

Form 10
[Rule 3.25]
2003 12747



COURT FILE NUMBER

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFF(S)

ROBERT LANDRY; and GILL FRUCHTER,
ON THEIR OWN BEHALF AND AS
PROPOSED REPRESENTATIVE PLAINTIFFS

DEFENDANT(S)

AURORA CANNABIS, INC., TERRY
BOOTH, and GLEN IBBOTT

DOCUMENT

Brought under the *Class Proceedings Act*
AMENDED STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND
CONTACT INFORMATION
OF PARTY FILING THIS
DOCUMENT

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NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

DEFINED TERMS

1. In addition to the terms defined in ss. 1 and 211.01 of the *Securities Act*, R.S.A. 2000, c. S-4, as amended, and elsewhere herein, the following capitalized terms used throughout this statement of claim have the meanings indicated below:

- (a) “**ACB**” means Aurora Cannabis Inc., a responsible issuer.
- (b) “**Class Period**” means September ~~11~~12, 2019 to December ~~21~~20, 2019;
- (c) “**Common Law Class**” means all persons, other than Excluded Persons, who acquired ACB’s securities on the TSX secondary market ~~on or after September 11, 2019,~~ and ~~who~~ held some or all of those securities until after the close of trading on September 11, 2019, November 14, 2019, November 18, 2019, ~~November 29, 2019~~, or December ~~21~~20, 2019;
- (d) “**CPA**” means the *Class Proceedings Act*, S.A. 2003, C-16.5, as amended;
- (e) “**Equivalent Securities Act**” means, collectively, the *Securities Act*, R.S.O. 1990, c. S. 5; the *Securities Act*, R.S.B.C. 1996, c 418, as amended; *The Securities Act*, C.C.S.M. c. ~~SS0S~~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.~~11~~, 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
- (f) “**Excluded Persons**” means any executive level employee of ACB and their immediate families;

- (g) “GAAP” means Generally Accepted Accounting Principles in Canada;“
- (h) **Impugned Statements**” means ACB’s annual financial statements, MD&A and other SEDAR filings on September 11, 2019, ~~and~~ the Individual Defendants’ oral statements on September 12, 2019, the 2019 Annual Report on September 20, 2019, the news releases issued on October 3 and October 16, 2019, and ACB’s 1Q 2020 quarterly financial statements and MD&A ending September 30, 2019 released on November 14, 2019 (which was also a partial Public Corrective Disclosure);
- (i) “**Individual Defendants**” means Terry Booth and Glen Ibbott;
- (j) “**Public Corrective ~~Statements~~“Disclosures”** means the statement released by ACB dated November 14, 2019, and related supplemental statements released on November 18, 2019, ~~November 29, 2019 and December 20, 2019;~~ and December 21, 2019; and
- (k) “**Statutory Class**” means all persons, other than Excluded Persons, who acquired ACB’s securities on the TSX secondary market on or after September ~~11~~12, 2019, and who held some or all of those securities until after the close of trading on November 14, 2019, November 18, 2019, ~~November 29, 2019,~~ or December ~~21~~20, 2019.

CAUSES OF ACTION

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

- (a) Section 211.03 of the *ASA* as against the Defendants for releasing the Impugned Statements containing misrepresentations; and
- (b) Common law secondary market negligent misrepresentations against the Defendants for releasing the Impugned Statements containing misrepresentations.

3. The Defendant ACB is one of Canada's new-economy cannabis companies relying upon recently enacted laws to exploit investment opportunities in the cannabis industry. It claimed to be one of the largest manufacturers and distributors of cannabis products.

4. On September 11, 2019, ACB released its 4Q 2019 quarterly financial statements and MD&A, ending June 30, 2019, and 2019 annual information form, which the Individual Defendants certified did not contain misrepresentations.

5. On September 12, 2019, the Individual Defendants made oral misrepresentations to investors during a conference call discussing these financial results and the then quarter, i.e.g., 1Q 2020 business and operations.

6. These statements within ACB's core and non-core documents were released two weeks prior to the close of the next financial quarter, i.e., 1Q 2020 ending September 30, 2019, and between then and November 13, 2019, ACB continued to release bullish statements about 1Q 2020.

7. After market close on November 14, 2019, however, ACB released its 1Q 2020, quarterly financial statements and MD&A ending September 30, 2019. In this partial Public Corrective Statement Disclosure, the Defendants published and stated that:

- (a) 1Q 2020 sales dropped by 25%;
- (b) ACB had distribution (logistic) problems (constraints) and that they monitor daily sales from the provinces to the retailers very carefully;
- (c) ACB's adjusted EBITDA loss for 1Q was \$39.7 million compared to \$26.6 million the prior quarter;
- (d) The decrease in EBITDA was primarily due to decreased revenue; and
- (e) ACB was halting construction of its Aurora Nordic 2 facility in Denmark and deferring final construction of its facility in Medicine Hat, Alberta.

