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THE ORDER OF L'ORDONNANCE DU

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REGISTRAR / CLERK
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE

STEVE PINIZZOTTO

Plaintiff

- and -

**TILT HOLDINGS, INC., ALEXANDER COLEMAN, MARK HERRON,
MICHAEL ORR and TODD HALPERN**

Defendants

Proceedings under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: ~~April 21, 2020~~

Issued by _____

Local registrar

Address of
court office

TO: TILT Holdings, Inc.
Suite 2200, HSBC Building
885 West Georgia Street
Vancouver, British Columbia V6C 3E8

AND TO: Alexander Coleman

AND TO: Mark Herron

AND TO: Michael Orr

AND TO: Todd Halpern

I. DEFINED TERMS

2. In this Amended Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Baker**” means Baker Technologies, Inc.;
- (b) “**Briteside**” means Briteside Holdings, LLC;
- (c) “**Class**” and “**Class Members**” means, other than Excluded Persons, collectively:
 - (i) **Non-Primary Market Sub-Class:** all persons, wherever they may reside or be domiciled, who acquired TILT’s securities during the **Class Period**, other than the **Primary Market Sub-Class Excluded Persons**; and
 - (ii) **Primary Market Sub-Class:** all persons, wherever they may reside or be domiciled, who acquired TILT’s securities in the **Offering**;
- (d) “**Class Period**” means the period from and including October 12, 2018 to the close of trading on May 1, 2019;
- (e) “**Coleman**” means the defendant Alexander Coleman;
- (f) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6;
- (g) “**CSE**” means the Canadian Securities Exchange;
- (h) “**Defendants**” means TILT and the **Individual Defendants**;
- (i) “**Excluded Persons**” means the Defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, and any member of the families of an Individual Defendant;
- (j) “**Finco**” means 1167411 B.C. Ltd.;
- (k) “**Halpern**” means Todd Halpern;
- (l) “**Herron**” means Mark Herron;
- (m) “**IFRS**” means International Financial Reporting Standards;
- (n) “**Individual Defendants**” means **Coleman, Herron, Orr and Halpern**;
- (o) “**Impugned Documents**” means, collectively:
 - (i) Joint Management Information Circular dated October 11, 2018, filed with SEDAR on October 12, 2018;

- (ii) MD&A for the year ended December 31, 2017 and the three and six months ended June 30, 2018, filed with SEDAR on October 12, 2018;
- (iii) Pro Forma Consolidated Financial Statements as at June 30, 2018, filed with SEDAR on October 12, 2018;
- (iv) Listing Statement dated November 22, 2018, filed with SEDAR on November 26, 2018;
- (v) Amended Listing Statement dated November 22, 2018, filed with SEDAR on November 28, 2018;
- (vi) Amended Listing Statement dated November 22, 2018, filed with SEDAR on December 5, 2018;
- (vii) MD&A for the period from inception through September 30, 2018 and three months ended September 30, filed with SEDAR on December 7, 2018;
- (viii) the Offering Memoranda:
 - (p) “**MD&A**” means Management’s Discussion and Analysis;
 - (q) “Offering” means the offering of TILT’s shares by way of the Offering Memoranda, as particularized herein;
 - (r) “Offering Memoranda” means:
 - (i) the Subscription Agreement; and
 - (ii) Joint Management Information Circular dated October 11, 2018, filed with SEDAR on October 12, 2018;
 - (s) “**Orr**” means Michael Orr;
 - (t) “**OSA**” means the *Securities Act*, RSO 1990, c S.5, as amended
 - (u) “**Securities Legislation**” means, collectively, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; *The Securities Act*, CCSM, c S50, as amended; the *Securities Act*, SNB 2004, c S5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; *The Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;
 - (v) “**Sea Hunter**” means Sea Hunter Therapeutics, LLC
 - (w) “**SEDAR**” means the system for electronic document analysis and retrieval of the Canadian Securities Administrators;

- (x) “Subscription Agreement” means TILT’s subscription agreement pursuant to which TILT completed a US\$119 equity raise that closed November 21, 2018;
- (y) “SVH” means Santé Veritas Holdings Inc.; and
- (z) “TILT” means TILT Holdings, Inc.

