

Court File No. CV-19-0061408600 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

VECCHIO LONGO CONSULTING SERVICES INC.

Plaintiff

- and -

APHRIA INC., VICTOR NEUFELD, ~~CARL MERTON~~, COLE CACCIAVILLANI, ~~CLARUS~~
~~SECURITIES INC.~~, ~~CANACCORD GENUITY CORP.~~, ~~CORMARK SECURITIES INC.~~,
~~HAYWOOD SECURITIES INC. AND INFOR FINANCIAL INC.~~

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF EDWARD ANTHONY LONGO
(Sworn March 19, 2025)**

I, **EDWARD ANTHONY LONGO**, in the City of Mississauga, in the Ontario, **MAKE
OATH AND SAY:**

Overview

1. I am the owner and President of Vecchio Longo Consulting Services Inc. ("**Vecchio**"), an Ontario company that is the Representative Plaintiff in this class proceeding. As such, I have knowledge of the matters to which I here depose. Where that knowledge is based on information and belief obtained from others, I have stated the source of that information, and I believe it to be true.
2. No portion of this affidavit is meant to waive nor should it be understood to be a waiver of solicitor-client or litigation privilege.
3. I swear this affidavit in support of a motion seeking approval of a settlement reached

between the parties (the “**Settlement Agreement**”) and for approval of Class Counsel’s request for legal fees, disbursements, and applicable taxes. Capitalized terms, unless otherwise defined, have the meanings provided for in the Settlement Agreement.

4. After being involved as representative plaintiff over the past six years of this litigation, and for the reasons described below, I support approval of the Settlement Agreement. I believe it is fair, reasonable, and in the interests of all Class Members. As such I recommend it to the Court.

5. I also support Rochon Genova’s request for approval of \$9,000,000 in Class Counsel fees, plus disbursements and applicable taxes, which is consistent with the retainer agreement entered between Vecchio and Rochon Genova.

I. Commencement of Action to Trial

My background

6. I am a retired executive and an entrepreneur. I earned a Bachelor of Commerce degree from the University of Toronto in 1984 and an MBA from the Schulich School of Business at York University in 1986. I have held various positions in business and industry since earning my MBA in 1986, including:

- a. From 1999 to 2005, I was the CFO of Playtex Canada Ltd., the Canadian subsidiary of its US publicly traded parent consumer products company. As the CFO of Playtex Canada Ltd., I was responsible for, among other things, ensuring compliance with the US *Sarbanes-Oxley Act*, the 2002 statute which I understand had as its purpose the oversight of financial reporting of public companies in order to improve the accuracy and reliability of corporate disclosure for the purposes of investor protection.

- b. From 2006 to 2011, I was the CFO of Asset Inc., a Canadian private company which provided technology-based asset recovery and insolvency management solutions to the Canadian financial services industry.
 - c. From 2012 to 2015, I was the CFO, the COO and co-owner of Milestones GTA, a company which owned and operated 5 restaurants in the Toronto area, having over 350 employees.
7. I have been an active equity investor since 1985. I consider myself to be a careful and informed investor. I follow the equity markets closely and I conduct research before I make investment decisions.

Vecchio's Investment in Aphria

8. In 2018, with the legalization of cannabis for recreational use in Canada, came new investment opportunities. Like many other investors I soon discovered Aphria – a growing company in this burgeoning sector with lots of upside. This was especially true after the company made two significant international acquisitions in 2018 for hundreds of millions of dollars.
9. After watching Aphria CEO Vic Neufeld (“**Neufeld**”) give a lengthy interview on BNN in November 2018 discussing Aphria’s international acquisitions and the tremendous growth opportunities for Aphria, on November 29, 2018 I caused Vecchio to purchase 2,000 Aphria shares at an average price of \$10.5555 per share. The interview remains available on BNN Bloomberg’s YouTube channel at the following link: <https://www.youtube.com/watch?v=23DB1_zQrI4>.
10. On December 3, 2018, just a few weeks after Neufeld’s interview, and a few days after Vecchio’s investment, I was shocked to read articles calling these international acquisitions a “shell game” and implicating Aphria and its leadership in wrongdoing. Vecchio’s investment in Aphria

lost almost half of its value over the course of a few days.

