 30, 2020. This is sufficient to bring a claim under the QSA.

[96] Therefore, Defendants' argument regarding lack of interest is dismissed.

### Misrepresentation

[97] Plaintiff argues that HEXO misled investors to believe that the SQDC would fulfill its contractual commitment to purchase 20 tons of product in the first year of the Quebec Supply Agreement.

[98] Plaintiff points to the language repeated in both core and non core documents that "under the agreement HEXO will supply 20,000 kg of cannabis products" in the first year of the agreement, and later the reference to the first year commitment being subject to a take-or-pay feature<sup>79</sup> to argue that HEXO guaranteed the first year of revenues under the Agreement.

[99] The Court disagrees.

[100] The fact that the SQDC did not fulfill its first year purchase commitment or that Defendants decided not to enforce the take or pay feature, are not evidence that the public statement were untrue or misleading at the time they were made. As stated previously, the Court does not make assessments with the benefit of hindsight.

---

<sup>79</sup> Schedule II.

[101] A plain reading of the Impugned Statements illustrates that HEXO was simply providing a description of the SQDC's purchase commitment in the first year under the Quebec Supply Agreement.

[102] Plaintiff argued that as Defendants have not filed the Quebec Supply Agreement into evidence, they cannot affirm the accuracy of the statements describing the Agreement. However, as stated by the Court of Appeal in *Amaya*, the burden of proof rests with Plaintiff to provide credible evidence to support a claim for misrepresentation and Defendants are "not obliged to assist"<sup>80</sup>. In any event, there is no allegation that Defendants misrepresented the terms of the Quebec Supply Agreement.

[103] Moreover, read in the context of other public statements made or released by Defendants since April 11, 2018, the claim that Defendants guaranteed the revenues from the first year is untenable. In particular, since April 11, 2018, Defendants also stated that the SQDC had the right to terminate the Quebec Supply Agreement under certain circumstances<sup>81</sup>.

[104] The fact that the SQDC could terminate the Agreement directly contradicts the argument that an investor would be misled to believe that the revenues to be generated in the first year were guaranteed.

[105] Plaintiff also points to the public statements regarding "strong business certainty through Year 1 post-legalization" and "second highest recreational revenue certainty" in the the June 27, 2018 MD&A<sup>82</sup> and the June 28, 2018 press release<sup>83</sup> in support of the argument that Defendants misled the investors to believe that the revenues to be generated in the first year were guaranteed.

[106] However, these statements cannot be read in isolation or out of context.

[107] In the June 27, 2018 MD&A<sup>84</sup> HEXO references several factors that led to the representation that there was a strong business certainty in year 1 and beyond as follows:

We have achieved excellent revenue visibility as we approach the legalization of recreational cannabis, with the five year, estimated 200,000 kg supply commitment under our agreement with the SQDC and our medical cannabis sales. Predictable revenue streams from the recreational and medical markets, a debt-free balance sheet, two fully-funded expansion projects, and additional liquidity for corporate purposes, provide strong business certainty through Year

<sup>80</sup> Third Amended Motion, paragraph 108.

<sup>81</sup> Schedule II.

<sup>82</sup> Exhibit R-11.

<sup>83</sup> Exhibit R-14.

<sup>84</sup> Exhibit R-11.

500-06-001029-194

PAGE : 24

1 post-legalization and beyond. In our opinion achievement is the most important milestone to date in our company's history.

[108] Similarly, in the press release dated June 28, 2018 Defendants' statement was made in the context of a 5 year long term contract with the SQDC and does not reference the first year commitment at all <sup>85</sup>:

In the past quarter, we finalized a long-term supply contract as the preferred supplier to the Société québécoise du cannabis (SQDC) for approximately 200,000 kg of cannabis, over a five-year period. This gives us the second highest recreational revenue certainty among licensed producers for the first year of the adult-use market in Canada, with 20 metric tons committed, representing 35% of the Quebec adult recreational market [...]

[109] More importantly, all of these public statements must be read in the context of what Plaintiff himself describes as a "new and volatile market"<sup>86</sup>. A reasonable investor would not be misled to believe that Defendants were guaranteeing that the SQDC would fulfill its first year contractual commitment or that the take or pay feature would be enforced.

[110] In addition, with regard to the public statements contained in non-core documents, such as the press release and earnings calls prior to June 13, 2019, Plaintiff has not met the additional burden to establish a reasonable basis for the argument that, at the time the public statements were made, Defendants knew or should have known that the SQDC would not respect its first year commitment or that the take or pay feature of the Quebec Supply Agreement would likely not be enforced<sup>87</sup>.

[111] Plaintiff argues that Defendants knew that this was a new and volatile market and the SQDC was a strategic partner and should have disclosed the risk that the SQDC may not fulfill its commitment or that Defendants might decide not to enforce the take or pay feature<sup>88</sup>.

[112] However, the fact that this was a new and volatile market and that the SQDC was a strategic partner was publicly disclosed by Defendants and known to the public. Therefore, adopting Plaintiff's position would necessarily lead to the conclusion that Plaintiff and the putative members of the class also knew or should have known that there was a risk that the SQDC would not respect its first year commitment or that the take or pay feature of the Quebec Supply Agreement would not be enforced. Under section 225.17 QSA such knowledge by the Plaintiff would defeat the action.

[113] Moreover, there are no other facts alleged that demonstrate that Defendants were aware or should have been aware that the SQDC would not fulfill its contractual

<sup>85</sup> Exhibit R-14.

<sup>86</sup> Third Amended Motion, paragraphs 21, 85.1.

<sup>87</sup> Section 225.13 QSA.

<sup>88</sup> Third Amended Motion, paragraphs 93 and 95.

commitment. Plaintiff's claim, as regards the statements contained in non-core documents, is based upon pure speculation has no reasonable chance of success.

[114] Plaintiff further argues that as at June 13, 2019, Defendants should have at least adjusted investor expectations with regard to the first year supply commitment. Plaintiff argues:

149. On that date, the SQDC had purchased approximately 6,653 kg of its 20,000 kg alleged commitment, which amounts to approximately 830 kg per month, for the first eight months of the Québec Supply Agreement. In order to buy 20,000 kg of cannabis by December 31, 2019, the SQDC would have had to ramp up its orders by over 260% for the next six and a half months. The Defendants had no indication that that would happen, such that they could not bullishly assure the market that it would.

150. Moreover, the Defendants should have known that the SQDC's purchases would not increase almost three-fold per month, *inter alia*, because they were fully aware that the SQDC had opened substantially fewer stores than required to support a 20,000 kg demand. During the June 13, 2019 earnings call, Exhibit R-36, St-Louis reiterated that only 13 SQDC stores had been opened - which was very far from the 50 locations the SQDC had announced it would open in year one in December 2018, or even from the 24 locations initially envisioned.

151. During the March 14, 2019 earnings call, Exhibit R-30, St-Louis had also admitted that HEXO was having difficulty packaging and shipping product in a timely manner to its customers. There was no indication that this problem had since been resolved, which clearly rendered a 260% increase in SQDC orders unlikely and the Defendants' representation on June 13, 2019 misleading.

[115] All of the above information was disclosed to the public by Defendants prior to the June 13, 2019 earnings call where Defendant St-Louis disclosed that there was a "definite risk" that the SQDC would not fulfill its first year purchase commitment and the fact that HEXO would not enforce the take or pay feature.

[116] This disclosure was not, as argued by Plaintiff, a partial public correction of a prior misrepresentation but an assessment made on June 13, 2019, based on the data and figures available at that time.

[117] In addition, the Impugned Statements must be read in the context of the entirety of the public document which contains cautionary language stating, amongst other things, that the words highlighted by Plaintiff, such as: "will" "should" or "intend", are forward looking statements that are not to be construed as guarantees or assurances and should

not be relied upon. Moreover, the cautionary language highlights the material risks of this new and volatile emerging market<sup>89</sup>.

[118] In particular, the June 27, 2018 MD&A contains the following cautionary language that specifically provides that there can be no assurances as to the actual results<sup>90</sup> :

[...]These statements are not historical facts but instead represent management beliefs regarding future events, many of which, by their nature are inherently uncertain and beyond management control. We have based these forward-looking statements on our current expectations about future events. Although the forward-looking statements contained in this MD&A are based on what we believe are reasonable assumptions, these assumptions are subject to a number of risks beyond our control and there can be no assurance that actual results will be consistent with these forward-looking statements. [...]

[...]

We operate in a dynamic, rapidly changing environment that involves risks and uncertainties, and as a result, management expectations may not be realized for a number of reasons. An investment in our securities is speculative and involves a high degree of risk and uncertainty.

[119] Similarly, the June 28, 2018 press release is even more explicit and states, in part, that these statements cannot be read as guarantees<sup>91</sup>:

These statements should not be read as guarantees of future performance or results. Such statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements to be materially different from those implied by such statements. A more complete discussion of the risks and uncertainties facing the Company appears in the Company's Annual Information Form and continuous disclosure filings, which are available on SEDAR's website at [www.sedar.com](http://www.sedar.com). Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this press release.

[120] This cautionary language was contained in the core and non-core documents prior to June 2019 would allow Defendants to defeat the action, even if the Impugned Statements were found to be misrepresentations.

[121] Finally, Plaintiff also alleges that Defendants failed to disclose the circumstances the Quebec Supply Agreement could be terminated but did not reference same in his arguments. In the absence of any argument that the circumstances for termination are

<sup>89</sup> Schedule II.

<sup>90</sup> Exhibit R-11.

<sup>91</sup> Exhibit R-14.

material facts that needed to be disclosed to the public, this argument cannot reasonably succeed at trial.

[122] For all of these reasons the Court finds that there is no reasonable possibility that the claim for misrepresentation as regards the Quebec Supply Agreement will be resolved in favour of Plaintiff on the merits.

## **2. ACQUISITION OF NEWSTRIKE**

### **i) Licensed Facilities**

[123] Plaintiff argues that, at all material times since March 13, 2019, Defendants misrepresented that the Niagara Facilities were fully licensed and operational when in fact, Block B was not adequately licensed and that Defendants did not make a timely disclosure of a material change to its business and operations.

[124] As appears from the excerpts above and contained in Schedule II hereto, the Impugned Statements are contained in both core and non-core documents.

[125] With regard to the public statements contained in non-core documents<sup>92</sup>, made or released prior to July 30, 2019, the date Defendants' disclosed that they were made aware of the licensing deficiencies in Block B of the Niagara Facility, Plaintiff has not alleged any facts or provided any credible evidence that Defendants knew or should have known that the Block B was not adequately licensed.

[126] To the contrary, Plaintiff's evidence demonstrates that the licensing deficiencies for Block B only came to light on or around July 30, 2019<sup>93</sup>. In the November 15, 2019 and March 30, 2020 disclosures<sup>94</sup> Defendants state that prior to the acquisition, the due diligence revealed that the Niagara Facility was licensed and operational and Block B was part of that facility. Moreover, in February 2019, Block B had been the subject of an inspection by Health Canada without any issues raised as to the adequacy of the license<sup>95</sup>.

[127] With regard to the Impugned Statements contained in core documents, made or released prior to July 30 2019, this same evidence filed by Plaintiff could also be used by Defendants to argue on the merits that they had no reasonable grounds to believe that the documents or public oral statements contained a misrepresentation<sup>96</sup>.

<sup>92</sup> Plaintiff uses this date although Defendants' second disclosure references July 29, 2019.

<sup>93</sup> Exhibits R-48 and R-68.

<sup>94</sup> Exhibits R-48 and R-68.

<sup>95</sup> Exhibit R-68.

<sup>96</sup> Section 225.17 QSA.

[128] As for the Impugned Statements contained in the core documents dated October 28 and October 29, 2019, these statements essentially state as follows:

The Niagara facility is a 240,000 sq. ft fully automated, modern "Dutch-Tray" facility, consisting of 186,400 sq. ft licensed for production and cultivation, with the remaining space allocated to administration, packaging and shipping/ receiving areas. The facility is currently capable of producing up to 20,000 kg of dried cannabis annually. This facility is situated on approximately 16.6 acre of land and received its cultivation licence under the Cannabis Act on March 29, 2018.

Newstrike is a licensed producer of cannabis

Through the acquisition of all of the issued and outstanding common shares of Newstrike on May 24, 2019, the Company also acquired two Health Canada licences issued under the name Up Cannabis Inc. ("Up Cannabis"), a subsidiary of Newstrike, for its facilities in Brantford, Ontario (the "Brantford Licence") and Niagara, Ontario (the "Niagara Licence") [...] The Niagara Licence has a term ending on March 29, 2021.

[129] With the exception of the actual square footage of space that was licensed for production at the Niagara Facility, all of these statements concerning Newstrike generally were true. Newstrike had two facilities that were licensed for cannabis production. The Court notes that the term employed by Plaintiff "fully licensed and operations" was not used by Defendants. However, while the Niagara Facility was a licensed facility, a portion of that facility, Block B, was not licensed and operational.

[130] Was this an omission of a material fact, that is, a fact reasonably expected to have a significant effect on the market price or value of securities issued or securities proposed to be issued<sup>97</sup>?

[131] As stated in *Sharbern*<sup>98</sup>, materiality is a question of mixed law and fact, determined objectively, from the perspective of a reasonable investor. The Court examine the disclosed and undisclosed facts and considers all of the contextual evidence at the time the statements were made. Rothstein J. formulated the test for the materiality of an omitted fact as follows<sup>99</sup>:

An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote... Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available".

<sup>97</sup> Section 5 QSA.

<sup>98</sup> *Sharbern Holding Inc. supra*, note 17.

<sup>99</sup> *Ibid* at para 61.

[132] In the present matter, at the time the Impugned Statements were made or released on October 28 and 29, 2019, HEXO had temporarily suspended its operations of the Niagara Facilities as part of its cost cutting measures further to the withdrawal of its 2020 fiscal guidance. In fact, this information was announced on October 24, 2019 and was repeated in the core documents in question.

[133] As the entirety of the Niagara Facilities were not operational as of October 24, 2019, the Court finds that the fact that one section of the Niagara Facility, representing approximately 17% of the facility (i.e., 77,000 sq. ft. of 455,000 sq. ft.)<sup>100</sup> was not adequately licensed, and, thus, not operational, was not the omission of a material fact.

[134] Common sense dictates that such information could not reasonably be expected to have any impact on the investor decision to buy or sell HEXO securities let alone a significant one.

### Disclosure Obligations

[135] Plaintiff also argues that the above facts support an argument that HEXO failed to make a timely disclosure of a material change<sup>101</sup>.

[136] As stated previously, the continuous disclosure obligation was designed to create a "level playing field" where all investors have access to the same information<sup>102</sup>. However not all information or changes need be disclosed only material changes, that is a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the Company. As stated in *Cornish*, the Court must guard against too low a standard for materiality which would inundate the market with too much information, some of which may not be material and therefore not be conducive to informed decision making of the investor<sup>103</sup>.

[137] In determining whether a change is material, the Court must look at objective evidence that, at the time of the change, could reasonable be expected to impact the market price or value of the HEXO securities<sup>104</sup>. The decision to disclose the licensing deficiency in November 2019 is not an indication as to its materiality.

[138] The Plaintiff offered no credible evidence that the suspension of operations in Block B, on or around July 30, 2019, had any impact on HEXO's business or operations requiring disclosure such as its ability to meet production demands for the supply of cannabis. To the contrary, Plaintiff's evidence shows that:

<sup>100</sup> Exhibit R-68.

<sup>101</sup> Section 225.11 QSA.

<sup>102</sup> *Theratechnologies*, supra note 5.

<sup>103</sup> *Cornish*, supra note 20, at para 41.

<sup>104</sup> *Sharbern*, supra note 17.

138.1. Block B represented approximately 17% of the facility (i.e., 77,000 sq. ft. of 455,000 sq. ft.); or approximately 4% of the Issuer's total cultivation facilities (i.e., 77,000 sq. ft. of 1,779,000 sq. ft.);

138.2. HEXO had more inventory than needed to meet the industry demands, which is one of the criticisms levelled by Plaintiff as regards to the June 2019 disclosure that the SQDC had fallen short on its commitment; and

138.3. Health Canada did not require destruction of any inventory, nor did they prevent the Company from selling any of the inventories produced from the Niagara facility as part of the Block B licensing issue.

[139] On the basis of all of these facts, the Court finds that there is no reasonable possibility that Plaintiff can succeed in arguing that the licensing deficiency of Block B of the Niagara Facility was a material change that required disclosure on July 30, 2019.

[140] Plaintiff argues that the day after the November 15, 2019 disclosure that the Block B of the Niagara Facility was not adequately licensed, HEXO's stock decreased by 10.21% on the TSX<sup>105</sup> and relies on the expert opinion of Mr. Craig McCann the November 15, 2019 disclosure had an "effectively statistically significant negative price impact" on the market price of HEXO securities<sup>106</sup>.

[141] However, while evidence of the market impact of the disclosure may be relevant to assess the materiality of the change in the business or operations, it alone is not determinative of the issue<sup>107</sup>. In *Cornish* the Ontario Superior Court held<sup>108</sup>:

[59] Not only is such evidence not necessary, but it may not always be of assistance in a materiality analysis. There are at least three reasons why evidence of historical price and volume fluctuations for a reporting issuer's shares may not always be of assistance in this regard. First, if the reporting issuer is a new issuer, or if the issuer has never disclosed the same type of material change in the past, there may not be any relevant trading data to refer to for the purpose of determining how the market might react to a particular type of information. Second, where disclosure of the material change is limited or not made at all, a review of the market price and trading volume may not assist in the analysis of materiality. Third, if the material change is disclosed by the issuer along with other information, the market reaction to the combined disclosure may not be a reliable indicator of the market impact of the disclosure of one particular piece of information in isolation.

<sup>105</sup> Exhibit R-9.

<sup>106</sup> Exhibit R-83 par. 19; The t-statistic less than -1.96 indicates a statistically significant negative price movement at the 95% confidence level. Here the t-statistic was -1.94.

<sup>107</sup> *Peters v. SNC-Lavalin Group Inc.*, 2021 ONSC 5021, at paras. 195, 197.

<sup>108</sup> *Cornish*, *supra* note 20.

[142] In the present case, the November 15, 2019 disclosure contained other information that could also impact the market value or price of HEXO securities. The disclosure announces that the operations of the Niagara Facilities would be winding down (as opposed to a temporary suspension) and that management was disclosing a fact to their knowledge since July 30, 2019 which could affect the investor confidence in HEXO management.

[143] The McCann report does not link the market impact to the disclosure regarding the licensing deficiencies of Block B and is not, for the reasons mentioned earlier, sufficient and credible evidence to demonstrate that the licensing of Block B was material to HEXO'S business and operations.

[144] Therefore, Plaintiff has not shown a reasonable possibility of success at trial on the merits of a secondary market claim based on either a misrepresentation of the licenses for the Niagara Facilities or a breach of a timely disclosure of a material change.

#### **Newstrike Synergies, Q4 Revenue Projections and Fiscal Guidance for 2020**

[145] The following Impugned Statements were made in HEXO's MD&A dated March 13, 2019<sup>109</sup> and June 12, 2019<sup>110</sup>, as well as in non-core press releases and earnings calls at that time<sup>111</sup>, that :

- 145.1. With the acquisition of Newstrike, HEXO estimated annual synergies of \$10 million in March 2019 and in June estimated synergies in the millions of dollars;
- 145.2. HEXO estimated it would double its net revenue between Q2 and Q4 2019 to approximately \$26 million; and

[146] In the non-core documents, the March 13, 2019 and June 12, 2019 press releases<sup>112</sup>, HEXO estimated that net revenues would be \$400 million or more in the fiscal year 2020 (ending July 31, 2020).

[147] Plaintiff argues that the Impugned Statements were " grossly misleading in light of the fact that Defendants knew or should have known that the SQDC would not purchase its commitment volume prior to the calendar year-end, and that HEXO would not enforce the alleged take or pay provision, given its relationship with the SQDC, the significance of which was known from the outset"<sup>113</sup>.

<sup>109</sup> Exhibit R-27.

<sup>110</sup> Exhibit R-32.

<sup>111</sup> Exhibits R-26, R-30, R-31, R-35 and R-36.

<sup>112</sup> Exhibits R-26 and 35.

<sup>113</sup> Third amended Motion, paragraph 145.2.

[148] Subsidiarily, Plaintiff argues that the Defendants had an obligation to substantially revise their revenue projections downward as events unraveled throughout the Class Period, and to inform investors accordingly.

**(l) Accretive synergies**

[149] The estimated \$10 million in accretive synergies that was represented before the acquisition of Newstrike on May 24, 2019 and the estimated “million” in accretive synergies estimated after the acquisition, are reproduced in Schedule II.

[150] Plaintiff does not allege or identify any misrepresentation of a material fact. Rather, Plaintiff appears to rely on the fact that the synergies were not realized in order to conclude that the statements were untrue or misleading.

[151] The fact that projected synergies were not eventually realized is not evidence that the Impugned Statements contained misrepresentations as to material facts at the time they were made<sup>114</sup>. As stated previously, this is backwards reasoning argued with the benefit of hindsight.

[152] With regard to the non-core documents, Plaintiff has not alleged any facts or pointed to credible evidence to reasonably argue that Defendants knew or should have known that the synergies would not be realized.

[153] Moreover, not only did Plaintiff fail to identify a misrepresentation of a material fact but as appears from the March 13, 2014 press release and the June 12, 2019 MD&A, the representations are made in the context where Defendants specifically disclosed the material risk that the synergies may not be achieved<sup>115</sup>:

- there can be no assurance that the Transaction will be completed or that the anticipated benefits from the Transaction will be achieved (March 13, 2019 Press release).
- The Company may not be successful in the integration of the acquired Company into our business (June 12, 2019 MD&A).
- The Company may be unable to successfully achieve the objectives of our strategic alliances (June 12, 2019 MD&A).

[154] Therefore, the Court finds that there is no reasonable possibility that this argument will be resolved in Plaintiff's favor at trial.

<sup>114</sup> *Cornish, supra* note 20, at para 49.

<sup>115</sup> Exhibits R-26 and R-32.

**(ii) Q4 revenues and (iii) financial outlook for 2020**

[155] Plaintiff has not identified any misrepresentations of a material fact contained in the documents or public statements referenced in Schedule II.

[156] Plaintiff's argument is based upon the fact that the estimates or forecasts were not realized. However, as stated previously, the Court examines the statements at the time they were made and not with the benefit of hindsight.

[157] With regard to the financial guidance for 2020, this representation was contained only in non-core documents. Plaintiff has not alleged any facts or offered credible evidence to support an argument that Defendants knew or should have known, in March 2019, that the Q4 revenue estimate or 2020 fiscal guidance would not be met. Such a conclusion is entirely speculative.

[158] Moreover, Plaintiff's assumption that the forecasts were only based on the SQDC first year commitment being met is not supported by the evidence.

[159] In particular, the March 13, 2019 and June 12, 2019 press releases<sup>116</sup> and March and June MD&A's<sup>117</sup> referenced the following factors and assumptions: the additional capacity for cultivation through the acquisition of Newstrike; the Belleville facility leasehold improvements being finalized and ready for operations in Q4; the anticipation in Q4 of the sale of derivative cannabis products such as edibles and oils, and the rollout of cannabis beverages further to the Molson Coors joint venture, expansion in Latin America, Europe and the United States, doubling of sales of adult use cannabis in all of the HEXO supply agreements; and obtaining entry into additional Canadian markets through public and private retail channels.

[160] In the the March 13, 2019 press release announcing the Newstrike Acquisition and the 2020 fiscal forecast, HEXO lists the financial assumptions in support of its financial outlook for fiscal 2020<sup>118</sup>:

Forward-looking statements are based on certain assumptions regarding HEXO and Newstrike, including the completion of the Transaction, anticipated benefits from the Transaction, and expected growth, results of operations, performance, industry trends and growth opportunities. While HEXO and Newstrike consider these assumptions to be reasonable, based on information currently available, they may prove to be incorrect. Readers are cautioned not to place undue reliance on forward-looking statements.

HEXO's financial outlook for estimated net and gross revenues from the sale of cannabis in Canada for fiscal 2020 is based on the following assumptions of

<sup>116</sup> Exhibits R-26 and 35.

<sup>117</sup> Exhibits R-27 and R-32.

<sup>118</sup> Exhibit R-26.

HEXO, amongst others: (i) completion of the Transaction on the terms detailed above; (ii) adult-use cannabis sales volume growth of approximately double HEXO's current contractual supply agreements; (iii) obtaining entry into additional Canadian markets through public and private retail channels; (iv) cannabis production capacity to meet expected milestones with yield levels to obtain in excess of 91,000 kg of output; (v) current capital projects to meet expected completion and licensing milestones for production and transformation of cannabis purposes; (vi) average market prices across dry, oils, vapes and edibles cannabis markets based upon current and observable market pricing, as well as market research over future market prices; (vi) excise tax rates consistent with current Canadian policy; (vii) legalization of edible products, cannabis concentrates and topicals for production and sale and the adoption of regulations related thereto in October 2019 and in line with current industry expectations; and (viii) product development to meet expected completion milestones particularly with respect to launch of edible products and concentrates.

The assumptions of HEXO and Newstrike, although considered reasonable by them at the time of preparation, may prove to be incorrect. In addition, forward-looking statements necessarily involve known and unknown risks, including, without limitation, risks associated with general economic conditions, adverse industry events; future legislative, tax and regulatory developments; inability to access sufficient capital from internal and external sources, and/or inability to access sufficient capital on favourable terms; the ability of HEXO to implement its business strategies; competition; currency and interest rate fluctuations and other risks. Among other things, there can be no assurance that the Transaction will be completed or that the anticipated benefits from the Transaction will be achieved.

[161] In the March 14, 2019 earnings call<sup>119</sup>, Defendant St. Louis references the cannabis derivative market as a driver for the anticipated increase in sales, as well as the potential for sales outside Quebec beginning in Q4 and states:

[...] This quarter our meaningful wrap towards that 400 million starts in Q4.

We achieved adult use revenues per gram of \$5.83. So that was actually an increase of \$0.38 over last quarter. So you can start to see that demand that our customers have for our products, but also willing to pay for premium high-quality products. And 84% of our adult use sales were realized through our agreement with the SQDC. So that was 16% in Ontario and BC. I remind everybody that currently HEXO is not selling any dried flower and Ontario and BC. So we're achieving these market shares and this performance without even our full toolbox. So of course, toward the end of Q3 ramping into Q4, we are unlocking that toolbox and that's what is leading us to that \$400 million in net revenue next year. Of course, the additional capacity from Newstrike is going to help as well. Our cost of sales increased at \$6.5 million as a result of increased sales, increases in

<sup>119</sup> Exhibit R-30.

transformation process of our value-added products as we're preparing as well for the legislation coming down in October.

[162] The June 12, 2019 press release<sup>120</sup> underlined that the Q4 projection is based on the anticipated yield at the B9 facility in Belleville.

As the Company begins realizing sales from its first harvests of from its B9 greenhouse in the fourth quarter of fiscal 2019 net revenues are expected to approximately double those of the current quarter.

[163] In the June 13, 2019 earnings call<sup>121</sup>, Defendants disclosed that there was a risk that the SQDC would not meet its purchase commitment and that the take or pay feature would not be enforced in the. However, Defendant St Louis was still confident that the Q4 estimates and financial forecasts would be met as, contrary to Plaintiff's argument, Defendants did not rely on the assumption that the first year revenues from the Quebec Supply Agreement would be achieved.

[164] Finally, this projection of revenues is based on sales from the B9 harvest is also reiterated in the June 14, 2019 earnings call<sup>122</sup>:

So I think last quarter I had mentioned that we'd be flat this quarter, we'd double in Q4. And I pointed that the key reason for that is that our infrastructure to package what we were growing was still ramping up, right. And now that infrastructure, this particular quarter has caught up and that's what's leading to the double.

So your insight is right. The infrastructure that's allowing us to package everything is really from HEXO -- from the HEXO side leading to that double. Obviously, we're going to grow much more, right. Our yields continue to go up every day. We're going to add the Newstrike yields, which is going to be great. But fundamentally, to truly unlock our infrastructure requirements, I need my Belleville facility. So I need the facility that's going to have processing capacity for 375 tons per year. And that kicks in in the fall. So that's why we're going to double and not much more immediately, as you pointed out, because we're catching up our infrastructure in two phases. Phase one now complete, and Belleville in the fall.

[165] Moreover, not only has Plaintiff failed to identify any misrepresentation of fact but the forward looking information contained in the documents in question contain cautionary language that specifically warns the reader that these projections are not guarantees of future performance or results<sup>123</sup>. There is no reasonable possibility that Plaintiff would overcome the safe harbour defence.

<sup>120</sup> Exhibit R-35.

<sup>121</sup> Exhibit R-36.

<sup>122</sup> Exhibit R-36.

<sup>123</sup> Schedule II.

[166] For all of these reasons the Court finds that there is no reasonable possibility that these claims would be resolved in Plaintiff's favour.

### **Disclosure Obligations**

[167] Subsidiarily, Plaintiff argues that the Defendants had an obligation to substantially revise their revenue projections downward as events unraveled throughout the Class Period, and to inform investors accordingly.

[168] Plaintiff does not detail whether the obligation is one to provide timely disclosure of material facts or periodic disclosure of a material change. However, as a change in financial results is not, in itself, a change in the issuer's business, operations or capital, there can be no breach of a timely disclosure<sup>124</sup>.

[169] In addition, "a downward trend in the performance of a business, without more, is not a material change requiring disclosure"<sup>125</sup>.

[170] There is no reasonable basis to argue that there was a breach of HEXO'S obligation to provide periodic disclosure of financial information.

[171] The Consolidated Financial Statements for the HEXO year end of July 31, 2019 were to be disclosed in late October 2019.

[172] On October 10, 2019, Defendants issued a press release in anticipation of releasing its Consolidated Financial Statement. It advised that it was withdrawing its financial outlook for 2020 and providing the preliminary results for Q4 which were 40% lower than estimated.

[173] The October 28, 2019 Consolidated Financial Statements for the financial year ending on July 31, 2019<sup>126</sup> and their accompanying MD&A disclosed further details on the actual Q4 revenue at that time.

[174] For these reasons, there is no reasonable possibility of success at trial on a breach of a disclosure obligation regarding its forecasts.

### **3. IMPAIRMENT LOSS ON INVENTORY AND INTERNAL CONTROLS**

#### **Relevant Facts**

[175] The October 28, 2019 Consolidated Financial Statements for the financial year ending on July 31, 2019<sup>127</sup> and the accompanying MD&A disclosed that HEXO incurred

<sup>124</sup> *Kerr* supra note 19 at para 47.

<sup>125</sup> *Mask* supra note 7.

<sup>126</sup> Exhibit R-43, p. 20 and Exhibit R-47, p. 8.

<sup>127</sup> Exhibit R-43, p. 20 and Exhibit R-47, p. 8.

an impairment loss on inventory of \$16,918 during the three months ended July 31, 2019, due to price compression in the market. This impairment loss was realized on cannabis purchased in fiscal 2019 to help meet the demands of the adult-use market in which the cost exceeded its net realizable value.

[176] In addition, HEXO disclosed some internal weakness including that it did not have effective information technology (IT) general controls over all operating systems, databases, and IT applications supporting financial reports and it did not have effective controls over its year end inventory count and did not maintain effective process level and management review controls over manual financial reporting processes and the application of IFRS and accounting measurements related to certain significant accounts and non-routine transactions.

[177] On December 16, 2019, in its Consolidated Interim Consolidated Financial Statements for the three months ended October 31, 2019<sup>128</sup> and accompanying MD&A<sup>129</sup> Hexo disclosed that it incurred a impairment loss of \$25.5 million which included losses on cannabis trim and milled products.

[178] On December 31, 2019, Hexo restated its financial statements for the year ended July 31, 2019<sup>130</sup> and accompanying MD&A, as well as its financial statements for the quarter ended October 31, 2019<sup>131</sup> and accompanying MD&A, notably, to adjust for write-down of inventories for the year ended July 31, 2019.

[179] On March 17, 2020, the Defendants announced that they were delaying the filing of HEXO's Q2 2020 interim financial statements, because HEXO shortly be recording a third impairment loss in the range of \$265 million to \$280 million<sup>132</sup>.

[180] On March 19, 2020, HEXO re-amended its October MD&A for the year ended July 31, 2019<sup>133</sup> and its MD&A for the three month period ended October 31, 2019 following a continuous disclosure review by the Ontario Securities Commission ("OSC") of the Company's disclosure record.

[181] On March 30, 2020, in its Condensed Interim Consolidated Financial Statements for the three and six months ended January 31, 2020<sup>134</sup> Hexo recorded another impairment loss resulting, in part, from the fact that the Niagara facility was no longer operating. HEXO incurred a net loss of \$298.2 million, including a \$138.2 million

---

<sup>128</sup> Exhibit R-51, p. 12.

<sup>129</sup> Exhibit R-50, pp. 25-26.

<sup>130</sup> Exhibit R-56.

<sup>131</sup> Exhibit R-57.

<sup>132</sup> Exhibit R-62.

<sup>133</sup> Exhibit R-63, p. 29.

<sup>134</sup> Exhibit R-69.

impairment loss relating to the Niagara facility and other intangible assets acquired from Newstrike, and \$111.9 million relating to a goodwill impairment charge.

[182] HEXO also registered a write-down on inventory of \$16.1 million. Hexo specifically provided the following explanation:

These write downs of inventory are primarily the result of the Company's economic risk assumed in the Canadian cannabis industry. Most notably, the recent economic climate changed in which, market prices and demands have been revised and adjusted to reflect current information and actual results obtained during the first year of recreational legalization in Canada. These changes included reduced average selling prices per gram and gram equivalents, as well as modified market demands for certain cannabis products ranging from specific active ingredient contents to method of consumption. The continuing evolution of these market conditions represent ongoing uncertainties that may affect the Company's future financial results. See "Risk Factors" for additional economic and inventory risks.

**(i) Impairment loss on inventory**

[183] As stated previously, Plaintiff has the burden of identifying each misrepresentation of a material fact at the time the statement was made and linking the public correction to that misrepresentation<sup>135</sup>.

[184] In the present case, Plaintiff has not linked any of the subsequent disclosures to a previous misrepresentation of a material fact.

[185] With the exception of the December 31, 2019 restatements of the Financial Statements for year ending July 31, 2019 and the quarter ending October 31, 2019, and the March 19, 2020 re-amended MD&A for that period, the disclosures are quarterly or year end financial statements presenting a snapshot for a specific time. They do not purport to correct a previous statement nor can such a public correction be inferred as suggested by counsel<sup>136</sup>.

[186] In addition, the correction was based on subsequent events. The December 31, 2019 restated Financial Statements states as follows<sup>137</sup>:

The annual financial statements of HEXO Corp. ("the Company") for the years ended July 31, 2019 and 2018 are being amended and refiled to adjust for deferred income taxes and write-down of inventories for the year ended July 31, 2019 as further described in Note 34. Except as described in Note 34, there has been no

<sup>135</sup> *Barrick Gold Corporation*, note 24.

<sup>136</sup> *Badesha* note 22.

<sup>137</sup> Exhibit B-56.

500-06-001029-194

PAGE : 39

other material changes to the financial statements as originally filed by the Company on October 28, 2019.

[187] Note 34 states that the increase in the impairment loss was due to subsequent events and new information as follows:

In assessing the financial impact of subsequent events, the Company also determined additional write-down of its cannabis trim based inventory based on the estimated fair market value due to new and available third party information resulting in an increased impairment loss on inventory of \$2,417.

[188] The disclosure does not expressly, or even implicitly, acknowledge the existence of any prior misrepresentation. Rather, the accounting adjustment is based on an assessment of subsequent events and new facts implying that the year end statements were not, at the time they were made or disclosed, untrue or misleading.

[189] Moreover, Plaintiff has not established that the disclosure concerned a material fact.

[190] The determination of what constitutes a material fact is discussed in *Drywall Acoustic Lathing and Insulation, Local 675 Pension Fund (Trustees of) v. SNC-Lavalin Group Inc.*<sup>138</sup> as follows:

[T]he determination of whether a corrective disclosure is corrective depends not only on a semantic analysis of how the words would be understood in an efficient market and also a statistical analysis of the effect of those words on the market's evaluation of the value of the securities that had been misrepresented to the marketplace.[...]

[191] Plaintiff's expert Dr. McCann opined that that the market impact of the disclosure of December 31, 2019 was not statistically significant<sup>139</sup>.

[192] The March 19, 2020, re-amended MD&A for the years ended July 31, 2019 and the quarter ending October 31, 2019 was filed further to the OSC comments to improve disclosure, including disclosure on the Quebec Supply Agreement and suspension of activities at the Niagara Facility. With regard to inventory it states as follows:

The Company has clarified and provided additional disclosure in the Amended MD&A regarding the Company's impairments and write-offs of inventory, including related events, risks, and uncertainties that the Company reasonably believes may materially affect its future performance.

<sup>138</sup> 2016 ONSC 5784, at para. 45

<sup>139</sup> Exhibit R-83 (Expert Report of Craig J. McCann, Ph.D., C.F.A. dated February 1, 2021) at paras 49-56.

[...]

In assessing the financial impact of subsequent events, the Company also determined additional write-down of its cannabis trim based inventory based on the estimated fair market value due to new and available third party information resulting in an increased impairment loss on inventory of \$2,417.

[193] Once again, on its face, the disclosure does not expressly, or even implicitly, acknowledge the existence of any prior misrepresentation or purport to correct a prior representation. Rather it provides greater detail on the impairment of inventory stating that it "resulted in part from the circumstances surrounding the ongoing development of the adult-use cannabis industry". There is therefore no reasonable basis to argue that the disclosure constituted a corrective disclosure.

[194] In addition, while Dr. McCann found the March 19, 2020 disclosure had a significant impact on the market value of HEXO securities, he does not link the impact to the disclosure of the adjustments to the impairment loss on inventory<sup>140</sup>. Indeed, given that there is no adjustment to the impairment loss on inventory and that the initial restatement in December 19, 2019 had no significant impact on the price or value of HEXO securities, it is not reasonable to conclude that there is a link.

[195] As stated in the Ontario Court of Appeal case of *Wong v. Pretium Resources Inc.*<sup>141</sup>, presuming a material misrepresentation on the basis of evidence of a drop in share price (backward reasoning) does not meet the test for leave. The Plaintiff must lead evidence that ties the decline in share price to the misrepresentation or omission in question.

[196] Therefore, there is no reasonable basis for success at trial in establishing a misrepresentation of the impairment loss on inventory.

(ii) **Internal controls**

[197] Plaintiff does not identify the public statements which allegedly contain misrepresentations as to the effectiveness or accuracy of HEXO's internal controls.

[198] Moreover, the October 28, 2019 MD&A for the July 31, 2019 year end<sup>142</sup> which identified some internal control weaknesses is not a corrective disclosure. On its face, the disclosure does not expressly, or even implicitly, acknowledge the existence of any prior misrepresentation with regard to internal controls at HEXO.

[199] Indeed, with regard to the ICFR and DC&P controls, the issues with HEXO's internal control over financial reporting and disclosure controls and procedures, were

<sup>140</sup> Exhibit R-83.

<sup>141</sup> 2022 ONCA 549, at para 107.

<sup>142</sup> Exhibit R-42.

previously disclosed by HEXO between October 25, 2018<sup>143</sup>. At that time, HEXO advised that it was preparing to implement a new Enterprise Resource Planning systems and cautioned investors that the scoping, requirements definition, business process definition, design and testing of the integrated ERP system could result in problems which could, in turn, result in errors to the operations and processes within the business and/or inaccurate information for management and financial reporting.

[200] There is therefore no reasonable basis for success at trial in establishing a misrepresentation by Defendants of the effectiveness of its internal controls.

[201] For all of these reasons, the Court finds that Plaintiff has failed to meet the authorization threshold to institute a secondary market claim.

### III. MOTION FOR AUTHORIZATION OF A CLASS ACTION

[202] The Court authorizes a class action and appoints the class member it designates as representative plaintiff if it is of the opinion that the application meets all of the criteria set out in article 575 CCP as follows:

- 1) the claims of the members of the class raise identical, similar or related issues of law or fact;
- 2) the facts alleged appear to justify the conclusions sought;
- 3) the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings; and
- 4) the class member appointed as representative plaintiff is in a position to properly represent the class members.

