

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

MICHAEL TIETZ AND DUANE LOEWEN

PLAINTIFFS

and

BRIDGEMARK FINANCIAL CORP., JACKSON & COMPANY PROFESSIONAL CORP., ANTHONY JACKSON, LUKOR CAPITAL CORP., JUSTIN EDGAR LIU, ROCKSHORE ADVISORS LTD. (FORMERLY KNOWN AS CAM PADDOCK ENTERPRISES INC.), CAMERON ROBERT PADDOCK, KONSTANTIN LICHTENWALD, SIMRAN SINGH GILL, JCN CAPITAL CORP., JOHN BEVILACQUA, ESSOS CORPORATE SERVICES INC., SWAY CAPITAL CORP., VON ROWELL TORRES, DETONA CAPITAL CORP., DANILEN VILLANUEVA, NATASHA JON EMAMI, ALTITUDE MARKETING CORP., RYAN PETER VENIER, PLATINUM CAPITAL CORP., 658111 B.C. LTD., JASON CHRISTOPHER SHULL, TRYTON FINANCIAL CORP., ABEIR HADDAD, TAVISTOCK CAPITAL CORP., ROBERT JOHN LAWRENCE, JARMAN CAPITAL INC., SCOTT JASON JARMAN, NORTHWEST MARKETING AND MANAGEMENT INC., RUFIZA ESMail, DENISE TRAINOR, ALY BABU MAWJI, ESCHER INVEST SA, HUNTON ADVISORY LTD., RANDY WHITE, KENDL CAPITAL LIMITED, 1153307 B.C. LTD., RUSSELL GRANT VAN SKIVER, BERTHO HOLDINGS LTD., ROBERT WILLIAM BOSWELL, HAIGHT-ASHBURY MEDIA CONSULTANTS LTD., ASHKAN SHAHROKHI, SAIYA CAPITAL CORPORATION, TARA HADDAD, KEIR PAUL MACPHERSON, TOLLSTAM & COMPANY CHARTERED ACCOUNTANTS, ALBERT KENNETH TOLLSTAM, 727 CAPITAL, DAVID RAYMOND DUGGAN, VIRAL STOCKS INC., 10X CAPITAL, CRYPTOBLOC TECHNOLOGIES CORP., NEIL WILLIAM STEVENSON-MOORE, KENNETH CLIFFORD PHILLIPPE, BRIAN BILES, KOOTENAY ZINC CORP., ROBERT TINDALL, AFFINOR GROWERS INC., NICHOLAS BRUSATORE, SAM CHAUDHRY, GREEN 2 BLUE ENERGY CORP., SLAWOMIR SMULEWICZ, MICHAEL YOUNG, GLENN LITTLE, BELEAVE INC., ANDREW WNEK, BOJAN KRASIC, CITATION GROWTH CORP. (FORMERLY KNOWN AS LIHT CANNABIS CORP. AND MARAPHARM VENTURES INC.), LINDA SAMPSON, DAVID ALEXANDER, YARI ALEXANDER NIEKEN, HANSPAUL PANNU, BLOK TECHNOLOGIES INC., ROBERT DAWSON, JAMES HYLAND, PREVECEUTICAL MEDICAL INC., STEPHEN VAN DEVENTER, SHABIRA RAJAN, ABATTIS BIOCEUTICALS CORP., ROBERT ABENANTE, KENT MCPARLAND, SPEAKEASY CANNABIS CLUB LTD., MARC GEEN, MERVYN GEEN, JEREMY ROSS, ALEXANDER KAULINS, KOPR POINT VENTURES INC. (FORMERLY KNOWN AS NEW POINT EXPLORATION CORP.), AND BRYN GARDENER-EVANS

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF APPLICATION

Names of Applicant: The Plaintiffs, Michael Tietz and Duane Loewen

To: The Defendants

TAKE NOTICE that an application will be made by the applicants, Michael Tietz and Duane Loewen, to the Case Management Judge, the Honourable Madam Justice Wilkinson, at the courthouse at 800 Smithe Street, Vancouver, B.C., on 8/APR/2022 at 9:00 a.m. for 1 hour for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. The Distribution Protocol, attached as Schedule “A” to this Notice of Application, is approved and shall be implemented and enforced in accordance with its terms.
2. Class Counsel’s Retainer Agreement with the representative Plaintiff, and the payment pursuant to that Retainer Agreement of Class Counsel’s legal fees, disbursements, and taxes thereon, in the following amount \$720,000 in legal fees (plus taxes) and \$135,101.79 in disbursements (inclusive of taxes) is approved.
3. \$240,000 shall be paid to Class Counsel, in trust for members of the Class, for litigation expenses to be approved by the Court (the “Litigation Holdback”).
4. Analytics Consulting LLC (“Analytics”) is hereby appointed the Administrator for the purposes of settlement administration, subject to this Order and any further order as may be obtained, to serve until such time as the Net Settlement Fund is distributed in accordance with the Distribution Protocol, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Distribution Protocol.
5. After the date that is thirty-one (31) days after the making of this Order, Class Counsel shall transfer the Settlement Fund, less approved class counsel fees, disbursements, applicable taxes and the Litigation Holdback, to an account at a Canadian Schedule 1 bank under the control of the Administrator (“Escrow Settlement Fund”).
6. The Administrator shall invoice Class Counsel monthly for the services provided in the settlement administration. Upon approval by Class Counsel, those invoices shall be paid from the Escrow Settlement Fund.
7. If in the course of administering the settlement the Administrator believes the average costs per claimant (excluding the project setup costs) will exceed those set out in its proposal by more than 10%, it shall notify Class Counsel immediately. Upon receiving such notice,

Class counsel shall bring a short leave application for the Court's approval of the exceedance, or such other direction as the Court may consider appropriate.

