

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**RONALD TARRANT**

Plaintiff

– and –

**NAMASTE TECHNOLOGIES, INC., SEAN DOLLINGER and  
PHILIP VAN DEN BERG**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**FRESH AS AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANTS:

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

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

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

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

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

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court.

If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

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

Date Issued: Oct 19, 2018

Issued by: "Registrar"  
Local Registrar

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*Lawyer for the Defendants*

## DEFINED TERMS

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

- (a) “**CEO**” means Chief Executive Officer;
- (b) “**CJA**” means the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) “**Class**” means all persons, other than Excluded Persons, who acquired Namaste’s common shares listed on the TSX and FSE, and all Canadian-resident investors that purchased Namaste’s common shares listed in over-the-counter transactions outside of Canada, on or after November 29, 2017, and who held some or all of those common shares until after the close of trading on October 3, 2018, October 15, 2018, or February 3, 2019;
- (d) “**Corrective Disclosure(s)**” means the document(s) released by third-parties on October 4 and 16, 2018, and the news release by Namaste on February 4, 2019;
- (e) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- (f) “**Defendants**” means Namaste and the Individual Defendants;
- (g) “**Equivalent Securities Act**” means, collectively, the *Securities Act*, R.S.A. 2000, c. S-4, as amended; the *Securities Act*, R.S.B.C. 1996, c 418, as amended; *The Securities Act*, C.C.S.M. c. S50, as amended; the *Securities Act*, S.N.B. 2004, c. S-5.5, as amended; the *Securities Act*, R.S.N.L. 1990, c S-13, as amended; the *Securities Act*, S.N.W.T. 2008, c. 10, as amended; the *Securities Act*, R.S.N.S. 1989, c. 418, as

amended; the *Securities Act*, S Nu 2008, c. 12, as amended; the *Securities Act*, R.S.P.E.I. 1988, c S-3.1, as amended; the *Securities Act*, R.S.Q. c V-1.1, as amended; *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2, as amended; and the *Securities Act*, S.Y. 2007, c. 16, as amended;

- (h) “**Excluded Persons**” means the Individual Defendants’ immediate families and any other shareholder that was aware that Namaste divested Dollinger Enterprises US, Inc. to a then current employee of Namaste prior to the Corrective Disclosure(s);
- (i) “**Form 52-109FV2**” means the form required by NI 52-109 by which an officer of a venture issuer certifies *inter alia* that based on their knowledge, having exercised reasonable diligence, interim financial statements and MD&A do not contain any untrue statements of material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it is made, and fairly present in all material respects the financial condition, results of operation and cash flows of the issuer;
- (j) “**FSE**” means Frankfurt Stock Exchange;
- (k) “**GAAP**” means Generally Accepted Accounting Principles in Canada;
- (l) “**Impugned Statements**” means Namaste’s documents released on November 28, 2017 (non-core document), January 8 (core document), February 7 (core document) and 20 (core document), April 30 (core document), July 23 (core document), October 2 (core document), October 9 (non-core document), October 19 (core document), and October 30, 2018 (core document);
- (m) “**Individual Defendants**” means Sean Dollinger and Philip van den Berg;

- (n) **“Namaste”** or **“Company”** means Namaste Technologies, Inc.;
- (o) **“NI 51-102”** means the CSA’s National Instrument 51-102—*Continuous Disclosure Obligations*, as amended;
- (p) **“NI 52-109”** means the CSA’s National Instrument 52-109—*Certification of Disclosure in Issuers’ Annual and Interim Filings*, as amended;
- (q) **“OSA”** means the *Securities Act*, R.S.O. 1990 c. S.5, as amended;
- (r) **“Prospectuses”** means the:
  - (i) Preliminary Short Form Prospectus dated February 7, 2018;
  - (ii) Short Form Prospectus dated February 20, 2018;
  - (iii) Preliminary Short Form Prospectus dated October 2, 2018; and
  - (iv) Short Form Prospectus dated October 19, 2018
- (s) **“Q1”, “Q2”, “Q3”, and “Q4”** means:
  - (i) for the period before August 31, 2018, the three-month interim periods ending November 30, February 28, May 31 and August 31, respectively; and
  - (ii) for the period after August 31, 2018, the three-month interim periods ending February 28, May 31, August 31 and November 30, respectively;
- (t) **“SEDAR”** means the Canadian Securities Administrators’ System for Electronic Document Analysis and Retrieval.