[203] The role of the Court, at this preliminary stage, is simply to filter out frivolous or "untenable claims, sparing unnecessary procedures for the group, the representative, the defendant and the judicial system"<sup>144</sup>.

[204] The threshold requirement is relatively low. Plaintiff must only demonstrate that he has an arguable case in light of the facts and the applicable law<sup>145</sup>.

[205] The Court does not engage in a review of the merits of the case. Rather the facts alleged in the application are deemed to be true for the purpose of that demonstration,

---

<sup>143</sup> Exhibit R-15, p. 27.

<sup>144</sup> *Infineon Technologies AG v. Option consommateurs*, [2013] 3 S.C.R. 600 at para 11.

<sup>145</sup> *Infineon*, *supra* at para 134.

however, opinion and argument are not<sup>146</sup>. Moreover, bare assertions that are not supported by some evidence, albeit limited, are insufficient to form an arguable case<sup>147</sup>.

[206] Defendants only contest the criteria contained in article 575 (2) and (4) CCP.

[207] The Court will begin its analysis with article 575 (2) CCP as regards the primary market claim under sections 217 and 218 QSA and the civil liability claim under 1457 CCQ.

### **Article 575(2) CCP- the facts appear to justify the conclusions sought**

#### **Primary Market Claim**

[208] As appears from Schedule I, Sections 217 and 218 QSA provide a right of action for any person who subscribed to or acquired securities in a distribution effected with a prospectus containing a misrepresentation.

[209] Section 221 QSA provides that a right of action may also be exercised if a misrepresentation is contained in: (1) the information incorporated in a simplified prospectus; (2) the offering memorandum prescribed by regulation, or (3) in any other document authorized by the "Autorité des marchés financiers" (the "Authority") for use in lieu of a prospectus.

[210] Plaintiff is not required to prove that he relied on the document containing the misrepresentation when he subscribed for, acquired or disposed of a security<sup>148</sup>.

[211] In the present case, Plaintiff's right of action for a misrepresentation in a primary market claim is based on : 1) the January 30, 2019, Offering of 8,855,000 shares at \$6.50 each, which was distributed pursuant to a prospectus dated January 24, 2019 and 2) a private placement which closed on December 5, 2019 of 8.0% unsecured convertible debentures for gross aggregate proceeds of \$70 million maturing on December 5, 2022<sup>149</sup>.

[212] Plaintiff has not alleged any misrepresentations in the private placement offering memorandum and, as such, he has not established a *prima facie* case for a primary market claim on that basis<sup>150</sup>.

<sup>146</sup> *Option Consommateurs v. Bell Mobilité*, 2008 QCCA 2201; *Fortier v. Meubles Léon Ltée*, 2014 QCCA 195.

<sup>147</sup> *Infineon*, *supra* note 144 at paras 127 and 134; see also *Charles v. Boiron Canada Inc.*, 2016 QCCA 1716 (CanLII) at para 43.

<sup>148</sup> Section 225.0.2 QSA.

<sup>149</sup> Third Amended Motion paras 190-190.1.

<sup>150</sup> *Nseir*, *supra* at note 19 at paras 287-291 and 325.

[213] As for the prospectus supplement dated January 24, 2019, Schedule II identifies the following alleged misrepresentation<sup>151</sup>:

Under the agreement, the Company will supply 20,000 kg of products in the first year of the agreement, which is subject to a take-or-pay feature for that year.

[214] As stated previously, this statement is, on its face, merely descriptive of the contractual terms of the SQDC purchase commitment in the first year of the Quebec Supply Agreement.

[215] The fact that the purchase commitment was not fulfilled by the SQDC by October 2019 or that Defendants decided not to enforce the take or pay feature, is not evidence that the Impugned Statement was untrue or misleading at the time the statement was made. As stated previously, the Court does not make assessments with the benefit of hindsight.

[216] Moreover, read in the context of other public statements made or released by Defendants since April 11, 2018, the claim that Defendants guaranteed the revenues from the first year is untenable. As stated previously, Defendants expressly publicized, since April 11, 2018, the fact that the SQDC had the right to terminate the Quebec Supply Agreement under certain circumstances. In this new and volatile market where the SQDC could terminate the Agreement under certain circumstances, a reasonable investor would not be misled to believe that the first year revenues from the Quebec Supply Agreement were guaranteed.

[217] Also, as stated previously, all of the core and non-core documents underline the risk that the securities was highly speculative such that there were no assurances that could be given. Defendants would also be able to rely on the cautionary language regarding forward-looking information under sections 224.22 and 225.23 QSA. In particular, the cautionary language specifies that no assurance can be given including when the statements use the term "will"<sup>152</sup>:

[...]the use of forward-looking terminology such as "expect," "believe", "plan", "project", "assume", "likely", "may," "will," "should," "intend," or "anticipate", "potential", "proposed", "estimate" and other similar words, including negative and grammatical variations thereof, or statements that certain events or conditions "may" or "will" happen, or by discussions of strategy. No assurance can be given that the expectations in any forward-looking statement will prove to be correct and, as such, the forward-looking statements included in this Prospectus Supplement, the Shelf Prospectus and the documents incorporated by reference herein and therein should not be unduly relied upon.

<sup>151</sup> Exhibit R-2.

<sup>152</sup> Exhibits R-11 and R-14.

[218] The January 24, 2019 prospectus supplement also lists several risk factors including the risk that the SQDC may decide not to continue to purchase HEXO products was disclosed<sup>153</sup>:

[...] If any of the SQDC, the OCRC or the BCLDB decides to purchase lower volumes of products from HEXO than HEXO expects, alters its purchasing patterns at any time with limited notice or decides not to continue to purchase HEXO's cannabis products at all, HEXO's revenues could be materially adversely affected, which could have a material adverse effect on HEXO's business, financial condition, results of operations and prospects.

[219] Finally, the January 30, 2019 press release<sup>154</sup> specifically states that the "[f]orward-looking statements should not be read as guarantees of future performance or results."

[220] The Court finds that Plaintiff has not demonstrated an arguable case for a primary market class action.

### Civil Liability Claim

[221] The requisite elements for a claim in damages based on extra-contractual liability under Article 1457 CCQ are: (i) fault, (ii) damages and (iii) causal link between the fault and the damages.

[222] Plaintiff argued that Defendants failed to meet their general duty of care under Article 1457 CCQ regardless of the fact that they did not violate the *Quebec Securities Act* and further alleges that Defendants' misrepresentations and breaches of its disclosure obligations artificially inflated the price or value of HEXO securities that once publicly corrected caused the members of the class damages.

[223] Citing the recent cases in *Nseir*<sup>155</sup> and *Graaf*<sup>156</sup>, Defendants argue that where the primary and secondary market claims are dismissed, the civil law claim for fault cannot succeed in the absence of facts to support a different and independent fault.

[224] As a general rule, the absence of a statutory breach is not a bar to a common law action for extracontractual fault as appears from the Court of Appeal decision in *Infineon Technologies*<sup>157</sup>:

<sup>153</sup> Exhibit R-2.

<sup>154</sup> Exhibit R-71.

<sup>155</sup> *Nseir*, *supra* note 19.

<sup>156</sup> *Graaf v. SNC-Lavalin Group Inc.*, 2020 QCCS 1232 (CanLII).

<sup>157</sup> *Option Consommateurs v. Infineon Technologies, a.g.*, 2011 QCCA 2116 (CanLII) at para 88; see SCC decision at note 144.

[88] The respondents contend that they cannot be held liable under article 1457 C.C.Q. if they have respected the requirements section 45 of the Competition Act. In support of this position, they cite *Acier d'armature Rô* in which this Court observed that statutory duty under the Competition Act and the generally applicable norm in civil liability are very closely connected. There is no denying that the laws bearing on commercial activity shape, in some measure, our understanding of the duties commercial actors have under the general law of civil liability. Care must be taken, however, not to conflate the notion of civil fault and the violation of a statutory norm, whether in a commercial setting or elsewhere. While it is true – although not invariably – that the failure to respect a duty imposed by statute can be an extracontractual fault under the Civil Code, the inverse proposition – that a person's conduct that is not shown to violate a statute absolves him or her from civil fault – does not always stand to reason. Article 1457 C.C.Q. gives expression to an ancient idea in stating that a person must abide by the rules of conduct that bind him or her "according to circumstances, usage or law/suivant les circonstances, les usages ou la loi". To read the reference to "law" narrowly as a reference to a single statute, or to contend that commercial circumstances and usage are necessarily codified by section 45 in the present situation, does a disservice to article 1457 C.C.Q. as an expression of the *droit commun*. The content of article 1457 C.C.Q. may be informed by statutory duty but one cannot assume that it is defined or exhausted thereby. [...]

[225] The norm of conduct imposed upon the the reasonable and prudent issuer as regards public statements that are made or released concerning its business or operations is not any different under the more generous civil law regime. The only distinction is that unlike a statutory claim under the QSA, Plaintiff must demonstrate a *prima facie* causal link between the damages and the misrepresentation as the causal link is not presumed<sup>158</sup>.

[226] Plaintiff alleges the following facts to support an action for extra-contractual fault:

283. The QSA, the Securities Legislation, national instruments including NI 51-102, NI 52-109, NI 52-110, all informed Defendants of their obligations.
284. The Defendants also owed the Class Members the *bon père de famille* obligations imposed under the CCQ.
285. The Defendants breached their obligations by making the alleged misrepresentations particularized herein and, as such, committed faults against the Class Members.
286. St-Louis oversaw the preparation of all filings and news releases, including the Impugned Statements, and knew or ought to have known of the alleged misrepresentations.

<sup>158</sup> *Amaya supra* note 4 at para 7.

287. Consequently, not only is HEXO directly liable towards the Class Members for its own faults, but it is also liable for the faults committed by St-Louis or any other officer, director, partner or employee.
288. In light of the Defendants' misrepresentations, HEXO securities traded at artificially-inflated prices and did not reflect their true value at all relevant times during the Class Period.
289. Once the misrepresentations were corrected, the price of HEXO's securities plummeted causing significant damages to the Plaintiff and Class Members, for which the Defendants must compensate them.

[227] Plaintiff also alleges that he relied on the Impugned Statements to make his investment decisions demonstrating that his damages are *prima facie* a direct and immediate consequence of the misrepresentations<sup>159</sup>. The debate on the need to establish reliance here is purely theoretical, however, the Court agrees with the *Nseir* and *Graaf*<sup>160</sup> decisions that the causal link in cases of misrepresentation requires a plaintiff to demonstrate that plaintiff relied on the misrepresentation. The fraud on the market theory available in the United States<sup>161</sup> has not been accepted in Canada<sup>162</sup>.

[228] As stated previously, Plaintiff has not demonstrated, on a *prima facie* basis, that the public documents and statements referenced in Schedule II contain misrepresentations of a material fact. Plaintiff has also not identified any other fault that would require a different analysis.

[229] Therefore, in the absence of fault, the Court finds that Plaintiff has not demonstrated an arguable case for misrepresentation under the general principles of fault in the civil law.

[230] As this criterion has not been met, Plaintiff's Motion for authorization of a class action is dismissed. However, in order to complete the analysis, the Court will review the balance of the criteria in article 575 CCP.

<sup>159</sup> Third Amended Motion paragraphs 100.2 and 101.

<sup>160</sup> *Nseir supra* note 19 and *Graaf supra* note 156.

<sup>161</sup> This statutory cause of action was described by the United States Supreme Court in *Basic Inc. v. Levinson*, 485 U.S. 224 (U.S. Ohio, 1988), at 241 held that "in an open and developed securities market, the price of a company's stock is determined by the available material information regarding the company and its business...Misleading statements will therefore defraud purchasers of stock even if the purchasers do not directly rely on the misstatements...The causal connection between the defendants' fraud and the plaintiffs' purchase of each stock in such a case is no less significant than in a case of direct reliance on misrepresentations".

<sup>162</sup> *Carom v. Bre-X Minerals Ltd.* (1998), 1998 CanLII 14705 (ON SC), 41 O.R. (3d) 780 (Ont. Gen. Div.) at p. 794.

**Article 575 (1) CCP-The questions of fact and law are similar or identical**

[231] This criterion is not contested.

[232] As stated in the *Dutton*<sup>163</sup>, when examining the commonality requirement, “the underlying question is whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analyses. Thus, an issue is common where its resolution is necessary to the resolution of each class member’s claim”.

[233] The questions put forward by Plaintiff meet that test. They are as follows:

- a) During the Class Period, did the Defendants publish documents or make statements that contained misrepresentations within the meaning of the QSA and, if necessary, other Securities Legislation?
- b) If so, which document or statement contains which misrepresentation?
- c) Were the misrepresentations intentional?
- d) Are any of the Defendants liable to the Class or any of its Members under the QSA, and if necessary, any concordant provisions of the other Securities Legislation and/or under art. 1457 of the CCQ?
- e) If so, which Defendant is liable and to whom?
- f) Is Defendants’ liability solidary? and
- g) What is the amount of the damages sustained by the Class Members?

**Article 575(3) CCP-The rules of mandate or joinder are difficult or impracticable**

[234] This criterion is not contested.

[235] The Court finds that the composition of the class, both in number and geographic locations, would make it difficult or impracticable to proceed by way of a mandate or joinder of actions.

**Article 575 (4) CCP- Adequateness of the Representative of the Proposed Class**

[236] Defendants argue that Plaintiff does not have the requisite standing as he did not purchase HEXO securities in the primary market.

[237] The Court does not agree.

<sup>163</sup> *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 (CanLII), [2001] 2 S.C.R. 534 at para 39.

500-06-001029-194

PAGE : 48

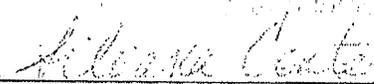
[238] In the *Infineon* case<sup>164</sup>, the Supreme Court of Canada confirmed that an adequate representation requires the consideration of three factors: interest in the suit; competence; and absence of conflict with the group members. These factors must be interpreted liberally as no proposed representative should be excluded unless his or her interest or competence is such that the case could not possibly proceed fairly.

[239] As appears from the facts, Plaintiff has the requisite judicial interest to act as a representative. He has demonstrated that he purchased securities in the secondary market and alleged that he relied on the Impugned Statements to his detriment with regard to the civil claim. The fact that he did not personally have a primary market claim is not a bar to his status as a representative as confirmed by the Supreme Court in *Bank of Montreal v. Marcotte*<sup>165</sup>.

**FOR THESE REASONS, THE COURT:**

[240] **DISMISSES** Plaintiff's Third 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;

[241] **THE WHOLE**, with costs.

  
 \_\_\_\_\_  
 SILVANA CONTE, J.S.C.

Mtre Shawn K. Faguy  
 Mtre Elizabeth Meloche  
**FAGUY & CO.**  
 Attorneys for Plaintiff

Mtre François-David Paré  
 Mtre Francesca Taddeo  
**NORTON ROSE FULLBRIGHT CANADA LLP**  
 Attorneys for Defendants

Hearing date: November 15 and 16, 2022.

<sup>164</sup> *Infineon*, supra note 144 at p.419.

<sup>165</sup> *Bank of Montreal v. Marcotte*, 2014 SCC 55 (CanLII), at paras 31-33; see also: *Ameublement Tanguay inc. v. Luc Cantin*, 2017 QCCA 1330 at paras 36-37 and *Télébec v. 9238-0831*, 2020 QCCA 1720 at paras 65, 67.

500-06-001029-194

PAGE : 50

SCHEDULE I

500-06-001029-194

PAGE : 50

## Schedule I

The relevant provisions of the *Securities Act*, CQLR c V-1.1

5. In this Act, unless the context indicates otherwise, [...]

"material fact" means a fact that may reasonably be expected to have a significant effect on the market price or value of securities issued or securities proposed to be issued;

"misrepresentation" means any misleading information on a material fact as well as any pure and simple omission of a material fact;

5.3. When used in relation to an issuer other than an investment fund, "material change" means a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer, or a decision to implement such a change made by the directors or by senior management of the issuer who believe that confirmation of the decision by the directors is probable. [...]

73. A reporting issuer shall provide periodic disclosure about its business and internal affairs, including its governance practices, timely disclosure of a material change and any other disclosure prescribed by regulation in accordance with the conditions determined by regulation.

### MISREPRESENTATION

#### DIVISION I

#### PRIMARY MARKET AND TAKE-OVER OR ISSUER BIDS

217. A person who has subscribed for or acquired securities in a distribution effected with a prospectus containing a misrepresentation may apply to have the contract rescinded or the price revised, without prejudice to his claim for damages.

The defendant may defeat the application only if it is proved that the plaintiff knew, at the time of the transaction, of the alleged misrepresentation.

218. The plaintiff may claim damages from the issuer or the holder, as the case may be, whose securities were distributed, from its officers or directors, the dealer under contract to the issuer or holder whose securities were distributed and any person who is required to sign an attestation in the prospectus, in accordance with the conditions prescribed by regulation.

[...]

220. The defendant in an action provided for in sections 218 and 219 is liable for damages unless it is proved that

(1) he acted with prudence and diligence, except in an action brought against the issuer or the holder whose securities were distributed, or that

(2) the plaintiff knew, at the time of the transaction, of the alleged misrepresentation.

221. Rights of action established under sections 217 to 219 may also be exercised if a misrepresentation is contained in

(1) the information incorporated by reference in the simplified prospectus;

(2) the offering memorandum prescribed by regulation;

(3) any other document authorized by the Authority for use in lieu of a prospectus.

[...]

225.0.1. A defendant may defeat an action based on a misrepresentation in forward-looking information by proving that

(1) the document containing the forward-looking information contained, proximate to that information,

(a) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information; and

(b) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection; and

(2) the defendant had a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information.

This section does not apply to forward-looking information in a financial statement required to be filed under this Act or the regulations or in a document released in connection with an initial public offering.

225.0.2. The plaintiff is not required to prove that the plaintiff relied on the document containing a misrepresentation when the plaintiff subscribed for, acquired or disposed of a security.

## DIVISION II

### SECONDARY MARKET

#### § 1. — Scope and interpretation

225.2. This division applies to any person who acquires or disposes of a security of a reporting issuer or of any issuer closely connected to Québec whose securities are publicly traded.

However, this division does not apply to a person that subscribes for or acquires a security during the period of a distribution of securities made with a prospectus or, unless otherwise provided by regulation, under a prospectus exemption granted by this Act, a regulation made under this Act or a decision of the Authority; nor does it apply to a person that acquires or disposes of a security in connection with or pursuant to a take-over bid or issuer bid, unless otherwise provided by regulation, or to a person that makes any other transaction determined by regulation.

225.3. In this division, unless the context indicates otherwise,

"core document" means a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take-over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, a proxy solicitation circular, the issuer's annual and interim financial statements and any other document determined by regulation, and a material change report, but only where used in relation to the issuer or the investment fund manager and their officers;

"document" means any writing that is filed or required to be filed with the Authority, with a government or an agency of a government under applicable securities or corporate law, or with a stock exchange or quotation and trade reporting system under its by-laws, or the content of which would reasonably be expected to affect the market price or value of a security of the issuer;

[...]

"management's discussion and analysis" means the section of an annual information form, annual report or other document that contains management's discussion and analysis of the financial situation and operating results of an issuer as required under this Act or the regulations;

"public oral statement" means an oral statement made in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed;

[...]

§ 2. — Actions for damages and burden of proof

I. — Prior authorization and other general conditions



misrepresentation and the time when the misrepresentation was publicly corrected may bring an action against

- (1) the issuer and each director and officer of the issuer who authorized, permitted or acquiesced in the making of the public oral statement;
- (2) the person who made the public oral statement;
- (3) each influential person, and each director and officer of an influential person, who knowingly influenced the person who made the public oral statement to make the public oral statement or a director or officer of the issuer to authorize, permit or acquiesce in the making of the public oral statement; and
- (4) each expert whose report, statement or opinion containing the misrepresentation was included, summarized or quoted from in the public oral statement and, if the public oral statement was made by a person other than the expert, who consented in writing to the use of the report, statement or opinion in the public oral statement.

225.10: A person that acquires or disposes of an issuer's security during the period between the time when an influential person or a mandatary or other representative of the influential person released a document or made a public oral statement relating to the issuer and containing a misrepresentation and the time when the misrepresentation was publicly corrected may bring an action against

- (1) the issuer, if a director or officer of the issuer or the investment fund manager authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
- (2) the person who made the public oral statement;
- (3) each director and officer of the issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
- (4) the influential person and each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement; and
- (5) each expert whose report, statement or opinion containing the misrepresentation was included, summarized or quoted from in the document or public oral statement and, if the document was released or the public oral statement was made by a person other than the expert, who consented in writing to the use of the report, statement or opinion in the document or public oral statement.

225.11: A person that acquires or disposes of an issuer's security during the period between the time when the issuer failed to make timely disclosure of a material

change and the time when the material change was disclosed in the manner required under this Act or the regulations may bring an action against

(1) the issuer and each director and officer of the issuer who authorized, permitted or acquiesced in the failure to make timely disclosure; and

(2) each influential person, and each director and officer of an influential person, who knowingly influenced the issuer or a mandatary or other representative of the issuer in the failure to make timely disclosure or a director or officer of the issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

### III. — Plaintiff's burden of proof

225.12. The plaintiff is not required to prove that the plaintiff relied on the document or public oral statement containing a misrepresentation or on the issuer having complied with its timely disclosure obligations when the plaintiff acquired or disposed of the issuer's security.

225.13. For the purposes of sections 225.8 to 225.10, unless the defendant is an expert or the misrepresentation was contained in a core document, the plaintiff must prove that the defendant

(1) knew, at the time that the document was released or the public oral statement was made, that the document or public oral statement contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time; or

(2) was guilty of a gross fault in connection with the release of the document or the making of the public oral statement.

225.14. For the purposes of section 225.11, unless the defendant is the issuer, the investment fund manager or an officer of the issuer or the investment fund manager, the plaintiff must prove that the defendant

(1) knew, at the time that a material change report should have been filed, of the change and that the change was a material change, or deliberately avoided acquiring such knowledge at or before that time; or

(2) was guilty of a gross fault in connection with the failure to make timely disclosure.

[...]

225.16. The court seized of the action may decide that multiple misrepresentations having common subject matter or content may be treated as a single misrepresentation or that multiple instances of failure to make timely disclosure concerning common subject matter may be treated as a single failure to make timely disclosure.

IV. — Defendant's burden of proof

225.17. A defendant may defeat an action by proving that, at the time of the transaction, the plaintiff knew that the document or public oral statement contained a misrepresentation or was aware of the material change that should have been disclosed.

An action may also be defeated by proving that the defendant conducted or caused to be conducted a reasonable investigation and had no reasonable grounds to believe that the document or public oral statement would contain a misrepresentation or that the failure to make timely disclosure would occur.

225.18. In determining whether an investigation was reasonable under the second paragraph of section 225.17, the court must consider all relevant circumstances, including those listed in paragraphs 1 to 11 of section 225.15.

225.19. A defendant may defeat an action by proving that

(1) the misrepresentation was also contained in a document filed by or on behalf of a third person, other than the issuer, with the Authority or an extra-provincial securities commission within the meaning of section 305.1 or a stock exchange, and was not corrected in another document filed by or on behalf of that third person with the Authority, commission or stock exchange before the issuer or the mandatary or other representative of the issuer released the document or made the public oral statement;

(2) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation; and

(3) when the document was released or the public oral statement was made, the defendant did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

[...]

225.22. A defendant may defeat an action for a misrepresentation in forward-looking information in a document or a public oral statement by proving that

(1) the document or public oral statement containing the forward-looking information contained, proximate to that information,

(a) reasonable cautionary language clearly identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information; and

(b) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection; and

500-06-001029-194

PAGE : 58

(2) the defendant had a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information.

This section does not apply to forward-looking information in a financial statement required to be filed under this Act or the regulations or in a document released in connection with an initial public offering.

225.23. A defendant is deemed to have satisfied the requirements of subparagraph 1 of the first paragraph of section 225.22 with respect to a public oral statement containing forward-looking information if the person who made the public oral statement

(1) made a cautionary statement that the public oral statement contains forward-looking information;

(2) stated that the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information and that certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information; and

(3) stated that additional information about the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information and about the material factors or assumptions applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information is contained in a readily-available document, and has identified that document.

For the purposes of subparagraph 3 of the first paragraph, a document filed with the Authority, or otherwise generally disclosed, is deemed to be readily available.

[...]

500-06-001029-194

PAGE : 59

SCHEDULE II

500-06-001029-194

PAGE : 59

ANNEX B: TABLE OF SELECTED EVIDENCE

TABLE OF CONTENTS

I-	ALLEGED QUÉBEC SUPPLY AGREEMENT GUARANTEED REVENUES IN YEAR 1	2
II-	REVENUE GENERATION	14
	a. Double HEXO Revenues Between Q2 and Q4 2019	14
	b. \$400M in Net Revenue In 2020	17
III-	NEW STRIKE	20
	a. Newstrike Annual Synergies	20
	b. Niagara Licensing	25
IV-	INVENTORY	30

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)?	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
<b>I- ALLEGED QUÉBEC SUPPLY AGREEMENT GUARANTEED REVENUES IN YEAR 1</b>						
April 11, 2018	R-8 – HEXO press release Par. 84, 111	Under the agreement, Hydropharmacy will supply 20,000 kg of products in the first year of the agreement and is expected to supply 35,000 kg in the second year and 45,000 kg in the third. [...] The SAQ has the right to terminate the agreement in certain circumstances. [...]	225.8 225.11	NC but confir med in a core docum ent on April 20, 2018	Inference	<ul style="list-style-type: none"> <li>CD 1: JUNE 13, 2019</li> <li>R-36 - EARNINGS CALL RE: Q3 2019 MFA, par. 141-145.7</li> </ul> <p>p. 8: Oliver Rowe -- Scotiabank -- Analyst Hey, good morning. Thanks for taking my question. When I think about Quebec, which is obviously an important market for you, you're expecting 20,000 kilograms of sales to Quebec in the first year for ag (ph). I think we're over halfway through that year now and sales within about 5,500 kilograms to that province. So it seems to me like it could be a bit challenging for the SQDC sales to triple over the remaining five months. Do you see a risk that the SQDC doesn't need that much product, but picks it anyway and that leads to significant inventory builds and maybe even impacts demand on your year two contract? Sebastien St-Louis -- Co-founder and Chief Executive Officer</p>
April 20, 2018	R-10 – HEXO material change report Par. 113, 114	Under the agreement, the Company will supply 20,000 kg of products in the first year of the agreement and is expected to supply 35,000 kg in the second year and 45,000 kg in the third. [...] The SAQ has the right to terminate the agreement in certain circumstances. [...]	225.8 225.11	C	Presumed	
June 27, 2018	R-11 - MD&A Q3 2018 Par. 85.3, 115-117.2	p. 6: On April 11, 2018, we announced the finalization of the commercial agreement with SQDC to be the preferred supplier for cannabis products for the Quebec market for the first five years post legalization. We will supply the SQDC with 20,000 kg of products in the first year and expect to supply 35,000 kg and 45,000 kg in years two and three respectively. Thereafter, based on an expected market growth rate of 10% we intend to	225.8 225.11	C	Presumed	

<sup>1</sup> MFA here refers to the paragraphs of the Motion for Authorization dealing with the Impugned Statements.  
<sup>2</sup> Emphasis is added.

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREPRESENTATION AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
June 28, 2018	R-14 – HEXO press release Par. 118 NON	<p>supply 49,500 kg and 54,450 kg in years four and five respectively. The Company estimates the total volume to be supplied over the five-year term of the agreement to be in excess of 200,000 kg which is the largest forward supply contract ever awarded in the history of the emerging cannabis industry. [...]</p> <p>p. 14: We have achieved excellent revenue visibility as we approach the legalization of recreational cannabis, with the five year, estimated 200,000 kg supply commitment under our agreement with the SQDC and our medical cannabis sales. Predictable revenue streams from the recreational and medical markets, a debt-free balance sheet, two fully-funded expansion projects, and additional liquidity for corporate purposes, provide strong business certainty through Year 1 post-legalization and beyond. In our opinion achievement is the most important milestone to date in our company's history.</p> <p>On April 11, 2018 we signed a commercial supplier agreement with the SQDC to supply cannabis to the Québec market. Based on the signed agreements between the SQDC and five other licensed producers, we obtained the highest Year 1 volume of 20,000 kg, representing a 34% market share. [...]</p>	225.8 225.11	NC	Inference	<p>[...] I do think there could be some timing risk around a few of those tons -- of those 20 tons. Now of course, as you pointed out, it is to take or pay contract, but we value our relationship with SQDC more than the few million dollars in revenue we could get this quarter. So we're working very closely with them. We ramped (ph) our SKU mix to create more interesting products. We plan on launching a whole bunch of new products over the following couple quarters, which we think will help that, but expect some timing risk whether it's an October, November, December timeline to hit the full 20 I think would be a reasonable assumption. We're confident we can completely offset that in more of course in other provinces.</p> <ul style="list-style-type: none"> <li>CD 3: OCT. 28-29, 2019</li> <li>R-42: Q4 2019 MD&amp;A / R-44 - 2019 AIF / R-45 - Annual Report / R-49 - Earnings Call Transcript Q4 2019</li> <li>MfA, par. 155-156.5</li> </ul>
Oct. 26, 2018	R-15 – Q4 2018 MD&A	<p>p. 3 PDF: We currently possess the single largest and longest national forward supply amount among all licensed producers, based upon the announced provincial supply agreements. In Quebec alone, we will supply 20,000 kg in the first year of legalized</p>	225.8 225.11	C	Presumed	<p>R-42: p. 14 : During this start-up phase, HEXO sold in (sic) 10 tons, achieving approximately 33% market share based on volume, and that is line with our goal.</p>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	Par. 119-121	<p>adult-use cannabis and up to approximately 200,000 kg over the first five years of legalized adult-use cannabis.</p> <p>p. 8 PDF: The strategic value of our SQDC relationship cannot be understated. We hold the single largest forward contract in the history of the emerging cannabis industry with the SQDC and are the preferred supplier for cannabis products for the Quebec market for the first five years following legalization. We will supply the SQDC with 20,000 kg of products in the first year, and we expect to supply 35,000 kg and 45,000 kg in years two and three, respectively. Thereafter, based on an expected market growth rate of 10%, we intend to supply 49,500 kg and 54,450 kg in years four and five, respectively. The Company estimates the total volume to be supplied over the five-year term of the agreement to be in excess of 200,000 kg.</p>				<p>Our contract required SQDC to purchase 20 tons in the first year, while we did not achieve these quantities during this period, we believe that exercising the committed 20 feature under the contract would be short sighted.</p> <p>R-45, p. 17 contains identical language.</p> <p>R-44:</p> <p>p. 9: Under the agreement, the Company was slated to supply 20,000 kg of products in the first year of the agreement and expected to supply 35,000 kg in the second year and 45,000 kg in the third. The volumes for the final two years of the agreement will be established based on the sales generated in the first three years. The supply arrangement covers the full range of the Company's products and brands, from flowers to cannabis oil. During the first year of the agreement, HEXO supplied approximately 10,000 kg under the agreement. While the Company did not achieve the expected sales during the first year of the agreement, it remains a preferred supplier of the Société québécoise du cannabis ("SQDC") with an approximately 33%</p>
Oct. 26, 2018	R-17 - HEXO 2:18 A/F Par. 119-121	<p>p. 16: The Company now possesses supplier contracts across four provinces with 20,000 kg of cannabis to be supplied to Quebec in year one alone.</p> <p>p. 8: Under the agreement, the Company will supply 20,000 kg of products in the first year of the agreement and is expected to supply 35,000 kg in the second year and 45,000 kg in the third.</p> <p>p. 9: We currently possess the single largest and longest national forward supply amount among all licensed producers, based upon the announced provincial supply agreements. In Quebec alone, we will supply 20,000 kg in the first year of legalized adult-use cannabis and up to approximately 200,000 kg over the first five years of legalized adult-use cannabis.</p>	225.8 225.11	C	Presumed	

DATE	REF. EXHIBIT (R-) MIFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Oct. 26, 2018	R-18 - HEXO 2018 annual report Par. 11.9-12.1	<p>p. 15 PDF: In Quebec alone, we <u>will supply 20,000 kg</u> in the first year of legalized adult-use cannabis and up to approximately 200,000 kg over the first five years of legalized adult-use cannabis.</p> <p>p. 16 PDF: We hold the single largest forward supply contract among licensed producers, based upon announced agreements for year one of legalization, with 20,000 kg to be supplied to Quebec in the first year.</p> <p>p. 20 PDF: The strategic value of our SQDC relationship cannot be understated. We hold the single largest forward contract in the history of the emerging cannabis industry with the SQDC and are the preferred supplier for cannabis products for the Quebec market for the first five years following legalization. We will supply the SQDC with 20,000 kg of products in the first year, and we expect to supply 35,000 kg and 45,000 kg in years two and three, respectively. Thereafter, based on an expected market growth rate of 10%, we intend to supply 49,500 kg and 54,450 kg in years four and five, respectively. The Company estimates the total volume to be supplied over the five-year term of the agreement to be in excess of 200,000 kg.</p> <p>p. 24 PDF: The additional facilities and associated production capacity have positioned the Company to meet the SQDC first-year demand of 20,000 kg.</p>	225.8 225.11	NC But contains the same language as core documents of the same date	inference	<p>market share based on volume and is working on expanding its product offerings with the SQDC based on consumer demands and as the SQDC continues the roll-out of its retail distribution channels, and it believes that any exercise of committed purchase features for a larger amount during the first year of the agreement would be short sighted.</p> <p>p. 18-19: The SAQ is not required to purchase a minimum volume of cannabis under this agreement other than in the first year. The SQDC originally contracted approximately 60 tons for purchase in the first year from all licensed producers. Initial sell-through was expected to be a little less than half of that amount, however, as the retail store roll-out in Quebec has been slow to develop. While the SAQ had committed to improving access to legalized cannabis, this has been slower than HEXO had originally expected. During this start-up phase, HEXO sold 10,250 kg [...] it believes that any exercise of committed purchase features for a larger amount during the first year of the agreement would be short sighted.</p> <p>R-49, p. 4; Similar language</p>
Nov. 19, 2018	R-19.1 - prospectus Par. 121.1	<p>p. 9 PDF: [...] the Company has entered into a commercial agreement with the Société des alcools du Québec to be the preferred supplier of cannabis products for the Québec market for the first five years post-legalization, with an option to extend the term for an additional year. Under the agreement, the Company will supply 20,000 kg of products in</p>	225.8 225.11	C	Presumed	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Dec.13, 2018	R-20 – MD&A Q1 2019 Par. 122-123	<p>the first year of the agreement and is expected to supply 35,000 kg in the second year and 45,000 kg in the third. [...]</p> <p>p. 3 PDF: In Quebec alone, we will supply 20,000 kg in the first year of legalized adult-use cannabis...</p> <p>p. 4 PDF: We hold the single largest forward supply contract among licensed producers, based upon announced agreements for year one of legalization, with 20,000 kg to be supplied to Quebec in the first year.</p> <p>p. 7 PDF: The strategic value of our SQDC relationship cannot be understated. We hold the single largest forward contract in the history of the emerging cannabis industry with the SQDC and are the preferred supplier for cannabis products for the Quebec market for the first five years following legalization. We will supply the SQDC with 20,000 kg of products in the first year, and we expect to supply 35,000 kg and 45,000 kg in years two and three, respectively. Thereafter, based on an expected market growth rate of 10%, we intend to supply 49,500 kg and 54,450 kg in years four and five, respectively ...</p> <p>p. 12 PDF: ... have positioned the Company to meet the SQDC first-year demand of 20,000 kg.</p>	225.8 225.11	C	Presumed	<ul style="list-style-type: none"> <li>CD 7; MARCH 19, 2020</li> <li>R-63 – RE-AMENDED MD&amp;A Q4 2019 / R-64 – RE-AMENDED MD&amp;A Q1 2020 / R-67 – HEXO PRESS REPORT Par. 164.24-164.25</li> </ul> <p>R-67: HEXO Corp. ("HEXO" or the "Company") (TSX: HEXO; NYSE: HEXO) today announced it has amended and refilled its management's discussion and analysis for the fiscal year ended July 31, 2019 (the "Amended 2019 MD&amp;A") and its management's discussion and analysis for the three month period ended October 31, 2019 (the "Amended Q1 2020 MD&amp;A") to better comply with National Instrument 51-102 – Continuous Disclosure Obligations. As noted in the press release of the Company dated March 17, 2020, the Amended 2019 MD&amp;A and Amended Q1 2020 MD&amp;A (collectively, the "Amended MD&amp;A") were prepared following a continuous disclosure review by the Ontario Securities Commission ("OSC") of the Company's disclosure record. The Amended MD&amp;A were filed to address comments received from OSC Staff and in order to improve the Company's disclosure. In</p>
Dec. 20, 2018	R-2 – Amended Prospectus dated Dec. 14, 2019 and	<p>p.11 PDF: In addition to supply contracts in certain other provinces of Canada, the Company has entered into a commercial agreement with the Société des alcools du Québec to be the preferred supplier of cannabis products for the Quebec market for the first five years post-legalization, with an option to extend the term for an additional year. Under the agreement, the Company will supply 20,000 kg of products in the first year of the agreement and is expected to supply 35,000 kg in the second year and 45,000 kg in</p>	225.8 225.11	C	Presumed	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPLICATED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	published on Dec. 20, 2018 Par. 111.1, 126	the third. The volumes for the final two years of the agreement will be established at a later date based on the sales generated in the first three years.				particular, among other changes, the Amended MD&A have been revised: [...] to clarify and provide additional disclosure regarding the Company's supply contract with Québec's Société Québécoise du cannabis (the "SQDC") including details of the Company's right under the contract for the sale of 20,000kg to the SQDC during the first year of the contract; Modifications made in R-63, p. 1, 18 PDF; and R-64, p. 1, 16 PDF
Jan. 21, 2019	R-24- preliminary prospectus supplement Par. 126	p. S-9-S-10: [...] the Company has entered into a supply agreement with the SQDC to be the preferred supplier of cannabis products for the Québec market for the first five years post legalization, with an option to extend the term for an additional year. The supply arrangement covers the full range of the Company's products and brands. Under the agreement, the Company will supply 20,000 kg of products in the first year of the agreement, which is subject to a take-or-pay feature for that year. The Company estimates that this represents an approximate 35% market share of the province's adult-use sales in the first year of legalization based on the volumes disclosed by other publicly traded cannabis companies who have also entered into SQDC supply agreements. The Company expects to supply 35,000 kg in the second year of the agreement and 45,000 kg in the third year. The Company estimates that the total amount expected to be supplied in the first three years of the agreement represents an approximate 30% market share of the province's adult-use sales based on the volumes disclosed by other publicly traded cannabis companies who have also entered into SQDC supply agreements. The volumes for the final two years of the Company's agreement with the SQDC will be established at a later date based on the sales generated in the first three years. The Company estimates that the total volume of cannabis to be supplied over the five-year term of the agreement could exceed 200,000 kg which, based on the average sale prices assumed by the Company for its products, would represent approximately \$1 billion in estimated potential revenue to the Company. The Company believes this	225.8 225.11	C	Presumed	<ul style="list-style-type: none"> <li>CD 8: MARCH 30, 2020</li> <li>R-68 – Q2 2020 MD&amp;A</li> <li>MFA, par. 164.26-164.36</li> </ul> <p>p. 15 PDF, footnote 5: By amendment effective on January 17, 2020, the Company contractually relieved the SQDC of the 1st year obligation to purchase the full 20 tons of the outstanding commitment.</p> <ul style="list-style-type: none"> <li>ALL OTHER CDS, BECAUSE ALL INTERTWINED.</li> </ul>



DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Jan. 21, 2019	R-23 – Corporate presentation Par. 111.1, 124-125	<p>P. 11 PDF: Based on HEXO's 20,000 kg supply contract with Quebec for the first year post legalization</p> <p>P. 16 PDF: • Largest forward supply contract in the history of the cannabis industry in Canada based on year one volume</p> <ul style="list-style-type: none"> <li>• Take or pay feature for year one on 20,000 kg with an estimated over 30% market share in Quebec for first three years [...]</li> </ul>	225.8 225.11	NC	Inferred	
Jan. 24, 2019	R-2: prospectus supplement Par. 111.1, 127-129.3	<p>P. 9-9-10: [...] the Company has entered into a supply agreement with the SQDC to be the preferred supplier of cannabis products for the Québec market for the first five years post legalization, with an option to extend the term for an additional year. The supply arrangement covers the full range of the Company's products and brands. Under the agreement, the Company will supply 20,000 kg of products in the first year of the agreement, which is subject to a take-or-pay feature for that year. The Company estimates that this represents an approximate 35% market share of the province's adult-use sales in the first year of legalization based on the volumes disclosed by other publicly traded cannabis companies who have also entered into SQDC supply agreements. The Company expects to supply 35,000 kg in the second year of the agreement and 45,000 kg in the third year. The Company estimates that the total amount expected to be supplied in the first three years of the agreement represents an approximate 30% market share of the province's adult-use sales based on the volumes disclosed by other publicly traded cannabis companies who have also entered into SQDC supply agreements. The volumes for the final two years of the Company's agreement with the SQDC will be established at a later date based on the sales generated in the first three years. The Company estimates that the total volume of cannabis to be supplied over the five-year term of the agreement could exceed 200,000 kg which, based on the average</p>	225.8 225.11	C	Presumed	

DATE	REF. EXHIBIT (R-) MFA1 (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		<p>sale prices assumed by the Company for its products, would represent approximately \$1 billion in estimated potential revenue to the Company. The Company believes this agreement is the largest forward supply agreement in the history of the cannabis industry in Canada, based on year one volume.</p> <p>p. 5-17: HEXO expects to derive a significant portion of its future revenues from the recently legalized adult-use cannabis industry and market in Canada, including through its agreements with the SQDC in Québec, the OCRC in Ontario and the BCLDB in British Columbia (...). <u>Other than the agreement with the SQDC, pursuant to which the SQDC has agreed to purchase 20,000 kg of HEXO's products for the first year of the agreement, the agreements with the SQDC, the OCRC and the BCLDB do not contain purchase commitments or otherwise obligate the purchaser to buy a minimum or fixed volume of products from HEXO. The amount of cannabis that the SQDC, the OCRC and the BCLDB may purchase under HEXO's agreements with them may therefore vary from what HEXO expects or has planned for. The amount of cannabis that the SQDC, the OCRC and the BCLDB may purchase under HEXO's agreements with them may therefore vary from what HEXO expects or has planned for. As a result, HEXO's revenues could fluctuate materially in the future and could be materially and disproportionately impacted by the purchasing decisions of the SQDC, the OCRC and the BCLDB. If any of the SQDC, the OCRC or the BCLDB decides to purchase lower volumes of products from HEXO than HEXO expects, alters its purchasing patterns at any time with limited notice or decides not to continue to purchase HEXO's cannabis products at all, HEXO's revenues could be materially adversely affected, which could have a material adverse effect on HEXO's business, financial condition, results of operations and prospects.</u></p>				



DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREPEAT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
March 14, 2019	R-30 – Earnings call transcript Q2 2019 Par. 135-136.3	<p>p. 29 PDF: [...] Other than the agreement with the SQDC, pursuant to which the SQDC has agreed to purchase 20,000 kg of HEXO's products for the first year of the agreement, the agreements with the SQDC, the OCRC and the BCLDB do not contain purchase commitments or otherwise obligate the purchaser to buy a minimum or fixed volume of products from HEXO.</p> <p>p. 4: I want to take note to mention that the <u>SQDC 20 ton commitment is fully on track</u>. Our relationship remains an amazing standing and we're really excited about all the stores they're opening [...] our meaningful wrap towards that 400 million starts in Q4.</p>	225.9	NC	Inferred	
June 12, 2019	R-32 – MD&A Q3 2019 Par. 137-139	<p>p. 3 PDF: We currently possess the single largest and longest Canadian forward supply amount among all licensed producers, based upon announced provincial supply agreements. In Quebec alone, we will supply 20,000 kg in the first year of legalized adult-use cannabis and could exceed an estimated 200,000 kg over the first five years of legalized adult use cannabis.</p> <p>p. 5 PDF: The strategic value of our SQDC relationship cannot be understated. We hold the single largest forward contract in the history of the emerging cannabis industry with the SQDC and are the preferred supplier for cannabis products for the Quebec market for the first five years following legalization. We will supply the SQDC with 20,000 kg of products in the first year, and we expect to supply 35,000 kg and 45,000 kg in years two and three, respectively. The volumes for the final two years of the agreement will be established at a later date based on the sales generated in the first three years. The</p>	225.8 225.11	C	Presumed	

DATE	REF. EXHIBIT (R-) MFA <sup>3</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
June 13, 2019	R-36 – Earnings Call Transcript Q3 2019 Par. 140-145.7	<p>Company estimates the total volume to be supplied over the five-year term of the agreement could exceed 200,000 kg.</p> <p>p. 11 PDF: We hold the single largest forward supply contract among licensed producers, based upon announced agreements for year one of legalization, with <u>20,000 kg to be supplied to Quebec in the first year.</u></p>	225.9	NC	Inferred	
		<p>p. 8: Oliver Rowe – Scotiabank – Analyst</p> <p>Hey, good morning. Thanks for taking my question. When I think about Quebec, which is obviously an important market for you, you're expecting 20,000 kilograms of sales to Quebec in the first year for eg (ph). I think we're over halfway through that year now and sales within about 5,500 kilograms to that province. So it seems to me like it could be a bit challenging for the SQDC sales to triple over the remaining five months. Do you see a risk that the SQDC doesn't need that much product, but picks it anyway and that leads to significant inventory builds and maybe even impacts demand on your year two contract?</p> <p>Sebastien St-Louis -- Co-founder and Chief Executive Officer</p> <p>Yeah. So definitely a risk. I think the demand is there in Quebec. I think SQDC has been doing a fantastic job, but since there were inventory supply shortages on the early days tram most LPs, so HEXO was delivering on its purchase orders, but SQDC weren't getting fully supplied. They slowed their store ramps. So the original plan called for about 25 stores in Quebec by this day. And last quarter we were at about 13. Now the good news is SQDC has now gone back to seven days of full time selling. So that adds significant demand. They've added more stores now. So we have a brand new store in Gatineau, right next to an Ottawa population center.</p>				

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		I do think there could be some <u>timing risk</u> around a few of those tons -- of those 20 tons. Now of course, as you pointed out, it is take or pay contract, but we value our relationship with SQDC more than the few million dollars in revenue we could get this quarter. So we're working very closely with them. We ramped (ph) our SKU mix to create more interesting products. We plan on launching a whole bunch of new products over the following couple quarters, which we think will help that, but expect some timing risk whether it's an <u>October, November, December</u> timeline to hit the full 20 I think would be a reasonable assumption. We're confident we can completely offset that in more of course in other provinces.				
<b>II- REVENUE GENERATION</b>						
<b>A. Double HEXO Revenues Between Q2 and Q4 2019</b>						
March 13, 2019	R-27 – MD&A Q2 2019 Par. 133-134	p. 18 PDF: Net revenues for the fourth quarter are expected to approximately double those of the second quarter for the reasons detailed above. [Note: These reasons include the Québec Supply Agreement and the Newstrike acquisition.]	225.8 225.11	C	Presumed	<ul style="list-style-type: none"> <li>CD 2: OCT. 10, 2019 R-39 – HEXO NEWS RELEASE MFA, par. 150-154.1</li> </ul>
March 14, 2019	R-30 – Earnings Call Transcript Q2 2019 Par. 135-136.3	p.-15-16: Robert Fagan Sebastien, I just want to focus on your guidance for the next quarter being so much flat in terms of revenues. If we kind of look at that outlook and assume you double sales in the Q4, it would still require a pretty significant rampup in volumes in Q1 2020 to hit your 20 tons supply commitment to Quebec. How confident are you feeling about that and is there any risk for that? Sebastien St. Louis	225.9	NC	Inferred	<p>HEXO Corp provides preliminary fourth quarter 2019 revenue results and withdraws fiscal year 2020 outlook</p> <p>[...] Based on preliminary financial information and subject to year-end closing adjustments, HEXO expects net revenue for the fourth quarter to be approximately \$14.5 million to \$16.5 million [...] [Note: This is more than 40% lower than the roughly</p>

DATE	REF. EXHIBIT (R-) MFA (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
March 14, 2019	R-31 - press release	<i>I'm absolutely confident about that Rob. Look at historically what we've done in terms of rampup, so if you look at the multiples we've put forth on previous sales, I think there has always been a doubt for HEXO's ability to rampup and we've executed every single time. So I'm telling everybody now we will execute again. Are there risks? Yes. So there is some licensing risk around our Belleville facility. So that Belleville facility and the infrastructure and the backing is critical towards getting this done. But we've given ourselves adequate buffer, the license application is already in, we're already in conversation with Health Canada, and we have of course, phenomenal relationship. So we think that's adequately mitigated.</i>				\$26 million in net revenue for Q4 2019 that the Company had projected as late as June 13, 2019, with only weeks then remaining in Q4 2019.]  "Fourth quarter revenue is below our expectation and guidance, primarily due to lower than expected product sell through," commented Sebastien St-Louis, CEO and co-founder of HEXO Corp. [...]  • CD 3: OCT. 28-29, 2019 R-42: Q4 2019 MD&A /R-49 - EARNINGS CALL Q4 2019 / R-43 - FINANCIAL STATEMENTS /R-44 - 2019 AIF / R-45 - ANNUAL REPORT MFA, par. 155-156.5
June 12, 2019	R-32 - MD&A Q3-2019 Par. 137-139	p. 6: Net revenues for the fourth quarter are expected to approximately double those of the second quarter for the reasons detailed above.  p. 20 PDF: As the Company begins realizing sales from its first harvests of from its B9 greenhouse in the fourth quarter of fiscal 2019 net revenues are expected to approximately double those of the current quarter.	225.8 225.11	NC	Inferred	
June 12, 2019	R-35 - press release Par. 95, 137-139	p. 1: HEXO remains on-track ramping up to \$400 million net revenue in fiscal 2020 and to double net revenue in Q4 fiscal 2019  p. 3-4: As the Company begins realizing sales from its first harvests of from its B9 greenhouse in the fourth quarter of fiscal 2019 net revenues are expected to approximately double those of the current quarter.  [With only a few weeks left in Q4 2019:]	225.8 225.11	NC	Inferred	Total net revenue in the fourth quarter of fiscal 2019 increased to \$15,424 [...] [Note: This missed the approximately \$26 million in net revenue that the Company had announced for Q4 2019 (double Q2 2019 revenues) by roughly 41%. Only weeks before Q4 ended, Defendants reiterated that they would meet their Q4 2019 \$26 million target.]  - See also R-49, p. 4
June 13, 2019	R-36 - Earnings Call		225.9	NC	Inferred	

DATE	REF. EXHIBIT (R-) MFA <sup>3</sup> (PAR)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	<p>Transcript for Q3 2019 Par. 140-145.7</p>	<p>p. 5: We expect revenues to double this quarter [...]</p> <p>p. 15: So the doubling of revenue would include the Newstrike numbers, which are expected to be consolidated in next quarter, yes.</p> <p>p. 17: So I think last quarter I had mentioned that we'd be flat this quarter, we'd double in Q4. And I pointed that the key reason for that is that our infrastructure to package what we were growing was still ramping up, right. And now that infrastructure, this particular quarter has caught up and that's what's leading to the double.</p> <p>[...] So that's why we're going to double [...]</p> <p>P. 26: As we double this quarter and as we go of course, and we start to ramp from there into our CAD400 million next year, as I mentioned, the infrastructure block goes away largely by fall. So you have more and more capacity to supply into these markets.</p> <p>p. 27: Krishna Ruthnum -- CIBC -- Analyst</p> <p>Okay. Thanks for that. And one last question just on your guidance for Q4, just given where we are in the quarter, just wondering if you can give us some comments on the trend to date as well as your -- the pace and sort of your confidence of reaching that target?</p> <p>Sebastien St-Louis -- Co-founder and Chief Executive Officer</p> <p>We're going to reach the target. I mean, I'd ask you and I continuously, I welcome a challenge-as I think that the analyst community is doing a phenomenal job in our space. I welcome more transparency in our space. I welcome a broader discussion for investors. If you ever hear me say something and not deliver, you have to call me out. And in reverse, I would tell you today, nobody has ever called me out on anything because</p>				<p>- <i>Inter alia</i>, R-42, p. 38-39; R-44, p. 42-44; R-45, p. 40-42 PDF:</p> <p><b>FINANCIAL REPORTING</b></p> <p>The Company did not maintain effective process level and management review controls over manual financial reporting processes and the application of IFRS and accounting measurements related to certain significant accounts and non-routine transactions.</p> <p>To strengthen the controls surrounding the financial reporting process, management has initiated the following:</p> <ul style="list-style-type: none"> <li>• Assessing the financial and accounting resources in order to identify the areas and functions that lack sufficient personnel and other resources.</li> <li>• Hiring additional personnel, to be dedicated to the implementation, maintenance and monitoring of disclosure and financial controls, including our current efforts to recruit a Director of Finance; and,</li> <li>• Engaging third-party advisors with appropriate expertise to assist in the application of complex accounting measurements and non-routine transactions.</li> </ul>

DATE	REF. EXHIBIT (R- MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT. (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE.	PUBLIC CORRECTION (CD)
		HEXO has always delivered what we said we would. We're delivering a double this quarter.				<ul style="list-style-type: none"> <li>ALL OTHER CDs, BECAUSE ALL INTERTWINED.</li> </ul>
<b>B. \$400M in Net Revenue in 2020</b>						
March 13, 2019	R-26 – press release Par. 95, 130-132	<p>p.1: With this acquisition, HEXO will add 470,000 sq. ft. in production space when completed [...] Over \$400 million of pro forma net annual revenue ending July 2020 expected by HEXO following acquisition</p> <p>[...] today are (sic) committing to achieving over \$400 million in net revenue in 2020</p> <p>p. 3: Based on the completion of the Transaction, for fiscal 2020, HEXO estimates net and gross revenues from the sale of cannabis in Canada will be in excess of \$400 million and \$479 million respectively.</p>	225.8 225.11	NC	Inferred	<ul style="list-style-type: none"> <li>CD 2: OCT. 10, 2019 R-39 – HEXO NEWS RELEASE MfA, par. 150-154.1</li> </ul> <p>HEXO Corp provides preliminary fourth quarter 2019 revenue results and withdraws fiscal year 2020 outlook</p> <p>[...] Slower than expected store rollouts, a delay in government approval for cannabis derivative products and early signs of pricing pressure are being felt nationally. The delay in retail store openings in our major markets has meant that the access to a majority of the target customers has been limited. Additionally, regulatory uncertainty across the pan-Canadian system and jurisdictional decisions to limit the availability and types of cannabis derivative products have contributed to an increased level of unpredictability. As a result, HEXO is withdrawing its previously issued financial outlook for fiscal year 2020. [...]</p>
March 14, 2019	R-30 – Earnings Call Transcript Q2 2019 Par. 135-136.1	<p>p. 4: I want to take note to mention that the SQDC 20 ton commitment is fully on track Our relationship remains an amazing standing and we're really excited about all the stores they're opening [...] our meaningful wrap towards that 400 million starts in Q4. [...] leading us to that \$400 million in net revenue next year. Of course, the additional capacity from Newstrike is going to help as well.</p> <p>p. 6: [...] Newstrike [...] as this turns into what we're guiding to be \$400 million in net revenue next year, we think it'll be very accretive [...]</p> <p>p. 8: [...] And this is why HEXO was very bullish and why we think our Belleville facility is transformational. A 2 million square foot facility will give us enough space to fulfill that \$400 million net sales next year and beyond. [...]</p> <p>p. 10: Brett Hundley</p>	225.9	NC	Inferred	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		<p>And the last one here on the Newstrike Brands deal, you talked about that \$400 million expected in revenue from the combined entity, seems fairly conservative based on Newstrike capacity and legacy growth brands with HEXO. Can you talk a little bit about the forward asset mix expectations for Newstrike and any other factors that might own your forward revenue projections?</p> <p>Sebastien St. Louis</p> <p>Yes. So, I'm not breaking up the HEXO and Newstrike. So forecast is really a function of us correcting the overly conservative analyst's estimates. I'm glad to hear your comments. I mean if you think that's conservative, that was certainly -- the intention is to hit that number. So, we'll do that or better and so anything above that is really upside. [...]</p> <p>p. 17 [...] when we hit that \$400 million net [ph] next year, and of course, that's supported by very strong demand; that's why we're confident putting that number.</p>				<ul style="list-style-type: none"> <li>CD 3: OCT. 28-29, 2019</li> <li>R-42: Q4 2019 MD&amp;A / R-43 – financial statements / R-44 - 2019 AIF / R-45 - Annual Report</li> <li>Inter alia, R-42, p. 38-39; R-44, p. 42-44; R-45, p. 40-42 PDF, above, re: lack of internal controls.</li> <li>ALL OTHER CDs, BECAUSE ALL INTERTWINED.</li> </ul>
June 12, 2019	R-35 – press release Par. 95, 137-139	<p>p. 1: HEXO remains on-track ramping up to \$400 million net revenue in fiscal 2020 and to double net revenue in Q4 fiscal 2019 [...] This quarter saw HEXO remain on-track as it continues ramping up to \$400 million in revenue in fiscal 2020 [...]</p>	225.8 225.11	NC	Inferred	
June 13, 2019	R-36 – Earnings call transcript Q3 2019	<p>p. 4: We remain focused on delivering net revenues in fiscal 2020 of over CAD 400M and that of course excludes Truss Beverages.</p> <p>p. 6: [...] we're on target looking at forward revenue of CAD 400M [...]</p> <p>p. 7: There are two key risks to the CAD400 million. So the first one is of course the – as you pointed out, the regulatory risk. So, if we don't get the advanced products that</p>	225.9	NC	Inferred	

DATE	REF. EXHIBIT (R-) MFA <sup>3</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	Par. 140-145.7	<p>would put -- and I believe the risk of not getting it is also is negligible. I think the risk is really in delays. As I mentioned on the call, I think a delay to December would be prudent to expect a delay potentially in the December. But if it's further delayed that could put upwards of CAD100 million of that CAD400 million at risk as that we're planning advanced products to be about 25% of that number.</p> <p>The second risk is an execution risk, so much more in our control relating to our Belleville facility. So to achieve that CAD400 million target, we do need Belleville to be operational in the fall. And we are on track for that. But if something should happen outside of expectations, I would put that number at risk. We are confident we will deliver an operational facility in time.</p> <p>p. 12: So we haven't provided guidance spread on specific ramps for the CAD400 million, but you can expect that it will be an incremental step function, so try to -- I think if your model is a linear model, it will get pretty close.</p> <p>p. 14: I am happy to share with you that 2020, we're going to make some money. I mean obviously, CAD400 million at the kind of margin we're throwing off, it would be a little foolish not to.</p> <p>p. 25: So the CAD400 million guidance is for fiscal ending July.</p> <p>p. 26: As we double this quarter and as we go of course, and we start to ramp from there into our CAD400 million next year, as I mentioned, the infrastructure black goes away largely by fall. So you have more and more capacity to supply into these markets.</p>				

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
<b>III- NEWSTRIKE</b>						
<b>A. Newstrike Annual Synergies</b>						
March 13, 2019	R-27 – MD&A Q2 2019 Par. 133-134	<p>p. 13 PDF: Capacity boost with state-of-the-art cultivation infrastructure: The Transaction gives HEXO the capacity to produce approximately 150,000 kg of high-quality cannabis annually. The Transaction also provides HEXO access to four cutting-edge production campuses totalling close to 1.8 million sq. ft. of near-term cultivation space and diversified growing and production techniques. This is in addition to HEXO's 579,000 sq. ft. facility for a manufacturing and product development centre of excellence in Belleville, Ontario. [...]</p> <p>Premium indoor facility: Newstrike's licensed indoor facility provide HEXO with access to diversified growing techniques and positions HEXO for flexibility for international exports as global cannabis markets continue to open.</p> <p>Accretive synergies: The combined entity is estimated to realize annual synergies of \$10 million [...]</p>	225.8 225.11	C	Presumed	<ul style="list-style-type: none"> <li>CD 3: OCT. 28-29, 2019 R-42: Q4 2019 MD&amp;A / R-43 – financial statements / R-44 – 2019 AIF / R-45 – Annual Report / R-49 Earnings Call Q4 2019 MFA, par. 155-156.5</li> </ul> <p>R-42: p. 37: The above [Newstrike] acquisition contributed net revenue of \$2,770 and a net loss of (\$13,699) to the Company's consolidated results for the fiscal year ended since the date of acquisition.</p> <p>p. 17: As part of the changes to its operations, cultivation has been suspended at the Niagara facility acquired from Newstrike, and in 200,000 sq. ft. at the Company's main facility in Gatineau. The Company determined that this cultivation space is not required at this time given the current market conditions in Canada.</p>
March 13, 2019	R-26 – Press release Par. 95, 130-132	<p>p.1: With this acquisition, HEXO will add 470,000 sq. ft. in production space when completed [...]</p> <p>The Transaction gives HEXO the capacity to produce approximately 150,000 kg of high-quality cannabis annually. The Transaction also provides HEXO access to four cutting-edge production campuses totalling close to 1.8 million sq. ft. of near-term cultivation space and diversified growing and production techniques. This is in addition to HEXO's</p>	225.8 225.11	NC but also stated in core document of	Inferred	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR-)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		579,000 sq. ft. facility for a manufacturing and product development centre of excellence in Belleville, Ontario. Premium indoor facility. Newstrike's licensed indoor facility provide HEXO with access to diversified growing techniques and positions HEXO for flexibility for international exports as global cannabis markets continue to open. The combined entity is estimated to realize annual synergies of \$10 million [...]		same date		[Note: Both announcements do not bode well for the touted annual synergies.] R-43, p. 27 PDF, and R-45, p. 40, 71 PDF: Identical language as R-42, p. 37 above. R-44, p. 12, 15; R-45, p. 20 PDF; R-49, p. 6: Similar or identical language as R-42, p. 17 above.
March 14, 2019	R-30 – Earnings Call Transcript Q2 2019 Par. 135-136.1	p. 7: We do think we'll pick up a couple of synergies along the way. So, between, listing fees, legal fees, some key executives where you should be able to find synergies above \$10 million.	225.9	NC	Inferred	<ul style="list-style-type: none"> <li>CD 4: NOVEMBER 15, 2019 R-48 – HEXO PRESS RELEASE MFA, par. 96-96.1, 136.3, 160-164</li> </ul> Today, the [Newstrike] facility is no longer operational. On October 24, 2019, HEXO announced it was right-sizing its operations and winding down operations in Niagara.
March 14, 2019	R-31 – press release	p. 2: The combined entity is estimated to realize annual synergies of \$10 million [...]	225.8 225.11	NC	Inferred	<ul style="list-style-type: none"> <li>CD 5: DECEMBER 16, 2019 R-50 – Q1 2020 MD&amp;A / R-51 FINANCIAL STATEMENTS</li> </ul> p. 7 PDF: Operations at the Niagara facility are currently halted under the Company's restructuring efforts.
June 12, 2019	R-32 – MD&A Q3 2019 Par. 137-139	p. 14 PDF: The combined entity is estimated to realize annual savings of millions of dollars in operational synergies, allowing HEXO to operate efficiently with a commitment to continued excellence.	225.8 225.11	C	Presumed	p. 8 PDF: Temporarily suspended cultivation activities in Niagara and in 200,000 sq. ft. in Gatineau.
June 12, 2019	R-35 – press release	p. 1: The combined entity is estimated to realize millions in annual synergies, allowing HEXO to operate more efficiently with a continued commitment to excellence.	225.8 225.11	NC	Inferred	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	GSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	Par. 95, 137-139					<p>Similar language at R-50, p. 18 PDF; R-51, p. 13</p> <ul style="list-style-type: none"> <li>CD 7: MARCH 17, 2020 R-62 – HEXO PRESS REPORT Par. 164.21-164.23</li> </ul> <p>[...] the Company no longer expects to re-commence operations at the Niagara Facility and has decided to market the facility for sale. [...]</p> <p>These conditions combined with the accumulated losses to date indicate the existence of a material uncertainty that may cast doubt on the Company's ability to continue as a going concern.</p> <ul style="list-style-type: none"> <li>CD 7: MARCH 19, 2020 R-63 – RE-AMENDED MD&amp;A Q4 2019 / R-64 – RE-AMENDED MD&amp;A Q1 2020 / R-67 – HEXO PRESS REPORT Par. 164.24-164.25</li> </ul> <p>R-57: HEXO Corp. ("HEXO" or the "Company") [TSX: HEXO; NYSE: HEXO] today announced it has amended and refiled its management's discussion and analysis for the fiscal year ended July 31, 2019 (the "Amended 2019 MD&amp;A") and its management's discussion and analysis for the three month period ended October</p>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
						<p>31, 2019 (the "Amended Q1 2020 MD&amp;A") to better comply with National Instrument 51-102 - Continuous Disclosure Obligations.</p> <p>As noted in the press release of the Company dated March 17, 2020, the Amended 2019 MD&amp;A and Amended Q1 2020 MD&amp;A (collectively, the "Amended MD&amp;A") were prepared following a continuous disclosure review by the Ontario Securities Commission ("OSC") of the Company's disclosure record. The Amended MD&amp;A were filed to address comments received from OSC Staff and in order to improve the Company's disclosure. In particular, among other changes, the Amended MD&amp;A have been revised: [...]</p> <p>to clarify that the suspension of operations at the Company's Niagara, Ontario facility in October 2019 was completed [...]</p> <p>Modifications made in R-63, p. 1, 9 PDF; and R-64, p. 1, 9 PDF.</p> <ul style="list-style-type: none"> <li>• CD 8: MARCH 30, 2020 R-68 – Q2 2020 MD&amp;A / R-69 FINANCIAL STATEMENTS MfA, par. 164.26-164.36</li> </ul>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	OSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
						<p>R-58: p. 4 PDF: As the result of changes in the market conditions in Canada, the Company completed a strategic review of its cultivation capacity and assets and determined that it would list its Niagara facility for sale and record an impairment on property, plant and equipment and intangible assets. After a shift in the market capitalization of the Company, we determined that the total net assets significantly exceeded the Company's market capitalization. Based on this assessment, we performed an indicator-based impairment test of goodwill and recorded an impairment as at January 31, 2020.</p> <p>p. 7 PDF: On March 2, 2020 management concluded that the cultivation capacity of the Niagara facility is no longer needed based on significant excess cultivation capacity in the market and that previously suspended operations are not intended to restart. As a result, the facility and certain of its equipment and related cultivation and processing licences have been impaired to their fair value less disposal costs (see Notes 10 and 11 of the consolidated interim financial statements for the three and six months ended January 31, 2020) and certain of its property and equipment will be</p>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
						<p>marketed for sale beginning in the third quarter of fiscal 2020.</p> <p>p. 20 PDF: Total Net loss: (298,167) [million dollars]</p> <ul style="list-style-type: none"> <li>The Company recorded impairments to goodwill, intangible assets and property, plant and equipment of \$111,877, \$106,189 and \$32,082, respectively. [in millions of dollars]</li> </ul> <p>Confirmed in R-59, p. 4, 13-16 PDF</p> <ul style="list-style-type: none"> <li>ALL OTHER CDs, BECAUSE ALL INTERTWINED.</li> </ul>
<b>B. Niagara Licensing</b>						
March 13, 2019	R-27 – MD&A Q2 2019 Par. 133-134	<p>p. 13 PDF: Capacity boost with state-of-the-art cultivation infrastructure: The Transaction gives HEXO the capacity to produce approximately 150,000 kg of high-quality cannabis annually. The Transaction also provides HEXO access to four cutting-edge production campuses totalling close to 1.8 million sq. ft. of near-term cultivation space and diversified growing and production techniques. This is in addition to HEXO's 579,000 sq. ft. facility for a manufacturing and product development centre of excellence in Belleville, Ontario. [...]</p> <p>Premium indoor facility: Newstrike's licensed indoor facility provide HEXO with access to diversified growing techniques and positions HEXO for flexibility for international exports as global cannabis markets continue to open.</p>	225.8 225.11	C	Presumed	<ul style="list-style-type: none"> <li>CD 4: NOVEMBER 15, 2019 R-48 – HEXO PRESS RELEASE MFA, par. 96-96.1, 136.3, 160-164</li> </ul> <p>HEXO Corp provides additional transparency on licensing [...]</p> <p>On July 30, 2019, shortly after the Newstrike Brand Ltd. acquisition closed, HEXO discovered that cannabis was being grown in Block B, which was not adequately licensed. HEXO management</p>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
March 13, 2019	R-26 – press release Par. 95, 130-132	<p>p.1: With this acquisition, HEXO will add 470,000 sq. ft. in production space when completed [...] Over \$400 million of pro forma net annual revenue ending July 2020 expected by HEXO following acquisition</p> <p>The Transaction gives HEXO the capacity to produce approximately 150,000 kg of high-quality cannabis annually. The Transaction also provides HEXO access to four cutting-edge production campuses totalling close to 1.8 million sq. ft. of near-term cultivation space and diversified growing and production techniques. This is in addition to HEXO's 579,000 sq. ft. facility for a manufacturing and product development centre of excellence in Belleville, Ontario.</p> <p>Premium indoor facility: Newstrike's licensed indoor facility provide HEXO with access to diversified growing techniques and positions HEXO for flexibility for international exports as global cannabis markets continue to open.</p> <p>The combined entity is estimated to realize annual synergies of \$10 million [...]</p> <p>[...] today are (sic) committing to achieving over \$400 million in net revenue in 2020</p>	225.8 225.11	NC But reiterates statement in core document of same day	Inferred	<p>Immediately ceased cultivation and production activities in the unlicensed space.</p> <ul style="list-style-type: none"> <li>• ALL OTHER CDs, BECAUSE ALL INTERTWINED.</li> </ul>
March 14, 2019	R-30 – Earnings call transcript Q2 2019 Par. 135-136.3	<p>p. 8: Sebastien St. Louis</p> <p>Yes. So, of the total 450,000 square feet that we're adding, there's 250,000 feet that are licensed operational and we're looking forward to bringing in the HEXO team in there to ramp up the yields. We believe that coupled with the great infrastructure Newstrike's put in place, putting in HEXO's management and production processes will greatly increase a yield there. [Note: The licensing issue in Block B relates to this portion, said to have been already licensed and operational (cf. Exhibit R-48).]</p> <p>Tamy Chen</p>	225.9	NC	Inferred	

DATE	REF. EXHIBIT (R-) MIFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)?	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
March 14, 2019		<p>And the other 200,000 square feet that's still under construction?</p> <p>Sebastien St. Louis</p> <p>That's correct. So, well under way, the walls are all up, the glasses on, but there will be a licensing -- there's an expected licensing delay on that. But of course, we're putting our regulatory team which as we've proven time and time again and one of the best in the business, so we don't want to anticipate any major issues.</p>				
March 14, 2019	R-31 – press release	p. 2: The [Newstrike] acquisition will provide HEXO Corp capacity to produce approximately 150,000 kg of high-quality cannabis annually with access to four cutting-edge production campuses.	225.8 225.11	NC	Inferred	
June 12, 2019	R-32 – MD&A Q3 2019 Par. 137-139	<p>p. 3 PDF: We currently hold approximately 1.3 million sq. ft. of operating space at our home base Gatineau campus. In addition, [...] and through our Newstrike Brands Ltd acquisition an additional 469,000 sq. ft. in Brantford and Niagara once fully retrofitted.</p> <p>p. 14 PDF: The Niagara facility is a 240,000 sq. ft fully automated, modern "Dutch-Tray" facility, consisting of 186,400 sq. ft dedicated to production and cultivation, with the remaining space allocated to administration, packaging and shipping/receiving areas. The facility will produce approximately 20,000 kg of dried cannabis annually. This facility is situated on approximately 16.6 acre of land and <u>received its cultivation licence under the Cannabis Act on March 29, 2018.</u></p>	225.8 225.11	C	Presumed	
June 12, 2019	R-35 – press release	p. 1: • Closing of the Newstrike Brands Ltd ("Newstrike") acquisition on May 24, 2019, which resulted in the following: [...]	225.8 225.11	NC	Inferred	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	Par. 95, 137-139	<ul style="list-style-type: none"> <li>Increased footprint to approximately 1.8 million sq. ft. of production space and 638,000 sq. ft. of manufacturing and distribution space</li> <li>Increased total estimated annual production capacity to 150,000 kg of dried cannabis, once fully operational [...]</li> </ul> <p>HEXO most recently announced the closing of the agreement to acquire Newstrike. The acquisition will provide HEXO Corp capacity to produce approximately 150,000 kg of high-quality cannabis annually with access to four additional production campuses.</p>				
Oct. 28, 2019	R-42 – Q4 2019 MD&A Par. 155-156.5	<p>p. 17: The Niagara facility is a 240,000 sq. ft fully automated, modern "Dutch-Tray" facility, consisting of 185,400 sq. ft licensed for production and cultivation, with the remaining space allocated to administration, packaging and shipping/ receiving areas. The facility is currently capable of producing up to 20,000 kg of dried cannabis annually. This facility is situated on approximately 16.6 acre of land and received its cultivation licence under the Cannabis Act on March 29, 2018. [Note: As appears from HEXO's press release dated November 15, 2019, Exhibit R-48, HEXO learned in July that part of the existing portion of the Niagara facility was not properly licensed. This October disclosure is therefore dishonest.]</p>	225.8 225.11	C	Presumed under the QSA AND Admitted CD 4, R-48	
Oct. 28, 2019	R-45 – 2019 Annual Report Par. 155-156.5	<p>p. 20 PDF: [Identical language as that above in R-42]</p>	225.8 225.11	NC	Admitted by Defendants : CD 4, R-48	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPLICATED STATEMENT (MOST-RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Oct. 28, 2019	R-43 – 2019 annual financial statements	<p>p. 10 PDF: HEXO is a producer of cannabis and its sites are licensed by Health Canada for production and sale.</p> <p>p. 25: Newstrike is a licensed producer of cannabis operating in Ontario, Canada and was acquired for additional production capacity, established sales relationships and its brand.</p>	225.8 225.11	C	Presumed under the QSA AND Admitted CD 4, R-48	
Oct. 28, 2019	R-44 - 2019 AIF Par. 155-156.5	<p>p. 7: Through the acquisition of all of the issued and outstanding common shares of Newstrike on May 24, 2019, the Company also acquired two Health Canada licences issued under the name Up Cannabis Inc. ("Up Cannabis"), a subsidiary of Newstrike, for its facilities in Brantford, Ontario (the "Brantford Licence") and Niagara, Ontario (the "Niagara Licence") (see "General Development of the Business - Significant Acquisitions - Newstrike"). The Brantford Licence was most recently renewed on November 10, 2018 and has a term ending on December 19, 2019. The Niagara Licence has a term ending on March 29, 2021. Newstrike and Up Cannabis have subsequently been amalgamated with HEXO Operations. The Brantford Licence and Niagara Licence are currently issued in the name of Up Cannabis Inc. The Company has notified Health Canada of its intention to have the Brantford Licence and Niagara Licence re-issued under HEXO Operations. [...] The Niagara licence expires on March 29, 2021. HEXO is not currently aware of any reason why it would not be able to receive a renewal of its licences.</p> <p>p. 12: There are currently two Health Canada licences issued in the name of Up Cannabis: one licence is for a facility in Brantford, Ontario and the other is for a licence for a facility in Niagara, Ontario.</p>	225.8 225.11	C	Presumed under the QSA AND Admitted CD 4, R-48	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR-)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Oct. 28, 2019	R-49: HEXO Press Release Par. 163.2	<p>p. 26: HEXO's business operations are dependent on being licenced under the Cannabis Act. All licences must be renewed annually. HEXO's Gatineau licence expires on April 15, 2020, the Brantford licence expires on December 19, 2019 and the Niagara licence expires on March 29, 2021. [...] The Company is not currently aware of any circumstances that would impede the renewal of any of its licences.</p> <p>[...] by operating in complete alignment with regulations [...] [Note: This statement was made when Defendants knew the Niagara facility had been operated illegally. Not only were they still concealing information that they had the obligation to disclose to investors, but they were boasting the opposite from the truth.]</p>	225.8 225.11	NC	Admitted by Defendants: CD 4, R-48	
<b>IV- INVENTORY</b>						
March 14, 2019	R-30 – Earnings Call Transcript Q2 2019 Par. 135-136.1 Par. 145.7	<p>p. 8-9: Tamy Chen Okay, thanks. My next question is just looking at yesterday there was some Health Canada data that came out about industry production inventory and sales data. And there seems to be this continued disconnect in terms of inventory seems to be piling up, but it's not fully through enough down to the sales channel. And just wondering if you have any insights and what HEXO's experience has been. I mean, what's causing this, is it production issues, is it supply chain issues and as a result, can you just comment on how we should think about HEXO's pace of sales over the rest of this year in this context? Sebastien St. Louis</p>	225.9	NC	Inferred	<ul style="list-style-type: none"> <li>CD 3: OCT. 28-29, 2019</li> <li>R-42: Q4 2019 MD&amp;A / R-43 – financial statements / R-44 - 2019 AIF / R-45 - Annual Report</li> <li>MFA, par. 155-156.5</li> <li>R-42, p. 26; R-43, p. 6 PDF: p. 26: Impairment loss on inventory: 16,918 million dollars</li> </ul>

DATE	REF. EXHIBIT (R-) MFA <sup>3</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	OSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		<p>Yes, and well, I think that pace of sales I've mentioned that Q3 would be relatively flat and that's much do do not only the growing out of B9 but also all the processing equipment required. I think as a general rule, all the LPs including HEXO generally underestimated the amount of packaging, infrastructure and logistics and the employees and space that it would take to actually do fulfillment. It's one thing to grow this product. It's one thing to bag it and drying bags, but by the time you're thinking about putting it in individual multiline products that's one complex. And this is why HEXO was very bullish and why we think our Belleville facility is transformational. A 2 million square foot facility will give us enough space to fulfill that \$400 million net sales next year and beyond. And so that's all baked into that forecast that we're giving you, that we will be up and running in Belleville in fact that we expect to have that fully up and running by the end of the summer. And so, we don't expect any -- too many more challenges from there. But that's where you're seeing the disconnect is basically inventory piling up from cultivation and LPs not being able to process it.</p> <p>p. 17: Steven Schneiderman</p> <p>Just one question on Q3 being relatively flattish. Is that more of a factor of what you're seeing in terms of market demand or is that more of a factor of current production limitations? And just also in the face of that you produced twice as much candidates as was built in the quarter, it would seem to -- that there should be enough inventory for a little bit more of meaningfully rampup in the quarter. So I just wanted to get your thoughts there?</p> <p>Sebastien St. Louis</p> <p>Yes, it's entirely related to the supply and packaging infrastructure. So I've alluded to this earlier in one of the questions but effectively growing cannabis is one thing and</p>				<p>- R-47, p. 8, 14-15 (reproduced below as an impugned statement -- because incomplete disclosure)</p> <p>- <i>inter alia</i>, R-42, p. 38-39; R-44, p. 42-44; R-45, p. 41 PDF.</p> <p><b>INVENTORY COUNT</b></p> <p>The Company did not have effective controls around its year-end inventory count procedures, specifically with respect to its reconciliation of the ERP system, due to the details outlined in the previous change to control environment section.</p> <p>To further strengthen controls surrounding inventory, management has initiated or enhanced the following procedures;</p> <ul style="list-style-type: none"> <li>• Segregation of duties to initiate work, production orders and inventory adjustments will be strengthened;</li> <li>• Work, production orders and inventory adjustments will be reviewed and approved by the relevant supervisor;</li> <li>• Further enhancements to the ERP inventory processing, tracking and reporting functionality and</li> </ul>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		<p>producing it and putting it on the inventory as bulk packaged inventory but then actually packaging is for the consumers and entirely different beast, and we're ramping all -- we're ramping up all that production infrastructure to rapidly accelerate; so that's really what's happening. Although the product coming off the line from our B9 facility is -- I mean, the hardest are starting soon. Once it come off the line you have all the testing protocols, you have all the cleaning protocols that need to go in such as the radiation or other, and then you need to actually have the packaging, shipping etcetera loading into the stores; so there is a delay there. And really it's that delay coupled with the kicking in of B9 which is causing a bit of a flat Q3 but of course we're unlocking that in Q4. So we think it's momentary and then there is really a complete decoupling when we hit that \$400 million net [ph] next year, and of course, that's supported by very strong demand; that's why we're confident putting that number. We have that demand end up through multiple provinces beyond Quebec.</p>				<p>supporting work procedures in order to ensure their sustainability;</p> <ul style="list-style-type: none"> <li>Additional training, guidance and communications to internal teams and third-party inventory count providers regarding inventory management, count and reconciliation procedures.</li> <li>CD 5: DECEMBER 16, 2019 R-50 - Q1 2020 MD&amp;A / R-51 FINANCIAL STATEMENTS / R-53 PRESS RELEASE / R-54: EARNINGS CALL MFA, par. 164,1-164.11</li> </ul>
Oct. 28, 2019	R-42 - Q4 2019 MD&A Par. 155-156.5	<p>p. 26: Impairment loss on inventory: 16,918 million dollars (Note: This is a misrepresentation as well as a Corrective Disclosure (CD), because the impairment was insufficient.)</p>	225.8 225.11	C	Presumed	<p>R-50, p. 25 PDF: Impairment loss on inventory: 25,458 million dollars Reiterated in R-51, p. 6, 8, 12 PDF; R-53, p. 2; R-54, p. 5-7</p>
Oct. 28, 2019	R-43 - 2019 annual financial statements Par. 155-156.5	<p>p. 6 PDF: Impairment loss on inventory: 16,918 million dollars</p>	225.8 225.11	C	Presumed	<ul style="list-style-type: none"> <li>CD 6: DECEMBER 31, 2019 R-57 - RESTATED MD&amp;A Q4 2019 / R-56 - RESTATED FINANCIAL STATEMENTS Q4 2019, R-59 - RESTATED MD&amp;A Q1 2020 / R-56 - RESTATED FINANCIAL STATEMENTS Q1 2020</li> </ul>