8. Upon the conclusion of the settlement administration, and before distribution of the Net Settlement Fund to the Authorized Claimants, the Administrator shall report to the Court on the settlement administration and shall account for all monies it has received, administered and proposes to distribute in accordance with the Settlement Agreement and the Distribution Protocol.
9. No claims shall lie against Class Counsel or the Administrator based on distributions made substantially in accordance with this the Distribution Protocol, or with any other order or judgment of the Court.

Part 2: FACTUAL BASIS

10. The distribution of settlement proceeds to Class Members pursuant to the Distribution Protocol is fair and reasonable.
11. The proposed legal fees are in accordance with the Class Counsel's Retainer Agreement with the representative Plaintiff, and are fair and reasonable in the circumstances, and the disbursements were properly incurred by Class Counsel in the pursuit of claims on behalf of Class Members.
 1. Class Counsel's retainer agreement provides for a legal fee of 35% of all funds recovered for the Class through settlement or judgment. The proposed legal fee of \$720,000 represents 30% of the settlement proceeds.
 - Mounter Affidavit #4, Exhibit "A"
 2. Class Counsel has incurred and recorded time to date in the conduct of this class proceeding with a value of approximately \$3.1 million, based on the hourly rates that Class Counsel would otherwise have charged for the services provided.
 - Mounter Affidavit #4, para. 5
 3. The representative Plaintiffs, and the proposed plaintiff Mr. Morlani, approve the proposed legal fees.
 - Mounter Affidavit #4, para. 4
 4. The disbursements of the \$135,101.79, for which Class Counsel seeks approval, include disbursements incurred by Class Counsel, in relation to expert witness fees, process server

expenses, court fees, transcript costs, courier fees and other such expenses. It also includes the proposed honouraria of \$1,000 to each of Messrs. Morlani, Tietz, and Loewen.

- Mounteer Affidavit #4, para. 26.

5. Analytics is an experienced settlement administrator who has provided a reasonable and competitive proposal for distribution of the Settlement Fund pursuant to the Distribution Protocol.

- Baker Affidavit #1

- Affidavit #1 of Richard Simmons sworn on February 7, 2022

Part 3: LEGAL BASIS

6. Under s. 38(2) of the *Class Proceedings Act*, a fee agreement between a solicitor and the representative plaintiff is not enforceable unless approved by the Court.

7. Part 8 of the *Law Society Rules* sets up a standard of fairness and reasonableness for contingency fees agreements. Rule 8-1(1) provides that lawyer who enters into a contingency fee agreement must ensure that the agreement is fair under the circumstances when the agreement is entered into and the lawyers' remuneration provided for in the agreement is reasonable. Rule 8-1(2) provides that a bill prepared under a contingent fee agreement must be reasonable under the circumstances existing at the time the bill is prepared.

8. It has long been recognized that for class proceeding legislation to achieve its policy goals, counsel must be well rewarded for their efforts and the contingency agreements they negotiate with clients should be respected.

- *Wilson v. Depuy International Ltd.*, 2018 BCSC 1192 at para. 122

9. Contingency fees in the range of 33% have been recognized by Canadian courts as reasonable and presumably valid.

- *Wilson* at para. 123; *McLean v. Cathay Pacific Airways Ltd.* 2021 BCSC 1456 at para. 55.

10. The factors considered in assessing whether a fee is fair and reasonable are:

a. the results achieved;

b. the risks undertaken;

c. the time expended;

d. the complexity of the matter;

- e. the degree of responsibility assumed by counsel;
- f. the importance of the matter to the client;
- g. the quality and skill of counsel;
- h. the ability of the class to pay;
- i. the client and the class's expectation; and
- j. fees in similar cases.

- *Green v. Tecumseh Products of Canada Limited*, 2016 BCSC 217 at para. 57; *Pearce v. 4 Pillars Consulting Inc.*, 2021 BCSC 136 at para. 56; *McLean* at para. 48.

11. The proposed legal fee of \$720,000, reflecting 30% of the settlement proceeds, is fair and reasonable having regard the terms of Class Counsel's retainer agreement, the amount and value of the time expended by Class Counsel in the conduct of class proceeding, the additional time which will be expended by Class Counsel in administering the Plan, and the other factors set out above.