## **CAUSES OF ACTION**

2. The causes of action asserted in this claim are:

- (a) Section 138.3 of the *OSA* as against all of the Defendants for releasing the Impugned Statements containing misrepresentations;
- (b) Common law secondary market negligent misrepresentations against all of the Defendants for releasing the Impugned Statements containing misrepresentations;
- (c) Common law secondary market fraudulent misrepresentations against Individual Defendant Dollinger for releasing the Impugned Statements containing misrepresentations; and
- (d) Section 130 of the *OSA* against Defendant Namaste for releasing the Prospectuses containing misrepresentations.

## **RELIEF CLAIMED**

3. The Plaintiff claims on his own behalf and on behalf of the members of the Class:

- (a) An order pursuant to s. 5 of the *CPA* certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff for the Class;
- (b) An order granting leave to pursue the statutory causes of action set out in Part XXIII.1 of the *OSA* and the comparable provisions in the Equivalent Securities Acts;
- (c) A declaration that the Impugned Statements released by the Defendants contain misrepresentations related to the Company's business, operations and finances

because the documents and statements omitted material facts about Namaste's divestiture of Dollinger Enterprises US, Inc.;

- (d) A declaration that the misrepresentations were partially publicly corrected on October 4, 2018 and October 16, 2018, and finally publicly corrected on February 4, 2019;
- (e) A declaration that the Prospectuses contained misrepresentations related to the Company's business, operations and finances because those core documents omitted material facts about Namaste's divestiture of Dollinger Enterprises US, Inc.;
- (f) A declaration that Defendant Dollinger released the aforementioned misrepresentations intentionally;
- (g) A declaration that the Defendants Namaste and van den Berg (and in the alternative to (f), Defendant Dollinger), released the aforementioned misrepresentations negligently;
- (h) A declaration that the Defendants breached ss. 75, 130(1) and 138.3 of the *OSA* and the comparable provisions in the Equivalent Securities Acts;
- (i) A declaration that Namaste is vicariously liable for the acts and omissions of the Individual Defendants;
- (j) Statutory damages and common law damages in a sum to be determined, or such other sum as this Court finds appropriate at the trial of the common issues or at a reference or references;

- (k) An order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;
- (l) Prejudgment and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;
- (m) Costs of this action on a full indemnity scale, or in an amount that provides substantial indemnity, plus, pursuant to s. 26(9) of the *CPA*, the costs of administering the plan of distribution of the recovery in this action; and
- (n) Such further and other relief that this Honourable Court deems just.

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

4. The Defendant Namaste claims to be one of the largest online retailers for medical cannabis delivery systems (e.g., vaporizers).

5. For its annual 2017 financial returns, Namaste reported that its US division generated gross revenues of approximately U.S. \$1.1 million for fiscal 2017 and U.S. \$493,000 for fiscal 2016.

6. During December 2017, Namaste divested Dollinger Enterprises US, Inc. (its US division) for U.S. \$400,000 (“the Divestiture”), to ESC Hughes Holdings Limited (“ESC Hughes”) (now known as BKN Calla Investments), which was held out to be a European-based group of investors, which said asset was immediately re-sold (or otherwise flipped) to Lifted Cannabis, Inc. (n/k/a, Lifted Innovations, Inc. or Lifted Technology, Inc.) (“Lifted Innovations”) for 35 million shares of Lifted Innovations valued at \$7 million by April 2018.