DATE	REF. EXHIBIT (R-) MFA (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Oct. 29, 2019	R-47 – Earnings Call Transcript – Q4 2019 – Par. 156.6 - 159.1	<p>p. 8: The Company recorded an impairment loss on inventory of \$16.9 million in Q4. This is due to price compression in the market. The impairment loss was realized on cannabis purchased in fiscal 2019 to help meet the demand of the adult-use market and their original cost of this inventory now exceeds the net realizable value.</p> <p>p. 14-15: John Zamparo – CIBC – Analyst</p> <p>[...] I wanted to ask about the inventory impairments. So it seems related to product you purchase in the wholesale market. And you mentioned the price compression, you've seen there. I guess what I'm wondering is that given the lack of stores and sell through isn't where you want it to be. What's the thinking behind buying so much product on the wholesale market at this time?</p> <p>Sebastien St-Louis – Co-founder and Chief Executive Officer</p> <p>I think the purchasing that product was before we had full visibility on the store count. And so, quite frankly, in hindsight that's – purchasing of that product was a mistake.</p> <p>p. 25-26: Chris Carey – Bank of America Merrill Lynch -- Analyst</p> <p>[...] There is a growing concern about this unfinished inventory that is building up in the channel. The stock [Indecipherable] we put in that, I think it's over 380,000 or in 25 months of inventory at the current run rate. But I guess what I also hear from @company's, your peer companies. Is that, that unfinished inventory number includes a lot of unsellable flower, maybe that stocks or molded material or shielded material.</p>	225.9	NC	Inferred	<p>MFA, par. 164.13-164.17</p> <p>R-57, p. 2 PDF; [...] increased impairment loss on inventory of \$2.417. [Note: Defendants hereby admit that they should have taken this impairment in Q4 2019.]</p> <p>Reiterated in R-55, p. 48 PDF; R-59, p. 2 PDF; R-58, p. 34 PDF.</p> <ul style="list-style-type: none"> <li>CD 7: MARCH 17, 2020</li> </ul> <p>R-62 – HEXO PRESS REPORT</p> <p>Par. 164.21-164.23</p> <p>These factors are indicators of impairment in relation to the Company's inventory, property, plant and equipment, intangible assets and goodwill. The Company is in the process of completing its impairment assessment and has not reach its final conclusions. However, it is expected that the impairment loss will be in the range of \$265 million to \$280 million.</p> <ul style="list-style-type: none"> <li>CD 7: MARCH 19, 2020</li> </ul> <p>R-63 – RE-AMENDED MD&amp;A Q4 2019 / R-64 – RE-AMENDED MD&amp;A Q1 2020 / R-67 – HEXO PRESS REPORT</p> <p>Par. 164.24-164.25</p>

DATE	REF. EXHIBIT (R-) MFA (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		<p>And I wonder if you could talk to what you think is in that unfinished inventory number or whether that's something that the market needs to be concerned about from the standpoint of pricing and maybe inventory writedowns on a go-forward basis.</p> <p>Sebastien St-Louis -- Co-founder and Chief Executive Officer</p> <p>Yeah, I think your instincts bang on, Chris. The market should absolutely be concerned about that inventory. At HEXO, we've taken steps and again we're talking -- so we're sacrificing short-term market BS [Phonetic] right. Manipulating quarters, we're not doing that, we're taking a \$3.8 million reserve, this quarter, having not seen returns by the way, this is just being conservative in preparing for this. Our inventory at HEXO is good. And but will it hold given pricing do you need to do pricing adjustments. We've been proactive in taking on that pricing adjustment. Just like last quarter, I was proactive in foreshadowing the reduction in pricing. Unfortunately that came true. This inventory -- situation will come true as well and some of our competitors have been less proactive in adjusting that. Which means that on aggregate, absolutely, that's something investors need to start taking a look at.</p> <p>[...] And so I'm very happy where HEXO is positioned. I think a lot of my competitors will have to adjust to position themselves that we HEXO is doing so. They haven't gone through that pain yet. We've now taken that pain and that's reflected in our stock price unfortunately, but also creates a buying opportunity. [Note: In light of the extraordinary size of the inventory impairments taken by HEXO in the subsequent months, the Court can reasonably infer that Defendants knew, or at least should have known, that their inventory was not accurate at this time, but they rather continued to mislead the market.]</p>				<p>R-67:</p> <p>HEXO Corp. ("HEXO" or the "Company") [TSX: HEXO; NYSE: HEXO] today announced it has amended and refilled its management's discussion and analysis for the fiscal year ended July 31, 2019 (the "Amended 2019 MD&amp;A") and its management's discussion and analysis for the three month period ended October 31, 2019 (the "Amended Q1 2020 MD&amp;A") to better comply with National Instrument 51-102 - Continuous Disclosure Obligations.</p> <p>As noted in the press release of the Company dated March 17, 2020, the Amended 2019 MD&amp;A and Amended Q1 2020 MD&amp;A (collectively, the "Amended MD&amp;A") were prepared following a continuous disclosure review by the Ontario Securities Commission ("OSC") of the Company's disclosure record. The Amended MD&amp;A were filed to address comments received from OSC Staff and in order to improve the Company's disclosure. In particular, among other changes, the Amended MD&amp;A have been revised: [...]</p> <p>to clarify and provide additional disclosure regarding the Company's impairments and write-</p>

DATE	REF. EXHIBIT (R-) MFA <sup>2</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Dec. 16, 2019	R-50 – MD&A Q1 2020 Par. 164.1-164.11	<p>p. 25-26 PDF: The Company incurred an impairment loss on inventory of \$25.458 (all amounts in \$ millions) during the three months ended October 31, 2019. The impairment loss was realized on the Company's inventory in comprised of the following;</p> <ul style="list-style-type: none"> <li>• Impairment of a surplus of cannabis trim (Trim is the accumulation of the cannabis' sugar leaves during the dry trimming process. Trim is primarily used for extraction purposes) and milled products the amount of \$16,433 due to an excess of stock relative to the Company's short-term demand for cannabis distillate production;</li> <li>• Impairment of bulk purchased product of \$4,400 due, in part, to an oversupply in the market of bulk products with lower potencies as well as a relatively low value when compared to competing bulk goods with a higher potency in the current adult-use market;</li> <li>• Impairment of oil based finished goods of \$3,436 due a surplus of finished goods as oil-based products haven't captured the market share as originally estimated. Also contributing to the impairment is the decision made by certain provinces to return oil products with packaged dates greater than 3 to 4 months old and</li> <li>• Impairment of finished goods of \$1,186 which are required to be archived as at October 31, 2019 and possess a net realizable value of \$nil.</li> </ul>	225.8 225.11	C	Presumed	<p>offs of inventory, including related events, risks, and uncertainties that the Company reasonably believes may materially affect its future performance;</p> <p>Modifications made in R-63, p. 1, 29, 44 PDF; and R-64, p. 1, 28 PDF</p> <ul style="list-style-type: none"> <li>• CD 8: MARCH 30, 2020</li> </ul> <p>R-68 – Q2 2020 MD&amp;A / R-69 FINANCIAL STATEMENTS MFA, par. 164.26-164.36</p> <p>R-68: p. 24 PDF: The Company incurred write downs on inventory to net realizable value of \$16,089 [million dollars] during the three months ended January 31, 2020. These losses were due to the following:</p> <ul style="list-style-type: none"> <li>• Write down of surplus cannabis trim (trim is primarily used for extraction purposes) and milled products the amount of \$3,082 due to an excess of</li> </ul>
Dec. 16, 2019	R-53 – press release	<p>p. 2: The Company incurred an impairment loss on inventory of \$25.5M during Q1'20 compared with \$16.9M in Q4 '19. The impairment loss was realized on the Company's inventory in comprised of the following (same as above)</p>	225.8 225.11	NC	Inferred	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Dec. 16, 2019	R-54 – Earnings Call Q1 2020	<p>p. 5: In light of the changes in demand and downward pressure on the price of dried flower in the wholesale market, we've impaired our inventory this quarter by CAD25.5 million. By addressing these issues now, we're looking to provide greater transparency to our investors and more accurate financial statements.</p> <p>p.6-7: In Q1 2020, the Company recorded an impairment loss on inventory of CAD25.5 million in the quarter. CAD16.4 million of this impairment related to excess supply of trim and milled products on hand when compared with our short-term demand needs. CAD4.4 million related to bulk purchased products, CAD3.4 million related to a surplus of oil products and CAD1.2 million related to finished goods samples, which are required to be archived by Health Canada. We are closely monitoring inventory levels as well as assessing applications for inventory in our 2.0 products and we'll continue to keep you updated on a quarter-by- quarter basis regarding any further impairments that may be required.</p>	225.9	NC	Inferred	<p>stock relative to the Company's short-term demand for cannabis distillate production;</p> <ul style="list-style-type: none"> <li>• Write down of concentrated bulk purchase of \$11,766 due, in part to an oversupply in the bulk product market, of which lowered the value when compared to the contracted price. The purchase of bulk product was supplied through the acquired supply agreement acquired through the Company's acquisition of Newstrike. [...]; and</li> <li>• Write down in the amount of \$1,241 was recognized due to costs related to packaging reconfiguration.</li> </ul> <p>Write down confirmed in R-69, p. 4 PDF</p> <ul style="list-style-type: none"> <li>• ALL OTHER CDs, BECAUSE ALL INTERTWINED.</li> </ul>
Dec. 31, 2019	R-57 – Restated MD&A Q4 2019 Par. 164.13-164.17	<p>R-57, p. 2 PDF: In assessing the financial impact of subsequent events, the Company also determined an additional write-down of its cannabis trim based inventory based on the estimated fair market value due to new and available third party information resulting in an increased impairment loss on Inventory of \$2,417.</p> <p>[Note: R-56 - Restated Financial Statements Q4 2019, note 34, p. 48 PDF contains the same information.]</p>	225.8 225.11	C	Presumed	
Dec. 31, 2019	R-59 – Restated	<p>p. 2 PDF: Additionally, the Company has adjusted the comparative inventory balance for the audited annual consolidated financial statements for the year ended July 31, 2019 due to changes to the estimated fair market value of its cannabis trim based inventory. Newly acquired and available third party information resulted in an increased</p>	225.8 225.11	C	Presumed	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	MD&A Q1 2020 Par. 164.13-164.17	impairment loss on inventory of \$2,417 in the fiscal year ended July 31, 2019 and as a result, decreased the current period impairment loss and reduction to inventory. [Note: R-58 - Restated Financial Statements Q1 2020, note 34, p. 34 PDF contains the same information.]				
March 17, 2020	R-62 – press report Par. 164.21-164.23	At the end of Q2 2020, the carrying amount of the Company's total net assets significantly exceeded the Company's market capitalization as at January 31, 2020. In addition, the industry has experienced slower than expected retail store roll-outs in Canada and delays in government approval for cannabis derivative products which has constrained distribution channels and adversely affected overall market sales and profitability. These factors are indicators of impairment in relation to the Company's inventory, property, plant and equipment, intangible assets and goodwill. The Company is in the process of completing its impairment assessment and has not reach its final conclusions. However, it is expected that the impairment loss will be in the range of \$265 million to \$280 million.	225.8 225.11	NC	Inferred	

**SCHEDULE 2**

Notice of judgment dated February 17, 2023

FAGUY &amp; CO

329 OUEST DE LA COMMUNE 200  
MONTREAL QC  
H2Y 2E1MILLER  
ANNE  
4078 GAGE  
MONTREAL QC  
H3Y 1R5

Cour supérieure

Montréal

Date: le 17 février 2023

Objet: Le dossier 500-06-001029-194

MILLER  
ANNE et alc. HEXO CORP  
et alAVIS DE JUGEMENT  
(art. 108 et 335 C.p.c)

Prenez avis qu'un jugement est rendu dans le présent dossier. Si vous êtes représenté, votre avocat en est déjà avisé.

Sauf pour certaines matières, le greffier peut, sur demande et contre paiement des frais, délivrer des copies certifiées conformes du jugement.

Si le jugement rendu a mis fin à l'instance, vous devez récupérer les pièces déposées au dossier. Pour ce faire, vous pouvez utiliser le formulaire << Demande de retrait de pièces ou d'émission de certificats >> (SJ-1078) disponible sur le site Internet du ministère de la Justice au [www.justice.gouv.qc.ca](http://www.justice.gouv.qc.ca). À défaut, le greffier, un an après la date du jugement passé en force de chose jugée ou de l'acte qui met fin à l'instance, peut les détruire.

Toutefois, dans les matières susceptibles de révision ou de réévaluation ainsi que dans les affaires non contentieuses, certains documents ne doivent être ni retirés ni détruits.

Tout jugement peut être traduit en français ou en anglais sans frais et ce, sur demande d'une partie. À cet effet, vous pouvez utiliser le formulaire << Demande de traduction de jugement >> (SJ-1138) disponible sur le site Internet du ministère de la Justice.

N'hésitez pas à communiquer avec nous pour toute information additionnelle.

Le greffier  
Cour supérieure  
10, RUE SAINT-ANTOINE EST MONTREAL (QUEBEC) H2Y4A5  
SJ-1025 (2022-04) AVIJ

No:  
No: 500-06-001029-194

---

COURT OF APPEAL OF QUEBEC  
(Class Action)  
DISTRICT OF MONTREAL

---

*Within 10 days after notification, the respondent, the intervenors and the impleaded parties must file a representation statement giving the name and contact information of the lawyer representing them or, if they are not represented, a statement indicating as much. If an application for leave to appeal is attached to the notice of appeal, the intervenors and the impleaded parties are only required to file such a statement within 10 days after the judgment granting leave or after the date the judge takes note of the filing of the notice of appeal. (Article 358, para. 2 C.C.P.).*

MARTIN DIONNE

APPELLANT – Plaintiff

v.

HEXO CORP.

-and-

SÉBASTIEN ST-LOUIS

RESPONDENTS – Defendants

---

**NOTICE OF APPEAL**

Appellant  
March 14, 2023

---

COPY

---

**FAGUY & Co.**

BARRISTERS & SOLICITORS INC.

Mtre Shawn K. Faguy

Mtre Elizabeth Meloche

[sfaguy@faguyco.com](mailto:sfaguy@faguyco.com) / [emeloche@faguyco.com](mailto:emeloche@faguyco.com)

329 de la Commune Street West, Suite 200

Montréal, Québec H2Y 2E1 Canada

Telephone: (514) 285-8100

Fax: (514) 285-8050

BM-1125

Our file : 10239-001

*The parties shall notify their proceedings (including briefs and memoranda) to the appellant and to the other parties who have filed a representation statement by counsel (or a non-representation statement). (Article 25, para. 1 of the Civil Practice Regulation)*

*If a party fails to file a representation statement by counsel (or non-representation statement), it shall be precluded from filing any other pleading in the file. The appeal shall be conducted in the absence of such party. The Clerk is not obliged to notify any notice to such party. If the statement is filed after the expiry of the time limit, the Clerk may accept the filing subject to conditions that the Clerk may determine. (Article 30 of the Civil Practice Regulation)*

# SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-001029-194

DATE: January 23, 2023

---

**PRESIDED BY: THE HONORABLE JUSTICE SILVANA CONTE, J.S.C.**

---

**MARTIN DIONNE**  
Plaintiff

v.

**HEXO CORP.**

and

**SÉBASTIEN ST-LOUIS**  
Defendants

---

## JUDGMENT

---

[1] Plaintiff seeks authorization to institute a class action against Defendants for damages resulting from misrepresentations and breaches of disclosure obligations in both the primary and secondary markets, under Division II of the *Quebec Securities Act*<sup>1</sup> (QSA) and under article 1457 of the *Civil Code of Quebec* (CCQ). In accordance with section

---

<sup>1</sup> *Québec Securities Act*, CQLR., c. V-1.1.

225.4 QSA, Plaintiff must first seek prior authorization to institute a secondary market claim.

## I. OVERVIEW

[2] Defendant HEXO Corp (HEXO) is a licensed producer and distributor of medical and recreational cannabis incorporated under the *Ontario Business Corporations Act*<sup>2</sup>, with its headquarters in Gatineau, Québec<sup>3</sup>.

[3] Defendant, Sébastien St-Louis (St-Louis), is HEXO's co-founder, and was, at all relevant times during the Class Period, HEXO's Chief Executive Officer. He is alleged to have authorized, permitted or otherwise acquiesced to the release and publication of HEXO public statements, which he knew or ought to have known contained false and misleading information.

[4] Plaintiff claims that between April 11, 2018 and March 30, 2020 (Class Period) Defendants misrepresented material facts, in both documents and oral statements (Impugned Statements) and failed to disclose material changes in a timely manner as it relates to :

- 4.1. A five year commercial agreement entered into with the Société québécoise du cannabis (SQDC) in April 2018 for the supply of cannabis products in Quebec post legalization (October 2018) (the Quebec Supply Agreement or Agreement);
- 4.2. The acquisition of Newstrike on May 24, 2019 and estimated synergies from same; Revenue Projections for Q4 2019 and fiscal year 2020; and
- 4.3. HEXO Inventory and Internal Controls.

[5] Plaintiff claims that the misrepresentations were material and had the effect of artificially inflating the price and value of HEXO's securities at the time they were purchased by putative class members.

[6] Plaintiff further claims that eight subsequent corrective disclosures issued between June 13, 2019 and March 30, 2020, resulted in the decline in value of the share price of HEXO securities by 87.4% thereby causing damages to the members of the class.

[7] Plaintiff acquired HEXO securities, including shares and call options during the Class Period. He alleges that he relied on Defendants' misrepresentations when making his investment decisions and estimates his losses at approximately \$50,000.

---

<sup>2</sup> R.S.O. 1990, c. B-16.

<sup>3</sup> Exhibit R-1.

[8] Plaintiff is therefore seeking leave to institute a secondary market claim as well as authorization to institute a class action against Defendants on behalf of the following persons and entities:

8.1. 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

8.2. 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.

[9] Defendants deny that the Impugned Statements contained material misrepresentations or that they breached their disclosure obligations under the QSA. Defendants argue that there is no reasonable possibility that the secondary market liability claim will be resolved in Plaintiff's favour such that authorization under section 225.4 QSA should not be granted.

[10] Moreover, Defendants argue that the class action should not be authorized as the facts alleged do not appear to justify the conclusions sought (article 575(2) CCP) and that Plaintiff does not have the requisite capacity to act as class representative (article 575(4) CCP). In particular, that the primary market claim is untenable given the absence of a misrepresentation in the prospectus supplement. In addition, in the absence of a misrepresentation in any of the Impugned Statements, there can be no fault .

[11] As the threshold for authorization under section 225.4 QSA is different and more onerous than the burden of proof under article 575 CCP, as regards the primary market and civil liability claim, the Court will first proceed with the analysis of the Motion for authorization of a secondary market claim<sup>4</sup>.

## **II. MOTION FOR AUTHORIZATION OF A SECONDARY MARKET CLAIM**

[12] Under section 225.4 QSA, the Court authorizes a secondary market claim where plaintiff satisfies the following criteria:

---

<sup>4</sup> *Amaya Inc. v. Derome*, 2018 QCCA 120 (CanLII) at para 54.

- 12.1. The action is being brought in good faith; and
- 12.2. There is a reasonable possibility that the action will be resolved in favour of the plaintiff.

[13] The origins of the statutory civil liability regime contained in Division II of the Quebec *Securities Act* are explained in the Supreme Court of Canada decision *Theratechnologies Inc. v. 121851 Canada Inc.*<sup>5</sup>:

[33] Under this regime, when a security is acquired or transferred at the time of a false declaration or omission of information that should have been disclosed, the fluctuation in the value of the security is presumed to be attributable to that fault. Investors were thereby released from the heavy burden of demonstrating that the variation in the market price of the security was linked to the misinformation or omission, and from demonstrating that they personally relied on that information or omission in buying or transferring the security.

[34] The scheme also establishes an authorization mechanism to permit only actions in good faith with a “reasonable possibility of success”. As the Court of Appeal noted, Quebec’s new regime therefore reflected an attempt to strike a balance between preventing unmeritorious litigation and strike suits and, at the same time, ensuring that investors have a meaningful remedy when issuers breach disclosure obligations.

[14] The reasonable possibility of success threshold requires Plaintiff to offer both a plausible analysis of the applicable legislative provisions and some credible evidence in support of the claim. The burden of proof is explained in *Theratechnologies*<sup>6</sup> as follows:

[38] In my view, as Belobaba J. suggested in *Ironworkers*, the threshold should be more than a “speed bump” (para. 39), and the courts must undertake a reasoned consideration of the evidence to ensure that the action has some merit. In other words, to promote the legislative objective of a robust deterrent screening mechanism so that cases without merit are prevented from proceeding, the threshold requires that there be a reasonable or realistic chance that the action will succeed.

[39] A case with a reasonable possibility of success requires the claimant to offer both a plausible analysis of the applicable legislative provisions, and some credible evidence in support of the claim. This approach, in my view, best realizes the legislative intent of the screening mechanism: to ensure that cases with little chance of success — and the time and expense they impose — are avoided. I agree with the Court of Appeal, however, that the authorization stage under s. 225.4 should not be treated as a mini-trial. A full analysis of the evidence is unnecessary. If the goal of the screening mechanism is to prevent costly strike

<sup>5</sup> *Theratechnologies Inc. v. 121851 Canada inc.*, 2015 SCC 18 (CanLII) at paras 33-34.

<sup>6</sup> *Theratechnologies Inc.*, supra, note 5, at paras 38-39.

suits and litigation with little chance of success, it follows that the evidentiary requirements should not be so onerous as to essentially replicate the demands of a trial. To impose such a requirement would undermine the objective of the screening mechanism, which is to protect reporting issuers from unsubstantiated strike suits and costly unmeritorious litigation. What is required is sufficient evidence to persuade the court that there is a reasonable possibility that the action will be resolved in the claimant's favour.

[15] In *Mask v. Silvercorp Metals Inc.*<sup>7</sup>, cited with approval by the Court of Appeal in *Amaya v. Derome*<sup>8</sup>, the Ontario Court of Appeal held that the "reasonable possibility" leg of the leave test requires scrutiny of merits of the action "based on all the evidence proffered by the parties".

[16] In the present case, Plaintiff and Defendants have filed exhibits mainly regarding the public documents containing the written or transcribed oral statements relevant to the QSA claims, press articles regarding same or other disclosures during the Class Period and the transcript of Plaintiff's examination on discovery<sup>9</sup>.

[17] In addition, Plaintiff filed the expert report of Dr. Craig McCann dated February 1, 2021<sup>10</sup>; Defendants filed the expert report of Dr. Vinita Juneja dated August 4, 2021<sup>11</sup> and Plaintiff filed a rebuttal expert report by Dr. McCann on September 9, 2022<sup>12</sup>.

[18] On March 16, 2022, the Court struck portions of Dr. Juneja's expert report further to Plaintiff's application to dismiss same<sup>13</sup>.

[19] Both experts opined on the market impact of the alleged corrective disclosures in order to ascertain the materiality of the facts disclosed. While the Court has taken into consideration Dr. Juneja's competing report and method of analysis, the leave stage is not the proper venue to engage in an analysis of conflicting opinions and should be left to the judge hearing the merits of the case<sup>14</sup>.

## **ANALYSIS**

### **i) Good Faith**

<sup>7</sup> *Mask v. Silvercorp Metals Inc.*, 2016 ONCA 641 at para 41.

<sup>8</sup> Phrase coined in *Amaya Inc. supra* at note 4.

<sup>9</sup> Exhibit D-16.

<sup>10</sup> Exhibit R-83.

<sup>11</sup> Exhibit D-15.

<sup>12</sup> Exhibit R-84.

<sup>13</sup> *Miller v. HEXO Corp.*, 2022 QCCS 963 (CanLII).

<sup>14</sup> *Catucci v. Valeant Pharmaceutical International Inc.*, 2017 QCCS 3870 at paras 182, 186; *Swisscanto v. Blackberry*, 2015 ONSC 6434 at para 48.

[20] Defendants do not contest the good faith criterion for the purpose of the authorization hearing. As good faith is presumed<sup>15</sup> and the evidence does not rebut that presumption, the Court will examine the second criterion for leave under section 225.4 QSA, the reasonable possibility that the action will be resolved in Plaintiff's favour.

## ii) Reasonable Possibility Test

[21] The relevant provisions of the QSA relied upon by the parties are contained in Schedule I hereto.

[22] Plaintiff argues that:

22.1. Defendants' documents and oral statements contained misrepresentations of material facts that artificially increased the price or value of HEXO securities and that were relied upon by Plaintiff when he acquired or disposed of same; and

22.2. Defendants breached their continuous disclosure obligation under section 73 QSA.

## Misrepresentation

[23] Sections 225.8 and 225.9 QSA, create a statutory cause of action for secondary market misrepresentation for any person who acquires or disposes of an issuer's securities between the time that documents or oral statements containing the misrepresentations were publicly released and the time when the misrepresentations were publicly corrected.

[24] A misrepresentation is defined under section 5 QSA as "any misleading information on a material fact as well as any pure and simple omission of a material fact".

[25] A material fact is defined in section 5 QSA as "a fact that may reasonably be expected to have a significant effect on the market price or value of securities issued or securities proposed to be issued".

[26] The question of materiality is a mixed question of fact and law to be determined objectively from the perspective of the reasonable investor<sup>16</sup>. In *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*<sup>17</sup>, the Supreme Court of Canada provided the following guidance regarding the materiality test<sup>18</sup>:

---

<sup>15</sup> Art. 2805 CCQ.

<sup>16</sup> *Cappelli v. Nobilis Health Corp.*, 2019 ONSC 2266, at para 177.

<sup>17</sup> *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23 (CanLII),

<sup>18</sup> *Sharbern*, supra at paras 58-61.

[61] In sum, the important aspects of the test for materiality are as follows:

i. Materiality is a question of mixed law and fact, determined objectively, from the perspective of a reasonable investor;

ii. An omitted fact is material if there is a substantial likelihood that it would have been considered important by a reasonable investor in making his or her decision, rather than if the fact merely might have been considered important. In other words, an omitted fact is material if there is a substantial likelihood that its disclosure would have been viewed by the reasonable investor as having significantly altered the total mix of information made available;

iii. The proof required is not that the material fact would have changed the decision, but that there was a substantial likelihood it would have assumed actual significance in a reasonable investor's deliberations;

iv. Materiality involves the application of a legal standard to particular facts. It is a fact-specific inquiry, to be determined on a case-by-case basis in light of all of the relevant considerations and from the surrounding circumstances forming the total mix of information made available to investors; and

v. The materiality of a fact, statement or omission must be proven through evidence by the party alleging materiality, except in those cases where common sense inferences are sufficient. A court must first look at the disclosed information and the omitted information. A court may also consider contextual evidence which helps to explain, interpret, or place the omitted information in a broader factual setting, provided it is viewed in the context of the disclosed information. As well, evidence of concurrent or subsequent conduct or events that would shed light on potential or actual behaviour of persons in the same or similar situations is relevant to the materiality assessment. However, the predominant focus must be on a contextual consideration of what information was disclosed, and what facts or information were omitted from the disclosure documents provided by the issuer.

[27] As for the document containing the misrepresentation, section 225.13 QSA provides that unless the misrepresentation is contained in a core document, as defined in section 225.3, the plaintiff will also have to show that the defendant:

- (1) knew, at the time that the document was released or the public oral statement was made, that the document or public oral statement contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time; or
- (2) was guilty of a gross fault in connection with the release of the document or the making of the public oral statement.

[28] Section 225.3 QSA defines core and non core documents as follows :

**core document** means a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take-over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, a proxy solicitation circular, the issuer's annual and interim financial statements and any other document determined by regulation, and a material change report, but only where used in relation to the issuer or the investment fund manager and their officers;

**document** means any writing that is filed or required to be filed with the Authority, with a government or an agency of a government under applicable securities or corporate law, or with a stock exchange or quotation and trade reporting system under its by-laws, or the content of which would reasonably be expected to affect the market price or value of a security of the issuer;

[29] The Court evaluates the misrepresentation or omission at the time the public statement was made or released<sup>19</sup>. As stated in *Cornish v. Ontario Securities Commission*,<sup>20</sup> "assessments of materiality are not to be made against a standard of perfection or with the benefit of hindsight"<sup>21</sup>.

[30] The Court has the discretion to treat several misrepresentations as a single misrepresentation or a single failure to make timely disclosure. As provided for in section 225.16 QSA, there must be a common subject matter or content in the multiple representations or common subject matter for the disclosure and this determination is best left for the trial judge<sup>22</sup>.

[31] As for the public correction, it is not defined by the QSA. The courts have held that the date of the correction acts as a time-post for the purposes of a proposed class period and any eventual damages calculation<sup>23</sup>.

[32] Where the alleged public correction does not, on its face, clearly reveal the existence of the alleged misrepresentation, the judge must engage in a reasoned consideration of evidence of the context in which the alleged public corrections were made and how the alleged public corrections would be understood in the secondary market<sup>24</sup>.

<sup>19</sup> *Kerr v. Danier Leather Inc.*, 2007 SCC 44 (CanLII) at para 40; *121851 Canada Inc. v. Theratechnologies inc.*, 2012 QCCS 699 at para. 86; *Nseir v. Barrick Gold Corporation*, 2020 QCCS 1697 at para 220, leave to appeal granted on December 19, 2022.

<sup>20</sup> *Cornish v. Ontario Securities Commission*, 2013 ONSC 1310 (CanLII).

<sup>21</sup> *Cornish*, *supra* at para 49.

<sup>22</sup> *Badesha v. Cronos Group Inc.*, 2022 ONCA 663 at para 57; overturning *Badesha v. Cronos Group*, 2021 ONSC 4346, at para 67.

<sup>23</sup> *Nseir*, *supra* note 19 at para 263.

<sup>24</sup> *Drywall Acoustic Lathing and Insulation, Local 675 Pension Fund v. Barrick Gold Corporation*, 2021 ONCA 104 (CanLII), at para 48.

[33] In light of the foregoing, under sections 225.8 and 225.9 QSA, Plaintiff needs to offer sufficient and credible evidence of the following elements:

- 33.1. The document or public statement released by the Defendants contained a misrepresentation, that is, a misrepresentation or omission of a fact that may reasonably be expected to have a significant effect on the market price or value of securities issued or securities proposed to be issued;
- 33.2. The misrepresentation was publicly corrected;
- 33.3. Plaintiff acquired or disposed of Hexo's securities during the period between the time when the issuer released a document or statement containing a misrepresentation and the time when it was publicly corrected; and
- 33.4. If the document is a non-core document, Plaintiff must also show that Defendants had knowledge of the alleged misrepresentation at the time the misrepresentation was made, deliberately avoided acquiring such knowledge at or before that time or committed a gross fault in connection with the release of the document or the making of the misrepresentation.

#### **Continuous disclosure obligation under section 73 QSA**

[34] The second cause of action concerns a breach of an issuer's obligation to make continuous disclosures under section 73 QSA.

[35] In *Theratechnologies*<sup>25</sup>, the Supreme Court of Canada held that continuous disclosure obligations was designed to create a "level playing field" where all investors have access to the same information. These obligations fall into two categories: periodic disclosure and timely disclosure<sup>26</sup>:

[23] [...]Periodic disclosure must be made at regular intervals, typically through the regular provision of documents such as proxy circulars, financial statements and insider trading reports. In these regularly issued documents, companies must disclose all material facts — that is, anything "that may reasonably be expected to have a significant effect on the market price or value of securities issued": Securities Act (Quebec), s. 5 "material fact".

[24] Timely disclosure obligations, on the other hand, are imposed only when there has been a material change in the issuer's affairs. Material changes, which arise from changes in the issuers' business, operations or capital, must be disclosed at the time they occur: Securities Act (Quebec), s. 5.3; Mark R. Gillen, *Securities Regulation in Canada* (3rd ed. 2007), at p. 211; David Johnston,

---

<sup>25</sup> *Theratechnologies Inc.*, *supra* note 5.

<sup>26</sup> *Theratechnologies Inc.*, *supra* note 5, at paras 23-24.

Kathleen Doyle Rockwell and Cristie Ford: Canadian Securities Regulation (5th ed. 2014), at p. 249.

[36] A material change is defined in section 5.3 QSA and has two components. There must be a change in the business, operations or capital of the issuer and the change must be material, which means it would reasonably be expected to have a significant effect on the market price or value of the securities of the issuer.

[37] In *Kerr v. Danier Leather Inc.*,<sup>27</sup> the Supreme Court explains the distinction between material change and material fact as follows:

The distinction between “material change” and “material fact” is deliberate and policy-based, as explained by a former chairman of the O.S.C.:

The term “material fact” is necessary when an issuer is publishing a disclosure document, such as a prospectus or a take-over bid circular, where all material information concerning the issuer at a point in time is published in one document which is convenient to the investor. The term “material change” is limited to a change in the business, operations or capital of the issuer. This is an attempt to relieve reporting issuers of the obligation to continually interpret external political, economic and social developments as they affect the affairs of the issuer, unless the external change will result in a change in the business, operations or capital of the issuer, in which case, timely disclosure of the change must be made.

[38] As stated previously, a plaintiff is not required to prove that the plaintiff relied on the document or public oral statement containing a misrepresentation or on the issuer having complied with its timely disclosure obligations when the plaintiff acquired or disposed of the issuer’s security<sup>28</sup>.

[39] A defendant may defeat both causes of action by showing, amongst other things, that<sup>29</sup>:

- 39.1. The plaintiff knew that the document or public oral statement contained a misrepresentation or was aware of the material change that should have been disclosed; or
- 39.2. The defendant conducted or caused to be conducted a reasonable investigation and had no reasonable grounds to believe that the document or public oral statement would contain a misrepresentation or that the failure to make timely disclosure would occur.

---

<sup>27</sup> *Kerr, supra* note 19 at p. 333.

<sup>28</sup> Section 225.12 QSA.

<sup>29</sup> Section 225.17 QSA.

[40] In addition, under section 225.22 QSA, a defendant may defeat an action for a misrepresentation in forward-looking information in a document or a public oral statement by proving that<sup>30</sup>:

- (1) the document or public oral statement containing the forward-looking information contained, proximate to that information,
  - (a) reasonable cautionary language clearly identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information; and
  - (b) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection; and
- (2) the defendant had a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information.

[41] In light of the foregoing, Plaintiff must offer sufficient and credible evidence as follows:

- 41.1. Defendants failed to make a periodic disclosure of a material fact, that is a fact that may reasonably be expected to have a significant effect on the market price or value of securities issued or securities proposed to be issued; or
- 41.2. Defendants failed to make a timely disclosure of a material change, that is, a change in the business, operations or capital of HEXO that would reasonably be expected to have a significant effect on the market price or value of the securities of HEXO;
- 41.3. The material fact or material change was disclosed; and
- 41.4. Plaintiff acquired or disposed of Hexo securities during the period between the time when HEXO failed to make timely disclosure of a material change and the time when the material fact or material change was disclosed.

## **FACTS**

### **Quebec Supply Agreement**

---

<sup>30</sup> Section 225.22 QSA: This section does not apply to forward-looking information in a financial statement required to be filed under this Act or the regulations or in a document released in connection with an initial public offering.

[42] On April 11, 2018, in anticipation of the legalization of of adult-use recreational cannabis in Canada on October 17, 2018, HEXO (formerly known as Hydrothecary<sup>31</sup>) announced in a press release that it had entered into a commercial agreement with a future subsidiary of the Société des alcools du Québec, later known as the Société québécoise du cannabis (SQDC), to be the preferred supplier of cannabis products for the Quebec market for five years with an option to extend for a sixth year (Quebec Supply Agreement or Agreement)<sup>32</sup>.

[43] A key feature of the Quebec Supply Agreement was the commitment by the SQDC to purchase 20,000 kg of product in the first year post-legalization of cannabis for adult use.

[44] In the April 11, 2018 press release<sup>33</sup> Defendants stated as follows:

Under the agreement, Hydrothecary will supply 20,000 kg of products in the first year of the agreement and is expected to supply 35,000 kg in the second year and 45,000 kg in the third. [...]

The SAQ has the right to terminate the agreement in certain circumstances.

[45] The press release contained cautionary language regarding forward looking statements that "should not be read as assurances of future performance or results", "including the actual product volumes that will be supplied by the Company under the agreement"<sup>34</sup>.

[46] Following HEXO's announcement of the Québec Supply Agreement on April 11, 2018, the value and price of its common shares increased by 13.24% on the TSX in one day<sup>35</sup>.

[47] In subsequent core and non-core documents, the first year volume commitment in the Quebec Supply Agreement was couched in similar, if not identical, language, the extracts of the texts relied upon by Plaintiff and completed by Defendants appear in Schedule II attached hereto.

[48] Following the legalization of cannabis on October 17, 2018, the October 26, 2018 annual report and October 25, 2018 Management Discussion and Analysis (MD&A) underlined the strategic importance of the SQDC relationship<sup>36</sup>:

---

<sup>31</sup> Exhibit R-1, On August 29, 2018, the name was changed to HEXO Corp..

<sup>32</sup> Exhibit R-8.

<sup>33</sup> Exhibit R-8.

<sup>34</sup> Exhibit R-8.

<sup>35</sup> Exhibit R-9.

<sup>36</sup> Exhibit R-18.

The strategic value of our SQDC relationship cannot be understated. (sic) We hold the single largest forward contract in the history of the emerging cannabis industry with the SQDC and are the preferred supplier for cannabis products for the Quebec market for the first five years following legalization. We will supply the SQDC with 20,000 kg of products in the first year, and we expect to supply 35,000 kg and 45,000 kg in years two and three, respectively. Thereafter, based on an expected market growth rate of 10%, we intend to supply 49,500 kg and 54,450 kg in years four and five, respectively. The Company estimates the total volume to be supplied over the five-year term of the agreement to be in excess of 200,000 kg.