12. Court's have repeatedly acknowledged that Class Counsel are highly experienced in the field of class actions.

- *Denluck v. Boilermakers' Lodge 359 Pension Plan (Board of Trustees)* 2021 BCSC 242 at para. 17; *Parsons v. Coast Capital*, 2009 BCSC 330 at para. 10; *Jastram Properties Ltd. v. Tan*, 2021 BCSC 2432 at para. 46;

13. The hourly rates that Class Counsel would otherwise have charged for the services provided are consistent with those charged by national law firms.

- a. *Gowlings*, \$940 (for senior counsel), \$500 (2018 call); *Rieder v. Plista GMBH*, 2021 ONSC 5245 at para. 3.
- b. *Torys LLP*, \$1,095 (2000 call); *Hornepayne First Nation v. Ontario First Nations (2008) Limited Partnership*, 2021 ONSC 4575 at para. 7. Over \$1,000 per hour (Sheila Block); *Reiss v Torys LLP*, 2018 ONSC 5893 at para. 28.
- c. *McCarthy Tétrault*, \$905 (2000 Call), \$545 (2011 Call), \$530 (2016 Call); *Fram Elgin Mills 90 Inc. v. Romandale Farms Ltd.*, 2020 ONSC 1621 at 67; \$895 (20-year call); *TNG Acquisition Inc. (Re)*, 2014 ONSC 2754 at 22.
- d. *BLG*, \$950 (senior counsel), \$750 (14-year Call), *Bank of Nova Scotia v. Diemer (c.o.b. Cornacre Cattle Co.)*, 2014 ONCA 851 at para. 13; \$875 (23-year call); *Landmover Trucks Inc v Bhullar*, 2017 ONSC 3196 at 22.

- e. Fasken's, \$950 per hour (2003 Call) *Ayesof Professional Inc (cob St Mary's IDA Pharmacy) v Revera Inc*, [2022] OJ No 526, 2022 ONSC 217 at para. 9.
14. The hourly rates of Class Counsel are also consistent with the hourly rates reportedly charged by litigation senior counsel in BC (taking into account inflation since the amounts were reported):
 - a. "the billing rates charged by litigation lawyers in Vancouver [between 2015 and 2018] with more than 25 years experience ranged from a low of \$450 per hour to a high of \$750 per hour." ; *Burns v Wood*, 2019 BCSC 642 at para. 37.
 - b. \$550 per hour for senior counsel (in 2016) was "at or below market rates for lawyers of similar levels of experience."; *Hokhold v. Gerbrandt*, 2016 BCCA 5 at para. 24, per Registrar T.R. Outerbridge.
 - c. "senior counsel in Vancouver [in 2005] generally bill at \$460 per hour and that comparable counsel in Toronto bill at \$600 per hour."; *Lee (Guardian ad litem of) v Richmond Hospital Society (cob Richmond Hospital)*, 2005 BCCA 107 at para. 12.
15. The current hourly rates of Class Counsel have been accepted as reasonable in valuing the time expended; *Denluck (2021)* at para. 43. *Jastram (2021)* at para. 46.
16. The \$135,101.79 in disbursements incurred by Class Counsel were reasonable and necessary for the conduct of the action.
 - Mounter Affidavit #4, para. 27
17. Courts in British Columbia have long awarded honouraria to representative plaintiffs "in recognition of the effort expended on behalf of the class members". Honouraria at this stage of proceedings have typically been in the range of \$3,000 to \$4,000. The amount sought here is \$1,000 to recognize the Representative Plaintiffs and Mr. Morlani's, contributions to the successful result.
 - *Parsons v. Coast Capital Savings Credit Union*, 2010 BCCA 311; *Steele v Toyota Canada Inc*, 2015 BCSC 1040, paras 37-39; *Cantlie v Canadian Heating Products Inc*, 2015 BCSC 1225, paras 49-53; *McLean* at para. 57.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #3 of Mark W. Mounter sworn on February 7, 2022, previously filed.
2. Affidavit #1 of Nicholas Baker sworn on February 7, 2022, previously filed.

3. Affidavit #1 of Richard Simmons sworn on February 7, 2022, previously filed.
4. Affidavit #4 of Mark W. Munteer sworn on March 8, 2022.

The applicants estimate that the application will take 1 hour.

[x] The matter is not within the jurisdiction of a master.

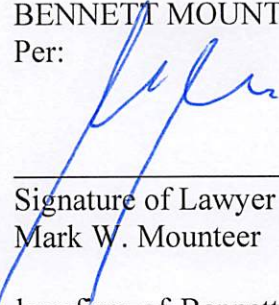
TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application:

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - i. you intend to refer to at the hearing of this application, and
 - ii. has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - i. a copy of the filed application response;
 - ii. a copy of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - iii. if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: 8/MAR/2022

BENNETT MOUNTEER LLP

Per:



Signature of Lawyer for Applicant
Mark W. Munteer

THIS NOTICE OF APPLICATION was prepared by the law firm of Bennett Munteer LLP, whose place of business and address for service is #400 – 856 Homer Street, Vancouver, British Columbia, V6B 2W5. Telephone: (604) 639-3680. Fax: (604) 639-3681. Counsel Reference: Paul R. Bennett and Mark W. Munteer

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

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.....
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Date:.....

Signature of Judge Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts