

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
) TUESDAY THE 3RD DAY
JUSTICE EDWARD MORGAN)
) OF NOVEMBER, 2020

BETWEEN:

ANNE MILLER

Plaintiff

– and –

FSD PHARMA, INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff, seeking an order: (1) certifying the action for settlement purposes, (2) setting the deadline for objections and opt-outs to be delivered to the O&O Administrator, (3) appointing the O&O Administrator, (4) approving the Opt-Out Form, (5) approving the form, content and method of dissemination of the First Notice and press release; and (6) appointing Class Counsel to manage the Escrow Account, was read this day at the Courthouse located at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the motion record, filed,

AND ON BEING ADVISED that all parties consent to this Order,

AND ON BEING ADVISED that:

- (a) the parties have entered into a Settlement Agreement, subject to court approval, a copy of which is attached as **Schedule “A”** to this Order; and
- (b) Paul Battaglia of Trilogy Class Action Services consents to being appointed as O&O Administrator to receive objections and opt-outs, if any, to the proposed settlement, and to report to the parties and the Court.

NOW THEREFORE, THIS HONOURABLE COURT ORDERS THAT:

1. For the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. Leave to proceed with the statutory cause of action found at Part XXIII.1 of the *Securities Act*, R.S.O. 1990 c. S.5, as amended (the “**OSA**”), is granted as of September 20, 2018 for settlement purposes only.
3. The Action is certified as a class proceeding for settlement purposes only as against the Defendant.
4. The Class is defined as:

all persons and entities, other than Excluded Persons, wherever they may reside or be domiciled, who purchased or otherwise acquired FSD Pharma, Inc. class B common shares in the secondary market, on or after September 20, 2018, and held some or all of those securities until after the close of trading on February 6, 2019.
5. The common issue is: Did the Defendant make a misrepresentation during the Class Period related to FSD’s business, operations and finances by omitting from core documents, non-core documents and statements, material facts regarding the status of its project with Auxly

Cannabis Corp. to build-out 220,000 square feet of cannabis cultivation space in Cobourg, Ontario?

6. Anne Miller is appointed as representative of the plaintiffs.

7. The cause of action certified for settlement purposes is secondary market misrepresentation pursuant to Part XXIII.1 of the *OSA*.

8. The First Notice, generally in the form attached as **Schedule “B”** to this Order, is approved.

9. The press release summarizing the content of the First Notice, generally in the form attached as **Schedule “C”** to this Order, is approved.

10. Paul Battaglia of Trilogy Class Action Services is appointed as O&O Administrator to receive objections and opt-outs to the proposed Settlement from putative Class Members.

11. The Opt-Out Form, generally in the form attached as **Schedule “D”** to this Order, is approved.

12. The deadline for objections and opt-outs shall be 5:00pm EST on January 22, 2021, and shall not be extended unless ordered by the Court.

13. After the deadline for objections and opt-outs has ended, and prior to the hearing of the motion to approve the Settlement, the O&O Administrator shall report to the Court, to the Defendant and to Class Counsel the names of those Class Members, if any, who have objected to the Settlement, or who have opted out of the Action, the number of Eligible Shares held by each Class Member who objected or opted out, and a summary of the information delivered by each Class Member who objected or opted out.

14. A hearing will be held on February 4, 2021 at 10:00 a.m. in the courthouse located at 130 Queen Street West, Toronto, Ontario (the “Approval Hearing”), to:

- (a) approve the Settlement Agreement;
- (b) approve the fee agreement between the plaintiffs and Morganti & Co., P.C. and to fix the fees, disbursements and applicable taxes of Morganti & Co., P.C.;
- (c) approve a second notice advising Class Members that the Settlement has been approved and describing how Class Members can submit Claim Forms to participate in the distribution of the Settlement Amount and the deadline to do so; and
- (d) deal with any related matters.

15. Within ten days of this Order, the putative Class Members shall be given notice of this Order and the Approval Hearing by:

- (a) Class Counsel publishing:
 - (i) the First Notice in English in at least ¼ page size in the business/legal section of the weekend edition of each of The National Post and the Montreal Gazette;
 - (ii) a translation of the First Notice in French in at least ¼ page size in the business section of the weekend edition La Presse;
- (b) Class Counsel disseminating a press release in English and French, generally in the form attached as Schedule “C” to this Order;
- (c) Class Counsel posting the First Notice in English and French on the website at <https://morgantico.com/fsd-pharma-inc/>;
- (d) Class Counsel shall graphically design digital online banners, in English and French, containing abbreviated notice content as well as an embedded link to the www.fsdsecuritiesclassaction.com website for a minimum of ten (10) days; and
- (e) the O&O Administrator posting the First Notice in English and French on the websites at www.fsdsecuritiesclassaction.com.

16. Forthwith after the publication and dissemination of the First Notice as required by paragraph 15, Class Counsel shall file an affidavit with the Court confirming compliance with that paragraph of this Order.

17. At the Approval Hearing the Court will consider objections to the Settlement Agreement if the objections are received in written form by no later than 5:00pm EST on January 22, 2021 by:

Paul Battaglia
Trilogy Class Action Services
117 Queen Street, P.O. Box. 1000
Niagara-on-the-Lake, Ontario, L0S 1J0
Attention: FSD Pharma, Inc. Class Action
Fax: 416-342-1761
Email: objection@trilogyclassactions.ca

18. Written objections must include the following:
- (a) the person's full name, current mailing address, fax number, telephone number and email address, as may be available;
 - (b) the number of shares purchased during and held at the close of the Class Period;
 - (c) a brief statement of the nature of and the reasons for the objection; and
 - (d) whether the person or a representative intends to appear at the Approval Hearing in person or by counsel, and if by counsel, the name, address, telephone number, fax number and email address of counsel.
19. The O&O Administrator shall, on or before January 29, 2021, report to the Court, by affidavit, with a copy to Morganti & Co., P.C. and counsel for the Defendant, the name of each person who objected or opted-out of the Settlement and copies of any materials filed in connection with those objections and opt-outs.
20. Morganti & Co., P.C. is appointed, until further order of the Court, to manage the Escrow Account in accordance with sections 4.1, 4.2, 5.1, 5.2 and 5.3 of the Settlement Agreement, and shall account to the Court and to the Defendant for all payments it makes from the Escrow Account in accordance with section 4.1(2) of the Settlement Agreement.
21. The costs relating to the implementation of this Order, including the costs associated with the publication of the First Notice and press release, and the fees, disbursements and taxes of the O&O Administrator shall be paid by Class Counsel as such costs are incurred out of the

settlement proceeds and such costs shall be Non-Refundable Expenses, as defined in section 4 of the Settlement Agreement.

22. The Parties and the Contributing Parties may apply to this Court for directions in respect of the implementation of this Order.

A handwritten signature in blue ink, appearing to read 'Ed Morgan', is centered on a light blue rectangular background.

THE HONOURABLE JUSTICE EDWARD MORGAN

SCHEDULE “A”

Court File No.: CV-19-614981-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ANNE MILLER

Plaintiff

– and –

FSD PHARMA, INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

Made as of the 26th day of October, 2020

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SETTLEMENT AGREEMENT

SECTION 1 – RECITALS

1.1 WHEREAS:

- A. The Plaintiff commenced the Action alleging omissions of material facts relating to FSD's business practices and public filings and statements;
- B. The Defendant and the Plaintiff have negotiated a Settlement of the Action that is subject to and conditional upon approval by the Court;
- C. The Defendant denies liability in respect of the claims alleged in the Action and expressly disclaims any wrongdoing or liability of any kind whatsoever including through the execution of this Agreement;
- D. The Defendant states that it would have actively and deliberately pursued affirmative defenses and other defenses had the Action not been settled and that it is entering into the Settlement solely to eliminate the uncertainty, burden and expense of further litigation;
- E. Leave to commence a secondary market securities claim has been granted for a class period beginning November 29, 2018;
- F. The Action has not yet been certified;
- G. The Plaintiff and the Defendant, through counsel, have engaged in hard-fought and extensive arm's-length settlement discussions and negotiations in respect of the Action through a mediation with Joel Wiesenfeld, an experienced securities class action mediator;
- H. As a result of these settlement discussions and negotiations, the Parties have entered into this Agreement, which embodies all of the terms and conditions of the Settlement among the Parties, both individually and on behalf of the Class and subject to approval of the Court;
- I. The Parties have negotiated and entered into the Agreement to fully, definitively and permanently resolve, settle and release and discharge all claims asserted, or which could have been asserted, against the Defendant by the Plaintiff on her own behalf and/or on behalf of the Class she seeks to represent, or by a third party for contribution and indemnity in respect of a claim asserted against the Defendant by the Plaintiff, and to avoid the further expense,

inconvenience, and burden of this litigation and avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy;

J. The Plaintiff has agreed to accept this Settlement, in part, because of the Settlement Amount to be provided by the Contributing Parties under the Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by the Defendant, and credit risk related to the collectability of any future judgment against the Defendant;

K. The Plaintiff and Class Counsel confirm that neither the Agreement, nor any statement made in the negotiation thereof, shall be deemed or construed to be an admission by or evidence against the Defendant or evidence of the truth of any of the Plaintiff's allegations against the Defendant;

L. The Plaintiff and Class Counsel have reviewed and fully understand the terms of the Agreement and, based on their analyses of the facts and law applicable to the Plaintiff, and having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, have concluded that this Settlement is fair, reasonable and in the best interests of the Plaintiff and the Class. The Parties therefore wish to, and hereby do, finally resolve, without admission of liability, the Action as against the Defendant;

M. For the purposes of settlement only and contingent on the conditions described herein, the Plaintiff has consented to a dismissal of the Action without costs and with prejudice;

N. The Plaintiff asserts that she is an adequate class representative for the Class she seeks to represent and will seek to be appointed representative plaintiff in the Action;

NOW THEREFORE, in consideration of the covenants, agreements, promises and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action be settled on the merits, subject to the approval of the Settlement by the Court, and that all Released Claims against the Defendant which any Releasor shall or may have or assert against any of the Releasees be forever extinguished and released on the following terms and conditions:

SECTION 2 – DEFINITIONS

2.1 Definitions

For the purposes of the Agreement, including the Recitals and Schedules hereto:

- (1) **Action** means the action *Anne Miller v FSD Pharma Inc.*, brought in the Court under Court File No. CV-19-614981-00CP.
- (2) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to approval, implementation and administration of the Settlement including the costs of translating, publishing and delivering notices and the fees, disbursements and taxes paid to the Administrator, the Referee, the Transfer Agent (see Sections 7 and 15.3 of the Agreement) and any other expenses approved by the Court which shall all be paid from the Settlement Amount. For greater certainty, Administration Expenses include the Non-Refundable Expenses but do not include Class Counsel Fees.
- (3) **Administrator** means the third-party firm appointed by the Court to administer the Agreement after the Settlement is approved by the Court, and any employees of such firm.
- (4) **Agreement** means this agreement, including the Recitals and Schedules hereto.
- (5) **Authorized Claimant** means any Class Member who has been approved for compensation by the Administrator.
- (6) **Claim Form** means the form or forms to be approved by the Court, which, when completed and submitted in a timely manner to the Administrator, enables a Class Member to apply for compensation pursuant to this Agreement.
- (7) **Claims Bar Deadline** means the date by which each Class Member must file a completed Claim Form and all required supporting documentation with the Administrator which date shall be set out in the Second Notice and which shall be at least one hundred twenty days (120) days after the date on which the Second Notice is last published.
- (8) **Class or Class Members** means all persons and entities, other than Excluded Persons, wherever they may reside or be domiciled, who during the Class Period acquired Shares in the secondary market on or after September 20, 2018, and held some or all of such Shares as of the close of trading on February 6, 2019.
- (9) **Class Counsel** means Morganti & Co., P.C.

- (10) ***Class Counsel Fees*** means the fees, disbursements, costs, HST, and other applicable taxes or charges of Class Counsel and a *pro rata* share of all interest earned on the Settlement Amount to the date of payment, as approved by the Court.
- (11) ***Class Period*** means the period from September 20, 2018 to February 7, 2019, inclusive.
- (12) ***Contributing Parties*** means FSD and its insurer funding the Settlement.
- (13) ***Court*** means the Ontario Superior Court of Justice.
- (14) ***CPA*** means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended.
- (15) ***Defendant*** means FSD.
- (16) ***Eligible Shares*** means Shares purchased during the Class Period and held at the close of trading on February 6, 2019.
- (17) ***Effective Date*** means the date on which the Second Order becomes a final order and the time for any appeals has expired.
- (18) ***Escrow Account*** means the interest bearing Canadian currency trust account with one of the Canadian Schedule 1 banks or a liquid money market account or equivalent security with a rating equivalent to, or better than, that of an interest bearing account in a Canadian Schedule 1 bank in Ontario, initially under the control of Morganti & Co., P.C., subject to the terms of this Agreement, and then transferred to the control of the Administrator on or after the Effective Date.
- (19) ***Escrow Settlement Amount*** means the Settlement Amount plus any interest accruing thereon as a result of investment thereof after payment of all Non-Refundable Expenses.
- (20) ***Excluded Persons*** means:
- (a) FSD and its past or present subsidiaries, affiliates, predecessors, successors and assigns;
 - (b) any person who was an officer or director of FSD for any portion of the Class Period;
 - (c) any immediate member of the families of any officers or directors of FSD during any portion of the Class Period; and

- (d) any entity in which any of the above persons has or had during the Class Period any legal or de facto controlling interest.
- (21) **First Motion** means the motions brought before the Court, for orders:
- (i) granting certification for settlement purposes only;
 - (ii) setting the date for the hearing of the Second Motion;
 - (iii) approving the form of the First Notice;
 - (iv) approving and authorizing publication and dissemination of the First Notice pursuant to the Plan of Notice;
 - (v) approving the Opt-Out Form;
 - (vi) appointing Morganti & Co., P.C., to control the Escrow Account subject to the terms of this Agreement; and
 - (vii) appointing Paul Battaglia of Trilogy Class Action Services to serve as O&O Administrator.
- (22) **First Notice** means notice to the Class in a form to be approved by the Court, which shall substantially be in accordance with the notice at Schedule “B”.
- (23) **First Order** means the order made by the Court granting the relief sought on the First Motion, substantially in the form of the order at Schedule “A”.
- (24) **FSD** means FSD Pharma, Inc. and its subsidiaries and affiliates during any portion of the Class Period.
- (25) **Newspapers** means the following newspaper publications: National Post, Montreal Gazette, and La Presse (online only).
- (26) **Non-Refundable Expenses** means certain administration expenses stipulated in section 4.1(1) of the Agreement to be paid from the Settlement Amount.
- (27) **“O&O Administrator”** means the third-party firm appointed by the Court to receive and report on objections and opt-outs to the Settlement, if any, before the Settlement is approved, and any employees of such firm.