8. On November 15, 2020, ACB's common shares closed down approximately 18%, from \$56.28 to \$43.08, on an adjusted basis.

9. Thereon after, on November 18, November 29, and December 21, 2019, there were further disclosures of adverse material facts about why 1Q 2020, ending September 30, 2019, conflicted with the prior Impugned Statements.

10. By December 23, 2019, ACB's common shares were trading down to \$31.80, on an adjusted basis.

REMEDY SOUGHT

11. Robert Landry is an individual who resides in Quebec. During the Class Period, he purchased thousands of shares of ACB. He realized a substantial loss by holding these securities until after the Public Corrective ~~Statements.~~ Disclosures. ~~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), and (ii) at common law for secondary market negligent misrepresentation.~~

12. Mr. Landry is a sophisticated investor who owned many shares of ACB before the start of the Class Period. During the Class Period he sold some of the shares he owned before the start of the Class Period. He held most of the shares he purchased during the Class Period until the end of the Class Period.

13. Before and during the Class Period, Mr. Landry read and relied upon ACB's continuous disclosure, news articles about ACB, and analyst reports about ACB to inform his decisions to buy, hold and sell the Company's securities.

14. Gill Fruchter is an individual who resides in Ontario. He purchased shares of ACB on September 25, 2019 and realized a loss by holding those shares until after the Public Corrective Disclosures.

15. Mr. Fruchter was a retail investor not in the business of advising on or trading in securities who had a general understanding of market dynamics. He understood the November 18, 2019 article about Aurora's disappointing 1Q2020 financial performance much better than Aurora's explanation on November 14, 2019.

16. Mr. Fruchter did not sell his shares on November 18, 2019 because he thought the price for Aurora's shares could not fall much lower as Aurora still had a good business based on its public disclosure and market position at the time. However, the accusations about Aurora's management not being transparent with investors seemed true when it was announced on December 21, 2019 that ACB's Chief Corporate Officer suddenly resigned under circumstances resembling termination.

17. Following Cam Battley's departure, Mr. Fruchter lost confidence in Aurora's management and their ability to lead Aurora effectively. Mr. Fruchter regrets his decision not to sell his shares in Aurora on or following November 18, 2019. The sudden change in management without explanation signaled to him and to members of the Class that the earlier accusations about Aurora's management not being transparent were founded, and that ACB did indeed make misrepresentations on and after September 11 and 12, 2019.

THE DEFENDANTS

18. ACB is a company incorporated pursuant to the *British Columbia Business Corporations Act*.

ACB is based in Edmonton, Alberta.

19. During and prior to the Class Period, ACB's securities were listed on and publicly traded on the TSX under the ticker symbol "ACB" with CUSIP identifier number 05156X, under ticker symbol "ACBFF" on the U.S. over-the-counter market (then ACB on the NYSE), and under ticker symbol "21P1" on the Frankfurt Stock Exchange. During the Class Period, ACB warrants were listed on and publicly traded on the TSX under the ticker symbol "~~ACS~~"ACB.WT".

~~14.20.~~ Individual Defendant Terry Booth was the Chief Executive Officer and a director of ACB during the Class Period. Booth signed certification forms associated with the Impugned Statements, allegedly affirming that they did not contain misrepresentations.

~~15.21.~~ Individual Defendant Glen Ibbott was the Chief Financial Officer of ACB during the Class Period. Ibbott signed certification forms associated with the Impugned Statements, allegedly affirming that they did not contain misrepresentations.

THE MATERIAL EVENTS IMPUGNED STATEMENTS

~~16.22.~~ On **September 11, 2019**, ACB released its 4Q 2019 quarterly financial statements and MD&A for the period ending June 30, 2019, and its 2019 annual information form, which the Individual Defendants certified did not contain misrepresentations.

~~17.23.~~ On **September 12, 2019**, ACB hosted its investor conference call. The Individual Defendants reassured investors that ACB expected that its adjusted EBITDA would improve due to higher sales, improved gross margins and prudent Selling, General and Administrative Expenses (“SG&A”) growth, they were seeing strong selling on products at the retail level [being then during 1Q 2020, opposed to a vague future date], revenue continues to increase quarter-to-quarter, ACB expects to see growth in its core business, *and ACB anticipated a plateau of demand between then and year end.*

~~18.24.~~ On **September 20, 2019**, ACB released its 2019 Annual Report. This core document reiterated the prior material facts and omitted the same material facts within the MD&A (Key Developments Subsequent to June 30, 2019).