11. In the following days, there was a lot of back and forth in the media about Aphria and some rebound in the share price. On December 28, 2018, in order to minimize my losses, I sold my 2,000 Aphria shares at an average price of \$8.2328, or a loss of about 22% on my investment in one month.

The Commencement of the Class Action

12. I caused Vecchio to commence this action to recover compensation for Vecchio's losses and others. I was also a class member in the SNC-Lavalin class action, through which I was able to recover some of my losses on my investment in that company. I believe that securities class actions are important for investors to recover some of their losses where there are misrepresentations in a company's public disclosure; and, also as a deterrent to misconduct in our capital markets. Shareholder class actions are only possible if investors, like Vecchio, are prepared to step up and act as representative plaintiffs.

13. I had benefitted from the SNC-Lavalin class action when others had taken the lead. I thought it was important to step forward in this case on behalf of harmed Aphria shareholders.

Retainer with Rochon Genova

14. On February 8, 2019, as President of the company, I entered into a retainer agreement with Rochon Genova. A subsequent, superseding retainer between Vecchio and Rochon Genova was agreed to and signed on April 3, 2019. This April 3, 2019 retainer agreement, attached hereto as **Exhibit "A"**, is the operative retainer agreement between Vecchio and Rochon Genova in respect of this class action.

Steps in the litigation prior to entering the settlement agreement

(a) Starting the Action (February 2019)

15. The February 7, 2019 Statement of Claim initially named Aphria, its directors and officers Victor Neufeld, Carl Merton, and Cole Cacciavillani, as well as Canaccord Genuity Corp., Clarus Securities Inc., Cormark Securities Inc., Haywood Securities Inc., and Infor Financial Group Inc. (collectively, the “**Underwriters**”) as defendants.

16. I have been actively involved in the prosecution of the Action, having numerous meetings, discussions and e-mail exchanges with Rochon Genova. Through this participation, I became very familiar with the issues in this action and the various steps taken up to this settlement approval motion.

(b) The Carriage Motion (April 2019)

17. Not long after signing my first retainer agreement, Rochon Genova informed me that two prominent plaintiff-side securities class action law firms had also commenced actions against Aphria.

18. I was then informed that these two law firms had teamed up to jointly prosecute the actions in a consortium which did not include Rochon Genova. Consequently, my counsel explained, only one action could move forward—ours or theirs—and we would have to go to court and be awarded “carriage” to proceed with the case. I consented to this step as I believed, based on our discussions, that Vecchio’s claim was stronger and more favourable to class members.

19. I swore an affidavit dated April 3, 2019, in support of the carriage motion. In that affidavit I explained the various steps undertaken by Rochon Genova at that time to advance the litigation including their retention of: (a) experts in Jamaica, Colombia, and Argentina to provide evidence on

the relevant cannabis regulatory regime in those jurisdictions; (b) a research consultant to assist in the investigation of this claim; (c) a leading US forensic economics firm to address liability and damages issues, and (d) a leading accounting expert to address whether Aphria's class period financial disclosure complied with relevant accounting standards.

20. The carriage motion was heard on May 16, 2019. A month later, on June 19, 2019, I was informed that Justice Perell had awarded Vecchio carriage on the basis that our case theory was better than the other competing cases.

(c) The Leave and Certification Motions during the Pandemic

21. As Rochon Genova advised me, the next step in the litigation would be the "Leave and Certification Motion". Rochon Genova explained that our Action needed permission (or "leave") of the court to bring the secondary market civil liability claim under the Ontario *Securities Act* (the "*OSA*") and for certification of the proceeding as a class action with Vecchio as the representative plaintiff under the Ontario *Class Proceedings Act, 1992* (the "*CPA*"). I understood that the Leave and Certification Motion would be a significant undertaking and vigorously contested by well-resourced defence counsel.