- (28) **Opt-Out Deadline** means the date to be specified in the First Notice which shall be at least 60 days after the date on which the First Notice is last published in the Newspapers.
- (29) **Opt-Out Form** means the documents, as approved by the Court, in English and French which shall substantially be in accordance with the documents at Schedule G, that if properly completed and submitted by a Class Member to the O&O Administrator before the expiry of the Opt-Out Deadline, excludes that Class Member from the Class, the Action and participation in the Settlement.
- (30) **Opt-Out Party** means any person who would otherwise be a Class Member who validly opts-out of the Action.
- (31) **Opting Out** means properly completing and submitting an Opt-Out Form and all necessary supporting documents specified in Section 11.2 of the Agreement before the expiry of the Opt-Out Deadline.
- (32) **OSA** means the Ontario *Securities Act*, RSO 1990, c. S.5, as amended.
- (33) **Parties** means the Plaintiff and the Defendant.
- (34) **Plaintiff** means Anne Miller.
- (35) **Plan of Allocation** means the plan, as approved by the Court, which shall substantially be in accordance with the plan at Schedule “F”.
- (36) **Plan of Notice** means the plan for disseminating the First Notice and the Second Notice to the Class, as approved by the Court, which shall substantially be in accordance with the plan attached as Schedule “C”.
- (37) **Referee** means Avram Joseph, or such other person or persons appointed by the Court to serve in that capacity.
- (38) **Released Claims** (or **Released Claim** in the singular) means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever and wherever incurred, and rights and liabilities of any nature whatsoever, including interest, costs, expenses, administration expenses, penalties, Class Counsel Fees and lawyers’ fees, whether known or unknown, suspected or unsuspected, in law, under statute, in equity, at common law or civil law, or under any other law, rule or regulation that the Releasers, or any of them, whether directly, indirectly, derivatively, or
- Stockwoods:00192560.3

in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees relating or connected in any way to the purchase, sale, retention, pricing, marketing or distributing of Shares, or to any conduct alleged, or that could have been alleged, in the Action, including, without limitation, any such claims that have been asserted, would have been asserted or could have been asserted in any forum whether in Canada or elsewhere, as a result of or in any connected with the purchase, retention or sale, or lack of purchase or sale, of Shares in the Class Period.

(39) ***Releasees*** means the Defendant and its past and present affiliates, and subsidiaries, and each of their respective current or former insurers, reinsurers, directors, officers, partners, employees, agents, trustees, servants, parents, consultants, underwriters, lenders, advisors, lawyers, representatives, successors, predecessors, assigns and each of their respective heirs, executors, attorneys, administrators, guardians, estates, trustees, successors and assigns.

(40) ***Releasors*** means, jointly and severally, the Plaintiff, the Class Members (excluding those who validly opt-out), including any person having a legal and/or beneficial interest in the Shares purchased or acquired by these Class Members and their respective past and present predecessors, affiliates, subsidiaries, directors, officers, employees, partners, parents, agents, trustees, servants, consultants, underwriters, lenders, shareholders, advisors, representatives, lawyers, heirs, executors, attorneys, administrators, guardians, estate trustees, successors and assigns, as the case may be.

(41) ***Second Motion*** means the motions brought in the Court for an order:

- (a) approving the Settlement;
- (b) appointing the Administrator and the Referee;
- (c) approving the Second Notice;
- (d) approving the Plan of Allocation;
- (e) approving the Claim Form;
- (f) setting the Claims Bar Deadline;
- (g) dismissing the Action without costs and with prejudice; and
- (h) approving Class Counsel Fees.

(42) ***Second Notice*** means notice to the Class in a form to be approved by the Court, which shall substantially be in accordance with the notice at Schedule “E”.

(43) ***Second Order*** means the order made by the Court granting the relief sought on the Second Motion, substantially in the form of the order at Schedule “D”.

(44) ***Settlement*** means the settlement provided for in this Agreement.

(45) ***Settlement Amount*** means Canadian \$5,500,000, inclusive of the Administration Expenses, Class Counsel Fees, interest, taxes and any other costs or expenses related to the Action or the Settlement.

(46) ***Shares*** means class B common shares of FSD that are or were listed for trading during the Class Period.

(47) ***Transfer Agent*** means Computershare Trust Company of Canada.

SECTION 3 – THE MOTIONS

3.1 Nature of Motions

(1) The Parties shall use their best efforts to implement the Agreement and to secure the prompt, complete and final resolution of the Action, including a final dismissal of the Action, without costs and with prejudice as against the Defendant.

(2) The First Motion shall be brought as soon as is reasonably possible following the execution of this Agreement. The Defendant shall consent to the First Order provided that it is substantially in the form at Schedule “A”.

(3) Following the determination of the First Motion, the First Notice shall be published in accordance with section 10.1 of this Agreement.

(4) Following the determination of the First Motion, the Second Motion will be brought and the Defendant shall consent to the Second Order provided that it is substantially in the form at Schedule “D”.

(5) Following the determination of the Second Motion, provided that the Settlement is approved by the Court, the Second Notice shall be published in accordance with section 10.2 of this Agreement.

SECTION 4 – NON-REFUNDABLE EXPENSES

4.1 Payments

(1) Expenses reasonably incurred for the following purposes shall be the Non-Refundable Expenses, and shall be payable from the Escrow Account, when incurred:

- (a) the costs incurred in connection with establishing and operating the Escrow Account;
- (b) the costs incurred for translating, publishing and disseminating the First Notice and the Second Notice;
- (c) the costs of the O&O Administrator in connection with receiving objections and Opt-Out Forms and reporting to the Court to a maximum of \$10,000 for fees, plus reasonable and documented disbursements and HST;
- (d) the costs incurred in translating the Settlement Agreement and Opt-Out Form;
- (e) if necessary, the costs incurred in publishing and disseminating notice to the Class that the Agreement has been terminated; and
- (f) if the Court appoints the Administrator and thereafter the Agreement is terminated by the Defendant pursuant to section 12 of this Agreement, the costs reasonably incurred by the Administrator for performing the services required to prepare to implement the Settlement, including any mailing expenses, to a maximum of \$35,000.

(2) Morganti & Co., P.C. shall account to the Court and the Parties for all payments it makes from the Escrow Account. In the event that the Agreement is terminated, this accounting shall be delivered no later than ten (10) days after such termination.

4.2 Disputes Concerning Non-Refundable Expenses

Any dispute concerning the entitlement to or quantum of Non-Refundable Expenses shall be dealt with by a motion to the Court on notice to the Parties. The Contributing Parties shall have standing in respect of such a motion, should it deem it appropriate to intervene or otherwise make representations.

SECTION 5 – THE SETTLEMENT AMOUNT

5.1 Payment of Escrow Settlement Amount

The Contributing Parties, or any of them, shall pay the Settlement Amount to Morganti & Co., P.C., in trust, within twenty (30) calendar days of execution of this Agreement which will deposit it in an interest-bearing trust account which shall be held to the order of the Contributing Parties and shall be paid out upon the Settlement becoming final.

5.2 Interim Investment of Escrow Account

After the Effective Date, the Administrator shall invest the Settlement Amount in a liquid money market account or equivalent security with a rating equivalent to, or better than that of an interest bearing account in a Canadian Schedule 1 bank and shall not pay out any amount from the Escrow Account, except in accordance with the terms of this Agreement.

5.3 Taxes on Interest

(1) Except as provided in section 5.3(2), all taxes payable on any interest which accrues in relation to the Settlement Amount, shall be solely the Class' responsibility and shall be paid by Class Counsel or the Administrator, as appropriate, from the Escrow Settlement Amount, or by the Class as the Administrator considers appropriate, and the Defendant and their insurers and re-insurers shall have no liability for any taxes payable on the interest.

(2) If the Administrator or Class Counsel returns any portion of the Settlement Amount plus accrued interest to the Contributing Parties pursuant to the provisions of this Agreement, the taxes payable on the interest portion of the returned amount shall be the responsibility of the Contributing Parties.

SECTION 6 – NO REVERSION

Unless the Agreement is terminated as provided herein or otherwise by the Court, the Contributing Parties shall not, under any circumstances, be entitled to the repayment of any portion of the Settlement Amount and then only to the extent of and in accordance with the terms provided herein.

SECTION 7 - DISTRIBUTION OF THE ESCROW SETTLEMENT AMOUNT

If the Settlement becomes final as contemplated by section 13, the Administrator shall distribute the Settlement Amount out of the Escrow Account in accordance with the following priorities:

- (a) to pay all of the costs and expenses reasonably and actually incurred in connection with the provision of notices, locating Class Members for the sole purpose of providing notice to them, and soliciting Class Members to submit a Claim Form (including the notice expenses reasonably and actually incurred by the Transfer Agent in connection with the provision of notice of this Settlement to Class Members). For greater certainty, the Defendant is specifically excluded from eligibility for any payment of costs and expenses under this subsection;
- (b) to pay all of the costs and expenses reasonably and actually incurred by the Administrator and the Referee, relating to determining eligibility, the filing of Claim Forms, processing Claim Forms, resolving disputes arising from the processing of Claim Forms and administering and distributing the Settlement Amount;
- (c) to pay any taxes required by law to be paid to any governmental authority; and
- (d) to pay a share of the balance of the Escrow Settlement Amount to each Authorized Claimant in proportion to his/her/its claim as recognized in accordance with the Plan of Allocation.

SECTION 8 – EFFECT OF SETTLEMENT

8.1 No Admission of Liability

Neither this Agreement, nor anything contained herein, shall be interpreted as a concession or admission of wrongdoing or liability by the Releasees, or as a concession or admission by the Releasees of the truthfulness or merit of any claim or allegation asserted in the Action. Neither the Agreement, nor anything contained herein, shall be used or construed as an admission by the Releasees of any fault, omission, liability or wrongdoing in connection with the matters alleged in the Action or any oral or written statement, release or written document or

financial report. The Defendant expressly denies any and all allegations of fault, liability, wrongdoing or damages whatsoever.

8.2 Agreement Not Evidence

(1) Whether or not the Agreement is terminated, the Parties agree that neither the Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Agreement shall be referred to, offered as evidence or received in evidence in any current or future civil, criminal, quasi-criminal, regulatory or administrative action or proceeding in any jurisdiction as any presumption, concession or admission:

- (a) of the validity of any claim that has been or could have been asserted in the Action by the Plaintiff against the Defendant, or the deficiency of any defence that has been or could have been asserted in the Action;
- (b) of wrongdoing, fault, neglect or liability by the Defendant; and
- (c) that the consideration to be given hereunder represents the amount that could be or would have been recovered in the Action after trial.

(2) Notwithstanding section 8.2(1), this Agreement may be referred to or offered as evidence in a proceeding to approve or enforce the Agreement, to defend against the assertion of Released Claims, and as otherwise required by law.

8.3 Best Efforts

The Parties shall use their best efforts to implement the terms of this Agreement. The Parties agree to hold in abeyance all steps in the Action, including all discovery, other than proceedings provided for in this Agreement, the First Motion, the Second Motion and such other proceedings required to implement the terms of this Agreement, until the date the Settlement becomes final or the termination of the Agreement.

SECTION 9 – CERTIFICATION AND SETTLEMENT APPROVAL

9.1 Certification and Settlement Approval

The Defendant will consent to the certification of the Action pursuant to the *CPA*, for the purposes of Settlement only.

SECTION 10 – NOTICE TO THE CLASS

10.1 First Notice

(1) Class Counsel shall cause the First Notice to be translated, published and disseminated in accordance with the Plan of Notice and the costs of doing so shall be paid as a Non-Refundable Expense as provided in section 4.1(1)(b) of this Agreement.

10.2 Second Notice

(1) Class Counsel shall cause the Second Notice to be translated, published and disseminated in accordance with the Plan of Notice and the costs of so doing shall be paid as a Non-Refundable Expense as provided in section 4.1(1)(b) of this Agreement.

10.3 Report to the Court

Forthwith after the publication and dissemination of each of the notices required by this section, Class Counsel shall file with the Court affidavits confirming that the notices have been published and disseminated in accordance with the Agreement and the Plan of Notice, as appropriate, or order of the Court.

10.4 Notice of Termination

If the Agreement is terminated after the Second Notice has been published and disseminated, a notice of the termination will be given to the Class. Class Counsel will cause the notice of termination, in a form approved by the Court, to be published and disseminated as directed by the Court, and the costs of so doing shall be paid as a Non-Refundable Expense as provided in section 4.1(1)(e) of this Agreement.

SECTION 11 – OPTING OUT

11.1 Potential Opt-Outs

The Plaintiff, Defendant and Class Counsel represent and warrant that:

- (a) they will not encourage or solicit any Class Member to opt-out of the Class; and
- (b) they will not represent any Class Member who opts out of the Class.

11.2 Opt-Out Procedure

- (1) Each Class Member who wishes to opt-out must submit a properly completed Opt-Out Form, along with true copies of (i) all trade confirmation slips in respect of transactions in the Shares during the Class Period (and ten days after the end of the Class Period), or (ii) all monthly statements with information concerning transactions in the Shares during the Class Period (and ten days after the end of the Class Period) (“Supporting Documents”), to the O&O Administrator on or before the Opt-Out Deadline.
- (2) If a Class Member fails to submit a properly completed Opt-Out Form and/or all required Supporting Documents before the Opt-Out Deadline, the Class Member shall not have opted-out of the Action, subject to any order of the Court to the contrary, and will in all respects be subject to, and bound by, the provisions of this Agreement and the releases contained herein, and any orders made in the Action.
- (3) The Opt-Out Deadline shall not be extended unless the Court orders otherwise.
- (4) All Opt-Out Parties will be excluded from any and all rights and obligations arising from the Settlement. Class Members who do not opt-out shall be bound by the Settlement and the terms of this Agreement regardless of whether he/she/it files a Claim Form or receives compensation from the Settlement.

11.3 Notification of Number of Opt-Outs

Within five (5) days after the Opt-Out Deadline, the O&O Administrator shall report to the Court and to the Parties as to the number of Opt-Out Parties, the number of Eligible Shares held by each Opt-Out Party, a summary of the information delivered by each Opt-Out Party and the total number of Eligible Shares held by the Opt-Out Parties.

SECTION 12 – TERMINATION OF THE AGREEMENT

12.1 General

- (1) Only FSD may terminate this Agreement, and only if:
 - (a) the Second Order (excluding approval of Class Counsel Fees) is not granted by the Court substantially in accordance with the form at Schedule “D”; or
 - (b) the Second Order is reversed on appeal and the reversal becomes final.

(2) The failure of the Court to approve in full the request by Class Counsel for Class Counsel Fees shall not be grounds to terminate this Agreement.

(3) In the event this Agreement is terminated in accordance with its terms, or is not approved by the Court, or any Second Order is reversed, vacated or terminated by any appellate court and/or the Second Orders do not become final:

- (a) the Parties will be restored to their respective positions prior to the execution of this Agreement;
- (b) the Parties will consent to orders setting aside any order certifying the Action as a class proceeding for the purposes of implementing the Agreement;
- (c) the Parties will consent to orders setting aside any order granting the Plaintiff leave to proceed with a claim for statutory misrepresentation relating to statements made by FSD on September 20, 2018 (but not the period beginning November 29, 2018, for which leave has been granted by the Court);
- (d) the Parties will consent to an order extending the Defendant's time to deliver its materials for its motion seeking leave to appeal the order of Justice Morgan dated July 21, 2020;
- (e) the Agreement will have no further force and effect and no effect on the rights of the Parties;
- (f) the certification of the Action will be deemed to have been without prejudice to any position that any of the Parties may later take on any issue in the Action;
- (g) any amounts paid for establishing and operating the Escrow Account, publishing and disseminating the Settlement Agreement, the First Notice, the Second Notice and the Termination Notice, if any, and to the O&O Administrator, the Administrator and the Referee pursuant to section 4.1(1) of this Agreement are non-recoverable from the Plaintiff and the Class Members;
- (h) the Settlement Amount will be returned to the Contributing Parties less any Non-Recoverable Expenses that have already been properly incurred; and
- (i) this Agreement will not be introduced into evidence or otherwise referred to in any litigation or proceeding against the Defendant.

(4) Notwithstanding the provisions of section 12.1(3)(c) of this Agreement, if this Agreement is terminated, the provisions of this section and sections 2, 4, 5.2, 5.3, 8.1, 8.2, 8.3, 10.3, 12.1(3), 12.1(4), 12.2, 12.3, 15.1(2), 15.3(4), 15.5(2), 15.6(2), 18.1, 18.2, 18.3, 18.4, 18.5, 18.6(2), 18.7, 18.8, 18.9, 18.10, 18.11, 18.12, 18.13, 18.14, 18.15 and the recitals and schedules applicable thereto shall survive termination and shall continue in full force and effect.

12.2 Allocation of Monies in the Escrow Account Following Termination

(1) The Administrator and Morganti & Co., P.C. shall account to the Court for the amounts maintained in the Escrow Account. If the Agreement is terminated, this accounting shall be delivered no later than ten (10) days after such termination.

(2) If the Agreement is terminated, the Defendant shall, within thirty (30) days after termination, apply to the Court for an order:

- (a) declaring the Agreement null and void and of no force or effect except for the provisions of those sections listed in section 12.1(4) of this Agreement;
- (b) requiring the notice of termination to be sent out to the Class Members and, if so, the form and method of disseminating such a notice;
- (c) setting aside, *nunc pro tunc*, all prior orders or judgments entered in accordance with the terms of the Agreement; and
- (d) authorizing the payment to the Contributing Parties, apportioned *pro rata* based on their respective contributions directly or indirectly, to the Escrow Account, as the case may be, of:
 - (i) all funds received by Morganti & Co., P.C. from any of the Contributing Parties and not yet paid into the Escrow Account pursuant to section 4.1 of this Agreement; and
 - (ii) all funds in the Escrow Account, including accrued interest, minus any amounts paid out of the Escrow Account as Non-Refundable Expenses in accordance with the terms of the Agreement.

12.3 Disputes Relating to Termination

If there are any disputes about the termination of the Agreement, the Court shall determine any dispute by motion on notice to the Parties. The Contributing Parties shall be

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granted standing in respect of any such motion, should it deem it appropriate to intervene or otherwise make representations.

SECTION 13 – DETERMINATION THAT THE SETTLEMENT IS FINAL

- (1) The Settlement shall be considered final on the Effective Date.
- (2) Within ten (10) days after the Effective Date, Morganti & Co., P.C. shall transfer the Escrow Account to the Administrator.

SECTION 14 – RELEASES AND JURISDICTION OF THE COURT

14.1 Release of Releasees

As of the Effective Date, provided that the Settlement Amount has been deposited into the Escrow Account, the Releasors in exchange for and in consideration of the foregoing, and inasmuch as the terms and conditions of the Settlement are approved by the Court, forever and absolutely release the Releasees from the Released Claims.

14.2 No Further Claims

Notwithstanding sections 2.1 (41) and 2.1 (42) of this Agreement:

- (1) As of the Effective Date and provided that the Settlement Amount has been deposited into the Escrow Account, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person (including on behalf of any Opt-Out Party), any action, suit, cause of action, claim or demand against any Releasee or any other person (including but not limited to any of the Defendant's auditors, investment bankers and underwriters) who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto; and
 - (2) For greater certainty, the Releasors and Class Counsel acknowledge that they may subsequently discover facts adding to those they knew as at October 26, 2020, but nonetheless agree that on the Effective Date, they shall have fully, definitively and permanently settled, waived and released and discharged all claims, no matter if they were unknown, unsuspected, not disclosed, and regardless of the subsequent discovery of facts different from those they are currently aware of. By means of the Settlement, the Releasors waive any right they might have under any statute, rule or regulation, the common law, civil law, in equity or otherwise, to
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disregard or avoid the release and discharge of the unknown claims and bar against the commencement of new claims for any reason whatsoever and expressly relinquish any such right and each Class Member shall be deemed to have waived and relinquished such right. Furthermore, the Releasors agree to this waiver of their own volition, with full knowledge of its consequences and that this waiver was negotiated and constitutes a key element of the Settlement.

14.3 Dismissal of the Action

Except as otherwise provided in the Agreement and the Second Order, and as a condition of Settlement, the Action shall be dismissed without costs and with prejudice as against the Defendant.

SECTION 15 – ADMINISTRATION

15.1 Appointment of the Administrator

- (1) The Court will appoint the Administrator to serve until further order of the Court, to implement the Agreement and the Plan of Allocation, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Agreement and in the Plan of Allocation.
- (2) If the Agreement is terminated, the Administrator's fees, disbursements and taxes will be fixed as set out in section 4.1(1)(f) of this Agreement.
- (3) If the Settlement becomes final as contemplated by section 13 of this Agreement, the Court will fix the Administrator's compensation and payment schedule.

15.2 Appointment of the Referee

- (1) The Court will appoint the Referee with the powers, duties and responsibilities set out in the Agreement and the Plan of Allocation.
- (2) The fees, disbursements and taxes of the Referee will be fixed by the Court and shall not exceed \$25,000, exclusive of disbursements and HST. When directed by the Court, the Administrator will pay the Referee from the Escrow Settlement Amount.

15.3 Information and Assistance from the Defendant

- (1) Within thirty (30) days of the execution of this Agreement, FSD will produce or cause to be produced to the Plaintiff, any correspondence FSD's officers and/or directors had with Auxly during the Class Period.
- (2) Within thirty (30) days of the approval of the Settlement, upon request, FSD will authorize and direct the Transfer Agent to deliver a computerized list of all persons identified in its records who may be Class Members, along with such information as may be available to facilitate the delivery of notice to those persons to Class Counsel and the Administrator. Upon request, FSD will also authorize the Transfer Agent to obtain information about Class Members who hold or held beneficial interests in the Shares during the Class Period.
- (3) FSD will identify a person to whom the Administrator may address any requests for information in respect of section 15.3(2) of this Agreement. FSD agrees to make reasonable efforts to answer any reasonable inquiry from the Administrator in order to facilitate the administration and implementation of the Agreement and the Plan of Allocation.
- (4) FSD authorizes Class Counsel to use the information obtained pursuant to section 15.3(1) of this Agreement in the putative class action styled *Kevin Gowanlock v. Auxly Cannabis Group Inc.* bearing court file number CV-19-617136-00CP (the "**Auxly Action**");
- (5) In consideration for sections 15.3(1) and (4) of this Agreement, Class Counsel agrees that the statement of claim in the Auxly Action shall be amended so as to limit the claim against Auxly Cannabis Group Inc. ("**Auxly**") in that action to exclude any amounts for which Auxly has a valid claim for contribution and indemnity against any of the Releasees;
- (6) Class Counsel and/or the Administrator may use the information obtained pursuant to sections 15.3(2) and (3) of this Agreement only for the purposes of delivering the Second Notice and administering and implementing the Agreement and the Plan of Allocation.
- (7) Any information obtained or created in the administration of this Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of distributing notices and the administration of the Agreement and Plan of Allocation.

15.4 Claims Process

- (1) In order to seek payment from the Settlement Amount, a Class Member must submit a completed Claim Form to the Administrator, in accordance with the provisions of the Plan of

Allocation, on or before the Claims Bar Deadline and any Class Member who fails to do so shall not share in any distribution made in accordance with the Plan of Allocation unless the relevant court orders otherwise as provided in section 18.4 of this Agreement.

(2) In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require and request that additional information be submitted by a Class Member who submits a Claim Form. Such Class Members shall have until the later of thirty (30) days from the date of the request from the Administrator or the Claims Bar Deadline to rectify the deficiency. Any person who does not respond to such a request for information within the thirty (30) day period shall be forever barred from receiving any payments pursuant to the Settlement, subject to any order of the relevant court to the contrary as provided in section 18.4 of this Agreement, but will in all other respects be subject to, and bound by, the provisions of the Agreement and the releases contained herein.

15.5 Disputes Concerning the Decisions of the Administrator

(1) In the event that a Class Member disputes the Administrator's decision, whether in whole or in part, the Class Member may appeal the decision to the Referee in accordance with the provisions in the Plan of Allocation. The decision of the Referee will be final with no right of appeal.

(2) No action shall lie against the Releasees, the Defendant, the Defendant's counsel, Class Counsel, the Administrator or the Referee for any decision made in the administration of the Agreement and Plan of Allocation without an order from the Court authorizing such an action.

15.6 Conclusion of the Administration

(1) Following the Claims Bar Deadline, and in accordance with the terms of this Agreement, the Plan of Allocation, and such further order of the Court, as may be necessary, or as circumstances may require, the Administrator shall distribute the Escrow Settlement Amount to Authorized Claimants.

(2) No claims or appeals shall lie against the Releasees, the Defendant, the Defendant's counsel, Class Counsel, the Administrator or the Referee based on distributions made substantially in accordance with the Agreement and the Plan of Allocation.

(3) If the Escrow Settlement Account is in a positive balance in an amount greater than 10% of the net Settlement Amount (whether by reason of tax refunds, un-cashed cheques or otherwise) after one hundred eighty (180) days from the date of distribution of the Escrow Settlement Amount to the Authorized Claimants, the Administrator shall, if economically feasible, allocate and distribute such balance among Authorized Claimants in an equitable fashion up to the limit of each authorized claimant's actual loss. If there is a balance in the Escrow Settlement Account after each Authorized Claimant is paid up to his/her/its actual loss, or if an amount equal to or less than 10% of the net Settlement Amount remains undistributed, the remaining funds shall be paid *cy près* to a recipient mutually agreed upon by the Parties and/or approved by the Court.

(4) Upon the conclusion of the administration, or at such other time(s) as the Court directs, the Administrator shall report to the Court on the administration and shall account for all monies it has received, administered and disbursed and obtain an order from the Court discharging it as Administrator.

SECTION 16 – THE PLAN OF ALLOCATION

The Defendant shall have no standing to oppose the approval of the Plan of Allocation, or to make submissions to the Court in respect of it.

SECTION 17 – CLASS COUNSEL FEES

17.1 Motion for Approval of Class Counsel Fees

(1) At the Second Motion, Class Counsel shall seek the approval of Class Counsel Fees to be paid as a first charge on the Settlement Amount. Class Counsel are not precluded from making additional applications to the Court for expenses incurred as a result of implementing the terms of the Agreement. All amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount.

(2) The Defendant acknowledges that they are not parties to the motion concerning the approval of Class Counsel Fees, they will have no involvement in the approval process to determine the amount of Class Counsel Fees, and they will not make any submissions to the Court concerning Class Counsel Fees.

(3) Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or affect or delay the finality of the Second Order and the Settlement of the Action as provided herein.

17.2 Payment of Class Counsel Fees

Forthwith after the Settlement becomes final, as contemplated in section 13 of this Agreement, Morganti & Co., P.C. shall pay to Class Counsel the Class Counsel Fees approved by the Court from the Escrow Account.

SECTION 18 – MISCELLANEOUS

18.1 Motions for Directions

(1) Any one or more of the Parties, the Contributing Parties, Class Counsel, the Administrator or the Referee may apply to the Court for directions in respect of any matter in relation to this Agreement, subject to the terms hereof.

(2) All motions contemplated by this Agreement shall be on notice to the Parties.

18.2 Defendant Have No Responsibility or Liability for Administration

Except for the obligation to pay the Settlement Amount and provide the information and assistance contemplated by sections 15.3(1), (2) and (3) of this Agreement, none of the Releasees, the Defendant, or the Defendant's counsel shall have any responsibility for or any liability whatsoever with respect to the administration or implementation of the Agreement and Plan of Allocation, including, without limitation, the processing and payment of claims by the Administrator.

18.3 Headings, etc.

(1) In this Agreement:

- (a) the division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement;

- (b) the terms “the Agreement”, “this Agreement”, “herein”, “hereto” and similar expressions refer to the Agreement and not to any particular section or other portion of this Agreement;
 - (c) unless otherwise indicated, all amounts referred to are in lawful money of Canada; and
 - (d) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.
- (2) In the computation of time in the Agreement, except where a contrary intention appears:
- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

18.4 Governing Law

- (1) The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
- (2) The Court shall exercise jurisdiction with respect to all issues related to this Agreement including implementation, administration, interpretation and enforcement of the terms of this Agreement.

18.5 Entire Agreement

This Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Agreement, unless expressly incorporated herein. This Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment must be approved by the Court.

18.6 Binding Effect

(1) If the Settlement is approved by the Court and becomes final as contemplated in section 13 of this Agreement, the Agreement shall be binding upon, and enure to the benefit of the Plaintiff, the Class Members, the Defendant, the Releasees, the Releasers, the Contributing Parties and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasers and each and every covenant and agreement made herein by the Defendant shall be binding upon all of the Releasees.

- (2) The persons signing this Agreement represent and warrant (as applicable) that:
- (a) he/she has all requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transaction contemplated hereby on his/her own behalf;
 - (b) the execution, delivery, and performance of the Agreement and the consummation of the Action contemplated herein have been duly authorized by all necessary corporate action;
 - (c) the Agreement has been duly and validly executed and delivered by him/her and constitutes legal, valid, and binding obligations; and
 - (d) he/she agrees to use his/her best efforts to satisfy all conditions precedent to the Effective Date.

18.7 Survival

The representations and warranties contained in this Agreement shall survive its execution and implementation.

18.8 Negotiated Agreement

This Agreement and the Settlement have been the subject of negotiations and many discussions among the Parties. Each of the undersigned has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of the Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Agreement.

18.9 Confidentiality

The Parties agree that prior to the filing of the First Motion or public disclosure of the Settlement by FSD, whichever comes first: (1) this Settlement Agreement, its terms, and the Settlement Amount are and shall be treated as confidential and shall not be disclosed, described, or characterized to any other person, entity, publication or member of the media, except as may be required by law, judicial process, or order of a court, to enforce the terms of the Settlement Agreement, or as otherwise agreed by the Parties; and (2) any Party intending to disclose such information as may be required by law, judicial process or order of a court, will notify the other of its intention and give the non-disclosing party a reasonable opportunity to object. The Parties agree not to disclose the substance of the negotiations that led to this Settlement Agreement including the merits of any positions taken by any Party except as necessary to provide the Court with information necessary to consider approval of the Settlement. Notwithstanding the foregoing, any Defendant may disclose such information to a regulatory authority if it determines that disclosure is warranted.

18.10 Recitals and Schedules

- (1) The recitals and schedules to this Agreement are material and integral parts hereof and are fully incorporated into, and form part of, the Agreement.
- (2) The schedules to this Agreement are:
 - (a) Schedule “A” – First Order
 - (b) Schedule “B” – First Notice
 - (c) Schedule “C” – Plan of Notice
 - (d) Schedule “D” – Second Order
 - (e) Schedule “E” – Second Notice
 - (f) Schedule “F” – Plan of Allocation
 - (g) Schedule “G” – Opt-Out Form

18.11 Acknowledgements

Each of the Parties hereby represents, affirms and acknowledges that:

- (a) he, she or its representative has the authority to bind the Party with respect to the matters set forth herein and has read and understood the Agreement;
- (b) the terms of the Agreement and the effects thereof have been fully explained to him, her or its representative by his, her or its counsel; and
- (c) he, she or its representative fully understands each term of the Agreement and its effect.

18.12 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, the Agreement on behalf of the Party for whom he or she is signing.

18.13 Counterparts

The Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same Agreement, and a facsimile signature shall be deemed an original signature for purposes of executing the Agreement.

18.14 No French Translation

The Parties acknowledge that they have required and consented that the Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.

18.15 Notice

Any notice, instruction, motion for court approval or motion for directions or court orders sought in connection with the Agreement or any other report or document to be given by any of the Parties to any of the other Parties shall be in writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid as follows:

For the Plaintiff:

MORGANTI & CO., P.C.
Barristers & Solicitors
One Yonge Street, Suite 1506
Toronto, ON M5E 1E5

Albert Pelletier
Tel: 647.268.4475
Email: apelletier@morgantico.com

For the Defendant FSD, Pharma, Inc.

STOCKWOODS LLP
Toronto-Dominion Centre
TD North Tower, Box 140
77 King Street West, Suite 4130
Toronto, ON M5K 1H1
Tel: (416) 593-7200
Fax: (416) 593-9345

Samuel M. Robinson (LSO#: 46078U)
samr@stockwoods.ca

Carlo Di Carlo (LSO#: 62159L)
carlodc@stockwoods.ca

The Parties have executed this Agreement as of the date on the cover page.

Anne Miller



FSD Pharma, Inc.

By: _____

Name
Title

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MORGANTI & CO., P.C.
Barristers & Solicitors
One Yonge Street, Suite 1506
Toronto, ON M5E 1E5

Albert Pelletier
Tel: 647.268.4475
Email: apelletier@morgantico.com

For the Defendant FSD, Pharma, Inc.

STOCKWOODS LLP
Toronto-Dominion Centre
TD North Tower, Box 140
77 King Street West, Suite 4130
Toronto, ON M5K 1H1
Tel: (416) 593-7200
Fax: (416) 593-9345

Samuel M. Robinson (LSO#: 46078U)
samr@stockwoods.ca

Carlo Di Carlo (LSO#: 62159L)
carlodc@stockwoods.ca

The Parties have executed this Agreement as of the date on the cover page.

Anne Miller


FSD Pharma, Inc.

By: 

Name Donal Carroll
Title CFO

Morganti & Co., P.C. has executed this Agreement as of the date on the cover page to signify its consent to hold the Escrow Account on the terms provided in the Agreement and to be bound by the terms of the Agreement.

Morganti & Co., P.C.

By: 
Albert Pelletier
Principal

SCHEDULE “B”

NOTICE OF THE CERTIFICATION AND PROPOSED SETTLEMENT OF THE FSD PHARMA INC. SECURITIES CLASS ACTION

READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS.

This Notice is directed to all persons and entities, excluding certain persons associated with the Defendant, wherever they may reside or be domiciled, who purchased or otherwise acquired FSD Pharma, Inc. (“FSD”) class B common shares in the secondary market, on or after September 20, 2018, and held some or all of those securities until after the close of trading on February 6, 2019 (“Class Members” and the “Class”).

PURPOSE OF THIS NOTICE:

A class action brought on behalf of Class Members has been settled and certified for settlement purposes, subject to approval from the Court. This Notice provides Class Members with information about the certification and Settlement and their rights to participate in the Court proceedings considering whether to approve the Settlement (including each putative Class Member’s right to object to the Settlement, to opt-out of the Settlement, and to attend the hearing to approve the Settlement (the “Approval Hearing”)).

THE ACTION:

On February 22, 2019, a proposed class action was commenced on behalf of investors who purchased FSD class B common shares in the secondary market during the Class Period, against FSD in the Ontario Superior Court: *Anne Miller v. FSD Pharma, Inc.* CV-19-614981-00CP (the “Action”). The Plaintiff in the Action alleges that the Defendant made misrepresentations during the Class Period related to FSD’s business, operations and finances by omitting from core documents, non-core documents and statements, material facts regarding the status of its project with Auxly Cannabis Corp. to build-out 220,000 square feet of cannabis cultivation space in Cobourg, Ontario.

The parties have reached a proposed settlement of the Action, without an admission of liability on the part of the Defendant, subject to approval by the Court. The terms of the proposed settlement are set out below.

THE TERMS OF THE PROPOSED SETTLEMENT:

FSD will pay CAD \$5.5 million (the “Settlement Amount”), in full and final settlement of all claims against it in the Action. The Settlement Amount, less the lawyers’ fees and disbursements, administrator’s expenses, and taxes (the “Net Settlement Amount”), if approved by the Court, will be distributed to the Class in accordance with the court-approved Plan of Allocation. The Settlement Agreement may be viewed at <https://morgantico.com/fsd-pharma-inc/> or at www.fsdsecuritiesclassaction.com.

If the Settlement is approved, a further notice will be published which will include instructions on how Class Members can file Claim Forms to participate in the distribution of the Net Settlement Amount and the deadline for doing so.

The Settlement provides that if it is approved by the Court, the claims of all Class Members which were asserted or which could have been asserted in the Action (except any putative Class Members who opt-out) will be fully and finally released and the Action will be dismissed.

CERTIFICATION:

Certification is a procedural step that defines the form of the litigation and the common issue(s) to be resolved, allowing the litigation to be pursued on behalf of a class of plaintiffs. This Action has been certified for settlement purposes on behalf of Class Members (defined above) who purchased FSD securities during the Class Period (defined above).

THE APPROVAL HEARING:

The Court will be asked to approve the proposed Settlement and the lawyers' fees, disbursements, expenses and taxes at a hearing to be held on **February 4, 2021 at 10:00 a.m.** at the courthouse located at **130 Queen Street West, Toronto, Ontario**. Class Members who do not oppose the proposed Settlement are not required to appear at the hearing or take any other action at this time to indicate their desire to participate in the proposed settlement. Class Members who oppose the proposed Settlement may have their opposition heard by filing an Objection (see "Objections" below). Putative Class Members who do not oppose the proposed Settlement but do not wish to participate in it or release their claims may opt-out of the proposed Settlement (see "Opting-Out" below). Class Members who consider it desirable or necessary to seek the advice and guidance of their own lawyers may do so at their own expense.

Class Members may attend the Approval Hearing whether or not they deliver an objection. The Court may permit Class Members to participate in the Approval Hearing whether or not they deliver an objection. Class Members who wish for a lawyer to speak on their behalf at the Approval Hearing may retain one to do so at their own expense.

OBJECTIONS:

At the Approval Hearing, the Court will consider any objections to the proposed Settlement by the Class Members if the objections are submitted in writing, by prepaid mail, email or fax to: Paul Battaglia, Trilogy Class Action Services, 117 Queen Street, P.O. Box 1000, Niagara-on-the-Lake, Ontario, L0S 1J0, Email: objection@trilogyclassactions.ca, Toll-Free: 1877-400-1211, Fax: 416-342-1761, Attention: FSD Class Action.

A written objection can be submitted in English or French and must include the following information:

- (a) the objector's full name, current mailing address, telephone number, fax number and email address (as may be available);
- (b) the number of shares purchased during, and held at the close of, the Class Period;
- (c) a brief statement of the nature of and reasons for the objection; and
- (d) whether the objector intends to appear at the hearing in person or by counsel, and, if by counsel, the name, address, telephone number, fax number and email address of counsel.

Objections must be received on or before January 22, 2021 at 5:00pm E.S.T.

OPTING-OUT:

Class Members who wish to pursue their own action or who do not want to be bound by the outcome of this Action **MUST OPT-OUT of the Action**.

If you want to opt-out of the Action, you must send an OPT-OUT FORM stating that you elect to opt-out of the Class in the FSD Class Action.

The Opt-Out Form is available at <https://morgantico.com/fsd-pharma-inc/> and www.fsdsecuritiesclassaction.com, or by calling Morganti & Co., P.C. at (647) 344-1900. Any Class Member who wishes to opt-out of the Action shall deliver a completed Opt-Out Form by prepaid mail, email or fax to: Trilogy Class Action Services, 117 Queen Street, P.O. Box 1000, Niagara-on-the-Lake, Ontario, L0S 1J0, Email: optout@trilogyclassactions.ca, Toll-Free: 1877-400-1211, Fax: 416-342-1761, Attention: FSD Class Action

The Opt-Out Form must be received on or before January 22, 2021 at 5:00pm E.S.T.

Each Class Member who does not opt-out of the Action will be bound by the terms of the Settlement, if approved by the Court, and will not be allowed to pursue an independent action.

If you wish to pursue other claims against the Defendant relating to the matters at issue in the Action, you should immediately seek independent legal advice. If you do not exclude yourself from participating in this Action, all of your claims relating to the subject matter of this litigation will be determined by the result obtained in the Action, whether by settlement or judgement.

LAWYERS' FEES, DISBURSEMENTS AND TAXES:

The lawyers for the Class Members will ask the Court to approve legal fees in the amount of thirty (30) percent of CAD \$5,500,000.00, plus disbursements, plus taxes. This fee request is consistent with the retainer agreement entered into between Class Counsel and the representative Plaintiff at the beginning of the litigation. As is customary in such cases, Class Counsel conducted the Action on a contingent-fee basis. Class Counsel has not been paid as the matter has proceeded, has paid all of the expenses of conducting the litigation, and has borne all of the risk of adverse cost awards.

The approval of the Settlement is not contingent on the approval of the Class Counsel Fees requested. The Settlement may still be approved even if the requested Class Counsel Fees are not approved.

QUESTIONS:

Questions for the Class Members' lawyers may be directed to:

Ian Literovich Morganti & Co., P.C. 21 St. Clair Ave. East, Suite 1102 Toronto, ON M4T 1L9 Tel: (647) 344-1900 x9 Email: iliterovich@morgantico.com	
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INTERPRETATION:

If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

This notice has been approved by the Court. Questions about matters in this notice should NOT be directed to the Court.

SCHEDULE “C”

Miller v. FSD Pharma, Inc.

Settlement Approval Hearing to be held February 4, 2021

TORONTO -- November 11, 2020 – Law firm Morganti & Co, P.C., today announces that the Ontario Superior Court of Justice (the “Court”) has scheduled a hearing to be held on February 4, 2021 at 10 am at the courthouse located at 130 Queen Street West in Toronto, Ontario (the “Settlement Approval Hearing”) to approve a settlement among all of the parties to the class proceeding styled as *Anne Miller v. FSD Pharma, Inc.*, bearing Court File No. CV-19-614981-00CP (the “Action”).

Background

The Action was commenced on behalf of persons and entities who purchased or otherwise acquired FSD Pharma, Inc. class B common shares in the secondary market, on or after September 20, 2018, and held some or all of those securities until the close of trading on February 6, 2019. In the Action it is alleged that during the Class Period, the Defendant made misrepresentations concerning material facts regarding the status of its project with Auxly Cannabis Corp. to build-out 220,000 square feet of cannabis cultivation space in Cobourg, Ontario.

At the conclusion of a full-day mediation in September 2020, the parties agreed to settle the Action to fully, definitively and permanently resolve all claims asserted against FSD, subject to approval of a written Settlement Agreement by the Court at the Settlement Approval Hearing.

The Settlement

The terms of settlement (“Settlement”) include the Defendant’s consent to certification of the Action for settlement purposes only, payment of the amount of \$5.5 million CAD on behalf of the Defendant (FSD and its insurers), a full and final release of all claims that were asserted or could have been asserted against the Defendant by class members in the Action, and the Defendant’s express denial of any liability in respect of the claims alleged in the Action and of any kind whatsoever. The Settlement Agreement may be viewed at <https://morgantico.com/fsd-pharma-inc/> or www.fsdsecuritiesclassaction.com.

If the Settlement is approved at the Settlement Approval Hearing, a further notice will be published which will include instructions on how Class Members can file Claim Forms online to participate in the distribution of the net settlement funds and the deadline for doing so.

The Class

If you acquired class B common shares of FSD Pharma, on or after September 20, 2018, and held some or all of those shares until at least February 6, 2019, you will likely be entitled to participate in the settlement after the Court has approved it.

Objections

At the Settlement Approval Hearing, the Court will consider any objections to the proposed Settlement by the Class Members if the objections are submitted in writing in the manner described in the *Notice of Certification and Proposed Settlement of the FSD Securities Class Action* located at www.fsdsecuritiesclassaction.com.

Opting-Out

Class Members who wish to pursue their own action or who do not want to be bound by the outcome of this Action **MUST OPT-OUT of the Action**.

If you want to opt-out of the Action, you must send an OPT-OUT FORM stating that you elect to opt-out of the Class in the FSD Class Action.

The Opt-Out Form is available at www.fsdsecuritiesclassaction.com and must be received by the Administrator on or before January 22, 2021.

If the Settlement is approved by the Court, each Class Member who does not opt-out of the Action will be bound by the terms of the Settlement, including a release of all claims against the Defendant, and will not be allowed to pursue an independent action.

Attending the Settlement Approval Hearing

Class Members may attend the Settlement Approval Hearing whether or not they deliver an objection. The Court may permit Class Members to participate in the Settlement Approval Hearing whether or not they deliver an objection. Class Members who wish for a lawyer to speak on their behalf at the Approval Hearing may retain one to do so at their own expense.

Questions

Morganti & Co., P.C. is a law firm that investigates, litigates and resolves economic and financial disputes. You may learn more about Morganti & Co., P.C., at www.morgantico.com.

Questions for the Class Members' lawyers may be directed to:

Ian Literovich

Morganti & Co., P.C.

21 St. Clair Ave. East, Suite 1102

Toronto, ON M4T 1L9

Tel: (647) 344-1900 x9

Email: iliterovich@morgantico.com

SCHEDULE “D”

FSD PHARMA, INC SECURITIES CLASS ACTION OPT-OUT FORM

This is **NOT** a Claim Form.

Class Members who wish to pursue their own action or who do not want to be bound by the outcome of this Action **MUST OPT-OUT of the Action by completing this OPT-OUT FORM.**

TO: FSD Pharma, Inc. Class Action
Trilogy Class Action Services
117 Queen Street, P.O. Box 1000
Niagara-on-the-Lake, Ontario, L0S 1J0
Fax: 416-342-1761
Phone: 1-877-400-1211
Email: optout@trilogyclassactions.ca

- ☐ I hereby acknowledge that by opting out, I am confirming that I do not wish to participate in the FSD Pharma, Inc. securities class action;
- ☐ I hereby acknowledge that Class Members who wish to pursue their own actions, or who do not want to be bound by the outcome of this Action **MUST OPT-OUT** of the Action.
- ☐ I hereby acknowledge that if I wish to pursue other claims against the Defendant relating to the matters at issue in the Action, I shall immediately seek independent legal advice at my own expense;

Optional: Reason for Opting-Out: Please explain your reason(s) for opting-out.

Trading Information: Specify in the space below the dates and volumes of FSD Pharma, Inc. class B common shares purchased and sold by you in the secondary market, on or after September 20, 2018, and held some or all of those securities until after the close of trading on February 6, 2019 ("**Class Period**"). Attach true copies of (i) all trade confirmation slips in respect of transactions in the Shares during the Class Period (and ten days after the end of the Class Period), or (ii) all monthly statements with information concerning transactions in the Shares during the Class Period (and ten days after the end of the Class Period) ("**Supporting Documents**"). to the O&O Administrator on or before the **Opt-Out Deadline of 5:00pm EST on XXXXXX, 99, 2020.**

Date:

Signature of Witness:

Signature of Class Member:

Name of Witness: (Print Name)

Name of Class Member: (Print Name)

If opting out on behalf of a corporation, by signing you acknowledge that you are an authorized signing officer.

Name of Corporation:

Position:

Telephone:

Email:

Address:

Note: To Opt-Out, you must properly complete this Opt-Out Form, together with all required Supporting Documentation specified above and received at the above mailing or e-mail address by no later than Opt-Out Deadline of 5:00pm EST on XXXX, 2021.

ANNE MILLER
Plaintiff

and

FSD PHARMA, INC.
Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO

ORDER

(Notice Approval and Certification for Settlement Purposes)

MORGANTI & CO. P.C.
21 St. Clair Ave. East, Suite 1102
Toronto, ON M4T 1L9
Tel: (647) 344-1900
Fax: (416) 352-7638

Albert Pelletier (LSO# 46965R)
apelletier@morgantico.com

Ian Literovich (LSO #75121J)
iliterovich@morgantico.com

Lawyers for the Plaintiff