~~19.25.~~ These core documents were released two weeks prior to the close of the next financial quarter, i.e., 1Q 2020 ending September 30, 2019, and between then and November 13, 2019, ACB continued to release bullish statements about 1Q 2020.

20.26. On **October 3, 2019**, ACB published a news release that generally touted that business development of its facilities under construction were going well. This non-core document omitted the adverse material facts that ~~the quarter was~~ its business operations were not evolving as ACB had projected on September 11-12, 2019.

21.27. On **October 30, 2019**, ACB published a news release that touted that business and sales were going well. This non-core document omitted the adverse material facts that ~~the quarter was~~ its business and sales were not evolving as ACB had projected on September 11-12, 2019.

THE PUBLIC CORRECTIVE DISCLOSURES

22.28. After market close on **November 14, 2019**, however, ACB released its 1Q 2020, quarterly financial statements and MD&A ending September 30, 2019. In this partial Public Corrective Statement Disclosure, the Defendants published and stated that:

- (a) 1Q 2020 sales dropped by 25%;
- (b) ACB had distribution (logistic) problems (constraints) and that they monitor daily sales from the provinces to the retailers very carefully;
- (c) ACB's adjusted EBITDA loss for 1Q was \$39.7 million compared to \$26.6 million the prior quarter;
- (d) The decrease in EBITDA was primarily due to decreased revenue; and
- (e) ACB was halting construction of its Aurora Nordic 2 facility in Denmark and deferring final construction of its facility in Medicine Hat, Alberta.

23.29. During the conference call with investors, Individual Defendant Booth conceded that there was oversupply of cannabis in the market and ACB anticipated that going into the quarter, i.e., contradicting the Impugned Statements made on September 11 and 12, 2019.

~~24.30.~~ On **November 15, 2019**, ACB's common shares closed down approximately 18%, from \$56.28 to \$43.08, on an adjusted basis.

~~25.31.~~ On **November 18, 2019**, MarketWatch published an article entitled, "Aurora Cannabis stock suffers worst day in more than five years, analyst says 'it would be fair for investors not to believe them[.]'" This partial Public Corrective Statement clarified, in layman terms, the inconsistencies between ACB's September 11-12, 2019 Impugned Statements and its 1Q 2020 results released on November 14, 2019. This article resulted in the price for ACB common shares dropping a further 16%.

~~26.~~ On **November 29, 2019**, Marijuana Business Daily reported that German pharmacies were told, during 1Q 2020, not to sell Aurora's cannabis product by the German health authorities.

~~27.32.~~ On **December 21, 2019**, ACB published a statement that its Chief Corporate Officer, Cam Battley, was resigning, but omitted the material facts why. Cam Battley is the ACB officer who told the market on September 12, 2019 that ACB's 1Q 2020 earnings would "plateau" when he must have known they were in serious decline. The price for ACB shares dropped another 10%.

NO STATUTORY DEFENCE FOR FORWARD-LOOKING INFORMATION

~~28.33.~~ To the extent that any of the disclosure documents or public statements addressed in this 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.

~~29.34.~~ Further or in the alternative, to the extent that the statutory defences in section 211.04 of the *ASA* 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 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 AURORA'S SECURITIES

35. The Defendants owed a duty of care to the investing public (the market) to ensure that ACB's continuous disclosure documents did not contain misrepresentations.

36. The Defendants' duty was triggered as soon as each investor purchased ACB's securities in reliance upon any material fact about ACB's business, operations, and finances.

37. For the reasons stated herein, the Defendants breached the standard of care by releasing the Impugned Documents containing misrepresentations.

38. The Plaintiffs and each member of the putative Class sustained damages from a direct and foreseeable result of the Defendants' breach.

~~30.39.~~ The price and value of ACB's securities were directly affected each time the Defendants disclosed (or omitted to fully disclose) material facts about ACB's business, operations or capital structure.

~~31.40.~~ The Defendants intended that the members of each class would rely upon these disclosures, which they did to their detriment, in purchasing and holding ACB's securities.

41. Had the Defendants not omitted the material facts as alleged herein, Robert Landry would have sold all of his ACB securities on or about September 12, 2019 when ACB should have disclosed that 1Q2020 earnings would be negative and not just flat, thereby avoiding a substantial portion of the loss he suffered.

42. The Plaintiffs and the other members of the Class are entitled to elect to recover damages by (i) being put back into the position that they would have been in had the Defendants released the September 11-12 and subsequent Impugned Statements without misrepresentations, or (ii) damages for the drop in the price or value of ACB's securities after the release of each of the partial Public Corrective Disclosures (partial and final).