[49] In the December 12, 2018 MD&A HEXO estimated that the Quebec Supply Agreement represented \$1 billion in potential revenues as follows<sup>37</sup>:

In Quebec, which has a population of 8.45 million, or approximately 23% of the Canadian population, the Société québécoise du cannabis ("SQDC") operates the distribution and sale of adult-use cannabis.

The SQDC has established 12 retail locations throughout the province, for in-store cannabis sales. It expects to increase this number to 50 locations within the first year of legalization. It will also sell cannabis online.

In the first year of legalization, we hold a 35% market share in Quebec. Our agreement with the SQDC spans a potential five-year period, with us supplying an estimated 200,000 kg or more of cannabis, representing \$1 billion in potential revenues.

In addition, we hold a distribution agreement with the SQDC, in which we house and distribute all of the SQDC's online [...]

[50] The January 21, 2019 Corporate presentation<sup>38</sup> and January 24, 2019 prospectus supplement<sup>39</sup> also referenced the SQDC first year purchase commitment as being subject to a take or pay feature.

### **Acquisition of Newstrike**

[51] In a March 13, 2019 press release<sup>40</sup>, HEXO announced that it would acquire Newstrike, another publicly traded Canadian cannabis company.

[52] With this acquisition, HEXO stated that it would access markets in 8 other provinces, and boost production with the addition of approximately 470,000 sq. ft. in production space including "Newstrike's **licensed** indoor facility" generating "accretive synergies estimated to realize annual synergies of \$10 million".

---

<sup>37</sup> Exhibit R-20.

<sup>38</sup> Exhibit R-23.

<sup>39</sup> Exhibit R-2.

<sup>40</sup> Exhibit R-26.

[53] Moreover, HEXO announced in the March 13, 2019 press release that "Based on the completion of the Transaction, for fiscal 2020, HEXO estimates net and gross revenues from the sale of cannabis in Canada will be in excess of \$400 million and \$479 million respectively"<sup>41</sup>.

[54] This information also appears in the March 13, 2019 MD&A <sup>42</sup> where HEXO also represented that the net revenues with regard to adult-use sales were expected to double in the fourth quarter 2019 (Q4 2019)<sup>43</sup>.

[55] On the March 14, 2019 earnings call with analysts, Defendant St. Louis referenced the Newstrike acquisition stating that "of the total 450,000 square feet that we're adding, there's 250,000 feet that are licensed operational" and as regards the synergies on listing fees, legal fees, some key executives "above \$10 million"<sup>44</sup>. With regard to doubling of net revenues in Q4 2019, Defendant St. Louis responded to an analyst inquiry as to the ability to meet the Q4 target as follows:

I'm absolutely confident about that Rob. Look at historically what we've done in terms of rampup, so if you look at the multiples we've put forth on previous sales; I think there has always been a doubt for HEXO's ability to rampup and we've executed every single time. So I'm telling everybody now we will execute again. Are there risks? Yes. So there is some licensing risk around our Belleville facility. So that Belleville facility and the infrastructure and the backing is critical towards getting this done. But we've given ourselves adequate buffer, the license application is already in, we're already in conversation with Health Canada, and we have of course, phenomenal relationship. So we think that's adequately mitigated

[56] On May 24, 2019, HEXO closed on the acquisition of Newstrike<sup>45</sup>.

[57] In the June 12, 2019 MD&A Defendants represented, that net revenues for adult use cannabis would double in Q4 2019 for the reasons stated therein which included the anticipated regulations regarding the sale of derivative cannabis products (edibles etc) expected to take effect in October 2019, the Quebec Supply Agreement, the Newstrike acquisition and increase in consumer demands<sup>46</sup>.

[58] The volume of cannabis supplied to the SQDC, for the quarter ending on April 30, 2019, as also reported by HEXO in its June 12, 2019 MD&A<sup>47</sup>, fell short of expectations and amounted to approximately 5,500 kg.

---

<sup>41</sup> Exhibit R-26.

<sup>42</sup> Exhibit R-32.

<sup>43</sup> Exhibit R-31.

<sup>44</sup> Exhibit R-30.

<sup>45</sup> Exhibit R-42.

<sup>46</sup> Exhibit R-32.

<sup>47</sup> Exhibit R-32.

[59] In the transcript of the June 13, 2019 earnings call with analysts, Defendant St Louis acknowledged the risk that the 20,000 kg commitment would not be met and indicated that it valued the relationship with the SQDC and would not be enforcing the take or pay feature in the Agreement in that quarter (pp140-145.7)<sup>48</sup>:

Hey, good morning. Thanks for taking my question. When I think about Quebec, which is obviously an important market for you, you're expecting 20,000 kilograms of sales to Quebec in the first year for ag (ph). I think we're over halfway through that year now and sales within about 5,500 kilograms to that province. So it seems to me like it could be a bit challenging for the SQDC sales to triple over the remaining five months. Do you see a risk that the SQDC doesn't need that much product, but picks it anyway and that leads to significant inventory builds and maybe even impacts demand on your year two contract?

Sebastien St-Louis - Co-founder and Chief Executive Officer

Yeah. So definitely a risk. I think the demand is there in Quebec. I think SQDC has been doing a fantastic job, but since there were inventory supply shortages on the early days from most LPs, so HEXO was delivering on its purchase orders, but SQDC weren't getting fully supplied. They slowed their store ramps. So the original plan called for about 25 stores in Quebec by this day. And last quarter we were at about 13. Now the good news is SQDC has now gone back to seven days of full time selling. So that adds significant demand. They've added more stores now. So we have a brand new store in Gatineau, right next to an Ottawa population center.

I do think there could be some timing risk around a few of those tons -- of those 20 tons. Now of course, as you pointed out, it is to take or pay contract, but we value our relationship with SQDC more than the few million dollars in revenue we could get this quarter. So we're working very closely with them. We ramped (ph) our SKU mix to create more interesting products. We plan on launching a whole bunch of new products over the following couple quarters, which we think will help that, but expect some timing risk whether it's an October, November, December timeline to hit the full 20 I think would be a reasonable assumption. We're confident we can completely offset that in more of course in other provinces.

[60] With regard to the Q4 2019 target to double Q2 net revenues from \$12.9 million to approximately \$27 million Defendant St. Louis stated<sup>49</sup> :

We're going to reach the target. I mean, I'd ask you and I continuously, I welcome a challenge-as I think that the analyst community is doing a phenomenal job in our space. I welcome more transparency in our space. I welcome a broader discussion for investors. If you ever hear me say something and not deliver, you have to call me out. And in reverse, I would tell you today, nobody has ever called me out on

---

<sup>48</sup> Exhibit R-36.

<sup>49</sup> Exhibit R-36.

anything because HEXO has always delivered what we said we would. We're delivering a double this quarter.

[61] The price of HEXO common shares fell 8.4% on June 13, 2019<sup>50</sup>. Dr. McCann opines that the abnormal return was statistically significant.

[62] On October 4, 2019 HEXO announced that the Chief Financial Officer had resigned<sup>51</sup>.

[63] On October 10, 2019, HEXO issued a press release advising that it was withdrawing its fiscal 2020 revenue guidance and Q4 estimates stating, in part,<sup>52</sup>:

Fourth quarter revenue is below our expectation and guidance, primarily due to lower than expected product sell through [...]

Slower than expected store rollouts, a delay in government approval for cannabis derivative products and early signs of pricing pressure are being felt nationally. The delay in retail store openings in our major markets has meant that the access to a majority of the target customers has been limited. Additionally, regulatory uncertainty across the pan-Canadian system and jurisdictional decisions to limit the availability and types of cannabis derivative products have contributed to an increased level of unpredictability. As a result, HEXO is withdrawing its previously issued financial outlook for fiscal year 2020.

[64] The price of HEXO's common shares in Canada fell 23.0% on October 10, 2019 and another 10.9% on October 11, 2019<sup>53</sup>. Dr. McCann opined that the abnormal return was statistically significant.

[65] On October 24, 2019, HEXO announced it was right-sizing its operations and winding down operations at the Niagara Facility<sup>54</sup>.

[66] In the October 28, 2019 MD&A<sup>55</sup>, Defendants represented the following:

The Niagara facility is a 240,000 sq. ft fully automated, modern "Dutch-Tray" facility, **consisting of 186,400 sq. ft licensed for production and cultivation**, with the remaining space allocated to administration, packaging and shipping/receiving areas. The facility is currently capable of producing up to 20,000 kg of dried cannabis annually. **This facility is situated on approximately 16.6 acre of land and received its cultivation licence under the Cannabis Act on March 29, 2018.**

---

<sup>50</sup> Exhibits R-9 and R-82.

<sup>51</sup> Exhibit R-83.

<sup>52</sup> Exhibit R-39.

<sup>53</sup> Exhibits R-9 and R-83.

<sup>54</sup> Exhibit R-48.

<sup>55</sup> Exhibit R-42.

[...]

The actions taken are intended to rightsize the organization to the revenue the Company expects to achieve in fiscal 2020. As part of the changes to its operations, **cultivation has been suspended at the Niagara facility** acquired from Newstrike, and in 200,000 sq. ft. at the Company's main facility in Gatineau. The Company determined that this cultivation space is not required at this time given the current market conditions in Canada.

[67] The annual report dated October 28, 2019<sup>56</sup> and AIF of October 29, 2019<sup>57</sup> also referenced this information.

[68] The Consolidated Financial Statements dated October 28, 2019 issued for the year ending July 31, 2019 also recorded an impairment loss on inventory in Q4 of \$16.9 million<sup>58</sup>.

[69] On the October 29, 2019 earnings call, Defendant St. Louis attributed this loss to price compression in the market and explained that their original cost of this inventory exceeded the net realizable value<sup>59</sup>.

[70] Defendant St. Louis also explained that the slow roll out of retail stores coupled with inventory shortages resulted in the failure of the SQDC to fulfill the 20,000 kg purchase in the first year. Mr. St. Louis reiterated that HEXO valued a long term SQDC relationship and confirmed HEXO would not be enforcing the take or pay feature in the SQDC Agreement<sup>60</sup>:

So shipping about 10 tons in of our 22-ton initial commitment. But what I think is more important is to point out that HEXO maintained a 33% market share in Quebec. So our original 20-ton commitment out of the 58 ton, we've held that market share if not the volume. Our contract required SQDC to purchase that tonnage. And while we didn't achieve those quantities, we don't think it would be responsible as a partner to demand that full 20 tons. We're in this for the long haul, with our partner SQDC and we're more interested in what we can do with revenues over the next 5 to 20 years versus the next five quarters.

[71] Defendant St. Louis also announced that HEXO has scaled back its cultivation facilities to 1.1 million square feet, with a temporary suspension of activity at the Niagara facility and reduction of 200,000 square feet in Gatineau<sup>61</sup>.

---

<sup>56</sup> Exhibit R-45.

<sup>57</sup> Exhibit R-44.

<sup>58</sup> Exhibit R-43.

<sup>59</sup> Exhibit R-47.

<sup>60</sup> Exhibit R-47.

<sup>61</sup> Exhibit R-47.

[72] The price of HEXO's common shares in Canada fell 3.0% on October 29, 2019<sup>62</sup>. Dr. McCann opined, however, that the abnormal return was not statistically significant as the information regarding the Quebec Supply Agreement and net revenue projections was already disclosed on June 13, 2019 and October 10, 2019 respectively and incorporated in the price<sup>63</sup>.

[73] On November 15, 2019, HEXO issued a press release wherein it disclosed that on July 30, 2019, HEXO discovered that Block B of the Niagara Facility was not adequately licensed as follows<sup>64</sup>:

In November 2018, prior to HEXO Corp's acquisition of Newstrike Brands Ltd., the UP Cannabis cultivation facility in Niagara was licenced by Health Canada and production from that facility began shortly after. Block B – the space in question – was included in the licence application. In October 2018, Health Canada requested additional information for the application, pertaining specifically to the building where Block B is housed. When the licence was received, the team was under the impression that Block B was included in the licence. In February 2019, Health Canada conducted an inspection of the facility, which included Block B and no observations were made about cultivation in this space. This further reinforced the assumption that it was indeed a licensed growing space.

On July 30, 2019, shortly after the Newstrike Brand Ltd. acquisition closed, HEXO discovered that cannabis was being grown in Block B, which was not adequately licensed. HEXO management immediately ceased cultivation and production activities in the unlicensed space.

[...]

Today, the facility is no longer operational. On October 24, 2019, HEXO announced it was right-sizing its operations and winding down operations in Niagara.

[74] The price of HEXO's common shares in Canada fell 10.2% on November 18, 2019. Dr. McCann opined that the abnormal return was statistically significant<sup>65</sup>.

[75] On or around November 19, 2019, the first Motion for authorization was filed.

[76] In the December 16, 2019 MD&A for the year ended October 31, 2019<sup>66</sup> Defendants disclosed that HEXO's final Q4 2019 results were approximately 40% lower

---

<sup>62</sup> Exhibits R-9 and R-83.

<sup>63</sup> Exhibit R-83.

<sup>64</sup> Exhibit R-48.

<sup>65</sup> Exhibits R-9 and R-83.

<sup>66</sup> Exhibit R-50.

than forecasted. It also identified material weaknesses in its internal controls with regard to its financial reporting.

[77] On December 16, 2019, the Defendants also disclosed that HEXO had incurred an additional impairment loss on inventory of \$25.5 million<sup>67</sup>.

[78] On December 16, 2019, the price of HEXO's common shares in Canada fell 3.4% on December 16, 2019. Dr. McCann opined that the abnormal return was not statistically significant<sup>68</sup>.

[79] On December 31, 2019, the Defendants' MD&A restated the Q4 2019 and Q1 2020 statements and moved \$2.4M of the impairment loss on inventory from Q1 2020 to Q4 2019<sup>69</sup>.

[80] The price of HEXO's common shares in Canada increased 3.5% on December 31, 2019<sup>70</sup>.

[81] On March 17, 2020, the Defendants announced that they were delaying the filing of HEXO's Q2 2020 interim financial statements, because HEXO shortly would be recording a third impairment loss in the range of \$265 million to \$280 million<sup>71</sup>.

[82] The price of HEXO's common shares in Canada fell 33.7% on March 17, 2020. Dr. McCann opined that the abnormal return was statistically significant<sup>72</sup>.

[83] In the March 30, 2020 MD&A HEXO provided further information on the licensing deficiency of Block B of the Niagara Facility and the reasons it did not file a material change report<sup>73</sup>:

On November 15, 2019, the Company announced that following its acquisition of Newstrike, it had discovered that cannabis being grown in "Block B" of the Niagara facility was not adequately licensed. Following this discovery, which occurred on July 29, 2019, as a result of the Company's application to Health Canada requesting the designation of a new alternate quality assurance person at the facility 7, it was promptly reported to Health Canada, and the Company ceased cultivation and production activities in Block B and took other appropriate corrective actions, with which Health Canada was satisfied. Health Canada eventually renewed the licence for the facility in November 2019, including Block B. While operations at the facility were suspended in October 2019 due to the Company's cost-cutting measures, it is fully licensed. The deficiencies in the

<sup>67</sup> Exhibit R-50.

<sup>68</sup> Exhibits R-9 and R-83.

<sup>69</sup> Exhibits R-57 and R-59.

<sup>70</sup> Exhibit R-9.

<sup>71</sup> Exhibit R-62.

<sup>72</sup> Exhibits R-9 and R-83.

<sup>73</sup> Exhibit R-68.

licensing of Block B were not considered by the Company to have a material impact on its operations and business. The Company did not file a material change report with respect to this matter on the basis that it did not consider this matter to be a change in its business or operations that would reasonably be expected to have a significant effect on the market price or value of any of its securities in the particular circumstances. The Company regards the Block B licensing issue as a technical matter that is not and was not material. Block B was only one section of the Niagara facility, representing approximately 17% of the facility (i.e., 77,000 sq. ft. of 455,000 sq. ft.), or approximately 4% of the Issuer's total cultivation facilities (i.e., 77,000 sq. ft. of 1,779,000 sq. ft.). Health Canada did not require destruction of any inventory, nor did they prevent the Company from selling any of the inventories produced from the Niagara facility as part of the Block B licensing issue.

[84] The March 30, 2020 MD&A <sup>74</sup> also disclosed that HEXO would sell the Niagara Facility and recorded impairments to goodwill, intangible assets and property, plant and equipment of \$111,877, \$106,189 and \$32,082, respectively noting as follows:

As the result of changes in the market conditions in Canada, the Company completed a strategic review of its cultivation capacity and assets and determined that it would list its Niagara facility for sale and record an impairment on property, plant and equipment and intangible assets. After a shift in the market capitalization of the Company, we determined that the total net assets significantly exceeded the Company's market capitalization. Based on this assessment, we performed an indicator-based impairment test of goodwill and recorded an impairment as at January 31, 2020.

[85] In the March 30, 2020 MD&A, HEXO references the October 2019 decision not to enforce the 20 ton commitment as follows<sup>75</sup>:

Although total sales for the first year did not reach the 20 tonnes originally expected under the contract, our actual sales relative to expectations were proportionate to total sales by the SQDC, which only had initial sell-through in year one of roughly half of the total amount it had expected to purchase for all licensed producers. While the Company had a right under the contract to require the SQDC to purchase the full 20 tonnes of the outstanding commitment during the first year of the agreement, the Company did not seek to enforce this right on the belief that it would be short sighted given the general results in the industry and the SQDC's initial sell-through and from the perspective of its overall business relationship with the SQDC and its position in Quebec. While HEXO did not achieve the expected volume for year 1. HEXO met its goal of achieving a premiere market share in Quebec and remains a preferred supplier to the SQDC.

In a footnote, it is disclosed that <sup>76</sup>:

---

<sup>74</sup> Exhibit R-68.

<sup>75</sup> Exhibit R-68.

<sup>76</sup> Exhibit R-68.

By amendment effective on January 17, 2020, the Company contractually relieved the SQDC of the 1st year obligation to purchase the full 20 tons of the outstanding commitment.

[86] The price of HEXO's common shares in Canada fell 28.1% on March 30, 2020. Dr. McCann opined that the abnormal return was statistically significant<sup>77</sup>.

[87] Plaintiff's Motion for authorization was amended on May 6, 2020, November 16, 2020 and March 21, 2022.

### **IMPUGNED STATEMENTS**

[88] Plaintiff argues that Defendants made the following misrepresentations:

88.1. The Quebec Supply Agreement with the SQDC provided guaranteed revenues associated with the sale of 20,000 kilograms of cannabis in the first year following the legalization of cannabis;

88.2. The acquisition of Newstrike:

- i) included fully licensed and operational facilities;
- ii) would generate over ten million dollars in annual synergies;
- iii) along with the Québec Supply Agreement, HEXO's net revenue between Q2 and Q4 2019 would double to approximately \$26 million;
- iv) HEXO would achieve a net revenue of greater than \$400 million for fiscal 2020 (ending July 31, 2020); and

88.3. HEXO's inventories were accurate and its internal controls were effective.

[89] The specific extracts of the Impugned Statements are detailed in Schedule II attached hereto.

[90] As a preliminary argument, Defendants argue that Plaintiff does not have the requisite legal interest to institute a secondary market claim with respect to the Quebec Supply Agreement<sup>78</sup>.

[91] The Court will examine the preliminary argument and each of the Impugned Statements.

---

<sup>77</sup> Exhibits R-9 and R-83.

<sup>78</sup> Art. 85 CCP.

## **1. THE QUEBEC SUPPLY AGREEMENT**

### **Interest or Standing**

[92] Plaintiff purchased securities on June 26, 2018, July 11 and 23, 2018, August 2, 2018 and September 6, 2018 on the basis of the April 11, 2018 statements regarding the Quebec Supply Agreement. He then purchased shares on April 5, 2019 and April 26, 2019 based on the March 13, 2019 press release and statements regarding the Newstrike Acquisition.

[93] On April 29, 2019, Plaintiff sold all his shares in HEXO at a profit.

[94] On October 21, 2019, Plaintiff purchased 25 call options and shares on the basis that the take or pay feature would be exercised, which he sold on November 6, 2019 and November 7, 2019 as a result of the October 28, 2019 disclosure that the take or pay feature would not be exercised. He sold that balance of his call options on March 4, 2020.

[95] Plaintiff therefore purchased and sold shares between the time that the Impugned Statements were made and the date of the alleged corrective disclosures on October 28, 2019 and March 30, 2020. This is sufficient to bring a claim under the QSA.

[96] Therefore, Defendants' argument regarding lack of interest is dismissed.

### **Misrepresentation**

[97] Plaintiff argues that HEXO misled investors to believe that the SQDC would fulfill its contractual commitment to purchase 20 tons of product in the first year of the Quebec Supply Agreement.

[98] Plaintiff points to the language repeated in both core and non core documents that "under the agreement HEXO will supply 20,000 kg of cannabis products" in the first year of the agreement, and later the reference to the first year commitment being subject to a take-or-pay feature <sup>79</sup> to argue that HEXO guaranteed the first year of revenues under the Agreement.

[99] The Court disagrees.

[100] The fact that the SQDC did not fulfill its first year purchase commitment or that Defendants decided not to enforce the take or pay feature, are not evidence that the public statement were untrue or misleading at the time they were made. As stated previously, the Court does not make assessments with the benefit of hindsight.

---

<sup>79</sup> Schedule II.

[101] A plain reading of the Impugned Statements illustrates that HEXO was simply providing a description of the SQDC's purchase commitment in the first year under the Quebec Supply Agreement.

[102] Plaintiff argued that as Defendants have not filed the Quebec Supply Agreement into evidence, they cannot affirm the accuracy of the statements describing the Agreement. However, as stated by the Court of Appeal in *Amaya*, the burden of proof rests with Plaintiff to provide credible evidence to support a claim for misrepresentation and Defendants are "not obliged to assist"<sup>80</sup>. In any event, there is no allegation that Defendants misrepresented the terms of the Quebec Supply Agreement.

[103] Moreover, read in the context of other public statements made or released by Defendants since April 11, 2018, the claim that Defendants guaranteed the revenues from the first year is untenable. In particular, since April 11, 2018, Defendants also stated that the SQDC had the right to terminate the Quebec Supply Agreement under certain circumstances<sup>81</sup>.

[104] The fact that the SQDC could terminate the Agreement directly contradicts the argument that an investor would be misled to believe that the revenues to be generated in the first year were guaranteed.

[105] Plaintiff also points to the public statements regarding "strong business certainty through Year 1 post-legalization" and "second highest recreational revenue certainty" in the the June 27, 2018 MD&A<sup>82</sup> and the June 28, 2018 press release<sup>83</sup> in support of the argument that Defendants misled the investors to believe that the revenues to be generated in the first year were guaranteed.

[106] However, these statements cannot be read in isolation or out of context.

[107] In the June 27, 2018 MD&A<sup>84</sup> HEXO references several factors that led to the representation that there was a strong business certainty in year 1 and beyond as follows:

We have achieved excellent revenue visibility as we approach the legalization of recreational cannabis, with the five year, estimated 200,000 kg supply commitment under our agreement with the SQDC and our medical cannabis sales. Predictable revenue streams from the recreational and medical markets, a debt-free balance sheet, two fully-funded expansion projects, and additional liquidity for corporate purposes, provide strong business certainty through Year

---

<sup>80</sup> Third Amended Motion, paragraph 108.

<sup>81</sup> Schedule II.

<sup>82</sup> Exhibit R-11.

<sup>83</sup> Exhibit R-14.

<sup>84</sup> Exhibit R-11.

1 post-legalization and beyond. In our opinion achievement is the most important milestone to date in our company's history.

[108] Similarly, in the press release dated June 28, 2018 Defendants' statement was made in the context of a 5 year long term contract with the SQDC and does not reference the first year commitment at all <sup>85</sup>:

In the past quarter, we finalized a long-term supply contract as the preferred supplier to the Société québécoise du cannabis (SQDC) for approximately 200,000 kg of cannabis, over a five-year period. This gives us the second highest recreational revenue certainty among licensed producers for the first year of the adult-use market in Canada, with 20 metric tons committed, representing 35% of the Quebec adult recreational market [...]

[109] More importantly, all of these public statements must be read in the context of what Plaintiff himself describes as a "new and volatile market"<sup>86</sup>. A reasonable investor would not be misled to believe that Defendants were guaranteeing that the SQDC would fulfill its first year contractual commitment or that the take or pay feature would be enforced.

[110] In addition, with regard to the public statements contained in non-core documents, such as the press release and earnings calls prior to June 13, 2019, Plaintiff has not met the additional burden to establish a reasonable basis for the argument that, at the time the public statements were made, Defendants knew or should have known that the SQDC would not respect its first year commitment or that the take or pay feature of the Quebec Supply Agreement would likely not be enforced<sup>87</sup>.

[111] Plaintiff argues that Defendants knew that this was a new and volatile market and the SQDC was a strategic partner and should have disclosed the risk that the SQDC may not fulfill its commitment or that Defendants might decide not to enforce the take or pay feature<sup>88</sup>.

[112] However, the fact that this was a new and volatile market and that the SQDC was a strategic partner was publicly disclosed by Defendants and known to the public. Therefore, adopting Plaintiff's position would necessarily lead to the conclusion that Plaintiff and the putative members of the class also knew or should have known that there was a risk that the SQDC would not respect its first year commitment or that the take or pay feature of the Quebec Supply Agreement would not be enforced. Under section 225.17 QSA such knowledge by the Plaintiff would defeat the action.

[113] Moreover, there are no other facts alleged that demonstrate that Defendants were aware or should have been aware that the SQDC would not fulfill its contractual

---

<sup>85</sup> Exhibit R-14.

<sup>86</sup> Third Amended Motion, paragraphs 21, 85.1.

<sup>87</sup> Section 225.13 QSA.

<sup>88</sup> Third Amended Motion, paragraphs 93 and 95.

commitment. Plaintiff's claim, as regards the statements contained in non-core documents, is based upon pure speculation has no reasonable chance of success.

[114] Plaintiff further argues that as at June 13, 2019, Defendants should have at least adjusted investor expectations with regard to the first year supply commitment. Plaintiff argues:

149. On that date, the SQDC had purchased approximately 6,653 kg of its 20,000 kg alleged commitment, which amounts to approximately 830 kg per month, for the first eight months of the Québec Supply Agreement. In order to buy 20,000 kg of cannabis by December 31, 2019, the SQDC would have had to ramp up its orders by over 260% for the next six and a half months. The Defendants had no indication that that would happen, such that they could not bullishly assure the market that it would.
150. Moreover, the Defendants should have known that the SQDC's purchases would not increase almost three-fold per month, *inter alia*, because they were fully aware that the SQDC had opened substantially fewer stores than required to support a 20,000 kg demand. During the June 13, 2019 earnings call, Exhibit R-36, St-Louis reiterated that only 13 SQDC stores had been opened - which was very far from the 50 locations the SQDC had announced it would open in year one in December 2018, or even from the 24 locations initially envisioned.
151. During the March 14, 2019 earnings call, Exhibit R-30, St-Louis had also admitted that HEXO was having difficulty packaging and shipping product in a timely manner to its customers. There was no indication that this problem had since been resolved, which clearly rendered a 260% increase in SQDC orders unlikely and the Defendants' representation on June 13, 2019 misleading.

[115] All of the above information was disclosed to the public by Defendants prior to the June 13, 2019 earnings call where Defendant St-Louis disclosed that there was a "definite risk" that the SQDC would not fulfill its first year purchase commitment and the fact that HEXO would not enforce the take or pay feature.

[116] This disclosure was not, as argued by Plaintiff, a partial public correction of a prior misrepresentation but an assessment made on June 13, 2019, based on the data and figures available at that time.

[117] In addition, the Impugned Statements must be read in the context of the entirety of the public document which contains cautionary language stating, amongst other things, that the words highlighted by Plaintiff, such as: "will" "should" or "intend", are forward looking statements that are not to be construed as guarantees or assurances and should

not be relied upon. Moreover, the cautionary language highlights the material risks of this new and volatile emerging market<sup>89</sup>.

[118] In particular, the June 27, 2018 MD&A contains the following cautionary language that specifically provides that there can be no assurances as to the actual results<sup>90</sup> :

[...]These statements are not historical facts but instead represent management beliefs regarding future events, many of which, by their nature are inherently uncertain and beyond management control. We have based these forward-looking statements on our current expectations about future events. Although the forward-looking statements contained in this MD&A are based on what we believe are reasonable assumptions, these assumptions are subject to a number of risks beyond our control and there can be no assurance that actual results will be consistent with these forward-looking statements. [...]

[...]

We operate in a dynamic, rapidly changing environment that involves risks and uncertainties, and as a result, management expectations may not be realized for a number of reasons. An investment in our securities is speculative and involves a high degree of risk and uncertainty.

[119] Similarly, the June 28, 2018 press release is even more explicit and states, in part, that these statements cannot be read as guarantees<sup>91</sup>:

These statements should not be read as guarantees of future performance or results. Such statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements to be materially different from those implied by such statements. A more complete discussion of the risks and uncertainties facing the Company appears in the Company's Annual Information Form and continuous disclosure filings, which are available on SEDAR's website at [www.sedar.com](http://www.sedar.com). Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this press release.

[120] This cautionary language was contained in the core and non-core documents prior to June 2019 would allow Defendants to defeat the action, even if the Impugned Statements were found to be misrepresentations.

[121] Finally, Plaintiff also alleges that Defendants failed to disclose the circumstances the Quebec Supply Agreement could be terminated but did not reference same in his arguments. In the absence of any argument that the circumstances for termination are

---

<sup>89</sup> Schedule II.

<sup>90</sup> Exhibit R-11.

<sup>91</sup> Exhibit R-14.

material facts that needed to be disclosed to the public, this argument cannot reasonably succeed at trial.

[122] For all of these reasons the Court finds that there is no reasonable possibility that the claim for misrepresentation as regards the Quebec Supply Agreement will be resolved in favour of Plaintiff on the merits.

## **2. ACQUISITION OF NEWSTRIKE**

### **i) Licensed Facilities**

[123] Plaintiff argues that, at all material times since March 13, 2019, Defendants misrepresented that the Niagara Facilities were fully licensed and operational when in fact, Block B was not adequately licensed and that Defendants did not make a timely disclosure of a material change to its business and operations.

[124] As appears from the excerpts above and contained in Schedule II hereto, the Impugned Statements are contained in both core and non-core documents.

[125] With regard to the public statements contained in non-core documents<sup>92</sup>, made or released prior to July 30, 2019, the date Defendants' disclosed that they were made aware of the licensing deficiencies in Block B of the Niagara Facility, Plaintiff has not alleged any facts or provided any credible evidence that Defendants knew or should have known that the Block B was not adequately licensed.

[126] To the contrary, Plaintiff's evidence demonstrates that the licensing deficiencies for Block B only came to light on or around July 30, 2019<sup>93</sup>. In the November 15, 2019 and March 30, 2020 disclosures<sup>94</sup> Defendants state that prior to the acquisition, the due diligence revealed that the Niagara Facility was licensed and operational and Block B was part of that facility. Moreover, in February 2019, Block B had been the subject of an inspection by Health Canada without any issues raised as to the adequacy of the license<sup>95</sup>.

[127] With regard to the Impugned Statements contained in core documents, made or released prior to July 30 2019, this same evidence filed by Plaintiff could also be used by Defendants to argue on the merits that they had no reasonable grounds to believe that the documents or public oral statements contained a misrepresentation<sup>96</sup>.

---

<sup>92</sup> Plaintiff uses this date although Defendants' second disclosure references July 29, 2019.

<sup>93</sup> Exhibits R-48 and R-68.

<sup>94</sup> Exhibits R-48 and R-68.

<sup>95</sup> Exhibit R-68.

<sup>96</sup> Section 225.17 QSA.

[128] As for the Impugned Statements contained in the core documents dated October 28 and October 29, 2019, these statements essentially state as follows:

The Niagara facility is a 240,000 sq. ft fully automated, modern "Dutch-Tray" facility, consisting of 186,400 sq. ft licensed for production and cultivation, with the remaining space allocated to administration, packaging and shipping/ receiving areas. The facility is currently capable of producing up to 20,000 kg of dried cannabis annually. This facility is situated on approximately 16.6 acre of land and received its cultivation licence under the Cannabis Act on March 29, 2018.

Newstrike is a licensed producer of cannabis

Through the acquisition of all of the issued and outstanding common shares of Newstrike on May 24, 2019, the Company also acquired two Health Canada licences issued under the name Up Cannabis Inc. ("Up Cannabis"), a subsidiary of Newstrike, for its facilities in Brantford, Ontario (the "Brantford Licence") and Niagara, Ontario (the "Niagara Licence") [...] The Niagara Licence has a term ending on March 29, 2021.

[129] With the exception of the actual square footage of space that was licensed for production at the Niagara Facility, all of these statements concerning Newstrike generally were true. Newstrike had two facilities that were licensed for cannabis production. The Court notes that the term employed by Plaintiff "fully licensed and operations" was not used by Defendants. However, while the Niagara Facility was a licensed facility, a portion of that facility, Block B, was not licensed and operational.

[130] Was this an omission of a material fact, that is, a fact reasonably expected to have a significant effect on the market price or value of securities issued or securities proposed to be issued<sup>97</sup>?

[131] As stated in *Sharbern*<sup>98</sup>, materiality is a question of mixed law and fact, determined objectively, from the perspective of a reasonable investor. The Court examine the disclosed and undisclosed facts and considers all of the contextual evidence at the time the statements were made. Rothstein J. formulated the test for the materiality of an omitted fact as follows<sup>99</sup>:

An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote... Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available".

<sup>97</sup> Section 5 QSA.

<sup>98</sup> *Sharbern Holding Inc. supra*, note 17.

<sup>99</sup> *Ibid* at para 61.

[132] In the present matter, at the time the Impugned Statements were made or released on October 28 and 29, 2019, HEXO had temporarily suspended its operations of the Niagara Facilities as part of its cost cutting measures further to the withdrawal of its 2020 fiscal guidance. In fact, this information was announced on October 24, 2019 and was repeated in the core documents in question.

[133] As the entirety of the Niagara Facilities were not operational as of October 24, 2019, the Court finds that the fact that one section of the Niagara Facility, representing approximately 17% of the facility (i.e., 77,000 sq. ft. of 455,000 sq. ft.)<sup>100</sup> was not adequately licensed, and, thus, not operational, was not the omission of a material fact.

[134] Common sense dictates that such information could not reasonably be expected to have any impact on the investor decision to buy or sell HEXO securities let alone a significant one.

### **Disclosure Obligations**

[135] Plaintiff also argues that the above facts support an argument that HEXO failed to make a timely disclosure of a material change<sup>101</sup>.

[136] As stated previously, the continuous disclosure obligation was designed to create a "level playing field" where all investors have access to the same information<sup>102</sup>. However not all information or changes need be disclosed only material changes, that is a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the Company. As stated in *Cornish*, the Court must guard against too low a standard for materiality which would inundate the market with too much information, some of which may not be material and therefore not be conducive to informed decision making of the investor<sup>103</sup>.

[137] In determining whether a change is material, the Court must look at objective evidence that, at the time of the change, could reasonable be expected to impact the market price or value of the HEXO securities<sup>104</sup>. The decision to disclose the licensing deficiency in November 2019 is not an indication as to its materiality.

[138] The Plaintiff offered no credible evidence that the suspension of operations in Block B, on or around July 30, 2019, had any impact on HEXO's business or operations requiring disclosure such as its ability to meet production demands for the supply of cannabis. To the contrary, Plaintiff's evidence shows that:

---

<sup>100</sup> Exhibit R-68.

<sup>101</sup> Section 225.11 QSA.

<sup>102</sup> *Theratechnologies*, *supra* note 5.

<sup>103</sup> *Cornish*, *supra* note 20 at para 41.

<sup>104</sup> *Sharbern*, *supra* note 17.

- 138.1. Block B represented approximately 17% of the facility (i.e., 77,000 sq. ft. of 455,000 sq. ft.), or approximately 4% of the Issuer's total cultivation facilities (i.e., 77,000 sq. ft. of 1,779,000 sq. ft.) ;
- 138.2. HEXO had more inventory than needed to meet the industry demands, which is one of the criticisms levelled by Plaintiff as regards to the June 2019 disclosure that the SQDC had fallen short on its commitment; and
- 138.3. Health Canada did not require destruction of any inventory, nor did they prevent the Company from selling any of the inventories produced from the Niagara facility as part of the Block B licensing issue.

[139] On the basis of all of these facts, the Court finds that there is no reasonable possibility that Plaintiff can succeed in arguing that the licensing deficiency of Block B of the Niagara Facility was a material change that required disclosure on July 30, 2019.

[140] Plaintiff argues that the day after the November 15, 2019 disclosure that the Block B of the Niagara Facility was not adequately licensed, HEXO's stock decreased by 10.21% on the TSX<sup>105</sup> and relies on the expert opinion of Mr. Craig McCann the November 15, 2019 disclosure had an "effectively statistically significant negative price impact" on the market price of HEXO securities<sup>106</sup>.

[141] However, while evidence of the market impact of the disclosure may be relevant to assess the materiality of the change in the business or operations, it alone is not determinative of the issue<sup>107</sup>. In *Cornish* the Ontario Superior Court held<sup>108</sup>:

[59] Not only is such evidence not necessary, but it may not always be of assistance in a materiality analysis. There are at least three reasons why evidence of historical price and volume fluctuations for a reporting issuer's shares may not always be of assistance in this regard. First, if the reporting issuer is a new issuer, or if the issuer has never disclosed the same type of material change in the past, there may not be any relevant trading data to refer to for the purpose of determining how the market might react to a particular type of information. Second, where disclosure of the material change is limited or not made at all, a review of the market price and trading volume may not assist in the analysis of materiality. Third, if the material change is disclosed by the issuer along with other information, the market reaction to the combined disclosure may not be a reliable indicator of the market impact of the disclosure of one particular piece of information in isolation.

---

<sup>105</sup> Exhibit R-9.

<sup>106</sup> Exhibit R-83 par. 19; The t-statistic less than -1.96 indicates a statistically significant negative price movement at the 95% confidence level. Here the t-statistic was -1.94.

<sup>107</sup> *Peters v. SNC-Lavalin Group Inc.*, 2021 ONSC 5021, at paras. 195, 197.

<sup>108</sup> *Cornish*, *supra* note 20.

[142] In the present case, the November 15, 2019 disclosure contained other information that could also impact the market value or price of HEXO securities. The disclosure announces that the operations of the Niagara Facilities would be winding down (as opposed to a temporary suspension) and that management was disclosing a fact to their knowledge since July 30, 2019 which could affect the investor confidence in HEXO management.

[143] The McCann report does not link the market impact to the disclosure regarding the licensing deficiencies of Block B and is not, for the reasons mentioned earlier, sufficient and credible evidence to demonstrate that the licensing of Block B was material to HEXO'S business and operations.

[144] Therefore, Plaintiff has not shown a reasonable possibility of success at trial on the merits of a secondary market claim based on either a misrepresentation of the licenses for the Niagara Facilities or a breach of a timely disclosure of a material change.

#### **Newstrike Synergies, Q4 Revenue Projections and Fiscal Guidance for 2020**

[145] The following Impugned Statements were made in HEXO's MD&A dated March 13, 2019<sup>109</sup> and June 12, 2019<sup>110</sup>, as well as in non-core press releases and earnings calls at that time<sup>111</sup>, that :

145.1. With the acquisition of Newstrike, HEXO estimated annual synergies of \$10 million in March 2019 and in June estimated synergies in the millions of dollars;

145.2. HEXO estimated it would double its net revenue between Q2 and Q4 2019 to approximately \$26 million; and

[146] In the non-core documents, the March 13, 2019 and June 12, 2019 press releases<sup>112</sup>, HEXO estimated that net revenues would be \$400 million or more in the fiscal year 2020 (ending July 31, 2020).

[147] Plaintiff argues that the Impugned Statements were " grossly misleading in light of the fact that Defendants knew or should have known that the SQDC would not purchase its commitment volume prior to the calendar year-end, and that HEXO would not enforce the alleged take or pay provision, given its relationship with the SQDC, the significance of which was known from the outset"<sup>113</sup>.

---

<sup>109</sup> Exhibit R-27.