3. Unless otherwise stated, all dollar amounts stated herein are in Canadian dollars.

II. CLAIM

4. The Plaintiff claims:

- (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative Plaintiff for the Class, pursuant to section 5 of the *CPA*;
- (b) an order granting leave to proceed with the statutory claim for misrepresentation under Part XXIII.1 of the *OSA* or, if necessary, the corresponding provisions of the Securities Legislation;
- (c) a declaration that the Impugned Documents contained one or more misrepresentations within the meaning of the *OSA*, the Securities Legislation, and the common law;
- (d) a declaration that the Individual Defendants authorized, permitted or acquiesced in the making of the misrepresentations while knowing them to be misrepresentations;
- (e) a declaration that the Defendants are liable for damages to the Class Members for misrepresentations in TILT’s public disclosure alleged herein pursuant to Part XXIII and Part XXIII.1 of the *OSA*, the corresponding provisions of the Securities Legislation, and the common law;
- (f) damages in an amount that this Court finds appropriate;
- (g) punitive damages against the Defendants in an amount that this Court finds appropriate;
- (h) a declaration that TILT is vicariously liable for the acts and omissions of its officers, directors and employees;
- (i) an order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;
- (j) costs of this action, plus the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes, pursuant to section 26(9) of the *CPA*;
- (k) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c C-43, as amended; and
- (l) such further and other relief as this Honourable Court may deem just.

III. OVERVIEW

5. In November 2018, following the completion of a four-way merger and a capital raise of US\$119 million, TILT applied for listing with the CSE to become a publicly listed company in Canada.

6. In order to justify its initial lofty share price on the CSE, TILT repeatedly disclosed to the public that it had goodwill and intangibles of US\$721,065,218, a figure which was purportedly calculated in accordance with IFRS.

7. These disclosures were made in TILT's financial statements and MD&A, including in TILT's application to list its shares on the CSE on November 22, 2018.

8. However, unbeknownst to investors, TILT's goodwill was not calculated in accordance with IFRS. Instead, TILT massively overstated this figure in the public disclosures upon which it relied to enter Canada's public markets.

9. The truth about TILT's goodwill was revealed in its very first quarterly filings after its listing for the period ending December 31, 2018, some five weeks after its lofty goodwill disclosure, when TILT disclosed for the first time that its goodwill needed to be written down by nearly US\$500 million.

10. To explain this writedown, TILT and its officers and directors pointed the finger at different, and at times conflicting, sources: market forces, the use of different accounting methodologies, and mistakes by TILT's accounting firm MNP LLP and TILT's underwriter Canaccord.

11. On this news, the value of TILT's securities suffered an immediate and significant decline. In this action, the Plaintiff seeks to recover those losses on behalf of the Class Members from those responsible.

IV. THE PARTIES

A. Plaintiff

12. The Plaintiff, Steve Pinizzotto, resides in Toronto, Ontario. Mr. Pinizzotto purchased 123,380 TILT shares on the CSE during the Class Period and continued to own some or all of these shares at the end of the Class Period.

B. Defendants

i. TILT Holdings, Inc.

13. TILT describes itself as a vertically-integrated infrastructure and technology cannabis company.

14. TILT is a publicly-traded issuer continued under the British Columbia *Business Corporations Act*.

15. During the Class Period, TILT's shares traded on the CSE under the ticker symbol TILT and on the OTCQB under the ticker symbol TILTF.

16. TILT's registered office is in Vancouver, British Columbia.

17. TILT is a reporting issuer in Ontario, British Columbia, and Alberta.

18. TILT is a responsible issuer within the meaning of Part XXIII.1 of the *OSA* and equivalent provisions of the Securities Legislation.

ii. Alexander Coleman

19. Alexander Coleman is an individual. At all times during the Class Period, Coleman was the Chief Executive Officer, Co-Chairman and a director of TILT.

20. At all times during the Class Period, Coleman was an officer and director of TILT within the meaning of the *OSA* and the Securities Legislation.

21. As an officer and director, Coleman caused TILT to make the misrepresentations particularized below.

iii. Mark Herron

22. Mark Herron is an individual. From the beginning of the Class Period until January 7, 2019, he was TILT's Chief Financial Officer, and he was a director of TILT throughout the Class Period.