32-43. The disclosure documents referred to herein were filed with SEDAR and thereby became available to and were reproduced for inspection for the benefit of the Plaintiffs and the other members of each class, the public, financial analysts and the financial press through the internet and financial publications.

33-44. The price at which ACB's securities traded incorporated the information contained in the disclosure documents referred to herein.

THE VICARIOUS LIABILITY OF ACB

34-45. The acts particularized and alleged in this statement of claim to have been done by ACB were authorized, ordered and done by the senior officers, agents, employees and representatives who were engaged in the management, direction, control and transaction of ACB's business, finances, and operations and are, therefore, acts and omissions for which ACB is vicariously liable.

STATUTORY LIABILITY UNDER THE ASA

35-46. The Plaintiffs will seek leave under s. 17.1 of the *ASA* to assert, on behalf of ~~himself~~ themselves and the members of the Statutory Class, the causes of action set out in Part 17.1 of the *ASA* in respect of the Impugned Statements ~~dated September 11 and 12, 2019.~~

36.47. As a result of the conduct of the Defendants as alleged, the Plaintiffs and the members of each class suffered losses and damages by acquiring ACB's securities at artificially inflated prices and holding some or all of those securities until after one or more of the Public Corrective Statements.

37.48. Therefore, the Defendants are liable to pay damages pursuant to s. 211.07 of the *ASA* to the Plaintiffs and to the other members of each class.

38.49. The Plaintiffs and the other members of each class are also entitled to recover as damages, or costs in accordance with the *CPA*, the Plaintiffs' legal fees and the costs of administering the plan to distribute the recovery in this action.

REAL AND SUBSTANTIAL CONNECTION WITH ALBERTA

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

- (a) ACB is headquartered in Alberta;
- (b) ACB is a reporting issuer in Alberta;
- (c) There are members of each class who are residents of Alberta, relied on ACB's disclosure documents in Alberta, acquired ACB's securities in Alberta and suffered damage and loss in Alberta.

40.51. The Plaintiff proposes Plaintiffs propose that the trial of the certified common issues take place in the City of Edmonton, Alberta.

RELEVANT LEGISLATION

41.52. The Plaintiff pleads Plaintiffs plead and relies rely upon the *CPA*, NI 51-102, NI 52-109, the *ASA*, and the Equivalent Securities Acts.

REMEDY SOUGHT

~~42.53.~~ The ~~Plaintiff claims~~ Plaintiffs claim on ~~his~~their own ~~behalf~~ behalves and on behalf of the members of the Common Law Class and the Statutory Class:

- (a) An order pursuant to s. 5 of the *CPA* certifying this action as a class proceeding and appointing the Plaintiffs as the representative plaintiffs for each class;
- (b) An order granting leave to pursue the statutory causes of action set out in Part 17.1 of the *ASA* and the comparable provisions in the Equivalent Securities Acts for the period September 11, 2019 to December ~~21~~20, 2019;
- (c) A declaration that the Impugned Statements released by the Defendants contain misrepresentations related to ACB's business, operations and finances because the documents and statements omitted material facts about ACB's deteriorating sales, declining EBITDA, and distribution and construction problems.
- (d) A declaration that the misrepresentations were partially publicly corrected on November 14, 2019, November 18, 2019, and ~~November 29, 2019, and~~ finally publicly corrected on ~~December 20, 2019;~~ December 21, 2019;
- (e) A declaration that the Defendants released the aforementioned Impugned Statements containing misrepresentations negligently;
- (f) A declaration that the Defendants breached ss. 146 and 211.03 of the *ASA* and the comparable provisions in the Equivalent Securities Acts;
- (g) A declaration that ACB is vicariously liable for the acts and omissions of its senior officers;
- (h) 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;

(i) 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;

(j) Prejudgment and post-judgment interest, compounded, or pursuant to ~~ss. 128 and 129 of the CJA~~; s. 37.1 of the Courts of Justice Act, RSA 2000, c C-30.5 and ss. 2-8 of the Judgment Interest Act, RSA 2000, c J-1.

(k) Costs of this action on a full indemnity scale, or in an amount that provides substantial indemnity, plus, pursuant to s. ~~26(9)~~ 37 of the CPA and Division 2, Subdivision 1 Rules 10.29, 10.30, 10.31, 10.32 and 10.33 of the Alberta Rules of Court Alta Reg 124/2010, the costs of administering the plan of distribution of the recovery in this action; and

(l) Such further and other relief that this Honourable Court deems just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this

claim: 20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.