22. Moreover, as a central part of our case involved Aphria's acquisitions in both South America and Europe, counsel advised me it was necessary to retain additional experts to provide evidence in additional jurisdictions, being Germany and Italy, as well as experts on business valuation, corporate governance, and securities trading practices.

23. On March 13, 2020, Rochon Genova submitted a 5,195-page Leave and Certification Motion Record, in thirteen volumes. An additional 37-page Supplementary Record was delivered on June 5, 2020. I swore an affidavit dated January 27, 2020 in support of the Leave and Certification

Motion.

24. Rochon Genova advised me that the Aphria Defendants submitted a 2,004 page Responding Motion Record in three volumes on December 1, 2020, and on December 29, 2020, the Underwriter Defendants delivered their own Responding Motion Record.

25. On March 8, 2021, we delivered a 2,359 page, six-volume, reply motion record and on April 19 and June 7, 2021, we delivered two supplementary Reply Records.

26. Complicating matters was the fact that much of this work on the Leave and Certification Motion took place during the COVID-19 lock-down.

27. The motions for Leave and Certification were heard on June 23, 2021 and August 18, 2022. The initial motion was on consent of Aphria and the Individual Defendants, but contested by the Underwriter Defendants.

28. Following the first Leave and Certification Motion, Counsel informed me that Justice Perell had granted Vecchio Leave to Proceed under the *OSA* and certified our Action as a class proceeding with respect to the Aphria Defendants; however the Certification of this action against the Underwriter Defendants was delayed.

29. Counsel later advised that the Underwriter Defendants had appealed Justice Perell's decision and were given permission to proceed with their appeal by the Divisional Court.

30. Following the Divisional Court leave decision, Rochon Genova corresponded with me and advised me of this development and their strategic recommendation, to which I agreed, to dismiss the Action against the Underwriter Defendants, in exchange for their cooperation going forward. By avoiding the pending appeal, this would ensure that the Action would proceed more quickly against the remaining Aphria Defendants, who already consented to certification.

31. On August 18, 2022, Justice Perell heard the second Leave and Certification motion and granted the dismissal of the Action against the Underwriter Defendants and related relief.

(d) Mediation before The Honourable Warren Winkler (February 2023)

32. A mediation was held before former Chief Justice Warren Winkler on February 21 and 22, 2023.

33. Prior to the mediation, I reviewed an extensive Mediation Brief (87 pages) and Executive Summary (9 pages) prepared by Rochon Genova. Following my review, I attended a call with Rochon Genova to discuss mediation strategy and my settlement instructions, based on their advice.

34. The mediation was ultimately unsuccessful. The Defendants did not make any settlement offer in response to the Plaintiff's offer to settle.

35. Rochon Genova reported to me during and after the mediation.

(e) Production and Discovery (Spring-Summer 2023)

36. After the failed mediation, Rochon Genova began preparing for examinations for discovery.

37. I met with Counsel and swore my Affidavit of Documents on April 20, 2023.

38. Although Counsel advised me I would likely be examined for discovery some time in 2023 or early 2024 (which I was prepared for), Aphria's counsel never did so.

39. Examinations for discovery of the Aphria Defendants occurred over 10-days throughout June 2023, following which I received a detailed report from Rochon Genova.

(f) Preparing for trial

40. The Action was set down for trial, and the trial was scheduled before the Honourable Justice

Morgan for six weeks commencing on January 13, 2025.

41. Throughout 2024, Rochon Genova kept me informed regarding their extensive trial preparation and the commissioning of eleven expert reports on complex technical issues including: market economics and materiality, business valuation, accounting standards, corporate governance, damages, and legal opinions regarding the cannabis regulatory regimes in Colombia, Jamaica, Argentina, Germany and Italy.