23. During these periods, Herron was an officer and director of TILT within the meaning of the *OSA* and the Securities Legislation.

24. As an officer and director, Herron caused TILT to make the misrepresentations particularized below.

iv. Michael Orr

25. Michael Orr is an individual. At all times during the Class Period, Orr was TILT's Co-Chairman and director.

26. At all times during the Class Period, Orr was an officer and director of TILT within the meaning of the *OSA* and the Securities Legislation.

27. As an officer, Orr caused TILT to make the misrepresentations particularized below.

v. Todd Halpern

28. Todd Halpern is an individual. At all times during the Class Period, Halpern was TILT's director.

29. At all times during the Class Period, Halpern was a director of TILT within the meaning of the *OSA* and the Securities Legislation.

30. As a director, Halpern caused TILT to make the misrepresentations particularized below.

V. THE DEFENDANTS DISCLOSURE OBLIGATIONS

31. As a reporting issuer, TILT was subject to the continuous disclosure obligations prescribed by NI 51-102 to prepare and file on SEDAR certain disclosure documents prepared on regular basis, including:

- (a) financial statements, which provide information about TILT's business and financial positions; and
- (b) MD&As, which provides material information about TILT's business, management and operational and financial status during the period covered by the financial statements.

32. An MD&A is a narrative explanation, through the eyes of management, of how the company performed during the period covered by the financial statements, and of its financial conditions and future prospects. Among other things, the MD&A is required to:

- (a) discuss material information that may not be fully reflected in the financial statements;
- (b) discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future; and

- (c) provide information about the quality and potential variability, of the company's profit, loss or cash flow, to assist investors in determining if past performance is indicative of future performance.

33. In fulfilling its continuous disclosure obligations, TILT was prohibited from making a statement that it knew or reasonably ought to have known:

- (a) in a material respect and at the time and in the light of the circumstances under which it was made, was misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statement not misleading; and
- (b) would reasonably be expected to have a significant effect on the market price or value of its securities.

34. As a company listed on the CSE and OTCQB, TILT was also required to disclose material information concerning its business and affairs forthwith upon the information becoming known to management.

35. TILT and the Individual Defendants controlled the contents of its MD&As, financial statements and the other Impugned Documents particularized herein and the misrepresentations made therein were made by TILT and the Individual Defendants.

36. Each of the Individual Defendants knew that TILT was a reporting issuer and that in his capacity as a director and/or officer of TILT, he would have direct responsibility for ensuring the accuracy and completeness of TILT's disclosure documents.

37. Each of the Individual Defendants was aware of and accepted these obligations in assuming his position as a director and/or officer of TILT. The Individual Defendants authorized, permitted and/or acquiesced in the release or making of, and adopted as their own, the misrepresentations particularized below.

VI. EVENTS GIVING RISE TO THIS ACTION

A. The Merger Creating TILT

i. Phase I: Sea Hunter Acquires Assets and Liabilities of TILT in a Reverse Takeover, with Immediate Acquisition of Baker and Briteside

38. On June 22, 2018, TILT was incorporated under Nevada law. It was incorporated to provide for a merger of Baker, Briteside, Finco and Sea Hunter through a series of a transactions resulting in exchange by members and shareholders of Baker, Briteside, and Sea Hunter of their interests for TILT shares.

39. Sea Hunter was identified as the accounting acquirer that acquired assets and liabilities of TILT in a reverse takeover, with immediate acquisition of Baker and Briteside via business combination.

ii. Phase II: Continuation of TILT in British Columbia

40. On November 14, 2018, TILT continued into British Columbia under the *Business Corporations Act* from the jurisdiction of Nevada as TILT Holdings, Inc., a British Columbia corporation.

iii. Phase III: TILT Acquires Through Reverse Takeover all shares of SVH

41. The business combination continued in a series of transactions that resulted in the acquisition via reverse takeover by TILT, of all the outstanding common shares of SVH, previously listed for trading on the CSE under the symbol SV.

42. Following the completion of the transactions contemplated by the business combination, TILT became the direct parent entity of Baker and SVH, and the indirect parent entity of Sea Hunter and Briteside, as well as a reporting issuer (as defined in the *OSA* and Securities Legislation) in Ontario, British Columbia, and Alberta.