7. Namaste reported the Divestiture as an arm’s-length transaction and omitted to disclose the following material facts:



- (a) Namaste's Human Resources Manager (David Hughes) and other insiders of Namaste had a beneficial interest in ESC Hughes;
- (b) the sale price was not negotiated at arm's-length; and
- (c) the sale price was not at or near fair market value.

(together, the "Material Omissions").

8. The Plaintiff alleges that the Defendants released core and non-core documents and statements containing misrepresentations (including the Material Omissions), commencing on November 28, 2017, including in a preliminary short form prospectus dated February 7, 2018 (and finalized on February 20, 2018), and a preliminary short form prospectus dated October 2, 2018 (and finalized on October 19, 2018) (collectively, the Impugned Statements).

9. The Plaintiff further alleges that the value and price of Namaste's common shares were artificially inflated after the Defendants released each of the Impugned Statements, which all contained the same common theme misrepresentations.

10. On October 4, 2018, the first Corrective Disclosure was released revealing that ESC Hughes was, in fact, owned by Namaste's Human Resources Manager (David Hughes) and was therefore not arm's-length to Namaste. The first Corrective Disclosure caused the price for Namaste's shares to drop 10% on the TSXV and FSE.

11. On October 9, 2018, the Defendants denied *inter alia* that the divestiture of Dollinger Enterprises US, Inc. was to a "related party" or that it was a "related party transaction" under applicable Canadian securities laws.

12. On October 16, 2018, the second Corrective Disclosure was released which disclosed that immediately after ESC Hughes received the assets of Dollinger Enterprises US, Inc., which were purchased for a mere U.S. \$400,000, ESC Hughes transferred those same assets to Lifted Innovations for 35 million shares of Lifted Innovations, which within weeks increased in valuation by 20x (i.e., \$0.01 to \$0.20 per share), such that the assets that were sold by Namaste to ESC Hughes for U.S. \$400,000 were really worth an estimated U.S. \$12.9 million. The second Corrective Disclosure caused the price for Namaste's shares to drop a further 8% on the TSXV and the FSE.

13. In a press release issued on February 4, 2019, which is the third Corrective Disclosure, Namaste announced that after a thorough investigation by a Special Committee of the Namaste board of directors, CEO and Individual Defendant Dollinger was being fired for cause for reasons relating to "the sale of Namaste's subsidiary, Dollinger Enterprises US Inc. in 2017, and subsequent transactions involving its assets and companies in which Sean Dollinger and Namaste's head of marketing David Hughes have a beneficial interest, as well as breaches of fiduciary duty by Sean Dollinger and evidence of self-dealing".

#### **THE PLAINTIFF**

14. Ronald Tarrant is an individual who resides in Ottawa, Ontario. On September 14, 2018, he purchased 1,000 shares of Namaste and realized a loss by holding these securities until after the first Corrective Disclosure. On October 9, 2018, he sold those 1,000 shares at a loss. He is advancing claims (i) under sections 138.3(1) and (2) of the *OSA* for secondary market misrepresentations (and the concordant provisions of the Equivalent Securities Acts), (ii) under section 130(1) of the *OSA* for misrepresentations in a prospectus (and the concordant provisions

of the Equivalent Securities Acts), and (iii) for common law negligent misrepresentation (and fraudulent misrepresentation as against Defendant Dollinger) (secondary market only).

## **THE DEFENDANTS**

15. Namaste is a company incorporated pursuant to the *British Columbia Business Corporations Act*, that is based in Vancouver, British Columbia, with its corporate office at Suite 2300, 550 Burrard Street, Vancouver, BC V6C 2B5 and a mailing address at 100 King Street West, Suite 1600, Toronto, ON M5X 1G5. Namaste describes itself as a global leader in the sale of medical cannabis consumption devices.

16. During and prior to the period of time at issue in this action, Namaste's securities were listed on and publicly traded under the ticker symbol "N" on the TSX-V, "M5BQ" on the FSE with CUSIP identifier number 62987D, and "NXTTF" on the over-the-counter market.

17. Sean Dollinger served as Namaste's Chief Executive Officer during the relevant period. He authorized the release of each impugned statement and certified all of the core documents on Form 52-109FV2 as not containing any misrepresentation when released.

18. Philip van den Berg served as Namaste's Chief Financial Officer from October 2016 to June 28, 2018. He certified and signed the Form 52-109FV2 for Namaste's MD&A for the period ending November 30, 2017 and February 28, 2018.

## **THE MATERIAL EVENTS**

19. On **November 28, 2017**, after the market closed, Namaste released a statement, a non-core document, on SEDAR announcing that it was going to divest its US assets, "Dollinger Enterprises US, Inc.," including all banking assets, real estate lease, and 5 unidentified employees, to ESC

Hughes in exchange for U.S. \$400,000. This statement was signed by Individual Defendant Dollinger.

20. This statement contained a misrepresentation, *inter alia*, by omitting the material facts that ESC Hughes was, in fact, owned by David Hughes, Namaste's Human Resources manager, and that contrary to the statement Individual Defendant Dollinger knew or should have known that this asset would be flipped into that company.

21. On **November 29, 2017**, Namaste hosted a conference call with investors whereby Individual Defendant Dollinger stated that the sale of the US assets was going to be done in an arm's-length transaction with a group out of Europe in a strategic decision.

22. This statement contained an intentional misrepresentation, at a minimum, by omitting the material fact that ESC Hughes was, in fact, owned by David Hughes, Namaste's "HR Manager". This statement also omitted all the material facts about this "strategic decision" to sell Dollinger Enterprises US, Inc. for less than half of its annual gross revenues.

23. Effective December 31, 2017, Namaste sold Dollinger Enterprises US, Inc. to ESC Hughes.

24. On **January 8, 2018**, Namaste released its financial statements and MD&A for the quarter and financial year ending August 31, 2017. Individual Defendants Dollinger and van den Berg certified and signed the Form 52-109FV1. The financial statement and MD&A under the heading of "Subsequent Events" described the divestiture of Dollinger Enterprises US, Inc. in the same manner as the November 28, 2017 statement.

25. This statement contained a misrepresentation, at a minimum, by omitting the material fact that ESC Hughes was, in fact, owned by David Hughes, Namaste's "HR Manager". This statement

also omitted all the material facts about the “strategic decision” to sell Dollinger Enterprises US, Inc. for less than half of its annual gross revenues.

26. On **January 29, 2018**, and amended on **February 20, 2018**, Namaste released its financial statements and MD&A for the quarter and financial year ending November 30, 2017. Individual Defendants Dollinger and van den Berg certified and signed the Form 52-109FV1. The MD&A did not describe the divestiture of Dollinger Enterprises US Inc. The financial statement disclosed the divestiture of Dollinger Enterprises US, Inc. and included the material fact that it had received a USD \$100,000 payment with the balance to be paid at a rate of USD \$25,000 per month.

27. This statement contained a misrepresentation, at a minimum, by omitting the material fact that ESC Hughes was, in fact, owned by David Hughes, Namaste’s “HR Manager”. This statement also omitted all the material facts about this “strategic decision” to sell Dollinger Enterprises US Inc. for less than half of its annual gross revenues.

28. On **February 7, 2018**, Namaste filed a preliminary short form prospectus and on **February 20, 2018** a final short form prospectus to distribute 13,726,000 units of Namaste at a price of \$2.55 per unit, where each unit comprised one common share of Namaste and one warrant to purchase one common share of Namaste at an exercise price of \$3.15 for a period of 24 months for total proceeds of \$35,001,300. Both versions of the prospectus:

- (a) were signed by Individual Defendants Dollinger and van den Berg as certifying officers, and by Individual Defendant Dollinger as Promoter; and
- (b) disclosed the divestiture of Dollinger Enterprises US, Inc., including the material fact that Namaste had received a USD \$100,000 payment with the balance to be paid at a rate of USD \$25,000 per month, but omitted the material facts:

- (i) that ESC Hughes was, in fact, owned by David Hughes, Namaste's "HR Manager"; and
- (ii) about the "strategic decision" to sell Dollinger Enterprises US, Inc. for less than half of its annual gross revenues.