42. On August 9, 2024, Rochon Genova provided me with a lengthy and detailed report summarizing all of the expert reports which had been served on Aphria counsel, and discussing next steps leading up to trial. I met with counsel on August 21, 2024, to discuss the status of the litigation and next steps.

43. A trial management conference was held before Justice Morgan on September 23, 2024 which detailed the steps remaining leading up to trial. Rochon Genova provided a detailed report to me regarding the Trial Management Conference, and on October 8, 2024, I had a call with counsel to discuss next steps.

II. The Proposed Settlement

44. Rochon Genova provided me with a further detailed report on December 13, 2024, summarizing all of the Defendants' expert reports and our experts' reply reports. They also reported on a proposed settlement initiative by Aphria Counsel, who requested a meeting during the first week of January 2025.

45. On December 23, 2024, I had a detailed discussion with Rochon Genova about these latest developments and settlement strategy and I ultimately provided my instructions to serve a formal offer to settle on the Aphria Defendants, which they did, on December 27, 2024.

46. On January 2, 2025, eleven days before the scheduled start of trial, Rochon Genova met with Defence Counsel and Aphria's CFO and In-House General Counsel of Aphria's parent company, Tilray Brands, Inc. This was the meeting requested by Aphria in late December. My counsel provided a detailed report of that meeting including the fact that Aphria advised that, should it be found liable for a significant judgment at trial, it would immediately seek creditor protection for Aphria under the *Companies' Creditors Arrangement Act* ("CCAA"). Rochon Genova advised me that this was a serious issue which required them to immediately retain specialized bankruptcy and insolvency counsel to further investigate the issues raised at the January 2 meeting and provide their advice as to how to best proceed in the interests of the Class.

47. I had a lengthy call with Rochon Genova about the developing situation, and they sent a detailed report to me on January 6, 2025, setting out what had occurred, the advice they received from bankruptcy and insolvency counsel and setting out next steps. I note that while all of this was taking place, Rochon Genova continued to prepare for the start of trial which was just one week away.

48. I had a further lengthy discussion with Rochon Genova on January 10, 2025, wherein we exchanged views about the path forward in the best interests of the Class. On Rochon Genova's advice, I instructed them to serve a further Offer to Settle, which they did on that day.

49. While Rochon Genova remained confident in the merits of our case, and the evidence they had prepared for trial, they advised me that, should we be successful at trial, there was a serious risk of no or minimal recovery of any judgment against the Defendants. This was in part, they explained, because any judgment against Aphria would be an unsecured debt and likely uncollectable by Class Members.

50. Settlement negotiations continued. I spoke again with counsel on January 11, 2025, about

the progress that was being made, and I was advised that the parties would request that the start of trial be adjourned for one day to enable the settlement discussions to continue. I agreed with this and later that evening, Rochon Genova, on behalf of all counsel, wrote to Justice Morgan and requested that the start of trial be adjourned until Tuesday, January 14.

51. Late in the afternoon of January 13, 2025, I spoke with my counsel who informed me that the last settlement offered by the Defendants was \$30 million all inclusive, and that this was the best that my counsel believed could be achieved under all of the circumstances. On the advice of Rochon Genova, I instructed them to accept the offer on behalf of the Class, which they did, subject to Court approval. I note that this amount was better than that which was offered in the January 2, 2025, meeting when the issue of the Aphria solvency risk was first raised.

52. On January 24, 2025, Rochon Genova sent me a copy of the draft Settlement Agreement with an explanatory note, all of which I reviewed.

53. On January 31, 2025, Rochon Genova sent me a further draft of the Settlement Agreement together with all of the Schedules, and a note explaining the main sources of disagreement between the two sides.

54. On Monday February 3, 2025, I had a lengthy Zoom call with Rochon Genova where we had a detailed discussion of the terms of the final form of the Settlement Agreement. On Rochon Genova's advice I instructed them to sign the Settlement Agreement on my behalf, which they did.