<sup>110</sup> Exhibit R-32.

<sup>111</sup> Exhibits R-26, R-30, R-31, R-35 and R-36.

<sup>112</sup> Exhibits R-26 and 35.

<sup>113</sup> Third amended Motion, paragraph 145.2.

[148] Subsidiarily, Plaintiff argues that the Defendants had an obligation to substantially revise their revenue projections downward as events unraveled throughout the Class Period, and to inform investors accordingly.

**(i) Accretive synergies**

[149] The estimated \$10 million in accretive synergies that was represented before the acquisition of Newstrike on May 24, 2019 and the estimated "million" in accretive synergies estimated after the acquisition, are reproduced in Schedule II.

[150] Plaintiff does not allege or identify any misrepresentation of a material fact. Rather, Plaintiff appears to rely on the fact that the synergies were not realized in order to conclude that the statements were untrue or misleading.

[151] The fact that projected synergies were not eventually realized is not evidence that the Impugned Statements contained misrepresentations as to material facts at the time they were made<sup>114</sup>. As stated previously, this is backwards reasoning argued with the benefit of hindsight.

[152] With regard to the non-core documents, Plaintiff has not alleged any facts or pointed to credible evidence to reasonably argue that Defendants knew or should have known that the synergies would not be realized.

[153] Moreover, not only did Plaintiff fail to identify a misrepresentation of a material fact but as appears from the March 13, 2014 press release and the June 12, 2019 MD&A, the representations are made in the context where Defendants specifically disclosed the material risk that the synergies may not be achieved<sup>115</sup>:

- there can be no assurance that the Transaction will be completed or that the anticipated benefits from the Transaction will be achieved (March 13, 2019 Press release).
- The Company may not be successful in the integration of the acquired Company into our business (June 12, 2019 MD&A).
- The Company may be unable to successfully achieve the objectives of our strategic alliances (June 12, 2019 MD&A).

[154] Therefore, the Court finds that there is no reasonable possibility that this argument will be resolved in Plaintiff's favor at trial.

---

<sup>114</sup> *Cornish, supra* note 20, at para 49.

<sup>115</sup> Exhibits R-26 and R-32.

**(ii) Q4 revenues and (iii) financial outlook for 2020**

[155] Plaintiff has not identified any misrepresentations of a material fact contained in the documents or public statements referenced in Schedule II.

[156] Plaintiff's argument is based upon the fact that the estimates or forecasts were not realized. However, as stated previously, the Court examines the statements at the time they were made and not with the benefit of hindsight.

[157] With regard to the financial guidance for 2020, this representation was contained only in non-core documents. Plaintiff has not alleged any facts or offered credible evidence to support an argument that Defendants knew or should have known, in March 2019, that the Q4 revenue estimate or 2020 fiscal guidance would not be met. Such a conclusion is entirely speculative.

[158] Moreover, Plaintiff's assumption that the forecasts were only based on the SQDC first year commitment being met is not supported by the evidence.

[159] In particular, the March 13, 2019 and June 12, 2019 press releases <sup>116</sup> and March and June MD&A's <sup>117</sup> referenced the following factors and assumptions: the additional capacity for cultivation through the acquisition of Newstrike; the Belleville facility leasehold improvements being finalized and ready for operations in Q4; the anticipation in Q4 of the sale of derivative cannabis products such as edibles and oils, and the rollout of cannabis beverages further to the Molson Coors joint venture, expansion in Latin America, Europe and the United States, doubling of sales of adult use cannabis in all of the HEXO supply agreements; and obtaining entry into additional Canadian markets through public and private retail channels.

[160] In the the March 13, 2019 press release announcing the Newstrike Acquisition and the 2020 fiscal forecast, HEXO lists the financial assumptions in support of its financial outlook for fiscal 2020<sup>118</sup>:

Forward-looking statements are based on certain assumptions regarding HEXO and Newstrike, including the completion of the Transaction, anticipated benefits from the Transaction, and expected growth, results of operations, performance, industry trends and growth opportunities. While HEXO and Newstrike consider these assumptions to be reasonable, based on information currently available, they may prove to be incorrect. Readers are cautioned not to place undue reliance on forward-looking statements.

HEXO's financial outlook for estimated net and gross revenues from the sale of cannabis in Canada for fiscal 2020 is based on the following assumptions of

---

<sup>116</sup> Exhibits R-26 and 35.

<sup>117</sup> Exhibits R-27 and R-32.

<sup>118</sup> Exhibit R-26.

HEXO, amongst others: (i) completion of the Transaction on the terms detailed above; (ii) adult-use cannabis sales volume growth of approximately double HEXO's current contractual supply agreements; (iii) obtaining entry into additional Canadian markets through public and private retail channels; (iv) cannabis production capacity to meet expected milestones with yield levels to obtain in excess of 91,000 kg of output; (v) current capital projects to meet expected completion and licensing milestones for production and transformation of cannabis purposes; (vi) average market prices across dry, oils, vapes and edibles cannabis markets based upon current and observable market pricing, as well as market research over future market prices; (vi) excise tax rates consistent with current Canadian policy; (vii) legalization of edible products, cannabis concentrates and topicals for production and sale and the adoption of regulations related thereto in October 2019 and in line with current industry expectations; and (viii) product development to meet expected completion milestones particularly with respect to launch of edible products and concentrates.

The assumptions of HEXO and Newstrike, although considered reasonable by them at the time of preparation, may prove to be incorrect. In addition, forward-looking statements necessarily involve known and unknown risks, including, without limitation, risks associated with general economic conditions; adverse industry events; future legislative, tax and regulatory developments; inability to access sufficient capital from internal and external sources, and/or inability to access sufficient capital on favourable terms; the ability of HEXO to implement its business strategies; competition; currency and interest rate fluctuations and other risks. Among other things, there can be no assurance that the Transaction will be completed or that the anticipated benefits from the Transaction will be achieved.

[161] In the March 14, 2019 earnings call<sup>119</sup>, Defendant St. Louis references the cannabis derivative market as a driver for the anticipated increase in sales, as well as the potential for sales outside Quebec beginning in Q4 and states:

[...]This quarter our meaningful wrap towards that 400 million starts in Q4.

We achieved adult use revenues per gram of \$5.83. So that was actually an increase of \$0.38 over last quarter. So you can start to see that demand that our customers have for our products, but also willing to pay for premium high-quality products. And 84% of our adult use sales were realized through our agreement with the SQDC. So that was 16% in Ontario and BC. I remind everybody that currently HEXO is not selling any dried flower and Ontario and BC. So we're achieving these market shares and this performance without even our full toolbox. So of course, toward the end of Q3 ramping into Q4, we are unlocking that toolbox and that's what is leading us to that \$400 million in net revenue next year. Of course, the additional capacity from Newstrike is going to help as well. Our cost of sales increased at \$6.5 million as a result of increased sales, increases in

---

<sup>119</sup> Exhibit R-30.

transformation process of our value-added products as we're preparing as well for the legislation coming down in October.

[162] The June 12, 2019 press release<sup>120</sup> underlined that the Q4 projection is based on the anticipated yield at the B9 facility in Belleville.

As the Company begins realizing sales from its first harvests of from its B9 greenhouse in the fourth quarter of fiscal 2019 net revenues are expected to approximately double those of the current quarter.

[163] In the June 13, 2019 earnings call<sup>121</sup>, Defendants disclosed that there was a risk that the SQDC would not meet its purchase commitment and that the take or pay feature would not be enforced in the. However, Defendant St Louis was still confident that the Q4 estimates and financial forecasts would be met as, contrary to Plaintiff's argument, Defendants did not rely on the assumption that the first year revenues from the Quebec Supply Agreement would be achieved.

[164] Finally, this projection of revenues is based on sales from the B9 harvest is also reiterated in the June 14, 2019 earnings call<sup>122</sup>:

So I think last quarter I had mentioned that we'd be flat this quarter, we'd double in Q4. And I pointed that the key reason for that is that our infrastructure to package what we were growing was still ramping up, right. And now that infrastructure, this particular quarter has caught up and that's what's leading to the double.

So your insight is right. The infrastructure that's allowing us to package everything is really from HEXO -- from the HEXO side leading to that double. Obviously, we're going to grow much more, right. Our yields continue to go up every day. We're going to add the Newstrike yields, which is going to be great. But fundamentally, to truly unlock our infrastructure requirements, I need my Belleville facility. So I need the facility that's going to have processing capacity for 375 tons per year. And that kicks in in the fall. So that's why we're going to double and not much more immediately, as you pointed out, because we're catching up our infrastructure in two phases. Phase one now complete, and Belleville in the fall.

[165] Moreover, not only has Plaintiff failed to identify any misrepresentation of fact but the forward looking information contained in the documents in question contain cautionary language that specifically warns the reader that these projections are not guarantees of future performance or results<sup>123</sup>. There is no reasonable possibility that Plaintiff would overcome the safe harbour defence.

---

<sup>120</sup> Exhibit R-35.

<sup>121</sup> Exhibit R-36.

<sup>122</sup> Exhibit R-36.

<sup>123</sup> Schedule II.

[166] For all of these reasons the Court finds that there is no reasonable possibility that these claims would be resolved in Plaintiff's favour.

### **Disclosure Obligations**

[167] Subsidiarily, Plaintiff argues that the Defendants had an obligation to substantially revise their revenue projections downward as events unraveled throughout the Class Period, and to inform investors accordingly.

[168] Plaintiff does not detail whether the obligation is one to provide timely disclosure of material facts or periodic disclosure of a material change. However, as a change in financial results is not, in itself, a change in the issuer's business, operations or capital, there can be no breach of a timely disclosure<sup>124</sup>.

[169] In addition, "a downward trend in the performance of a business, without more, is not a material change requiring disclosure"<sup>125</sup>.

[170] There is no reasonable basis to argue that there was a breach of HEXO'S obligation to provide periodic disclosure of financial information.

[171] The Consolidated Financial Statements for the HEXO year end of July 31, 2019 were to be disclosed in late October 2019.

[172] On October 10, 2019, Defendants issued a press release in anticipation of releasing its Consolidated Financial Statement. It advised that it was withdrawing its financial outlook for 2020 and providing the preliminary results for Q4 which were 40% lower than estimated.

[173] The October 28, 2019 Consolidated Financial Statements for the financial year ending on July 31, 2019<sup>126</sup> and their accompanying MD&A disclosed further details on the actual Q4 revenue at that time.

[174] For these reasons, there is no reasonable possibility of success at trial on a breach of a disclosure obligation regarding its forecasts.

### **3. IMPAIRMENT LOSS ON INVENTORY AND INTERNAL CONTROLS**

#### **Relevant Facts**

[175] The October 28, 2019 Consolidated Financial Statements for the financial year ending on July 31, 2019<sup>127</sup> and the accompanying MD&A disclosed that HEXO incurred

<sup>124</sup> *Kerr* supra note 19 at para 47.

<sup>125</sup> *Mask* supra note 7.

<sup>126</sup> Exhibit R-43, p. 20 and Exhibit R-47, p. 8.

<sup>127</sup> Exhibit R-43, p. 20 and Exhibit R-47, p. 8.

an impairment loss on inventory of \$16,918 during the three months ended July 31, 2019, due to price compression in the market. This impairment loss was realized on cannabis purchased in fiscal 2019 to help meet the demands of the adult-use market in which the cost exceeded its net realizable value.

[176] In addition, HEXO disclosed some internal weakness including that it did not have effective information technology (IT) general controls over all operating systems, databases, and IT applications supporting financial reports and it did not have effective controls over its year end inventory count and did not maintain effective process level and management review controls over manual financial reporting processes and the application of IFRS and accounting measurements related to certain significant accounts and non-routine transactions.

[177] On December 16, 2019, in its Consolidated Interim Consolidated Financial Statements for the three months ended October 31, 2019<sup>128</sup> and accompanying MD&A<sup>129</sup> Hexo disclosed that it incurred a impairment loss of \$25.5 million which included losses on cannabis trim and milled products.

[178] On December 31, 2019, Hexo restated its financial statements for the year ended July 31, 2019<sup>130</sup> and accompanying MD&A, as well as its financial statements for the quarter ended October 31, 2019<sup>131</sup> and accompanying MD&A, notably, to adjust for write-down of inventories for the year ended July 31, 2019.

[179] On March 17, 2020, the Defendants announced that they were delaying the filing of HEXO's Q2 2020 interim financial statements, because HEXO shortly be recording a third impairment loss in the range of \$265 million to \$280 million<sup>132</sup>.

[180] On March 19, 2020, HEXO re-amended its October MD&A for the year ended July 31, 2019<sup>133</sup> and its MD&A for the three month period ended October 31, 2019 following a continuous disclosure review by the Ontario Securities Commission ("OSC") of the Company's disclosure record.

[181] On March 30, 2020, in its Condensed Interim Consolidated Financial Statements for the three and six months ended January 31, 2020<sup>134</sup> Hexo recorded another impairment loss resulting, in part, from the fact that the Niagara facility was no longer operating. HEXO incurred a net loss of \$298.2 million, including a \$138.2 million

---

<sup>128</sup> Exhibit R-51, p. 12.

<sup>129</sup> Exhibit R-50, pp. 25-26.

<sup>130</sup> Exhibit R-56.

<sup>131</sup> Exhibit R-57.

<sup>132</sup> Exhibit R-62.

<sup>133</sup> Exhibit R-63, p. 29.

<sup>134</sup> Exhibit R-69.

impairment loss relating to the Niagara facility and other intangible assets acquired from Newstrike, and \$111.9 million relating to a goodwill impairment charge.

[182] HEXO also registered a write-down on inventory of \$16.1 million. Hexo specifically provided the following explanation:

These write downs of inventory are primarily the result of the Company's economic risk assumed in the Canadian cannabis industry. Most notably, the recent economic climate changed in which, market prices and demands have been revised and adjusted to reflect current information and actual results obtained during the first year of recreational legalization in Canada. These changes included reduced average selling prices per gram and gram equivalents, as well as modified market demands for certain cannabis products ranging from specific active ingredient contents to method of consumption. The continuing evolution of these market conditions represent ongoing uncertainties that may affect the Company's future financial results. See "Risk Factors" for additional economic and inventory risks.

**(i) Impairment loss on inventory**

[183] As stated previously, Plaintiff has the burden of identifying each misrepresentation of a material fact at the time the statement was made and linking the public correction to that misrepresentation<sup>135</sup>.

[184] In the present case, Plaintiff has not linked any of the subsequent disclosures to a previous misrepresentation of a material fact.

[185] With the exception of the December 31, 2019 restatements of the Financial Statements for year ending July 31, 2019 and the quarter ending October 31, 2019, and the March 19, 2020 re-amended MD&A for that period, the disclosures are quarterly or year end financial statements presenting a snapshot for a specific time. They do not purport to correct a previous statement nor can such a public correction be inferred as suggested by counsel<sup>136</sup>.

[186] In addition, the correction was based on subsequent events. The December 31, 2019 restated Financial Statements states as follows<sup>137</sup>:

The annual financial statements of HEXO Corp. ("the Company") for the years ended July 31, 2019 and 2018 are being amended and refiled to adjust for deferred income taxes and write-down of inventories for the year ended July 31, 2019 as further described in Note 34. Except as described in Note 34, there has been no

<sup>135</sup> *Barrick Gold Corporation*, note 24.

<sup>136</sup> *Badesha* note 22.

<sup>137</sup> Exhibit R-56.

other material changes to the financial statements as originally filed by the Company on October 28, 2019.

[187] Note 34 states that the increase in the impairment loss was due to subsequent events and new information as follows:

In assessing the financial impact of subsequent events, the Company also determined additional write-down of its cannabis trim based inventory based on the estimated fair market value due to new and available third party information resulting in an increased impairment loss on inventory of \$2,417.

[188] The disclosure does not expressly, or even implicitly, acknowledge the existence of any prior misrepresentation. Rather, the accounting adjustment is based on an assessment of subsequent events and new facts implying that the year end statements were not, at the time they were made or disclosed, untrue or misleading.

[189] Moreover, Plaintiff has not established that the disclosure concerned a material fact.

[190] The determination of what constitutes a material fact is discussed in *Drywall Acoustic Lathing and Insulation, Local 675 Pension Fund (Trustees of) v. SNC-Lavalin Group Inc.*<sup>138</sup> as follows:

[T]he determination of whether a corrective disclosure is corrective depends not only on a semantic analysis of how the words would be understood in an efficient market and also a statistical analysis of the effect of those words on the market's evaluation of the value of the securities that had been misrepresented to the marketplace.[...]

[191] Plaintiff's expert Dr. McCann opined that that the market impact of the disclosure of December 31, 2019 was not statistically significant<sup>139</sup>.

[192] The March 19, 2020, re-amended MD&A for the years ended July 31, 2019 and the quarter ending October 31, 2019 was filed further to the OSC comments to improve disclosure, including disclosure on the Quebec Supply Agreement and suspension of activities at the Niagara Facility. With regard to inventory it states as follows:

The Company has clarified and provided additional disclosure in the Amended MD&A regarding the Company's impairments and write-offs of inventory, including related events, risks, and uncertainties that the Company reasonably believes may materially affect its future performance.

<sup>138</sup> 2016 ONSC 5784, at para. 45

<sup>139</sup> Exhibit R-83 (Expert Report of Craig J. McCann, Ph.D., C.F.A. dated February 1, 2021) at paras 49-56.

[...]

In assessing the financial impact of subsequent events, the Company also determined additional write-down of its cannabis trim based inventory based on the estimated fair market value due to new and available third party information resulting in an increased impairment loss on inventory of \$2,417.

[193] Once again, on its face, the disclosure does not expressly, or even implicitly, acknowledge the existence of any prior misrepresentation or purport to correct a prior representation. Rather it provides greater detail on the impairment of inventory stating that it “resulted in part from the circumstances surrounding the ongoing development of the adult-use cannabis industry”. There is therefore no reasonable basis to argue that the disclosure constituted a corrective disclosure.

[194] In addition, while Dr. McCann found the March 19, 2020 disclosure had a significant impact on the market value of HEXO securities, he does not link the impact to the disclosure of the adjustments to the impairment loss on inventory<sup>140</sup>. Indeed, given that there is no adjustment to the impairment loss on inventory and that the initial restatement in December 19, 2019 had no significant impact on the price or value of HEXO securities, it is not reasonable to conclude that there is a link.

[195] As stated in the Ontario Court of Appeal case of *Wong v. Pretium Resources Inc.*<sup>141</sup>, presuming a material misrepresentation on the basis of evidence of a drop in share price (backward reasoning) does not meet the test for leave. The Plaintiff must lead evidence that ties the decline in share price to the misrepresentation or omission in question.

[196] Therefore, there is no reasonable basis for success at trial in establishing a misrepresentation of the impairment loss on inventory.

(ii) **Internal controls**

[197] Plaintiff does not identify the public statements which allegedly contain misrepresentations as to the effectiveness or accuracy of HEXO's internal controls.

[198] Moreover, the October 28, 2019 MD&A for the July 31, 2019 year end<sup>142</sup> which identified some internal control weaknesses is not a corrective disclosure. On its face, the disclosure does not expressly, or even implicitly, acknowledge the existence of any prior misrepresentation with regard to internal controls at HEXO.

[199] Indeed, with regard to the ICFR and DC&P controls, the issues with HEXO's internal control over financial reporting and disclosure controls and procedures, were

<sup>140</sup> Exhibit R-83.

<sup>141</sup> 2022 ONCA 549, at para 107.

<sup>142</sup> Exhibit R-42.

previously disclosed by HEXO between October 25, 2018<sup>143</sup>. At that time, HEXO advised that it was preparing to implement a new Enterprise Resource Planning systems and cautioned investors that the scoping, requirements definition, business process definition, design and testing of the integrated ERP system could result in problems which could, in turn, result in errors to the operations and processes within the business and/or inaccurate information for management and financial reporting.

[200] There is therefore no reasonable basis for success at trial in establishing a misrepresentation by Defendants of the effectiveness of its internal controls.

[201] For all of these reasons, the Court finds that Plaintiff has failed to meet the authorization threshold to institute a secondary market claim.

### III. MOTION FOR AUTHORIZATION OF A CLASS ACTION

[202] The Court authorizes a class action and appoints the class member it designates as representative plaintiff if it is of the opinion that the application meets all of the criteria set out in article 575 CCP as follows:

- 1) the claims of the members of the class raise identical, similar or related issues of law or fact;
- 2) the facts alleged appear to justify the conclusions sought;
- 3) the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings; and
- 4) the class member appointed as representative plaintiff is in a position to properly represent the class members.

[203] The role of the Court, at this preliminary stage, is simply to filter out frivolous or "untenable claims, sparing unnecessary procedures for the group, the representative, the defendant and the judicial system"<sup>144</sup>.

[204] The threshold requirement is relatively low. Plaintiff must only demonstrate that he has an arguable case in light of the facts and the applicable law<sup>145</sup>.

[205] The Court does not engage in a review of the merits of the case. Rather the facts alleged in the application are deemed to be true for the purpose of that demonstration,

---

<sup>143</sup> Exhibit R-15, p. 27.

<sup>144</sup> *Infineon Technologies AG v. Option consommateurs*, [2013] 3 S.C.R. 600 at para 11.

<sup>145</sup> *Infineon, supra* at para 134.

however, opinion and argument are not<sup>146</sup>. Moreover, bare assertions that are not supported by some evidence, albeit limited, are insufficient to form an arguable case<sup>147</sup>.

[206] Defendants only contest the criteria contained in article 575 (2) and (4) CCP.

[207] The Court will begin its analysis with article 575 (2) CCP as regards the primary market claim under sections 217 and 218 QSA and the civil liability claim under 1457 CCQ.

### **Article 575(2) CCP- the facts appear to justify the conclusions sought**

#### **Primary Market Claim**

[208] As appears from Schedule I, Sections 217 and 218 QSA provide a right of action for any person who subscribed to or acquired securities in a distribution effected with a prospectus containing a misrepresentation.

[209] Section 221 QSA provides that a right of action may also be exercised if a misrepresentation is contained in: (1) the information incorporated in a simplified prospectus; (2) the offering memorandum prescribed by regulation, or (3) in any other document authorized by the "Autorité des marchés financiers" (the "Authority") for use in lieu of a prospectus.

[210] Plaintiff is not required to prove that he relied on the document containing the misrepresentation when he subscribed for, acquired or disposed of a security<sup>148</sup>.

[211] In the present case, Plaintiff's right of action for a misrepresentation in a primary market claim is based on : 1) the January 30, 2019, Offering of 8,855,000 shares at \$6.50 each, which was distributed pursuant to a prospectus dated January 24, 2019 and 2) a private placement which closed on December 5, 2019 of 8.0% unsecured convertible debentures for gross aggregate proceeds of \$70 million maturing on December 5, 2022<sup>149</sup>.

[212] Plaintiff has not alleged any misrepresentations in the private placement offering memorandum and, as such, he has not established a *prima facie* case for a primary market claim on that basis<sup>150</sup>.

<sup>146</sup> *Option Consommateurs v. Bell Mobilité*, 2008 QCCA 2201; *Fortier v. Meubles Léon Ltée*, 2014 QCCA 195.

<sup>147</sup> *Infineon*, *supra* note 144 at paras 127 and 134; see also *Charles v. Boiron Canada Inc.*, 2016 QCCA 1716 (CanLII) at para 43.

<sup>148</sup> Section 225.0.2 QSA.

<sup>149</sup> Third Amended Motion paras 190-190.1.

<sup>150</sup> *Nseir*, *supra* at note 19 at paras 287-291 and 325.

[213] As for the prospectus supplement dated January 24, 2019, Schedule II identifies the following alleged misrepresentation<sup>151</sup>:

Under the agreement, the Company will supply 20,000 kg of products in the first year of the agreement, which is subject to a take-or-pay feature for that year.

[214] As stated previously, this statement is, on its face, merely descriptive of the contractual terms of the SQDC purchase commitment in the first year of the Quebec Supply Agreement.

[215] The fact that the purchase commitment was not fulfilled by the SQDC by October 2019 or that Defendants decided not to enforce the take or pay feature, is not evidence that the Impugned Statement was untrue or misleading at the time the statement was made. As stated previously, the Court does not make assessments with the benefit of hindsight.

[216] Moreover, read in the context of other public statements made or released by Defendants since April 11, 2018, the claim that Defendants guaranteed the revenues from the first year is untenable. As stated previously, Defendants expressly publicized, since April 11, 2018, the fact that the SQDC had the right to terminate the Quebec Supply Agreement under certain circumstances. In this new and volatile market where the SQDC could terminate the Agreement under certain circumstances, a reasonable investor would not be misled to believe that the first year revenues from the Quebec Supply Agreement were guaranteed.

[217] Also, as stated previously, all of the core and non-core documents underline the risk that the securities was highly speculative such that there were no assurances that could be given. Defendants would also be able to rely on the cautionary language regarding forward-looking information under sections 224.22 and 225.23 QSA. In particular, the cautionary language specifies that no assurance can be given including when the statements use the term "will"<sup>152</sup>:

[...]the use of forward-looking terminology such as "expect," "believe", "plan", "project", "assume", "likely", "may," "will," "should," "intend," or "anticipate", "potential", "proposed", "estimate" and other similar words, including negative and grammatical variations thereof, or statements that certain events or conditions "may" or "will" happen, or by discussions of strategy. No assurance can be given that the expectations in any forward-looking statement will prove to be correct and, as such, the forward-looking statements included in this Prospectus Supplement, the Shelf Prospectus and the documents incorporated by reference herein and therein should not be unduly relied upon.

---

<sup>151</sup> Exhibit R-2.

<sup>152</sup> Exhibits R-11 and R-14.

[218] The January 24, 2019 prospectus supplement also lists several risk factors including the risk that the SQDC may decide not to continue to purchase HEXO products was disclosed<sup>153</sup>:

[...] If any of the SQDC, the OCRC or the BCLDB decides to purchase lower volumes of products from HEXO than HEXO expects, alters its purchasing patterns at any time with limited notice or decides not to continue to purchase HEXO's cannabis products at all, HEXO's revenues could be materially adversely affected, which could have a material adverse effect on HEXO's business, financial condition, results of operations and prospects.

[219] Finally, the January 30, 2019 press release<sup>154</sup> specifically states that the "[f]orward-looking statements should not be read as guarantees of future performance or results."

[220] The Court finds that Plaintiff has not demonstrated an arguable case for a primary market class action.

### **Civil Liability Claim**

[221] The requisite elements for a claim in damages based on extra-contractual liability under Article 1457 CCQ are: (i) fault, (ii) damages and (iii) causal link between the fault and the damages.

[222] Plaintiff argued that Defendants failed to meet their general duty of care under Article 1457 CCQ regardless of the fact that they did not violate the *Quebec Securities Act* and further alleges that Defendants' misrepresentations and breaches of its disclosure obligations artificially inflated the price or value of HEXO securities that once publicly corrected caused the members of the class damages.

[223] Citing the recent cases in *Nseir*<sup>155</sup> and *Graaf*<sup>156</sup>, Defendants argue that where the primary and secondary market claims are dismissed, the civil law claim for fault cannot succeed in the absence of facts to support a different and independent fault.

[224] As a general rule, the absence of a statutory breach is not a bar to a common law action for extracontractual fault as appears from the Court of Appeal decision in *Infineon Technologies*<sup>157</sup>:

---

<sup>153</sup> Exhibit R-2.

<sup>154</sup> Exhibit R-71.

<sup>155</sup> *Nseir*, *supra* note 19.

<sup>156</sup> *Graaf v. SNC-Lavalin Group Inc.*, 2020 QCCS 1232 (CanLII).

<sup>157</sup> *Option Consommateurs v. Infineon Technologies*, a.g., 2011 QCCA 2116 (CanLII) at para 88; see SCC decision at note 144.

[88] The respondents contend that they cannot be held liable under article 1457 C.C.Q. if they have respected the requirements section 45 of the Competition Act. In support of this position, they cite *Acier d'armature Rô* in which this Court observed that statutory duty under the Competition Act and the generally applicable norm in civil liability are very closely connected. There is no denying that the laws bearing on commercial activity shape, in some measure, our understanding of the duties commercial actors have under the general law of civil liability. Care must be taken, however, not to conflate the notion of civil fault and the violation of a statutory norm, whether in a commercial setting or elsewhere. While it is true – although not invariably – that the failure to respect a duty imposed by statute can be an extracontractual fault under the Civil Code, the inverse proposition – that a person's conduct that is not shown to violate a statute absolves him or her from civil fault – does not always stand to reason. Article 1457 C.C.Q. gives expression to an ancient idea in stating that a person must abide by the rules of conduct that bind him or her "according to circumstances, usage or law/suivant les circonstances, les usages ou la loi". To read the reference to "law" narrowly as a reference to a single statute, or to contend that commercial circumstances and usage are necessarily codified by section 45 in the present situation, does a disservice to article 1457 C.C.Q. as an expression of the *droit commun*. The content of article 1457 C.C.Q. may be informed by statutory duty but one cannot assume that it is defined or exhausted thereby. [...]

[225] The norm of conduct imposed upon the the reasonable and prudent issuer as regards public statements that are made or released concerning its business or operations is not any different under the more generous civil law regime. The only distinction is that unlike a statutory claim under the QSA, Plaintiff must demonstrate a *prima facie* causal link between the damages and the misrepresentation as the causal link is not presumed<sup>158</sup>.

[226] Plaintiff alleges the following facts to support an action for extra-contractual fault:

283. The QSA, the Securities Legislation, national instruments including NI 51-102, NI 52-109, NI 52-110, all informed Defendants of their obligations.
284. The Defendants also owed the Class Members the *bon père de famille* obligations imposed under the CCQ.
285. The Defendants breached their obligations by making the alleged misrepresentations particularized herein and, as such, committed faults against the Class Members.
286. St-Louis oversaw the preparation of all filings and news releases, including the Impugned Statements, and knew or ought to have known of the alleged misrepresentations.

---

<sup>158</sup> *Amaya supra* note 4 at para 7.

287. Consequently, not only is HEXO directly liable towards the Class Members for its own faults, but it is also liable for the faults committed by St-Louis or any other officer, director, partner or employee.
288. In light of the Defendants' misrepresentations, HEXO securities traded at artificially-inflated prices and did not reflect their true value at all relevant times during the Class Period.
289. Once the misrepresentations were corrected, the price of HEXO's securities plummeted causing significant damages to the Plaintiff and Class Members, for which the Defendants must compensate them.

[227] Plaintiff also alleges that he relied on the Impugned Statements to make his investment decisions demonstrating that his damages are *prima facie* a direct and immediate consequence of the misrepresentations<sup>159</sup>. The debate on the need to establish reliance here is purely theoretical, however, the Court agrees with the *Nseir* and *Graaf*<sup>160</sup> decisions that the causal link in cases of misrepresentation requires a plaintiff to demonstrate that plaintiff relied on the misrepresentation. The fraud on the market theory available in the United States<sup>161</sup> has not been accepted in Canada<sup>162</sup>.

[228] As stated previously, Plaintiff has not demonstrated, on a *prima facie* basis, that the public documents and statements referenced in Schedule II contain misrepresentations of a material fact. Plaintiff has also not identified any other fault that would require a different analysis.

[229] Therefore, in the absence of fault, the Court finds that Plaintiff has not demonstrated an arguable case for misrepresentation under the general principles of fault in the civil law.

[230] As this criterion has not been met, Plaintiff's Motion for authorization of a class action is dismissed. However, in order to complete the analysis, the Court will review the balance of the criteria in article 575 CCP.

---

<sup>159</sup> Third Amended Motion paragraphs 100.2 and 101.

<sup>160</sup> *Nseir supra* note 19 and *Graaf supra* note 156.

<sup>161</sup> This statutory cause of action was described by the United States Supreme Court in *Basic Inc. v. Levinson*, 485 U.S. 224 (U.S. Ohio, 1988), at 241 held that "in an open and developed securities market, the price of a company's stock is determined by the available material information regarding the company and its business...Misleading statements will therefore defraud purchasers of stock even if the purchasers do not directly rely on the misstatements...The causal connection between the defendants' fraud and the plaintiffs' purchase of each stock in such a case is no less significant than in a case of direct reliance on misrepresentations".

<sup>162</sup> *Carom v. Bre-X Minerals Ltd.* (1998), 1998 CanLII 14705 (ON SC), 41 O.R. (3d) 780 (Ont. Gen. Div.) at p. 794.

**Article 575 (1) CCP-The questions of fact and law are similar or identical**

[231] This criterion is not contested.

[232] As stated in the *Dutton*<sup>163</sup>, when examining the commonality requirement, “the underlying question is whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analyses. Thus, an issue is common where its resolution is necessary to the resolution of each class member’s claim”.

[233] The questions put forward by Plaintiff meet that test. They are as follows:

- a) During the Class Period, did the Defendants publish documents or make statements that contained misrepresentations within the meaning of the QSA and, if necessary, other Securities Legislation?
- b) If so, which document or statement contains which misrepresentation?
- c) Were the misrepresentations intentional?
- d) Are any of the Defendants liable to the Class or any of its Members under the QSA, and if necessary, any concordant provisions of the other Securities Legislation and/or under art. 1457 of the CCQ?
- e) If so, which Defendant is liable and to whom?
- f) Is Defendants’ liability solidary? and
- g) What is the amount of the damages sustained by the Class Members?

**Article 575(3) CCP-The rules of mandate or joinder are difficult or impracticable**

[234] This criterion is not contested.

[235] The Court finds that the composition of the class, both in number and geographic locations, would make it difficult or impracticable to proceed by way of a mandate or joinder of actions.

**Article 575 (4) CCP- Adequateness of the Representative of the Proposed Class**

[236] Defendants argue that Plaintiff does not have the requisite standing as he did not purchase HEXO securities in the primary market.

[237] The Court does not agree.

---

<sup>163</sup> *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 (CanLII), [2001] 2 S.C.R. 534 at para 39.

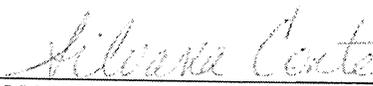
[238] In the *Infineon* case<sup>164</sup>, the Supreme Court of Canada confirmed that an adequate representation requires the consideration of three factors: interest in the suit; competence; and absence of conflict with the group members. These factors must be interpreted liberally as no proposed representative should be excluded unless his or her interest or competence is such that the case could not possibly proceed fairly.

[239] As appears from the facts, Plaintiff has the requisite judicial interest to act as a representative. He has demonstrated that he purchased securities in the secondary market and alleged that he relied on the Impugned Statements to his detriment with regard to the civil claim. The fact that he did not personally have a primary market claim is not a bar to his status as a representative as confirmed by the Supreme Court in *Bank of Montreal v. Marcotte*<sup>165</sup>.

**FOR THESE REASONS, THE COURT:**

[240] **DISMISSES** Plaintiff's Third 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;

[241] **THE WHOLE**, with costs.

  
\_\_\_\_\_  
SILVANA CONTE, J.S.C.

Mtre Shawn K. Faguy  
Mtre Elizabeth Meloche  
**FAGUY & CO.**  
Attorneys for Plaintiff

Mtre François-David Paré  
Mtre Francesca Taddeo  
**NORTON ROSE FULLBRIGHT CANADA LLP**  
Attorneys for Defendants

Hearing date: November 15 and 16, 2022.

<sup>164</sup> *Infineon*, supra note 144 at p.419.

<sup>165</sup> *Bank of Montreal v. Marcotte*, 2014 SCC 55 (CanLII), at paras 31-33; see also: *Ameublement Tanguay inc. v. Luc Cantin*, 2017 QCCA 1330 at paras 36-37 and *Télébec v. 9238-0831*, 2020 QCCA 1720 at paras 65, 67.

SCHEDULE I

## Schedule I

The relevant provisions of the *Securities Act*, CQLR c V-1.1

5. In this Act, unless the context indicates otherwise, [...]

“material fact” means a fact that may reasonably be expected to have a significant effect on the market price or value of securities issued or securities proposed to be issued;

“misrepresentation” means any misleading information on a material fact as well as any pure and simple omission of a material fact;

5.3. When used in relation to an issuer other than an investment fund, “material change” means a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer, or a decision to implement such a change made by the directors or by senior management of the issuer who believe that confirmation of the decision by the directors is probable. [...]

73. A reporting issuer shall provide periodic disclosure about its business and internal affairs, including its governance practices, timely disclosure of a material change and any other disclosure prescribed by regulation in accordance with the conditions determined by regulation.

### MISREPRESENTATION

#### DIVISION I

#### PRIMARY MARKET AND TAKE-OVER OR ISSUER BIDS

217. A person who has subscribed for or acquired securities in a distribution effected with a prospectus containing a misrepresentation may apply to have the contract rescinded or the price revised, without prejudice to his claim for damages.

The defendant may defeat the application only if it is proved that the plaintiff knew, at the time of the transaction, of the alleged misrepresentation.

218. The plaintiff may claim damages from the issuer or the holder, as the case may be, whose securities were distributed, from its officers or directors, the dealer under contract to the issuer or holder whose securities were distributed and any person who is required to sign an attestation in the prospectus, in accordance with the conditions prescribed by regulation.

[...]

220. The defendant in an action provided for in sections 218 and 219 is liable for damages unless it is proved that

(1) he acted with prudence and diligence, except in an action brought against the issuer or the holder whose securities were distributed, or that

(2) the plaintiff knew, at the time of the transaction, of the alleged misrepresentation.

221. Rights of action established under sections 217 to 219 may also be exercised if a misrepresentation is contained in

(1) the information incorporated by reference in the simplified prospectus;

(2) the offering memorandum prescribed by regulation;

(3) any other document authorized by the Authority for use in lieu of a prospectus.

[...]

225.0.1. A defendant may defeat an action based on a misrepresentation in forward-looking information by proving that

(1) the document containing the forward-looking information contained, proximate to that information,

(a) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information; and

(b) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection; and

(2) the defendant had a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information.

This section does not apply to forward-looking information in a financial statement required to be filed under this Act or the regulations or in a document released in connection with an initial public offering.

225.0.2. The plaintiff is not required to prove that the plaintiff relied on the document containing a misrepresentation when the plaintiff subscribed for, acquired or disposed of a security.

## DIVISION II

### SECONDARY MARKET

#### § 1. — Scope and interpretation

225.2. This division applies to any person who acquires or disposes of a security of a reporting issuer or of any issuer closely connected to Québec whose securities are publicly traded.

However, this division does not apply to a person that subscribes for or acquires a security during the period of a distribution of securities made with a prospectus or, unless otherwise provided by regulation, under a prospectus exemption granted by this Act, a regulation made under this Act or a decision of the Authority; nor does it apply to a person that acquires or disposes of a security in connection with or pursuant to a take-over bid or issuer bid, unless otherwise provided by regulation, or to a person that makes any other transaction determined by regulation.

225.3. In this division, unless the context indicates otherwise,

“core document” means a prospectus, a take-over bid circular, an issuer bid circular, a directors’ circular, a notice of change or variation in respect of a take-over bid circular, issuer bid circular or directors’ circular, a rights offering circular, management’s discussion and analysis, an annual information form, a proxy solicitation circular, the issuer’s annual and interim financial statements and any other document determined by regulation, and a material change report, but only where used in relation to the issuer or the investment fund manager and their officers;

“document” means any writing that is filed or required to be filed with the Authority, with a government or an agency of a government under applicable securities or corporate law, or with a stock exchange or quotation and trade reporting system under its by-laws, or the content of which would reasonably be expected to affect the market price or value of a security of the issuer;

[...]

“management’s discussion and analysis” means the section of an annual information form, annual report or other document that contains management’s discussion and analysis of the financial situation and operating results of an issuer as required under this Act or the regulations;

“public oral statement” means an oral statement made in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed;

[...]

§ 2. — Actions for damages and burden of proof

I. — Prior authorization and other general conditions

225.4. No action for damages may be brought under this division without the prior authorization of the court.

The request for authorization must state the facts giving rise to the action. It must be filed together with the projected statement of claim and be served by bailiff to the parties concerned, with a notice of at least 10 days of the date of presentation.

The court grants authorization if it deems that the action is in good faith and there is a reasonable possibility that it will be resolved in favour of the plaintiff.

