

CITATION: Vecchio Longo v. Aphria Inc., 2025 ONSC 1923
COURT FILE NO.: CV-19-00614086-00CP
DATE: 20250327

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: VECCHIO LONGO CONSULTING SERVICES INC., Plaintiff

– and –

APHRIA INC., VICTOR NEUFELD, and COLE CACCIAVILLANI, Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *Joel Rochon, Peter Jervis, Douglas Worndl, Rabita Sharfuddin, and Aylin Manduric*, Plaintiff

Dana Peebles and Bryn Gray, for the Defendants

HEARD: March 26, 2025

SETTLEMENT, COUNSEL FEE, HONORARIUM

[1] The parties to this class action reached a tentative settlement on January 13, 2025, which was the opening day of what was to be a six-week trial. The trial then adjourned pending the finalization of the settlement agreement.

[2] On February 7, 2025, I granted an Order approving the Notice Plan for the settlement and appointing RicePoint Administration Inc. d.b.a. Verita Global (“RicePoint”) as the Administrator of the Notice Plan and settlement, if approved. The Plaintiff now moves pursuant to section 29 of the *Class Proceedings Act, 1992*, SO 1992, c.6 (“CPA”) and section 138.10 of the *Ontario Securities Act*, RSO 1990, S.5 (“OSA”), for approval of the settlement and of class counsel fees.

I. Settlement approval

[3] The action was commenced by Statement of Claim on February 7, 2019 on behalf of all shareholders who purchased shares of Aphria Inc. (“Aphria”) between January 29, 2018 to December 3, 2018. The claim concerned the Defendants’ public disclosure about Aphria’s business, and in particular two major business acquisitions that it made during the class period. The Statement of Claim pleads that the Defendants’ public disclosure contained misrepresentations which are actionable under the OSA and which, once corrected, gave rise to damages in the form of losses for the investors.

[4] The action was granted leave to proceed pursuant to Part XXIII.1 of the OSA and certified as a global class action pursuant to section 5(1) of the CPA, as ordered by Justice Perell on August 6, 2021 and August 18, 2022.

[5] Following my approval of the Notice Plan on February 7, 2025, class counsel posted the Short Form Notice, Settlement Agreement and Settlement Rationale on its website. Shortly thereafter, they arranged for the publication of the Short Form Notice in major media publications and on digital platforms, as called for in the Notice Plan.

[6] Class counsel have explained that they met on January 2, 2025, a week before the commencement of trial, with Defendants' counsel as well as general counsel for Aphria Inc. and general counsel for its parent company, Tilray Brands Inc. At that meeting, class counsel were advised that if the Plaintiff were to obtain a damages award close to the statutory damages that the Plaintiff was seeking, Aphria would be compelled to seek protection under the *Companies' Creditors Arrangement Act*, RSC, 1985, c C-36 (the "CCAA"), and that, in fact, Aphria had already retained CCAA counsel with a view to commencing that process.

[7] Following the January 2, 2025 meeting, Class counsel retained insolvency law counsel to evaluate the risks of a CCAA proceeding. After taking advice from insolvency counsel, class counsel came around to the view if CCAA proceedings were commenced, the prospects of recovery for the class would be greatly diminished. More specifically, class counsel came to understand that any substantial judgment obtained after the scheduled six-week trial would, in a CCAA proceeding, become an unsecured claim, and that it would likely be uncollectable.

[8] In addition to the insolvency consideration, class counsel was also cognizant of certain risks they might encounter at trial. Specifically, the Defendants argued that there were no misrepresentations in the public disclosure at issue in the action, and that in any case the damages incurred by investors were minimal. The Defendants also took the position that the "reasonable investigation" or due diligence defense would be effective in precluding liability.

[9] In support of their position, the Defendants filed 13 separate reports by qualified experts opining on the applicable accounting standards, corporate governance standards, valuation principles, and regulatory regimes in the jurisdictions where the assets at issue were located. Class counsel felt compelled to acknowledge that if the Court accepted the evidence of these experts, there was a possibility that the Defendants would not be found liable for any damages. Such a finding would negate any recovery for the class members, even if it could be established that Aphria's public disclosure during the class period contained misrepresentations.

[10] Having settled on the eve of trial following extensive discovery and trial preparation, counsel on both sides of the case had achieved a thorough understanding of the prospects and risks for the case. Specifically, class counsel advise that they had fully reviewed and prepared the underlying facts, issues, evidence and applicable law, and had conducted extensive investigation of the issues at each stage of the litigation. Class counsel observes that the counsel team has reviewed some 100,000 pages of materials produced at discovery. Accordingly, all parties were well positioned to evaluate a prospective settlement.

[11] The proposed settlement provides for the Defendants to pay \$30 million in resolving all claims pleaded in the action. Using the Defendants' figures, that is roughly 25% of the maximum damages that the class could have received at trial given the statutory caps on damages under the OSA.

[12] The settlement ensures that class members have received notice of the settlement approval hearing, and that they will receive notice of the settlement's approval, if granted herein. The approved Notice Plan also ensures that notice is provided to class members allowing them to participate in the claims program. I also note that the proposed settlement is non-reversionary, such that any funds remaining after the administration of the claims will be distributed *cy-près* to a recipient approved by the court.