55. I am advised by Rochon Genova, and I believe to be true, that if the Settlement Agreement is not approved, I and other Class Members will likely face years more of litigation with the same looming risk that we may ultimately be unable to collect upon any eventual judgment due to Aphria's insolvency risk. I am also advised by Rochon Genova that the cost of pursuing this action through a

six-week trial would be very significant.

56. I have reviewed the Settlement Agreement in detail and had lengthy discussions with Rochon Genova, and I believe the Settlement it is fair, reasonable and in the best interests of the Class under all of the circumstances of this case.

57. This has been an intense six-years of litigation which was made even more challenging by the pandemic. Class Counsel has worked extremely hard to advance this case at every step and to do so as quickly as possible to secure the best possible outcome for the Class. In so doing, they have kept me fully informed at every stage with dozens of emails, including lengthy reports supporting their various recommendations and numerous in-person and virtual Zoom meetings. They explained issues fully, answered all of my questions, considered my comments and provided their recommendations and advice which I accepted.

58. Based on Class Counsel's extensive efforts in prosecuting this Action and negotiating a settlement, I believe that the proposed settlement terms, including the Notice Provisions, are fair, reasonable and will effectively advise Class Members of their rights and facilitate the professional administration of Class Members' claims.

III. Class Counsel Fees

59. I understand that the Settlement Agreement contemplates that Class Counsel's fees will be 30% of the total settlement amount of \$30 million plus applicable taxes. This is consistent with the retainer Agreement between Vecchio and Rochon Genova dated February 8, 2019 which is attached as Exhibit "A".

60. Accordingly, Class Counsel is requesting approval of its fee of \$9 million plus disbursements and applicable taxes.

61. This action raises complex factual and legal questions in multiple jurisdictions. Without the ability to prosecute shareholder claims by way of a class action, the shareholders would have had no practical way to recover any of their losses.

62. It certainly would not have been feasible for me or my corporation to retain a lawyer to prosecute my case individually or to cover any associated disbursements against the Defendants in this action.

63. I am advised by Rochon Genova, and I believe that the docketed value of their time in the prosecution of this action is approximately \$7.6 million, which is modestly lower than the requested Class Counsel Fees. I believe that the requested Class Counsel Fees are fair and reasonable in the circumstances given that Rochon Genova: (i) invested significant time and resources in the Action, including funding nearly \$1.3 million in disbursement; (ii) has received no compensation for the work it has completed to date; and (iii) the importance of prosecuting the issues in the Action for Class Members and the public at large.

64. I am also advised by Rochon Genova, and I believe, that no Class Members have objected to the requested Class Counsel Fees.

65. While the settlement amount is smaller than my earlier expectations of this Action, it is still sizable and holds the Defendants accountable.

66. Based on the terms of my retainer and the time, expenses, and significant risk incurred by Rochon Genova prosecuting this case on a contingency basis for more than 6 years, to the eve of trial, I believe their fee request is fair and reasonable. I recommend that this Court approve the requested fee.

IV. Conclusion

67. In conclusion, I believe I have fulfilled my duties as Representative Plaintiff over the past six years through my active engagement with Class Counsel and in the prosecution of this Action.

68. At all times, I have sought to act in the interests of all Class Members who suffered investment losses as a result of the Defendants' conduct.

69. I swear this affidavit in support of this motion for approval of the Settlement Agreement and Rochon Genova's fees and disbursements, and for no other or improper purpose.

SWORN remotely by EDWARD ANTHONY)
)
LONGO in Mississauga, Ontario,)
)
BEFORE ME in the City of Toronto, Province)
)
of Ontario on this 19th day of March 2025)



Commissioner for Taking Affidavits, etc

Ed Longo
Ed Longo (Mar 19, 2025 10:06 EDT)
EDWARD ANTHONY LONGO

VECCHIO LONGO CONSULTING SERVICES INC.
Plaintiff

and-

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AFFIDAVIT OF EDWARD ANTHONY LONGO
(Sworn March 19, 2025)

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