The request for authorization and, if applicable, the application for authorization to institute a class action required under article 574 of the Code of Civil Procedure (chapter C-25.01) must be made to the court concomitantly.

225.7. An action may not be abandoned or settled except on the terms set by the court, including terms as to legal costs.

When setting the terms, the court considers whether there are any other actions outstanding under this division or under comparable provisions of extra-provincial securities laws within the meaning of section 305.1 in respect of the same misrepresentation or failure to make timely disclosure.

[...]

## II. — Persons liable to action

225.8. A person that acquires or disposes of an issuer's security during the period between the time when the issuer or a mandatary or other representative of the issuer released a document containing a misrepresentation and the time when the misrepresentation was publicly corrected may bring an action against

(1) the issuer, each director of the issuer at the time the document was released, and each officer of the issuer who authorized, permitted or acquiesced in the release of the document;

(2) each influential person, and each director and officer of an influential person, who knowingly influenced the issuer or a mandatary or other representative of the issuer to release the document or a director or officer of the issuer to authorize, permit or acquiesce in the release of the document; and

(3) each expert whose report, statement or opinion containing the misrepresentation was included, summarized or quoted from in the document and, if the document was released by a person other than the expert, who consented in writing to the use of the report, statement or opinion in the document.

225.9. A person that acquires or disposes of an issuer's security during the period between the time when a mandatary or other representative of the issuer made a public oral statement relating to the issuer's business or affairs and containing a

misrepresentation and the time when the misrepresentation was publicly corrected may bring an action against

- (1) the issuer and each director and officer of the issuer who authorized, permitted or acquiesced in the making of the public oral statement;
- (2) the person who made the public oral statement;
- (3) each influential person, and each director and officer of an influential person, who knowingly influenced the person who made the public oral statement to make the public oral statement or a director or officer of the issuer to authorize, permit or acquiesce in the making of the public oral statement; and
- (4) each expert whose report, statement or opinion containing the misrepresentation was included, summarized or quoted from in the public oral statement and, if the public oral statement was made by a person other than the expert, who consented in writing to the use of the report, statement or opinion in the public oral statement.

225.10. A person that acquires or disposes of an issuer's security during the period between the time when an influential person or a mandatary or other representative of the influential person released a document or made a public oral statement relating to the issuer and containing a misrepresentation and the time when the misrepresentation was publicly corrected may bring an action against

- (1) the issuer, if a director or officer of the issuer or the investment fund manager authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
- (2) the person who made the public oral statement;
- (3) each director and officer of the issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
- (4) the influential person and each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement; and
- (5) each expert whose report, statement or opinion containing the misrepresentation was included, summarized or quoted from in the document or public oral statement and, if the document was released or the public oral statement was made by a person other than the expert, who consented in writing to the use of the report, statement or opinion in the document or public oral statement.

225.11. A person that acquires or disposes of an issuer's security during the period between the time when the issuer failed to make timely disclosure of a material

change and the time when the material change was disclosed in the manner required under this Act or the regulations may bring an action against

(1) the issuer and each director and officer of the issuer who authorized, permitted or acquiesced in the failure to make timely disclosure; and

(2) each influential person, and each director and officer of an influential person, who knowingly influenced the issuer or a mandatary or other representative of the issuer in the failure to make timely disclosure or a director or officer of the issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

III. — Plaintiff's burden of proof

225.12. The plaintiff is not required to prove that the plaintiff relied on the document or public oral statement containing a misrepresentation or on the issuer having complied with its timely disclosure obligations when the plaintiff acquired or disposed of the issuer's security.

225.13. For the purposes of sections 225.8 to 225.10, unless the defendant is an expert or the misrepresentation was contained in a core document, the plaintiff must prove that the defendant

(1) knew, at the time that the document was released or the public oral statement was made, that the document or public oral statement contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time; or

(2) was guilty of a gross fault in connection with the release of the document or the making of the public oral statement.

225.14. For the purposes of section 225.11, unless the defendant is the issuer, the investment fund manager or an officer of the issuer or the investment fund manager, the plaintiff must prove that the defendant

(1) knew, at the time that a material change report should have been filed, of the change and that the change was a material change, or deliberately avoided acquiring such knowledge at or before that time; or

(2) was guilty of a gross fault in connection with the failure to make timely disclosure.

[...]

225.16. The court seized of the action may decide that multiple misrepresentations having common subject matter or content may be treated as a single misrepresentation or that multiple instances of failure to make timely disclosure concerning common subject matter may be treated as a single failure to make timely disclosure.

IV. — Defendant's burden of proof

225.17. A defendant may defeat an action by proving that, at the time of the transaction, the plaintiff knew that the document or public oral statement contained a misrepresentation or was aware of the material change that should have been disclosed.

An action may also be defeated by proving that the defendant conducted or caused to be conducted a reasonable investigation and had no reasonable grounds to believe that the document or public oral statement would contain a misrepresentation or that the failure to make timely disclosure would occur.

225.18. In determining whether an investigation was reasonable under the second paragraph of section 225.17, the court must consider all relevant circumstances, including those listed in paragraphs 1 to 11 of section 225.15.

225.19. A defendant may defeat an action by proving that

(1) the misrepresentation was also contained in a document filed by or on behalf of a third person, other than the issuer, with the Authority or an extra-provincial securities commission within the meaning of section 305.1 or a stock exchange, and was not corrected in another document filed by or on behalf of that third person with the Authority, commission or stock exchange before the issuer or the mandatary or other representative of the issuer released the document or made the public oral statement;

(2) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation; and

(3) when the document was released or the public oral statement was made, the defendant did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

[...]

225.22. A defendant may defeat an action for a misrepresentation in forward-looking information in a document or a public oral statement by proving that

(1) the document or public oral statement containing the forward-looking information contained, proximate to that information,

(a) reasonable cautionary language clearly identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information; and

(b) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection; and

(2) the defendant had a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information.

This section does not apply to forward-looking information in a financial statement required to be filed under this Act or the regulations or in a document released in connection with an initial public offering.

225.23. A defendant is deemed to have satisfied the requirements of subparagraph 1 of the first paragraph of section 225.22 with respect to a public oral statement containing forward-looking information if the person who made the public oral statement

(1) made a cautionary statement that the public oral statement contains forward-looking information;

(2) stated that the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information and that certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information; and

(3) stated that additional information about the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information and about the material factors or assumptions applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information is contained in a readily-available document, and has identified that document.

For the purposes of subparagraph 3 of the first paragraph, a document filed with the Authority, or otherwise generally disclosed, is deemed to be readily available.

[...]

SCHEDULE II

ANNEX B: TABLE OF SELECTED EVIDENCE

TABLE OF CONTENTS

I-	ALLEGED QUÉBEC SUPPLY AGREEMENT GUARANTEED REVENUES IN YEAR 1 .....	2
II-	REVENUE GENERATION .....	14
	a. Double HEXO Revenues Between Q2 and Q4 2019 .....	14
	b. \$400M in Net Revenue in 2020 .....	17
III-	NEWSTRIKE .....	20
	a. Newstrike Annual Synergies .....	20
	b. Niagara Licensing .....	25
IV-	INVENTORY .....	30

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	GSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
<b>I- ALLEGED QUÉBEC SUPPLY AGREEMENT GUARANTEED REVENUES IN YEAR 1</b>						
April 11, 2018	R-8 – HEXO press release Par. 84, 111	Under the agreement, Hydrophothecary will supply 20,000 kg of products in the first year of the agreement and is expected to supply 35,000 kg in the second year and 45,000 kg in the third. [...] The SAQ has the right to terminate the agreement in certain circumstances. [...]	225.8 225.11	NC but confirmed in a core document on April 20, 2018	Inference	<ul style="list-style-type: none"> <li>CD 1: JUNE 13, 2019 R-36 - EARNINGS CALL RE: Q3 2019 MFA, par. 141-145.7</li> <li>p. 8: Oliver Rowe -- Scottabank -- Analyst</li> </ul> <p>Hey, good morning. Thanks for taking my question. When I think about Quebec, which is obviously an important market for you, you're expecting 20,000 kilograms of sales to Quebec in the first year for ag (ph). I think we're over halfway through that year now and sales within about 5,500 kilograms to that province. So it seems to me like it could be a bit challenging for the SQDC sales to triple over the remaining five months. Do you see a risk that the SQDC doesn't need that much product, but picks it anyway and that leads to significant inventory builds and maybe even impacts demand on your year two contract?</p> <p>Sebastien St-Louis -- Co-founder and Chief Executive Officer</p>
April 20, 2018	R-10 – HEXO material change report Par. 113, 114	Under the agreement, the Company will supply 20,000 kg of products in the first year of the agreement and is expected to supply 35,000 kg in the second year and 45,000 kg in the third. [...]	225.8 225.11	C	Presumed	
June 27, 2018	R-11 - MD&A Q3 2018 Par. 85.3, 115-117.2	The SAQ has the right to terminate the agreement in certain circumstances. [...] p. 6: On April 11, 2018, we announced the finalization of the commercial agreement with SQDC to be the preferred supplier for cannabis products for the Quebec market for the first five years post legalization. We will supply the SQDC with 20,000 kg of products in the first year and expect to supply 35,000 kg and 45,000 kg in years two and three respectively. Thereafter, based on an expected market growth rate of 10% we intend to	225.8 225.11	C	Presumed	

<sup>1</sup> MFA here refers to the paragraphs of the Motion for Authorization dealing with the Impugned Statements.  
<sup>2</sup> Emphasis is added.

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		<p>supply 49,500 kg and 54,450 kg in years four and five respectively. The Company estimates the total volume to be supplied over the five-year term of the agreement to be in excess of 200,000 kg which is the largest forward supply contract ever awarded in the history of the emerging cannabis industry. [...]</p> <p>p. 14: We have achieved <b>excellent revenue visibility</b> as we approach the legalization of recreational cannabis, with the five year, estimated 200,000 kg supply commitment under our agreement with the SQDC and our medical cannabis sales. <b>Predictable revenue streams</b> from the recreational and medical markets, a debt-free balance sheet, two fully-funded expansion projects, and additional liquidity for corporate purposes, provide <b>strong business certainty through Year 1 post-legalization</b> and beyond. In our opinion achievement is the most important milestone to date in our company's history.</p> <p>On April 11, 2018 we signed a commercial supplier agreement with the SQDC to supply cannabis to the Québec market. Based on the signed agreements between the SQDC and five other licensed producers, we obtained the <b>highest Year 1 volume of 20,000 kg</b>, representing a 34% market share. [...]</p>				<p>[...] I do think there could be some <u>timing risk</u> around a few of those tons -- of those 20 tons. Now of course, as you pointed out, it is to take or pay contract, but we value our relationship with SQDC more than the few million dollars in revenue we could get this quarter. So we're working very closely with them. We ramped (ph) our SKU mix to create more interesting products. We plan on launching a whole bunch of new products over the following couple quarters, which we think will help that, but <u>expect some timing risk whether it's an October, November, December timeline to hit the full 201</u> think would be a reasonable assumption. We're confident we can completely offset that in more of course in other provinces.</p> <ul style="list-style-type: none"> <li>• <b>CD 3: OCT. 28-29, 2019</b></li> <li>• <b>R-42: Q4 2019 MD&amp;A / R-44 - 2019 AIF / R-45 - Annual Report / R-49 - Earnings Call Transcript Q4 2019</b></li> <li>• <b>MFA, par. 155-156.5</b></li> </ul>
June 28, 2018	R-14 - HEXO press release Par. 118 <i>NON</i>	<p>p. 1: 20,000 kg of cannabis <u>to be supplied</u> to the SQDC in year one of the supplier agreement post legalization</p> <p>p. 2: This gives us the HEXO press release second highest <u>recreational revenue certainty</u> among licensed producers for the first year of the adult-use market in Canada, with 20 metric tons <u>committed</u>, representing 35% of the Quebec adult recreational market [...]</p>	225.8 225.11	NC	Inference	<p>R-42:</p>
Oct 26, 2018	R-15 - Q4 2018 MD&A	<p>p. 3 PDF: We currently possess the single largest and longest national forward supply amount among all licensed producers, based upon the announced provincial supply agreements. In Quebec alone, we <u>will supply 20,000 kg in the first year</u> of legalized</p>	225.8 225.11	C	Presumed	<p>p. 14: During this start-up phase, HEXO sold in (sic) <b>10 tons</b>, achieving approximately 33% market share based on volume, and that is fine with our goal.</p>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	Par. 119-121	<p>adult-use cannabis and up to approximately 200,000 kg over the first five years of legalized adult-use cannabis.</p> <p>p. 8 PDF: The strategic value of our SQDC relationship cannot be understated. We hold the single largest forward contract in the history of the emerging cannabis industry with the SQDC and are the preferred supplier for cannabis products for the Quebec market for the first five years following legalization. We will supply the SQDC with 20,000 kg of products in the first year, and we expect to supply 35,000 kg and 45,000 kg in years two and three, respectively. Thereafter, based on an expected market growth rate of 10%, we intend to supply 49,500 kg and 54,450 kg in years four and five, respectively. The Company estimates the total volume to be supplied over the five-year term of the agreement to be in excess of 200,000 kg.</p>				<p>Our contract required SQDC to purchase 20 tons in the first year, while we did not achieve these quantities during this period, we believe that exercising the committed 20 feature under the contract would be short sighted.</p> <p>R-45, p. 17 contains identical language.</p> <p>R-44:</p>
Oct. 26, 2018	R-17 – HEXO 2018 AIF Par. 119-121	<p>p. 16: The Company now possesses supplier contracts across four provinces with 20,000 kg of cannabis to be supplied to Quebec in year one alone.</p> <p>p. 8: Under the agreement, the Company will supply 20,000 kg of products in the first year of the agreement and is expected to supply 35,000 kg in the second year and 45,000 kg in the third.</p> <p>p. 9: We currently possess the single largest and longest national forward supply amount among all licensed producers, based upon the announced provincial supply agreements. In Quebec alone, we will supply 20,000 kg in the first year of legalized adult-use cannabis and up to approximately 200,000 kg over the first five years of legalized adult-use cannabis.</p>	225.8 225.11	C	Presumed	<p>p. 9: Under the agreement, the Company was slated to supply 20,000 kg of products in the first year of the agreement and expected to supply 35,000 kg in the second year and 45,000 kg in the third. The volumes for the final two years of the agreement will be established based on the sales generated in the first three years. The supply arrangement covers the full range of the Company's products and brands, from flowers to cannabis oil. During the first year of the agreement, HEXO supplied approximately 10,000 kg under the agreement. While the Company did not achieve the expected sales during the first year of the agreement, it remains a preferred supplier of the Société québécoise du cannabis ("SQDC") with an approximately 33%</p>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREPRESENTATION AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Oct. 26, 2018	R-18 – HEXO 2018 annual report Par. 119-121	<p>p. 15 PDF: In Quebec alone, we <u>will supply 20,000 kg in the first year of legalized adult-use cannabis and up to approximately 200,000 kg over the first five years of legalized adult-use cannabis.</u></p> <p>p. 16 PDF: We hold the single largest forward supply contract among licensed producers, based upon announced agreements for year one of legalization, with <u>20,000 kg to be supplied to Quebec in the first year.</u></p> <p>p. 20 PDF: <u>The strategic value of our SQDC relationship cannot be understated.</u> We hold the single largest forward contract in the history of the emerging cannabis industry with the SQDC and are the preferred supplier for cannabis products for the Quebec market for the first five years following legalization. <u>We will supply the SQDC with 20,000 kg of products in the first year, and we expect to supply 35,000 kg and 45,000 kg in years two and three, respectively.</u> Thereafter, based on an expected market growth rate of 10%, <u>we intend to supply 49,500 kg and 54,450 kg in years four and five, respectively.</u> The Company estimates the total volume to be supplied over the five-year term of the agreement to be in excess of 200,000 kg.</p> <p>p. 24 PDF: The additional facilities and associated production capacity have positioned the Company to <u>meet the SQDC first-year demand of 20,000 kg.</u></p>	225.8 225.11	NC But contains the same language as core documents of the same date	Inference	<p>market share based on volume and is working on expanding its product offerings with the SQDC based on consumer demands and as the SQDC continues the roll-out of its retail distribution channels, and it believes that any exercise of committed purchase features for a larger amount during the first year of the agreement would be short sighted.</p> <p>p. 18-19: The SAQ is not required to purchase a minimum volume of cannabis under this agreement other than in the first year. The SQDC originally contracted approximately 60 tons for purchase in the first year from all licensed producers. Initial sell-through was expected to be a little less than half of that amount, however, as the retail store roll-out in Quebec has been slow to develop. While the SAQ had committed to improving access to legalized cannabis, this has been slower than HEXO had originally expected. During this start-up phase, HEXO sold 10,250 kg [...] it believes that any exercise of committed purchase features for a larger amount during the first year of the agreement would be short sighted.</p> <p>R-49, p. 4: Similar language</p>
Nov. 19, 2018	R-19.1 - prospectus Par. 121.1	<p>p. 9 PDF: [...] the Company has entered into a commercial agreement with the Société des alcools du Québec to be the preferred supplier of cannabis products for the Québec market for the first five years post-legalization, with an option to extend the term for an additional year. Under the agreement, the Company will supply 20,000 kg of products in</p>	225.8 225.11	C	Presumed	

DATE	REF. EXHIBIT (R-) M/FA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)?	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		the first year of the agreement and is expected to supply 35,000 kg in the second year and 45,000 kg in the third. [...]				<ul style="list-style-type: none"> <li>CD 7: MARCH 19, 2020</li> </ul>
Dec.13, 2018	R-20 – MD&A Q1 2019 Par. 122-123	<p>p. 3 PDF: In Quebec alone, we will supply 20,000 kg in the first year of legalized adult-use cannabis...</p> <p>p. 4 PDF: We hold the single largest forward supply contract among licensed producers, based upon announced agreements for year one of legalization, with 20,000 kg to be supplied to Quebec in the first year.</p> <p>p. 7 PDF: <b>The strategic value of our SQDC relationship cannot be understated.</b> We hold the single largest forward contract in the history of the emerging cannabis industry with the SQDC and are the preferred supplier for cannabis products for the Quebec market for the first five years following legalization. We will supply the SQDC with 20,000 kg of products in the first year, and we expect to supply 35,000 kg and 45,000 kg in years two and three, respectively. Thereafter, based on an expected market growth rate of 10%, we intend to supply 49,500 kg and 54,450 kg in years four and five, respectively...</p> <p>p. 12 PDF: ... have positioned the Company to meet the <b>SQDC first-year demand of 20,000 kg.</b></p>	225.8 225.11	C	Presumed	<ul style="list-style-type: none"> <li>R-63 – RE-AMENDED MD&amp;A Q4 2019 / R-64 – RE-AMENDED MD&amp;A Q1 2020 / R-67 – HEXO PRESS REPORT Par. 164.24-164.25</li> </ul> <p>R-67: HEXO Corp. ("HEXO" or the "Company") (TSX: HEXO, NYSE: HEXO) today announced it has amended and refilled its management's discussion and analysis for the fiscal year ended July 31, 2019 (the "Amended 2019 MD&amp;A") and its management's discussion and analysis for the three month period ended October 31, 2019 (the "Amended Q1 2020 MD&amp;A") to better comply with National Instrument 51-102 - Continuous Disclosure Obligations.</p> <p>As noted in the press release of the Company dated March 17, 2020, the Amended 2019 MD&amp;A and Amended Q1 2020 MD&amp;A (collectively, the "Amended MD&amp;A") were prepared following a continuous disclosure review by the Ontario Securities Commission ("OSC") of the Company's disclosure record. The Amended MD&amp;A were filed to address comments received from OSC Staff and in order to improve the Company's disclosure. In</p>
Dec. 20, 2018	R-2 – Amended Prospectus dated Dec. 14, 2019 and	<p>p.11 PDF: In addition to supply contracts in certain other provinces of Canada, the Company has entered into a commercial agreement with the Société des alcools du Québec to be the preferred supplier of cannabis products for the Québec market for the first five years post-legalization, with an option to extend the term for an additional year. Under the agreement, the Company will supply 20,000 kg of products in the first year of the agreement and is expected to supply 35,000 kg in the second year and 45,000 kg in</p>	225.8 225.11	C	Presumed	<p>As noted in the press release of the Company dated March 17, 2020, the Amended 2019 MD&amp;A and Amended Q1 2020 MD&amp;A (collectively, the "Amended MD&amp;A") were prepared following a continuous disclosure review by the Ontario Securities Commission ("OSC") of the Company's disclosure record. The Amended MD&amp;A were filed to address comments received from OSC Staff and in order to improve the Company's disclosure. In</p>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Jan. 21, 2019	R-24- preliminary prospectus supplement Par. 126	<p>the third. The volumes for the final two years of the agreement will be established at a later date based on the sales generated in the first three years.</p> <p>p. 5-9-5-10: [...] the Company has entered into a supply agreement with the SQDC to be the preferred supplier of cannabis products for the Québec market for the first five years post legalization, with an option to extend the term for an additional year. The supply arrangement covers the full range of the Company's products and brands. Under the agreement, the Company will supply 20,000 kg of products in the first year of the agreement, which is subject to a take-or-pay feature for that year. The Company estimates that this represents an approximate 35% market share of the province's adult-use sales in the first year of legalization based on the volumes disclosed by other publicly traded cannabis companies who have also entered into SQDC supply agreements. The Company expects to supply 35,000 kg in the second year of the agreement and 45,000 kg in the third year. The Company estimates that the total amount expected to be supplied in the first three years of the agreement represents an approximate 30% market share of the province's adult-use sales based on the volumes disclosed by other publicly traded cannabis companies who have also entered into SQDC supply agreements. The volumes for the final two years of the Company's agreement with the SQDC will be established at a later date based on the sales generated in the first three years. The Company estimates that the total volume of cannabis to be supplied over the five-year term of the agreement could exceed 200,000 kg which, based on the average sale prices assumed by the Company for its products, would represent approximately \$1 billion in estimated potential revenue to the Company. The Company believes this</p>	225.8 225.11	C	Presumed	<p>particular, among other changes, the Amended MD&amp;A have been revised: [...]</p> <p>to clarify and provide additional disclosure regarding the Company's supply contract with Quebec's Société Québécoise du cannabis (the "SQDC") including details of the Company's right under the contract for the sale of 20,000kg to the SQDC during the first year of the contract;</p> <p>Modifications made in <u>R-63</u>, p. 1, 18 PDF; and <u>R-64</u>, p. 1, 16 PDF</p> <ul style="list-style-type: none"> <li>• CD 8: MARCH 30, 2020</li> <li>• R-68 – Q2 2020 MD&amp;A</li> <li>• MFA, par. 164.26-164.36</li> </ul> <p>p. 15 PDF, footnote 5: By amendment effective on January 17, 2020, the Company contractually relieved the SQDC of the 1st year obligation to purchase the full 20 tons of the outstanding commitment.</p> <ul style="list-style-type: none"> <li>• ALL OTHER CDS, BECAUSE ALL INTERVIEWED.</li> </ul>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	GSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	<p><i>15 year excluded from this warning</i></p>	<p>agreement is the largest forward supply agreement in the history of the cannabis industry in Canada, based on year one volume.</p> <p>p. S-17: <u>Other than the agreement with the SQDC, pursuant to which the SQDC has agreed to purchase 20,000 kg of HEXO's products for the first year of the agreement, the agreements with the SQDC, the OCRC and the BCLDB do not contain purchase commitments or otherwise obligate the purchaser to buy a minimum or fixed volume of products from HEXO.</u> The amount of cannabis that the SQDC, the OCRC and the BCLDB may purchase under HEXO's agreements with them may therefore vary from what HEXO expects or has planned for. As a result, <u>HEXO's revenues could fluctuate materially in the future and could be materially and disproportionately impacted by the purchasing decisions of the SQDC, the OCRC and the BCLDB.</u> If any of the SQDC, the OCRC or the BCLDB decides to purchase lower volumes of products from HEXO than HEXO expects, alters its purchasing patterns at any time with limited notice or decides not to continue to purchase HEXO's cannabis products at all, <u>HEXO's revenues could be materially adversely affected, which could have a material adverse effect on HEXO's business, financial condition, results of operations and prospects.</u></p> <p>p. 71 PDF : [...] the Company has entered into a commercial agreement with the Société des alcools du Québec to be the preferred supplier of cannabis products for the Québec market for the first five years post-legalization, with an option to extend the term for an additional year. Under the agreement, the Company will supply 20,000 kg of products in the first year of the agreement and is expected to supply 35,000 kg in the second year and 45,000 kg in the third. The volumes for the final two years of the agreement will be established at a later date based on the sales generated in the first three years. [...]</p>				

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)?	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Jan. 21, 2019	R-23 – Corporate presentation Par. 111.1, 124-125	p. 11 PDF: Based on HEXO's 20,000 kg supply contract with Quebec for the first year post legalization p. 16 PDF: • Largest forward supply contract in the history of the cannabis industry in Canada based on year one volume • Take or pay feature for year one on 20,000 kg with an estimated over 30% market share in Quebec for first three years [...]	225.8 225.11	NC	Inferred	
Jan. 24, 2019	R-2: prospectus supplement Par. 111.1, 127-129.3	p. S-9-S-10: [...] the Company has entered into a supply agreement with the SQDC to be the preferred supplier of cannabis products for the Québec market for the first five years post legalization, with an option to extend the term for an additional year. The supply arrangement covers the full range of the Company's products and brands. Under the agreement, the Company will supply 20,000 kg of products in the first year of the agreement, which is subject to a take-or-pay feature for that year. The Company estimates that this represents an approximate 35% market share of the province's adult-use sales in the first year of legalization based on the volumes disclosed by other publicly traded cannabis companies who have also entered into SQDC supply agreements. The Company expects to supply 35,000 kg in the second year of the agreement and 45,000 kg in the third year. The Company estimates that the total amount expected to be supplied in the first three years of the agreement represents an approximate 30% market share of the province's adult-use sales based on the volumes disclosed by other publicly traded cannabis companies who have also entered into SQDC supply agreements. The volumes for the final two years of the Company's agreement with the SQDC will be established at a later date based on the sales generated in the first three years. The Company estimates that the total volume of cannabis to be supplied over the five-year term of the agreement could exceed 200,000 kg which, based on the average	225.8 225.11	C	Presumed	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		<p>sale prices assumed by the Company for its products, would represent approximately \$1 billion in estimated potential revenue to the Company. The Company believes this agreement is the largest forward supply agreement in the history of the cannabis industry in Canada, based on year one volume.</p> <p>p. S-17: HEXO expects to derive a significant portion of its future revenues from the recently legalized adult-use cannabis industry and market in Canada, including through its agreements with the SQDC in Québec, the OCRC in Ontario and the BCLDB in British Columbia (...) <u>Other than the agreement with the SQDC, pursuant to which the SQDC has agreed to purchase 20,000 kg of HEXO's products for the first year of the agreement, the agreements with the SQDC, the OCRC and the BCLDB do not contain purchase commitments or otherwise obligate the purchaser to buy a minimum or fixed volume of products from HEXO. The amount of cannabis that the SQDC, the OCRC and the BCLDB may purchase under HEXO's agreements with them may therefore vary from what HEXO expects or has planned for. The amount of cannabis that the SQDC, the OCRC and the BCLDB may purchase under HEXO's agreements with them may therefore vary from what HEXO expects or has planned for. As a result, HEXO's revenues could fluctuate materially in the future and could be materially and disproportionately impacted by the purchasing decisions of the SQDC, the OCRC and the BCLDB. If any of the SQDC, the OCRC or the BCLDB decides to purchase lower volumes of products from HEXO than HEXO expects, alters its purchasing patterns at any time with limited notice or decides not to continue to purchase HEXO's cannabis products at all, HEXO's revenues could be materially adversely affected, which could have a material adverse effect on HEXO's business, financial condition, results of operations and prospects.</u></p>				

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)?	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
March 13, 2019	R-27 – MD&A Q2 2019 Par. 133-134	<p>PDF, p. 71: [...] Under the agreement, the Company will supply 20,000 kg of products in the first year of the agreement and is expected to supply 35,000 kg in the second year and 45,000 kg in the third. [...]</p> <p>p. 3 PDF: In Quebec alone, we will supply 20,000 kg in the first year of legalized adult-use cannabis and up to approximately 200,000 kg over the first five years of legalized adult-use cannabis.</p> <p>p. 5 PDF: <b>The strategic value of our SQDC relationship cannot be understated.</b> We hold the single largest forward contract in the history of the emerging cannabis industry with the SQDC and are the preferred supplier for cannabis products for the Quebec market for the first five years following legalization. <b>We will supply the SQDC with 20,000 kg of products in the first year, and we expect to supply 35,000 kg and 45,000 kg in years two and three, respectively.</b> The volumes for the final two years of the agreement will be established at a later date based on the sales generated in the first three years. However, based on an expected market growth rate of 10%, <b>we anticipate supplying 49,500 kg and 54,450 kg in years four and five, respectively.</b> The Company estimates the total volume to be supplied over the five-year term of the agreement to be in excess of 200,000 kg. Based on the current publicly disclosed agreements signed between the SQDC and seven other licensed producers, we have obtained the highest year one volume, representing approximately 30+% market share within Quebec, and we are aiming to remain the largest supplier in subsequent years.</p> <p>p. 11 PDF: We hold the single largest forward supply contract among licensed producers, based upon announced agreements for year one of legalization, with <b>20,000 kg to be supplied to Quebec in the first year.</b></p>	225.8 225.11	C	Presumed	

First PARTIAL RECTIF (habeshtul too) See page 2

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
March 14, 2019	R-30 – Earnings call transcript Q2 2019	p. 4: I want to take note to mention that the SQDC 20 ton commitment is fully on track Our relationship remains an amazing standing and we're really excited about all the stores they're opening [...] our meaningful wrap towards that 400 million starts in Q4.	225.9	NC	Inferred	
June 12, 2019	R-32 – MD&A Q3 2019 Par. 137-139	p. 3 PDF: We currently possess the single largest and longest Canadian forward supply amount among all licensed producers, based upon announced provincial supply agreements. In Quebec alone, we will supply 20,000 kg in the first year of legalized adult-use cannabis and could exceed an estimated 200,000 kg over the first five years of legalized adult use cannabis.  p. 5 PDF: The strategic value of our SQDC relationship cannot be understated. We hold the single largest forward contract in the history of the emerging cannabis industry with the SQDC and are the preferred supplier for cannabis products for the Quebec market for the first five years following legalization. We will supply the SQDC with 20,000 kg of products in the first year, and we expect to supply 35,000 kg and 45,000 kg in years two and three, respectively. The volumes for the final two years of the agreement will be established at a later date based on the sales generated in the first three years. The	225.8 225.11	C	Presumed	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)?	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
June 13, 2019	R-36 -- Earnings Call Transcript Q3 2019 Par. 140-145.7	<p>Company estimates the total volume to be supplied over the five-year term of the agreement could exceed 200,000 kg.</p> <p>p. 11 PDF: We hold the single largest forward supply contract among licensed producers, based upon announced agreements for year one of legalization, with <u>20,000 kg to be supplied to Quebec in the first year.</u></p> <p>p. 8: Oliver Rowe -- Scotiabank -- Analyst</p> <p>Hey, good morning. Thanks for taking my question. When I think about Quebec, which is obviously an important market for you, you're expecting 20,000 kilograms of sales to Quebec in the first year for ag (ph). I think we're over halfway through that year now and sales within about 5,500 kilograms to that province. So it seems to me like it could be a bit challenging for the SQDC sales to triple over the remaining five months. Do you see a risk that the SQDC doesn't need that much product, but picks it anyway and that leads to significant inventory builds and maybe even impacts demand on your year two contract? Sebastien St-Louis -- Co-founder and Chief Executive Officer</p> <p>Yeah. So definitely a risk. I think the demand is there in Quebec. I think SQDC has been doing a fantastic job, but since there were inventory supply shortages on the early days from most LPs, so HEXO was delivering on its purchase orders, but SQDC weren't getting fully supplied. They slowed their store ramps. So the original plan called for about 25 stores in Quebec by this day. And last quarter we were at about 13. Now the good news is SQDC has now gone back to seven days of full time selling. So that adds significant demand. They've added more stores now. So we have a brand new store in Gatineau, right next to an Ottawa population center.</p>	225.9	NC	Inferred	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPLICATED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		<p>I do think there could be some timing risk around a few of those tons -- of those 20 tons. Now of course, as you pointed out, it is to take or pay contract, but we value our relationship with SQDC more than the few million dollars in revenue we could get this quarter. So we're working very closely with them. We ramped (ph) our SKU mix to create more interesting products. We plan on launching a whole bunch of new products over the following couple quarters, which we think will help that, but expect some timing risk whether it's an <u>October, November, December</u> timeline to hit the full 201 I think would be a reasonable assumption. We're confident we can completely offset that in more of course in other provinces.</p>				
<p><b>II- REVENUE GENERATION</b></p> <p><b>A. Double HEXO Revenues Between Q2 and Q4 2019</b></p>						
<p>March 13, 2019</p>	<p>R-27 – MD&amp;A Q2 2019 Par. 133-134</p>	<p>p. 18 PDF: Net revenues for the fourth quarter are expected to approximately double those of the second quarter for the reasons detailed above. [Note: These reasons include the Québec Supply Agreement and the Newstrike acquisition.]</p>	<p>225.8</p>	<p>C</p>	<p>Presumed</p>	<ul style="list-style-type: none"> <li>• CD 2: OCT. 10, 2019 R-39 – HEXO NEWS RELEASE Mfa, par. 150-154.1</li> </ul>
<p>March 14, 2019</p>	<p>R-30 – Earnings Call Transcript Q2 2019 Par. 135-136.3</p>	<p>p.-15-16: Robert Fagan                      Sebastien, I just want to focus on your guidance for the next quarter being so much flat in terms of revenues. If we kind of look at that outlook and assume you double sales in the Q4, it would still require a pretty significant rampup in volumes in Q1 2020 to hit your 20 tons supply commitment to Quebec. How confident are you feeling about that and is there any risk for that?                      Sebastien St. Louis</p>	<p>225.9</p>	<p>NC</p>	<p>Inferred</p>	<p>HEXO Corp provides preliminary fourth quarter 2019 revenue results and withdraws fiscal year 2020 outlook</p> <p>[...] Based on preliminary financial information and subject to year-end closing adjustments, HEXO expects net revenue for the fourth quarter to be approximately \$14.5 million to \$16.5 million [...] [Note: This is more than 40% lower than the roughly</p>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)?	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		<u>I'm absolutely confident about that Rob.</u> Look at historically what we've done in terms of rampup, so if you look at the multiples we've put forth on previous sales; I think there has always been a doubt for HEXO's ability to rampup and <u>we've executed every single time. So I'm telling everybody now we will execute again.</u> Are there risks? Yes. So there is some licensing risk around our Belleville facility. So that Belleville facility and the infrastructure and the backing is critical towards getting this done. But we've given ourselves adequate buffer, the license application is already in, we're already in conversation with Health Canada, and we have of course, phenomenal relationship. So we think that's adequately mitigated.				\$26 million in net revenue for Q4 2019 that the Company had projected as late as June 13, 2019, with only weeks then remaining in Q4 2019. ] "Fourth quarter revenue is below our expectation and guidance, primarily due to lower than expected product sell through," commented Sebastien St-Louis, CEO and co-founder of HEXO Corp. [...] • CD 3: OCT. 28-29, 2019 R-42: Q4 2019 MD&A /R-49 – EARNINGS CALL Q4 2019 / R-43 – FINANCIAL STATEMENTS/R-44 - 2019 AIF / R-45 - ANNUAL REPORT MFA, par. 155-156.5
March 14, 2019	R-31 – press release	p. 6: Net revenues for the fourth quarter are expected to approximately double those of the second quarter for the reasons detailed above.	225.8	NC	Inferred	
June 12, 2019	R-32 – MD&A Q3 2019 Par. 137-139	p. 20 PDF: As the Company begins realizing sales from its first harvests of from its B9 greenhouse in the fourth quarter of fiscal 2019 net revenues are expected to approximately double those of the current quarter.	225.8	C	Presumed	- R-42, p. 24: Total net revenue in the fourth quarter of fiscal 2019 increased to \$15,424 [...]. [Note: This missed the approximately \$26 million in net revenue that the Company had announced for Q4 2019 (double Q2 2019 revenues) by roughly 41%. Only weeks before Q4 ended, Defendants reiterated that they would meet their Q4 2019 \$26 million target.]
June 12, 2019	R-35 – press release Par. 95, 137-139	p. 1: HEXO remains on-track ramping up to \$400 million net revenue in fiscal 2020 and to double net revenue in Q4 fiscal 2019 p. 3-4: As the Company begins realizing sales from its first harvests of from its B9 greenhouse in the fourth quarter of fiscal 2019 net revenues are expected to approximately double those of the current quarter.	225.8	NC	Inferred	
June 13, 2019	R-36 – Earnings Call	[With only a few weeks left in Q4 2019:]	225.9	NC	Inferred	- See also R-49, p. 4

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	<p>Transcript for Q3 2019 Par. 140-145.7</p>	<p>p. 5: We expect revenues to double this quarter [...]</p> <p>p. 15: So the doubling of revenue would include the Newstrike numbers, which are expected to be consolidated in next quarter, Yes.</p> <p>p. 17: So I think last quarter I had mentioned that we'd be flat this quarter, we'd double in Q4. And I pointed that the key reason for that is that our infrastructure to package what we were growing was still ramping up, right. And now that infrastructure, this particular quarter has caught up and that's what's leading to the double.</p> <p>[...] So that's why we're going to double [...]</p> <p>p. 26: As we double this quarter and as we go of course, and we start to ramp from there into our CAD400 million next year, as I mentioned, the infrastructure black goes away largely by fall. So you have more and more capacity to supply into these markets.</p> <p>p. 27: Krishna Ruthnum -- CIBC -- Analyst</p> <p>Okay. Thanks for that. And one last question just on your guidance for Q4, just given where we are in the quarter, just wondering if you can give us some comments on the trend to date as well as your -- the pace and sort of your confidence of reaching that target?</p> <p>Sebastien St-Louis -- Co-founder and Chief Executive Officer</p> <p><u>We're going to reach the target.</u> I mean, I'd ask you and I continuously, I welcome a challenge-as I think that the analyst community is doing a phenomenal job in our space. I welcome more transparency in our space. I welcome a broader discussion for investors. <u>if you ever hear me say something and not deliver, you have to call me out. And in reverse, I would tell you today, nobody has ever called me out on anything because</u></p>				<p>- <i>Inter alia</i>, R-42, p. 38-39; R-44, p. 42-44; R-45, p. 40-42 PDF:</p> <p><b>FINANCIAL REPORTING</b></p> <p>The Company did not maintain effective process level and management review controls over manual financial reporting processes and the application of IFRS and accounting measurements related to certain significant accounts and non-routine transactions.</p> <p>To strengthen the controls surrounding the financial reporting process, management has initiated the following:</p> <ul style="list-style-type: none"> <li>• Assessing the financial and accounting resources in order to identify the areas and functions that lack sufficient personnel and other resources.</li> <li>• Hiring additional personnel, to be dedicated to the implementation, maintenance and monitoring of disclosure and financial controls, including our current efforts to recruit a Director of Finance; and,</li> <li>• Engaging third-party advisors with appropriate expertise to assist in the application of complex accounting measurements and non-routine transactions.</li> </ul>