29. On **April 30, 2018**, Namaste released its financial statements and MD&A for the quarter and financial year ending February 28, 2018. The MD&A did not describe the divestiture of Dollinger Enterprises US, Inc. The financial statement disclosed the divestiture of Dollinger Enterprises US, Inc. and included the material fact that it had received a USD \$100,000 payment with the balance to be paid at a rate of USD \$25,000 per month. The financial statement also characterized the sale as "to an arm's length party" and "The Company recorded total gain on sales of \$286,305". Individual Defendants Dollinger and van den Berg certified and signed the Form 52-109FV1.

30. This statement contained a misrepresentation, at a minimum, by omitting the material fact that ESC Hughes was, in fact, owned by David Hughes, Namaste's "HR Manager". This statement also omitted all the material facts about this "strategic decision" to sell Dollinger Enterprises US, Inc. for less than half of its annual gross revenues.

31. On June 28, 2018, Namaste released a statement announcing that Individual Defendant van den Berg submitted his resignation and he was being replaced by Kenneth Ngo.

32. On **July 23, 2018**, Namaste released its financial statements and MD&A for the quarter and financial year ending May 31, 2018. The financial statement disclosed the divestiture of Dollinger Enterprises US, Inc. in the same manner as was described on April 30, 2018. Individual Defendant Dollinger certified and signed the Form 52-109FV1.

33. This statement contained a misrepresentation, at a minimum, by omitting the material fact that ESC Hughes was, in fact, owned by David Hughes, Namaste's "HR Manager". This statement also omitted all the material facts about the "strategic decision" to sell Dollinger Enterprises US Inc. for less than half of its annual gross revenues.

34. On **October 2, 2018**, Namaste filed a preliminary short form prospectus and on **October 19, 2018** a final short form prospectus to distribute 15 million units of Namaste at a price of \$3.00 per unit, where each unit comprised one common share of Namaste and one warrant to purchase one common share of Namaste at an exercise price of \$3.50 for a period of 48 months for total proceeds of \$45 million. Both versions of the prospectus:

- (a) were certified by Individual Defendant Dollinger as CEO and Promoter as constituting full, true and plain disclosure of all material facts relating to the securities offered; and
- (b) incorporated by reference, *inter alia*, the Company's financial statements and MD&A for the period ended May 31, 2018 (one of the impugned documents described above), which core documents disclosed the divestiture of Dollinger Enterprises US, Inc., but omitted the material facts:
  - (i) that ESC Hughes was, in fact, owned by David Hughes, Namaste's "HR Manager"; and
  - (ii) about the "strategic decision" to sell Dollinger Enterprises US, Inc. for less than half of its annual gross revenues

35. On **October 4, 2018**, Citron Research Inc. released a report (the "First Corrective Disclosure") disclosing the State of Florida corporate report for 2018, filed March 23, 2018, for

Dollinger Enterprises US, Inc., and that the president and treasurer of Dollinger Enterprises US, Inc. was David Hughes. David Hughes has reported himself on social media as being the “HR Manager” for Defendant Namaste since 2015.

36. The First Corrective Disclosure revealed that while the Defendants told the market repeatedly during the relevant period that Dollinger Enterprises US, Inc. had been sold to an arm’s-length party in Europe, in actual fact it had been sold to David Hughes who had been with Namaste since at least 2015 and is Namaste’s Human Resources manager. This news caused the price of Namaste’s shares to drop by approximately 10%.

37. On **October 9, 2018**, before the market opened, Namaste released a statement that Dollinger Enterprises US, Inc. was not a “related party” as defined under applicable Canadian securities laws. The Defendants did not provide any further disclosures about Namaste’s divestiture of Dollinger Enterprises US, Inc. to its “HR Manager”, David Hughes, the identification of the 4 other employees who transferred to Dollinger Enterprises US, Inc., or why Dollinger Enterprises US, Inc. was sold for less than half of its 2017 gross revenues. Upon reading this news, the Plaintiff sold his 1,000 shares of Namaste at a loss of approximately \$1.60 per share.

38. During the morning market hours on **October 16, 2018**, Citron Research Inc. released a report (the “Second Corrective Disclosure”) disclosing that:

- (a) “ESC Hughes, led by David Hughes, The Chief Marketing Officer of Namaste, acquired a subsidiary from Namaste, Dollinger Enterprises US Inc., and is taking it public in Canada for a whopping 3,200% gain and keeping all the money for Hughes and his associates, not Namaste Shareholders”;



- (b) “ESC Hughes is already monetizing the asset through a new cannabis company that is going public. Lifted Innovations filed its initial prospectus on September 27, 2018”; and
- (c) the Lifted Innovations prospectus sets out:
  - (i) how certain domain names formerly owned by Dollinger Enterprises US, Inc. were acquired by Lifted Innovations from ESC Hughes; and
  - (ii) that the assets acquired from Namaste for U.S. \$400,000 (i.e., Dollinger Enterprises US, Inc.) are really worth U.S. \$12.9 million.

39. The Second Corrective Disclosure caused the price of Namaste’s shares to drop by approximately 8%.

40. On **February 4, 2019**, Namaste released a news statement announcing that during October 2018, it formed a Special Committee to investigate allegations of wrong doing as reported in the partial public corrections. The Special Committee reported that one of the allegations concerning the sale of Dollinger Enterprises US, Inc. “was substantiated and required action” and that there were “breaches of fiduciary duty by Sean Dollinger and evidence of self-dealing” to the detriment of Namaste’s shareholders. Namaste further disclosed that it was immediately discharging Dollinger as CEO and commencing legal action against him for damages and disgorgement.

41. The Third Corrective Disclosure caused the price of Namaste’s shares to drop by approximately 14.5%.

42. On February 19, 2019, after the relevant period for the Class, Namaste issued a news release and Material Change Report regarding the material change in the business, operations or

capital of Namaste, that Namaste had entered into a settlement agreement with Defendant Dollinger pursuant to which Dollinger agreed to step down from all formal roles with Namaste.

43. The Plaintiff alleges that the omitted facts about the divestiture of Dollinger Enterprises US, Inc. to its “HR Manager”, David Hughes, and not an independent European entity is a material fact as defined by the *OSA*, and that the omitted facts concerning the true value of Dollinger Enterprises US, Inc. is a material fact as defined by the *OSA*. These omitted material facts caused the Plaintiff and class members damages when they were partially publicly corrected on October 4 and on October 16, 2018.

#### **NO STATUTORY DEFENCE FOR FORWARD-LOOKING INFORMATION**

44. To the extent that any of the disclosure documents or public statements addressed in this statement of claim contained forward-looking information, some or all of those forward-looking statements constituted misrepresentations because the Defendants had no reasonable basis for the underlying assumptions on which the forward-looking information was based, for the reasons particularized above.

45. Further or in the alternative, to the extent that the statutory defences in sections 132.1 and 138.4 of the *OSA* do apply to any forward-looking statements pleaded herein, the Defendants are liable for those forward-looking statements containing the alleged misrepresentations because, at the time each of those forward-looking statements was made, the Defendants knew (at the very least Individual Defendant Dollinger knew) or should have known that the particular forward-looking statements were misrepresentations for the reasons alleged herein.

## **THE RELATIONSHIP BETWEEN THE MISREPRESENTATIONS AND THE PRICE AND VALUE OF NAMASTE'S SECURITIES**

46. The price and value of Namaste's securities were directly affected each time that the Defendants disclosed (or omitted to fully disclose) material changes and material facts about Namaste's business, finances, and operations, including Namaste's acquisitions and spin-offs, accounting policies, cash on hand, revenue recognition policies, future revenue prospects, revenue growth percentages, compensation of insiders and management, and the number of Namaste's issued and outstanding shares.

47. The Defendants were aware at all material times of the effect of Namaste's disclosures about its business, finances, and operations, including Namaste's acquisitions and spin-offs, cash on hand, accounting policies, revenue recognition policies, future revenue prospects, revenue growth percentages, compensation of insiders and management, and the number of Namaste's issued and outstanding shares, on the price of the Company's publicly-traded securities.

48. The Defendants intended that the members of the Class, including the Plaintiff, would rely upon these disclosures, which they did to their detriment.

49. The disclosure documents referred to herein were filed with SEDAR and thereby became immediately available to and were reproduced for inspection for the benefit of the Plaintiff and the other members of the Class, the public, financial analysts and the financial press through the internet and financial publications.

50. The price at which Namaste's securities traded on the TSX-V, Frankfurt Stock Exchange, and over-the-counter market incorporated the information contained in the disclosure documents referred to herein, including information about Namaste's acquisitions and spin-offs, accounting

policies, revenue recognition policies, future revenue prospects, revenue growth percentages, compensation of insiders and management.

### **THE VICARIOUS LIABILITY OF NAMASTE**

51. The acts particularized and alleged in this statement of claim to have been done by Namaste were authorized, ordered and done by the Individual Defendants as well as other officers, agents, employees and representatives who were engaged in the management, direction, control and transaction of Namaste's business, finances, and operations and are, therefore, acts and omissions for which Namaste is vicariously liable.

### **STATUTORY LIABILITY UNDER THE *OSA***

52. The Plaintiff will seek leave under s. 138.8(1) of the *OSA* to assert, on behalf of himself and the members of the Class, the causes of action set out in Part XXIII.1 of the *OSA* against the Defendants.

53. As a result of the conduct of the Defendants as alleged, the Plaintiff and each other member of the Class suffered losses and damages as a result of acquiring Namaste's securities at artificially inflated prices on or after November 29, 2017, and holding some or all of those securities until after one or more of the Corrective Disclosure.

54. Therefore, the Defendants are liable to pay damages pursuant to ss. 130, 138.3, 138.5 and 138.7 of the *OSA* to the Plaintiff and to the other members of the Class.

55. The Plaintiff and the other members of the Class are also entitled to recover as damages, or costs in accordance with the *CPA*, the Plaintiff's legal fees and the costs of administering the plan to distribute the recovery in this action.

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

56. This action has a real and substantial connection with Ontario because, among other things:

- (a) Namaste is a reporting issuer in Ontario;
- (b) Namaste purposely availed itself to Ontario by raising capital in the province; and
- (c) There are members of the Class who are residents of Ontario, relied on Namaste's disclosure documents in Ontario, acquired Namaste securities in Ontario and suffered damage and loss in Ontario.

### **SERVICE OUTSIDE OF ONTARIO**

57. This originating process may be served without court order outside Ontario, pursuant to rule 17.02 of the *Rules of Civil Procedure*.

## RELEVANT LEGISLATION

58. The Plaintiff pleads and relies upon the *CJA*, the *CPA*, NI 51-102, NI 52-109, the *OSA*, and the Equivalent Securities Acts.

February 21, 2019

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**RONALD TARRANT** **v. NAMASTE TECHNOLOGIES, INC., et al.**  
Plaintiff Defendants

Court File No. CV-18-00078184

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDINGS COMMENCED AT OTTAWA

*Fresh & Amended*  
**STATEMENT OF CLAIM**

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*Lawyers for the Plaintiff*

AMENDED THIS *7<sup>th</sup>* DAY / JOUR  
MODIFIÉ DE  
OF / DE *February 23<sup>rd</sup> 2019*  
PURSUANT TO RULE *26.05(1A)*  
CONFORMÉMENT À LA RÈGLE  
OR COUVER  
OU A L'ORDONNANCE  
DATED THIS / EN DATE  
DAY / JOUR OF / DE *20*  
REGISTRAR, SUPERIOR COURT OF JUSTICE  
GREFFIER, COUR SUPÉRIEURE DE JUSTICE