43. On November 21, 2018, TILT issued a press release announcing that Baker, Briteside, Sea Hunter and SVH completed their merger and that they were now operating as a unified company under the name TILT Holdings, Inc.

B. TILT's Capital Raise

44. TILT also announced on November 21, 2018 by way of press release that, pursuant to the Offering Memoranda, it completed a US\$119 equity capital raise by Finco. Pursuant to the offering, Finco issued 22,886,858 subscription receipts at CAD\$5.25 per subscription receipt. Each subscription receipt automatically converted into one Finco common share immediately prior to and in connection with the completion of the merger. Each Finco common share was then exchanged for one TILT share. Pursuant to the Offering, members of the Primary Market Sub-Class purchased shares offered by TILT.

45. In addition to this offering, Finco completed a non-brokered private placement offering of 6,961,659 special shares of Finco, raising approximately US\$28,140,000. In connection with the merger, each special share was exchanged for 0.01 compressed shares in the capital of TILT.

C. TILT's Trading on the CSE and OTCQB

46. On December 6, 2018, TILT issued a press release announcing that it officially began trading on the CSE.

47. On March 15, 2019, TILT issued a press release announcing that its common shares had been approved to begin trading on the OTCQB Venture Market.

VII. TILT'S MISREPRESENTATIONS

A. TILT's Disclosures in its Management Information Circular and Documents Attached to its Management Information Circular

48. On October 12, 2018, TILT and SVH filed a Joint Management Information Circular dated October 11, 2018 with SEDAR.

i. TILT's Pro Forma Consolidated Financial Statements as at June 30, 2018

49. TILT's Joint Management Information Circular attached TILT's Pro Forma Consolidated Financial Statements as at June 30, 2018.

50. TILT's Pro Forma Consolidated Financial Statements in TILT's Joint Management Information Circular stated:

- (a) TILT had goodwill and intangibles of US\$721,065,218;
- (b) TILT had total assets of US\$904,505,870;
- (c) TILT had Total Non Current Assets of \$763,262,657;
- (d) TILT had share capital of \$923,559,548;
- (e) TILT had shareholders' equity of \$894,393,440;

- (f) TILT had total liabilities and shareholders' equity of \$904,505,870;
- (g) the Pro Forma Consolidated Financial Statements were prepared in accordance with IFRS; and
- (h) in the opinion of TILT's management, the Pro Forma Consolidated Financial Statements included all adjustments necessary for fair presentation in accordance with IFRS.

51. The note to TILT's Pro Forma Consolidated Financial Statements attached to TILT's Joint Management Information Circular, in respect of goodwill and intangibles, stated:

The acquisition of SVH by TILT constitutes a Business Combination for accounting purposes where TILT is identified as the acquirer and SVH meets the definition of a 'business' in IFRS 3, Business Combinations. Therefore, IFRS 3 was applied in accounting for the business combination. As a result, the value of consideration transferred (38,888,889 common shares of TILT at \$5.21) in excess of the net identifiable assets acquired and the liabilities assumed (\$12,016,658, measured at book value for the purposes of these pro forma financial statements, was recognized as goodwill and intangible assets related to the expected receipt of the License from Health Canada in 2018 permitting SVH to cultivate and harvest adult medical cannabis at its Powell River Facility.

ii. TILT's MD&A for the year ended December 31, 2017 and the three and six months ended June 30, 2018

52. The Joint Management Information Circular contained TILT's MD&A for the year ended December 31, 2017 and the three and six months ended June 30, 2018.

53. The MD&A in TILT's Joint Management Information Circular stated that TILT's total assets were US\$904,505,870.

54. The MD&A in TILT's Joint Management Information Circular also stated that TILT's Pro Forma Consolidated Financial Statements as at June 30, 2018 were prepared in accordance with IFRS.

55. The MD&A in TILT's Joint Management Information Circular omitted to disclose the following risks that goodwill could be reduced as a result of:

- (a) the legalized recreational market's impact on the medical cannabis industry in Canada;
- (b) the adoption of a new accounting method based on cash flows;
- (c) TILT's failure to account for the business combination in accordance with IFRS;
- (d) the fact that TILT's goodwill disclosure was not approved or attributable to TILT; and
- (e) the fact that TILT's goodwill had determined by an outside third party such as Canaccord.