DATE	REF.	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)?	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE.	PUBLIC CORRECTION (CD)
		HEXO has always delivered what we said we would. We're delivering a double this quarter.				<ul style="list-style-type: none"> <li>ALL OTHER CDs, BECAUSE ALL INTERTWINED.</li> </ul>
<b>B. \$400M in Net Revenue in 2020</b>						
March 13, 2019	R-26 – press release Par. 95, 130-132	<p>p. 1: With this acquisition, HEXO will add 470,000 sq. ft. in production space when completed [...] Over \$400 million of pro forma net annual revenue ending July 2020 expected by HEXO following acquisition</p> <p>[...] today are (sic) committing to achieving over \$400 million in net revenue in 2020</p> <p>p. 3: Based on the completion of the Transaction, for fiscal 2020, HEXO estimates net and gross revenues from the sale of cannabis in Canada will be in excess of \$400 million and \$479 million respectively.</p>	225.8 225.11	NC	Inferred	<ul style="list-style-type: none"> <li>CD 2: OCT. 10, 2019 R-39 – HEXO NEWS RELEASE Mfa, par. 150-154.1</li> </ul> <p>HEXO Corp provides preliminary fourth quarter 2019 revenue results and withdraws fiscal year 2020 outlook</p>
March 14, 2019	R-30 – Earnings Call Transcript Q2 2019 Par. 135-136.1	<p>p. 4: I want to take note to mention that the SQDC 20 ton commitment is fully on track Our relationship remains an amazing standing and we're really excited about all the stores they're opening [...] our meaningful wrap towards that 400 million starts in Q4. [...] leading us to that \$400 million in net revenue next year. Of course, the additional capacity from Newstrike is going to help as well.</p> <p>p. 6: [...] Newstrike [...] as this turns into what we're guiding to be \$400 million in net revenue next year, we think it'll be very accretive [...]</p> <p>p. 8: [...] And this is why HEXO was very bullish and why we think our Belleville facility is transformational. A 2 million square foot facility will give us enough space to fulfill that \$400 million net sales next year and beyond. [...]</p> <p>p. 10: Brett Hundley</p>	225.9	NC	Inferred	<p>[...] Slower than expected store rollouts, a delay in government approval for cannabis derivative products and early signs of pricing pressure are being felt nationally. The delay in retail store openings in our major markets has meant that the access to a majority of the target customers has been limited. Additionally, regulatory uncertainty across the pan-Canadian system and jurisdictional decisions to limit the availability and types of cannabis derivative products have contributed to an increased level of unpredictability. As a result, HEXO is withdrawing its previously issued financial outlook for fiscal year 2020. [...]</p>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)?	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREPRESENTATION AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		<p>And the last one here on the Newstrike Brands deal, you talked about that \$400 million expected in revenue from the combined entity, seems fairly conservative based on Newstrike capacity and legacy growth brands with HEXO. Can you talk a little bit about the forward asset mix expectations for Newstrike and any other factors that might impact your forward revenue projections?</p> <p>Sebastien St. Louis</p> <p>Yes. So, I'm not breaking up the HEXO and Newstrike. So forecast is really a function of us correcting the overly conservative analyst's estimates. I'm glad to hear your comments. I mean if you think that's conservative, that was certainly -- the intention is to hit that number. So, <u>we'll do that or better</u> and so anything above that is really upside. [...]</p> <p>p. 17 [...] when we hit that \$400 million net [ph] next year, and of course, that's supported by very strong demand; that's why we're confident putting that number.</p>				<ul style="list-style-type: none"> <li>CD 3: OCT. 28-29, 2019</li> <li>R-42: Q4 2019 MD&amp;A / R-43 – financial statements / R-44 - 2019 AIF / R-45 - Annual Report</li> <li>Inter alia, R-42, p. 38-39; R-44, p. 42-44; R-45, p. 40-42 PDF, above, re: lack of internal controls.</li> <li>ALL OTHER CDS, BECAUSE ALL INTERTWINED.</li> </ul>
June 12, 2019	R-35 – press release Par. 95, 137-139	<p>p. 1: <b>HEXO remains on-track ramping up to \$400 million net revenue in fiscal 2020 and to double net revenue in Q4 fiscal 2019 [...]</b> This quarter saw HEXO remain on-track as it continues ramping up to \$400 million in revenue in fiscal 2020 [...]</p>	225.8	NC	Inferred	
June 13, 2019	R-36 – Earnings call transcript Q3 2019	<p>p. 4: We remain focused on delivering net revenues in fiscal 2020 of over CAD 400M and that of course excludes Truss Beverages.</p> <p>p. 6: [...] we're on target looking at forward revenue of CAD 400M [...]</p> <p>p. 7: There are two key risks to the CAD400 million. So the first one is of course the -- as you pointed out, the regulatory risk. So, if we don't get the advanced products that</p>	225.9	NC	Inferred	

DATE	REF. EXHIBIT (R-) MFA: (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)?	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	Par. 140-145.7	<p>would put -- and I believe the risk of not getting it is also is negligible. I think the risk is really in delays. As I mentioned on the call, I think a delay to December would be prudent to expect a delay potentially in the December. But if it's further delayed that could put upwards of CAD100 million of that CAD400 million at risk as that we're planning advanced products to be about 25% of that number.</p> <p>The second risk is an execution risk, so much more in our control relating to our Belleville facility. So to achieve that CAD400 million target, we do need Belleville to be operational in the fall. And we are on track for that. But if something should happen outside of expectations, I would put that number at risk. We are confident we will deliver an operational facility in time.</p> <p>p. 12: So we haven't provided guidance spread on specific ramps for the CAD400 million, but you can expect that it will be an incremental step function, so try to -- I think if your model is a linear model, it will get pretty close.</p> <p>p. 14: I am happy to share with you that 2020, we're going to make some money. I mean obviously, CAD400 million at the kind of margin we're throwing off, it would be a little foolish not to.</p> <p>p. 25: So the CAD400 million guidance is for fiscal ending July.</p> <p>p. 26: As we double this quarter and as we go of course, and we start to ramp from there into our CAD400 million next year, as I mentioned, the infrastructure black goes away largely by fall. So you have more and more capacity to supply into these markets.</p>				

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
<b>III- NEWSTRIKE</b>						
<b>A. Newstrike Annual Synergies</b>						
March 13, 2019	R-27 – MD&A Q2 2019 Par. 133-134	p. 13 PDF: Capacity boost with state-of-the-art cultivation infrastructure: The Transaction gives HEXO the capacity to produce approximately 150,000 kg of high-quality cannabis annually. The Transaction also provides HEXO access to four cutting-edge production campuses totalling close to 1.8 million sq. ft. of near-term cultivation space and diversified growing and production techniques. This is in addition to HEXO's 579,000 sq. ft. facility for a manufacturing and product development centre of excellence in Belleville, Ontario. [...]	225.8 225.11	C	Presumed	<ul style="list-style-type: none"> <li>CD 3: OCT. 28-29, 2019</li> <li>R-42: Q4 2019 MD&amp;A / R-43 – financial statements / R-44 - 2019 AIF / R-45 - Annual Report / R-49 Earnings Call Q4 2019</li> <li>MFA, par. 155-156.5</li> </ul>
March 13, 2019	R-26 – press release Par. 95, 130-132	<p>p.1: With this acquisition, HEXO will add 470,000 sq. ft. in production space when completed [...]</p> <p>The Transaction gives HEXO the capacity to produce approximately 150,000 kg of high-quality cannabis annually. The Transaction also provides HEXO access to four cutting-edge production campuses totalling close to 1.8 million sq. ft. of near-term cultivation space and diversified growing and production techniques. This is in addition to HEXO's</p>	225.8 225.11	NC but also stated in core document of	Inferred	<p>p. 17: As part of the changes to its operations, cultivation has been suspended at the Niagara facility acquired from Newstrike, and in 200,000 sq. ft. at the Company's main facility in Gatineau. The Company determined that this cultivation space is not required at this time given the current market conditions in Canada.</p>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		579,000 sq. ft. facility for a manufacturing and product development centre of excellence in Belleville, Ontario.  Premium indoor facility: Newstrike's licensed indoor facility provide HEXO with access to diversified growing techniques and positions HEXO for flexibility for international exports as global cannabis markets continue to open.  The combined entity is estimated to realize annual synergies of \$10 million [...]		same date		[Note: Both announcements do not bode well for the touted annual synergies.]  R-43, p. 27 PDF, and R-45, p. 40, 71 PDF: Identical language as R-42, p. 37 above.  R-44, p. 12, 15; R-45, p. 20 PDF; R-49, p. 6: Similar or identical language as R-42, p. 17 above.
March 14, 2019	R-30 – Earnings Call Transcript Q2 2019 Par. 135-136.1	p. 7: We do think we'll pick up a couple of synergies along the way. So, between, listing fees, legal fees, some key executives where you should be able to find synergies above \$10 million.	225.9	NC	Inferred	<ul style="list-style-type: none"> <li>CD 4: NOVEMBER 15, 2019 R-48 – HEXO PRESS RELEASE MFA, par. 96-96.1, 136.3, 160-164</li> </ul> <p>Today, the [Newstrike] facility is no longer operational. On October 24, 2019, HEXO announced it was right-sizing its operations and winding down operations in Niagara.</p>
March 14, 2019	R-31 – press release	p. 2: The combined entity is estimated to realize annual synergies of \$10 million [...]	225.8	NC	Inferred	<ul style="list-style-type: none"> <li>CD 5: DECEMBER 16, 2019 R-50 – Q1 2020 MD&amp;A / R-51 FINANCIAL STATEMENTS</li> </ul>
June 12, 2019	R-32 – MD&A Q3 2019 Par. 137-139	p. 14 PDF: The combined entity is estimated to realize annual savings of millions of dollars in operational synergies, allowing HEXO to operate efficiently with a commitment to continued excellence.	225.8	C	Presumed	<ul style="list-style-type: none"> <li>p. 7 PDF: Operations at the Niagara facility are currently halted under the Company's restructuring efforts.</li> </ul>
June 12, 2019	R-35 – press release	p. 1: The combined entity is estimated to realize millions in annual synergies, allowing HEXO to operate more efficiently with a continued commitment to excellence.	225.8 225.11	NC	Inferred	<ul style="list-style-type: none"> <li>p. 8 PDF: Temporarily suspended cultivation activities in Niagara and in 200,000 sq. ft. in Gathneau.</li> </ul>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	Par. 95, 137-139					<p>Similar language at R-50, p. 18 PDF; R-51, p. 13</p> <ul style="list-style-type: none"> <li>CD 7: MARCH 17, 2020</li> <li>R-62 – HEXO PRESS REPORT</li> <li>Par. 164.21-164.23</li> </ul> <p>[...] the Company no longer expects to re-commence operations at the Niagara Facility and has decided to market the facility for sale. [...]</p> <p>These conditions combined with the accumulated losses to date indicate the existence of a material uncertainty that may cast doubt on the Company's ability to continue as a going concern.</p> <ul style="list-style-type: none"> <li>CD 7: MARCH 19, 2020</li> <li>R-63 – RE-AMENDED MD&amp;A Q4 2019 /</li> <li>R-64 – RE-AMENDED MD&amp;A Q1 2020 /</li> <li>R-67 – HEXO PRESS REPORT</li> <li>Par. 164.24-164.25</li> </ul> <p>R-67:</p> <p>HEXO Corp. ("HEXO" or the "Company") (TSX: HEXO, NYSE: HEXO) today announced it has amended and refilled its management's discussion and analysis for the fiscal year ended July 31, 2019 (the "Amended 2019 MD&amp;A") and its management's discussion and analysis for the three month period ended October</p>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
						<p>31, 2019 (the "Amended Q1 2020 MD&amp;A") to better comply with National Instrument 51-102 - Continuous Disclosure Obligations.</p> <p>As noted in the press release of the Company dated March 17, 2020, the Amended 2019 MD&amp;A and Amended Q1 2020 MD&amp;A (collectively, the "Amended MD&amp;A") were prepared following a continuous disclosure review by the Ontario Securities Commission ("OSC") of the Company's disclosure record. The Amended MD&amp;A were filed to address comments received from OSC Staff and in order to improve the Company's disclosure. In particular, among other changes, the Amended MD&amp;A have been revised: [...]</p> <p>to clarify that the suspension of operations at the Company's Niagara, Ontario facility in October 2019 was completed [...]</p> <p>Modifications made in <u>R-63</u>, p. 1, 9 PDF, and <u>R-64</u>, p. 1, 9 PDF.</p> <ul style="list-style-type: none"> <li>• CD 8: MARCH 30, 2020</li> </ul> <p>R-68 – Q2 2020 MD&amp;A / R-69 FINANCIAL STATEMENTS MFA, par. 164.26-164.36</p>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	OSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
						<p>R-68: p. 4 PDF: As the result of changes in the market conditions in Canada, the Company completed a strategic review of its cultivation capacity and assets and determined that it would list its Niagara facility for sale and record an impairment on property, plant and equipment and intangible assets. After a shift in the market capitalization of the Company, we determined that the total net assets significantly exceeded the Company's market capitalization. Based on this assessment, we performed an indicator-based impairment test of goodwill and recorded an impairment as at January 31, 2020.</p> <p>p. 7 PDF: On March 2, 2020 management concluded that the cultivation capacity of the Niagara facility is no longer needed based on significant excess cultivation capacity in the market and that previously suspended operations are not intended to restart. As a result, the facility and certain of its equipment and related cultivation and processing licences have been impaired to their fair value less disposal costs (see Notes 10 and 11 of the consolidated interim financial statements for the three and six months ended January 31, 2020) and certain of its property and equipment will be</p>

DATE	REF. EXHIBIT (R-)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	MFA <sup>1</sup> (PAR.)					<p>marketed for sale beginning in the third quarter of fiscal 2020.</p> <p>p. 20 PDF: Total Net loss: (298,167) [million dollars]</p> <p>• The Company recorded impairments to goodwill, intangible assets and property, plant and equipment of \$111,877, \$106,189 and \$32,082, respectively. [in millions of dollars]</p> <p>Confirmed in R-69, p. 4, 13-16 PDF</p> <p>• <b>ALL OTHER CDs, BECAUSE ALL INTERTWINED.</b></p>
<b>B. Niagara Licensing</b>						
March 13, 2019	R-27 – MD&A Q2 2019 Par. 133-134	<p>p. 13 PDF: Capacity boost with state-of-the-art cultivation infrastructure: The Transaction gives HEXO the capacity to produce approximately 150,000 kg of high-quality cannabis annually. The Transaction also provides HEXO access to four cutting-edge production campuses totalling close to 1.8 million sq. ft. of near-term cultivation space and diversified growing and production techniques. This is in addition to HEXO's 579,000 sq. ft. facility for a manufacturing and product development centre of excellence in Belleville, Ontario. [...]</p> <p>Premium indoor facility: Newstrike's licensed indoor facility provide HEXO with access to diversified growing techniques and positions HEXO for flexibility for international exports as global cannabis markets continue to open.</p>	225.8 225.11	C	Presumed	<ul style="list-style-type: none"> <li>CD 4: NOVEMBER 15, 2019 R-48 – HEXO PRESS RELEASE MFA, par. 96-96.1, 136.3, 160-164</li> </ul> <p>HEXO Corp provides additional transparency on licensing [...]</p> <p>On July 30, 2019, shortly after the Newstrike Brand Ltd. acquisition closed, HEXO discovered that cannabis was being grown in Block B, which was not adequately licensed. HEXO management</p>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPLICATED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREDEAT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
March 13, 2019	R-26 – press release Par. 95, 130-132	<p>p.1: <b>With this acquisition, HEXO will add 470,000 sq. ft. in production space</b> when completed [...] Over \$400 million of pro forma net annual revenue ending July 2020 expected by HEXO following acquisition</p> <p>The Transaction gives HEXO the capacity to produce approximately 150,000 kg of high-quality cannabis annually. The Transaction also provides HEXO access to four cutting-edge production campuses totalling close to 1.8 million sq. ft. of near-term cultivation space and diversified growing and production techniques. This is in addition to HEXO's 579,000 sq. ft. facility for a manufacturing and product development centre of excellence in Belleville, Ontario.</p> <p>Premium indoor facility: <b>Newstrike's licensed indoor facility</b> provide HEXO with access to diversified growing techniques and positions HEXO for flexibility for international exports as global cannabis markets continue to open.</p> <p>The combined entity is estimated to realize annual synergies of \$10 million [...] [...] today are (sic) committing to achieving over \$400 million in net revenue in 2020</p>	225.8 225.11	NC But reiterates statement in core document of same day	Inferred	<p>Immediately ceased cultivation and production activities in the unlicensed space.</p> <ul style="list-style-type: none"> <li>• <b>ALL OTHER CDS, BECAUSE ALL INTERTWINED.</b></li> </ul>
March 14, 2019	R-30 – Earnings call transcript Q2 2019 Par. 135-136.3	<p>p. 8: <b>Sebastien St. Louis</b></p> <p>Yes. So, of the total 450,000 square feet that we're adding, <b>there's 250,000 feet that are licensed operational</b> and we're looking forward to bringing in the HEXO team in there to ramp up the yields. We believe that coupled with the great infrastructure Newstrike's put in place, putting in HEXO's management and production processes will greatly increase a yield there. [Note: The licensing issue in Block B relates to this portion, said to have been already licensed and operational (cf. Exhibit R-48).]</p> <p>Tamy Chen</p>	225.9	NC	Inferred	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		<p>And the other 200,000 square feet that's still under construction? Sebastien St. Louis</p> <p>That's correct. So, well under way, the walls are all up, the glasses on, but there will be a licensing -- there's an expected licensing delay on that. But of course, we're putting our regulatory team which as we've proven time and time again and one of the best in the business, so we don't want to anticipate any major issues.</p>				
March 14, 2019	R-31 – press release	<p>p. 2: The [Newstrike] acquisition will provide HEXO Corp capacity to produce approximately 150,000 kg of high-quality cannabis annually with access to four cutting-edge production campuses.</p>	225.8	NC	Inferred	
June 12, 2019	R-32 – MD&A Q3 2019 Par. 137-139	<p>p. 3 PDF: We currently hold approximately 1.3 million sq. ft. of operating space at our home base Gatineau campus. In addition, [...] and through our Newstrike Brands Ltd acquisition an additional 469,000 sq. ft. in Brantford and Niagara once fully retrofitted.</p> <p>p. 14 PDF: The Niagara facility is a 240,000 sq. ft fully automated, modern "Dutch-Tray" facility, consisting of 186,400 sq. ft dedicated to production and cultivation, with the remaining space allocated to administration, packaging and shipping/receiving areas. The facility will produce approximately 20,000 kg of dried cannabis annually. This facility is situated on approximately 16.6 acre of land and <u>received its cultivation licence under the Cannabis Act on March 29, 2018.</u></p>	225.8 225.11	C	Presumed	
June 12, 2019	R-35 – press release	<p>p. 1: • Closing of the Newstrike Brands Ltd ("Newstrike") acquisition on May 24, 2019, which resulted in the following: [...]</p>	225.8 225.11	NC	Inferred	

DATE	REF. EXHIBIT (R-1) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	Par. 95, 137-139	<ul style="list-style-type: none"> <li>Increased footprint to approximately 1.8 million sq. ft. of production space and 638,000 sq. ft. of manufacturing and distribution space</li> <li>Increased total estimated annual production capacity to 150,000 kg of dried cannabis, once fully operational [...]</li> </ul> <p>HEXO most recently announced the closing of the agreement to acquire Newstrike. The acquisition will provide HEXO Corp capacity to produce approximately 150,000 kg of high-quality cannabis annually with access to four additional production campuses.</p>				
Oct. 28, 2019	R-42 – Q4 2019 M/D&A Par. 155-156,5	<p>p. 17: The Niagara facility is a 240,000 sq. ft fully automated, modern “Dutch-Tray” facility, consisting of 186,400 sq. ft licensed for production and cultivation, with the remaining space allocated to administration, packaging and shipping/ receiving areas. The facility is currently capable of producing up to 20,000 kg of dried cannabis annually. This facility is situated on approximately 16.6 acre of land and received its cultivation licence under the Cannabis Act on March 29, 2018. [Note: As appears from HEXO’s press release dated November 15, 2019, Exhibit R-48, HEXO learned in July that part of the existing portion of the Niagara facility was not properly licensed. This October disclosure is therefore dishonest.]</p>	225.8 225.11	C	Presumed under the QSA AND Admitted CD 4, R-48	
Oct. 28, 2019	R-45 – 2019 Annual Report Par. 155-156,5	p. 20 PDF: [Identical language as that above in R-42]	225.8 225.11	NC	Admitted by Defendants : CD 4, R-48	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)?	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Oct. 28, 2019	R-43 – 2019 annual financial statements	<p>p. 10 PDF: HEXO is a producer of cannabis and its sites are licensed by Health Canada for production and sale.</p> <p>p. 25: Newstrike is a licensed producer of cannabis operating in Ontario, Canada and was acquired for additional production capacity, established sales relationships and its brand.</p>	225.8 225.11	C	Presumed under the QSA AND Admitted CD 4, R-48	
Oct. 28, 2019	R-44 - 2019 AIF Par. 155-156.5	<p>p. 7: Through the acquisition of all of the issued and outstanding common shares of Newstrike on May 24, 2019, the Company also acquired two Health Canada licences issued under the name Up Cannabis Inc. ("Up Cannabis"), a subsidiary of Newstrike, for its facilities in Brantford, Ontario (the "Brantford Licence") and Niagara, Ontario (the "Niagara Licence") (see "General Development of the Business - Significant Acquisitions - Newstrike"). The Brantford Licence was most recently renewed on November 10, 2018 and has a term ending on December 19, 2019. The Niagara Licence has a term ending on March 29, 2021. Newstrike and Up Cannabis have subsequently been amalgamated with HEXO Operations. The Brantford Licence and Niagara Licence are currently issued in the name of Up Cannabis Inc. The Company has notified Health Canada of its intention to have the Brantford Licence and Niagara Licence re-issued under HEXO Operations. [...] The Niagara licence expires on March 29, 2021. HEXO is not currently aware of any reason why it would not be able to receive a renewal of its licences.</p> <p>p. 12: There are currently two Health Canada licences issued in the name of Up Cannabis: one licence is for a facility in Brantford, Ontario and the other is for a licence for a facility in Niagara, Ontario.</p>	225.8 225.11	C	Presumed under the QSA AND Admitted CD 4, R-48	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Oct 28, 2019	R-49: HEXO Press Release Par. 163.2	p. 26: HEXO's business operations are dependent on being licenced under the Cannabis Act. All licences must be renewed annually. HEXO's Gatineau licence expires on April 15, 2020, the Brantford licence expires on December 19, 2019 and the Niagara licence expires on March 29, 2021. [...] The Company is not currently aware of any circumstances that would impede the renewal of any of its licences.  [...] by operating in complete alignment with regulations [...] [Note: This statement was made when Defendants knew the Niagara facility had been operated illegally. Not only were they still concealing information that they had the obligation to disclose to investors, but they were boasting the opposite from the truth.]	225.8 225.11	NC	Admitted by Defendants: CD 4, R-48	
<b>IV- INVENTORY</b>						
March 14, 2019	R-30 – Earnings Call Transcript Q2 2019 Par. 135-136.1 Par. 145.7	p. 8-9: Tamy Chen  Okay, thanks. My next question is just looking at yesterday there was some Health Canada data that came out about industry production inventory and sales data. And <b>there seems to be this continued disconnect in terms of inventory seems to be piling up, but it's not fully through enough down to the sales channel.</b> And just wondering if you have any insights and what HEXO's experience has been. I mean, what's causing this, is it production issues, is it supply chain issues and as a result, can you just comment on how we should think about HEXO's pace of sales over the rest of this year in this context?  Sebastien St. Louis	225.9	NC	Inferred	<ul style="list-style-type: none"> <li>CD 3: OCT. 28-29, 2019 R-42: Q4 2019 MD&amp;A / R-43 – financial statements / R-44 - 2019 AIF / R-45 - Annual Report MFA, par. 155-156.5</li> <li>R-42, p. 26; R-43, p. 6 PDF; p. 26: Impairment loss on inventory: 16,918 million dollars</li> </ul>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		<p>Yes, and well, I think that pace of sales I've mentioned that Q3 would be relatively flat and that's much do do not only the growing out of B9 but also all the processing equipment required. I think as a general rule, all the LPs including HEXO generally underestimated the amount of packaging, infrastructure and logistics and the employees and space that it would take to actually do fulfillment. It's one thing to grow this product. It's one thing to bag it and drying bags, but by the time you're thinking about putting it in individual multiline products that's one complex. And this is why HEXO was very bullish and why we think our Belleville facility is transformational. A 2 million square foot facility will give us enough space to fulfill that \$400 million net sales next year and beyond. And so that's all baked into that forecast that we're giving you, that we will be up and running in Belleville in fact that we expect to have that fully up and running by the end of the summer. And so, we don't expect any -- too many more challenges from there. But that's where you're seeing the disconnect is basically inventory piling up from cultivation and LPs not being able to process it.</p> <p>p. 17: Steven Schneiderman</p> <p>Just one question on Q3 being relatively flatish. Is that more of a factor of what you're seeing in terms of market demand or is that more of a factor of current production limitations? And just also in the face of that you produced twice as much candidates as was built in the quarter, it would seem to -- that there should be enough inventory for a little bit more of meaningfully rampup in the quarter. So I just wanted to get your thoughts there?</p> <p>Sebastian St. Louis</p> <p>Yes, it's entirely related to the supply and packaging infrastructure. So I've alluded to this earlier in one of the questions but effectively growing cannabis is one thing and</p>				<p>- R-47, p. 8, 14-15 (reproduced below as an impugned statement -- because incomplete disclosure)</p> <p>- <i>Inter alia</i>, R-42, p. 38-39; R-44, p. 42-44; R-45, p. 41 PDF;</p> <p><b>INVENTORY COUNT</b></p> <p>The Company did not have effective controls around its year-end inventory count procedures, specifically with respect to its reconciliation of the ERP system, due to the details outlined in the previous change to control environment section.</p> <p>To further strengthen controls surrounding inventory, management has initiated or enhanced the following procedures:</p> <ul style="list-style-type: none"> <li>• Segregation of duties to initiate work, production orders and inventory adjustments will be strengthened;</li> <li>• Work, production orders and inventory adjustments will be reviewed and approved by the relevant supervisor;</li> <li>• Further enhancements to the ERP inventory processing, tracking and reporting functionality and</li> </ul>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	GSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		<p>producing it and putting it on the inventory as bulk packaged inventory but then actually packaging is for the consumers and entirely different beast, and we're ramping all -- we're ramping up all that production infrastructure to rapidly accelerate; so that's really what's happening. Although the product coming off the line from our B9 facility is -- I mean, the hardest are starting soon. Once it come off the line you have all the testing protocols, you have all the cleaning protocols that need to go in such as the radiation or other, and then you need to actually have the packaging, shipping etcetera loading into the stores; so there is a delay there. And really it's that delay coupled with the kicking in of B9 which is causing a bit of a flat Q3 but of course we're unlocking that in Q4. So we think it's momentary and then there is really a complete decoupling when we hit that \$400 million net [job] next year, and of course, that's supported by very strong demand; that's why we're confident putting that number. We have that demand end up through multiple provinces beyond Quebec.</p>				<p>supporting work procedures in order to ensure their sustainability;</p> <ul style="list-style-type: none"> <li>• Additional training, guidance and communications to internal teams and third-party inventory count providers regarding inventory management, count and reconciliation procedures.</li> <li>• <b>CD 5: DECEMBER 16, 2019</b></li> <li><b>R-50 - Q1 2020 MD&amp;A / R-51 FINANCIAL STATEMENTS / R-53 PRESS RELEASE / R-54: EARNINGS CALL</b></li> <li><b>MFA, par. 164.1-164.11</b></li> </ul>
Oct. 28, 2019	R-42 - Q4 2019 MD&A Par. 155-156.5	<p>p. 26: Impairment loss on inventory: 16,918 million dollars [Note: This is a misrepresentation as well as a Corrective Disclosure (CD), because the impairment was insufficient.]</p>	225.8 225.11	C	Presumed	<p>R-50, p. 25 PDF: Impairment loss on inventory: 25,458 million dollars</p> <p>Reiterated in R-51, p. 6, 8, 12 PDF; R-53, p. 2; R-54, p. 5-7</p> <ul style="list-style-type: none"> <li>• <b>CD 6: DECEMBER 31, 2019</b></li> <li><b>R-57 - RESTATED MD&amp;A Q4 2019 / R-56 - RESTATED FINANCIAL STATEMENTS Q4 2019, R-59 - RESTATED MD&amp;A Q1 2020 / R-56 - RESTATED FINANCIAL STATEMENTS Q1 2020</b></li> </ul>
Oct. 28, 2019	R-43 - 2019 annual financial statements Par. 155-156.5	<p>p. 6 PDF: Impairment loss on inventory: 16,918 million dollars</p>	225.8 225.11	C	Presumed	<p>R-50, p. 25 PDF: Impairment loss on inventory: 25,458 million dollars</p> <p>Reiterated in R-51, p. 6, 8, 12 PDF; R-53, p. 2; R-54, p. 5-7</p> <ul style="list-style-type: none"> <li>• <b>CD 6: DECEMBER 31, 2019</b></li> <li><b>R-57 - RESTATED MD&amp;A Q4 2019 / R-56 - RESTATED FINANCIAL STATEMENTS Q4 2019, R-59 - RESTATED MD&amp;A Q1 2020 / R-56 - RESTATED FINANCIAL STATEMENTS Q1 2020</b></li> </ul>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Oct 29, 2019	R-47 – Earnings Call Transcript – Q4 2019 Par. 156.6-159.1	<p>p. 8: <b>The Company recorded an impairment loss on inventory of \$16.9 million in Q4.</b> This is due to price compression in the market. The impairment loss was realized on <b>cannabis purchased in fiscal 2019</b> to help meet the demand of the adult-use market and <b>their original cost of this inventory now exceeds the net realizable value.</b></p> <p>p. 14-15: John Zamparo -- CIBC -- Analyst</p> <p>[...] I wanted to ask about the inventory impairments. So it seems related to product you purchase in the wholesale market. And you mentioned the price compression, you've seen there. I guess what I'm wondering is that given the lack of stores and sell through isn't where you want it to be. <b>What's the thinking behind buying so much product on the wholesale market at this time?</b></p> <p>Sebastien St-Louis -- Co-founder and Chief Executive Officer</p> <p>I think the purchasing that product was before we had full visibility on the store count. And so, quite frankly, in hindsight that's -- <b>purchasing of that product was a mistake.</b></p> <p>p. 25-26: Chris Carey -- Bank of America Merrill Lynch -- Analyst</p> <p>[...] There is a growing concern about this unfinished inventory that is building up in the channel. The stack [Indecipherable] we put it that, I think it's over 380,000 or in 25 months of inventory at the current run rate. But I guess what I also hear from Company's, your peer companies. Is that, that unfinished inventory number includes a <b>lot of unsellable flower, maybe that stocks or molded material or shielded material.</b></p>	225.9	NC	Inferred	<p><b>MFA, par. 164.13-164.17</b></p> <p>R-57, p. 2 PDF; [...] increased impairment loss on inventory of \$2,417. [Note: Defendants hereby admit that they should have taken this impairment in Q4 2019.]</p> <p>Reiterated in R-56, p. 48 PDF; R-59, p. 2 PDF; R-58, p. 34 PDF.</p> <ul style="list-style-type: none"> <li>• <b>CD 7: MARCH 17, 2020</b></li> <li>• <b>R-62 – HEXO PRESS REPORT</b> Par. 164.21-164.23</li> </ul> <p>These factors are indicators of impairment in relation to the Company's inventory, property, plant and equipment, intangible assets and goodwill. The Company is in the process of completing its impairment assessment and has not reach its final conclusions. However, it is expected that the impairment loss will be in the range of \$265 million to \$280 million.</p> <ul style="list-style-type: none"> <li>• <b>CD 7: MARCH 19, 2020</b></li> <li>• <b>R-63 – RE-AMENDED MD&amp;A Q4 2019 /</b></li> <li>• <b>R-64 – RE-AMENDED MD&amp;A Q1 2020 /</b></li> <li>• <b>R-67 – HEXO PRESS REPORT</b> Par. 164.24-164.25</li> </ul>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
		<p>And I wonder if you could talk to what you think is in that unfinished inventory number or whether that's something that the market needs to be concerned about from the standpoint of pricing and maybe inventory write-downs on a go-forward basis.</p> <p>Sebastien St-Louis -- Co-founder and Chief Executive Officer</p> <p>Yeah, I think your instincts bang on, Chris. The market should absolutely be concerned about that inventory. At HEXO, we've taken steps and again we're talking -- so we're sacrificing short-term market BS [Phonetic] right. Manipulating quarters, we're not doing that, we're taking a \$3.8 million reserve, this quarter, having not seen returns by the way, this is just being conservative in preparing for this. Our inventory at HEXO is good. And but will it hold given pricing do you need to do pricing adjustments. We've been proactive in taking on that pricing adjustment. Just like last quarter, I was proactive in foreshadowing the reduction in pricing. Unfortunately that came true. This inventory-- situation will come true as well and some of our competitors have been less proactive in adjusting that. Which means that on aggregate, absolutely, that's something investors need to start taking a look at.</p> <p>[...] And so I'm very happy where HEXO is positioned. I think a lot of my competitors will have to adjust to position themselves that we HEXO is doing so. They haven't gone through that pain yet. We've now taken that pain and that's reflected in our stock price unfortunately, but also creates a buying opportunity. [Note: In light of the extraordinary size of the inventory impairments taken by HEXO in the subsequent months, the Court can reasonably infer that Defendants knew, or at least should have known, that their inventory was not accurate at this time, but they rather continued to mislead the market.]</p>				<p>R-67:</p> <p>HEXO Corp. ("HEXO" or the "Company") (TSX: HEXO, NYSE: HEXO) today announced it has amended and refilled its management's discussion and analysis for the fiscal year ended July 31, 2019 (the "Amended 2019 MD&amp;A") and its management's discussion and analysis for the three month period ended October 31, 2019 (the "Amended Q1 2020 MD&amp;A") to better comply with National Instrument 51-102 - Continuous Disclosure Obligations.</p> <p>As noted in the press release of the Company dated March 17, 2020, the Amended 2019 MD&amp;A and Amended Q1 2020 MD&amp;A (collectively, the "Amended MD&amp;A") were prepared following a continuous disclosure review by the Ontario Securities Commission ("OSC") of the Company's disclosure record. The Amended MD&amp;A were filed to address comments received from OSC Staff and in order to improve the Company's disclosure. In particular, among other changes, the Amended MD&amp;A have been revised: [...]</p> <p>to clarify and provide additional disclosure regarding the Company's impairments and write-</p>

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)?	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Dec. 16, 2019	R-50 – MD&A Q1 2020 Par. 164.1-164.11	<p>p. 25-26 PDF: The Company incurred an impairment loss on inventory of \$25,458 [all amounts in \$ millions] during the three months ended October 31, 2019. The impairment loss was realized on the Company's inventory in comprised of the following:</p> <ul style="list-style-type: none"> <li>• Impairment of a surplus of cannabis trim (Trim is the accumulation of the cannabis' sugar leaves during the dry trimming process. Trim is primarily used for extraction purposes) and milled products the amount of \$16,433 due to an excess of stock relative to the Company's short-term demand for cannabis distillate production;</li> <li>• Impairment of bulk purchased product of \$4,400 due, in part, to an oversupply in the market of bulk products with lower potencies as well as a relatively low value when compared to competing bulk goods with a higher potency in the current adult-use market;</li> <li>• Impairment of oil based finished goods of \$3,436 due a surplus of finished goods as oil-based products haven't captured the market share as originally estimated. Also contributing to the impairment is the decision made by certain provinces to return oil products with packaged dates greater than 3 to 4 months old and</li> <li>• Impairment of finished goods of \$1,186 which are required to be archived as at October 31, 2019 and possess a net realizable value of \$nil.</li> </ul>	225.8 225.11	C	Presumed	<p>offs of inventory, including related events, risks, and uncertainties that the Company reasonably believes may materially affect its future performance;</p> <p>Modifications made in R-63, p. 1, 29, 44 PDF; and R-64, p. 1, 28 PDF</p> <ul style="list-style-type: none"> <li>• CD 8: MARCH 30, 2020</li> </ul> <p>R-68 – Q2 2020 MD&amp;A / R-69 FINANCIAL STATEMENTS MFA, par. 164.26-164.36</p> <p>R-68: p. 24 PDF: The Company incurred write downs on inventory to net realizable value of \$16,089 [million dollars] during the three months ended January 31, 2020.</p> <p>These losses were due to the following:</p> <ul style="list-style-type: none"> <li>• Write down of surplus cannabis trim (trim is primarily used for extraction purposes) and milled products the amount of \$3,082 due to an excess of</li> </ul>
Dec. 16, 2019	R-53 – press release	<p>p. 2: The Company incurred an impairment loss on inventory of \$25.5M during Q1 '20 compared with \$16.9M in Q4 '19. The impairment loss was realized on the Company's inventory in comprised of the following [same as above]</p>	225.8 225.11	NC	Inferred	

DATE	REF. EXHIBIT (R-) MFA <sup>1</sup> (PAR.)	IMPUGED STATEMENT (MOST RELEVANT EXCERPTS) <sup>2</sup>	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
Dec. 16, 2019	R-54 – Earnings Call Q1 2020	p. 5: In light of the changes in demand and downward pressure on the price of dried flower in the wholesale market, we've impaired our inventory this quarter by CAD25.5 million. By addressing these issues now, we're looking to provide greater transparency to our investors and more accurate financial statements.  p. 6-7: In Q1 2020, the Company recorded an impairment loss on inventory of CAD25.5 million in the quarter. CAD16.4 million of this impairment related to excess supply of trim and milled products on hand when compared with our short-term demand needs. CAD4.4 million related to bulk purchased products, CAD3.4 million related to a surplus of oil products and CAD1.2 million related to finished goods samples, which are required to be archived by Health Canada. We are closely monitoring inventory levels as well as assessing applications for inventory in our 2.0 products and we'll continue to keep you updated on a quarter-by- quarter basis regarding any further impairments that may be required.	225.9	NC	Inferred	stock relative to the Company's short-term demand for cannabis distillate production;  • Write down of concentrated bulk purchase of \$11,766 due, in part to an oversupply in the bulk product market of which lowered the value when compared to the contracted price. The purchase of bulk product was supplied through the acquired supply agreement acquired through the Company's acquisition of Newstrike. [...]; and  • Write down in the amount of \$1,241 was recognized due to costs related to packaging reconfiguration.  Write down confirmed in <u>R-69</u> , p. 4 PDF
Dec. 31, 2019	R-57 – Restated MD&A Q4 2019  Par. 164.13- 164.17	R-57, p. 2 PDF: In assessing the financial impact of subsequent events, the Company also determined additional write-down of its cannabis trim based inventory based on the estimated fair market value due to new and available third party information resulting in an increased impairment loss on inventory of \$2,417.  [Note: R-56 - Restated Financial Statements Q4 2019, note 34, p. 48 PDF contains the same information.]	225.8  225.11	C	Presumed	• ALL OTHER CDS, BECAUSE ALL INTERTWINED.
Dec. 31, 2019	R-59 – Restated	p. 2 PDF: Additionally, the Company has adjusted the comparative inventory balance for the audited annual consolidated financial statements for the year ended July 31, 2019 due to changes to the estimated fair market value of its cannabis trim based inventory. Newly acquired and available third party information resulted in an increased	225.8  225.11	C	Presumed	

DATE	REF.	IMPUGNED STATEMENT (MOST RELEVANT EXCERPTS)?	QSA	CORE DOC (C) OR NOT (NC)	PROOF OF KNOWLEDGE OF MISREP AT THE TIME IT WAS MADE	PUBLIC CORRECTION (CD)
	MD&A Q1 2020 Par. 164.13- 164.17	impairment loss on inventory of \$2,417 in the fiscal year ended July 31, 2019 and as a result, decreased the current period impairment loss and reduction to inventory. [Note: R-58 - Restated Financial Statements Q1 2020, note 34, p. 34 PDF contains the same information.]				
March 17, 2020	R-62 – press report Par. 164.21- 164.23	At the end of Q2 2020, the carrying amount of the Company's total net assets significantly exceeded the Company's market capitalization as at January 31, 2020. In addition, the industry has experienced slower than expected retail store roll-outs in Canada and delays in government approval for cannabis derivative products which has constrained distribution channels and adversely affected overall market sales and profitability. These factors are indicators of impairment in relation to the Company's inventory, property, plant and equipment, intangible assets and goodwill. The Company is in the process of completing its impairment assessment and has not reach its final conclusions. However, it is expected that the impairment loss will be in the range of \$265 million to \$280 million.	225.8 225.11	NC	Inferred	