[13] As opposed to the risks of trial and of post-trial insolvency proceedings, the settlement of the action provides class members with certainty. The costs of a six-week trial would have been substantial. Moreover, given the importance of the issues to the parties and the level of damages being sought, an appeal would have been likely.

[14] Class counsel advise that they have not received any objections to the proposed settlement. No objectors appeared at the settlement approval hearing before me. I am confident that the settlement was reached through extensive negotiation by experienced counsel, and that class counsel and defense counsel are at arm's length and independent of each other.

[15] I also note that four individual plaintiffs who opted out of the class action at an earlier stage have now reached an agreement with the Defendants allowing them to opt back into the class. Those individual plaintiffs have consented to dismissing their claims; the settlement agreement and Order contemplate them then being included as class members.

[16] The settlement is accompanied by a Distribution Protocol that was designed with the assistance of Frank Torchio, an economist who is familiar with the scope of this action and with distribution protocols and plans of allocation in securities class actions. Mr. Torchio has opined that the settlement is also consistent with the damages formula provided by section 138.5 of Part XXIII.1 of the OSA.

[17] I make no finding as to whether Mr. Torchio is correct in that regard, or whether the proposed Distribution Protocol would have more general application in other cases. The settlement hearing has not afforded me an opportunity to consider opposing views on the interpretation of the causation and damages terms in section 138.5 of the OSA. Accordingly, the Distribution Protocol is being considered here for the purposes of the present settlement alone.

[18] It is the opinion of class counsel and Mr. Torchio that the Distribution Protocol will equitably distribute the net settlement amount among eligible class members. I agree that the Distribution Protocol is capable of being administered in an efficient and effective manner, and that, in the circumstances of this settlement, it will result in a fair distribution of the settlement funds among eligible claimants in the class.

[19] Given all of this, I consider the proposed settlement terms to be fair and reasonable. They include a comprehensive system for notifying class members of their rights, and are structured to ensure the professional and fair administration of class members' claims.

II. Counsel fee approval

[20] Class counsel seeks approval of \$9 million in legal fees, \$1,170,000 in HST, and \$3,914,500.55 in disbursements. They also seek approval of the levy payable to the Class Proceedings Fund in the amount of \$1,521,549.95. The fees requested by class counsel come to 30% of the overall settlement amount.

[21] This level of fees reflects that agreed upon in the retainer agreement between class counsel and the Plaintiff. I understand that the retainer agreement provides that the fees for class counsel will be 30% of the recovery where the total value is less than \$50 million and the settlement is achieved after the action is set down for trial. Both of those factors pertain to the present settlement.

[22] This level of fees is within the range routinely approved in class action litigation in Ontario: see *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686, at para. 9. Moreover, it reflects the risk taken by class counsel in pursuing the action and the reward achieved in obtaining a substantial settlement for the class. This is especially the case given the prospect of a post-trial CCAA proceeding, where there was a real risk of no recovery for the class.

III. Honorarium approval

[23] Class counsel advise that, Edward Anthony Longo, the owner and president of the corporate Plaintiff, Vecchio, actively participated throughout the six years of this action. As part of the settlement, they request an honorarium of \$15,000. This payment would recognize Mr. Longo's unwavering commitment, time and energy in participating in the action and moving it forward. He was involved from the action's commencement through the leave and certification motions, examinations for discovery, mediation, and trial preparation.

[24] I am told that Mr. Longo spoke with class counsel on numerous occasions, and that he asked many probing questions, received advice from counsel, and provided well informed instructions at every step of this process. Given his professional experience as a CFO of the Canadian subsidiary of a US public company, his familiarity with public company reporting requirements, and his experience as an entrepreneur who has managed, bought and sold businesses, Mr. Longo made a meaningful contribution to the class's deliberations and to the settlement that the class has achieved.

[25] In my view, the requested honorarium appropriately recognizes this contribution. It may also encourage others to step forward to fulfill the important role of representative plaintiff.

IV. Conclusion

The following is a summary of the way in which the settlement funds will be used:

Fee Item	Amount
Settlement Amount	\$30,000,000.00
Counsel Fees	(9,000,000.00)
HST on Counsel Fees	(1,170,000.00)
Disbursements exclusive of HST	(\$3,914,500.55)
Budgeted Administration Expenses	(\$700,000.00)
Total	\$15,215,499.55
Estimated Levy Payable to the CPF	\$1,521,549.95
Amount Available for Distribution to Class Members	\$13,693,949.51

[26] Given the time and effort invested by class counsel, the complexity of the action and the risks of a trial and of post-trial insolvency of Aphria Inc., and the need for numerous expert reports, this distribution and the settlement overall is fair, reasonable, and in the best interest of the class.

V. Disposition

[27] The settlement, Distribution Protocol, and other related relief sought by the Plaintiff is hereby approved.

[28] Counsel fees as requested by class counsel are also hereby approved.

[29] The honorarium for the representative Plaintiff is hereby approved.

[30] There will be an Order to go as submitted by class counsel.



Morgan J.

Date: March 27, 2025