56. TILT's Joint Management Information Circular, Pro Forma Consolidated Financial Statements as at June 30, 2018, and MD&A for the year ended December 31, 2017 and the three and six months ended June 30, 2018 are core documents as defined by the *OSA* and the Securities Legislation.

B. TILT's Disclosures in its Listing Statement for Listing on the CSE

i. The Listing Statement Requirements

- 57. A Listing Statement must be used for all initial applications for listing on the CSE.
- 58. A Listing Statement requires prospectus level disclosure.
- 59. Among other things, a Listing Statement must disclose:
 - (a) total assets for the last three completed financial years and any period subsequent to the most recent financial year end for which financial statements have been prepared;
 - (b) total assets for each of the eight most recently completed quarters ending at the end of the most recently completed financial year;
 - (c) financial data for each of the three most recently completed financial years, including total assets;
 - (d) audited financial statements for the issuer, including financial statements for any interim period of the current fiscal year.
 - (e) MD&A for the most recent annual financial statements or filed since the last update of the listing statement;

- (f) interim MD&A for each interim financial statement filed with the application for listing that must update the issuer's annual MD&A for all required disclosures, including total assets; and
- (g) a certificate signed by the Chief Executive Officer, Chief Financial Officer and two directors of the issuer stating that the Listing Statement:
 - (i) contains full, true and plain disclosure of all material information relating to the issuer; and
 - (ii) contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to prevent a statement that is made from being false or misleading in light of the circumstances in which it was made.

60. A Listing Statement requires management to take into account information available up to the date of the MD&A. If the date of the MD&A is not the date it is filed, management must ensure the disclosure in the MD&A is current so that it will not be misleading when it is filed.

ii. TILT's Disclosures in its Listing Statements and Documents Attached to TILT's Listing Statements

61. On November 22, 2018, TILT publicly disclosed its Listing Statement in connection with its application for listing on the CSE.

62. TILT's Listing Statement consisted of a body containing information about TILT, as well as schedules containing, among other things, TILT's Pro Forma Consolidated Financial Statements and MD&A.

63. In the body of TILT's Listing Statement, TILT stated that:

- (a) TILT had goodwill and intangibles of US\$721,065,217;
- (b) TILT had total assets of US\$904,505,870, which included its goodwill and intangibles;
- (c) TILT had share capital of \$923,559,548;
- (d) TILT had shareholders' equity of \$894,393,440;

- (e) TILT had total liabilities and shareholders' equity of \$904,505,870;
- (f) the financial statements in the Listing Statement were prepared in accordance with IFRS; and
- (g) the Listing Statement was certified by Coleman, Herron, Orr and Halpern who certified that it contains:
 - (i) full, true and plain disclosure of all material information relating to TILT Holdings Inc.; and
 - (ii) does not omit to state a material fact that is required to be stated or that is necessary to prevent a statement that is made from being false or misleading in light of the circumstances in which it was made.

64. TILT attached its Pro Forma Consolidated Financial Statements as at June 30, 2018 as a schedule to the Listing Statement, which repeated the disclosures set out in paragraphs 50 – 51.

65. TILT also attached to the Listing Statement its MD&A for the year ended December 31, 2017 and the three and six months ended June 30, 2018, which repeated the disclosures set out in paragraphs 53 – 55.

66. On November 28, 2018, TILT filed with SEDAR an Amended Listing Statement, repeating the disclosures identified in paragraphs 63 – 65.

67. On December 5, 2018, TILT filed with SEDAR an Amended Listing Statement, repeating the disclosures identified in paragraphs 63 – 65.

68. TILT's Listing Statement, Amended Listing Statements, Pro Forma Consolidated Financial Statements as at June 30, 2018, and MD&A for the year ended December 31, 2017 and the three and six months ended June 30, 2018 are core documents as defined by the *OSA* and the Securities Legislation.

C. TILT's Disclosures in its MD&A for the Period from Inception Through September 30, 2018 and Three Months Ended September 30, 2018

69. On December 7, 2018, TILT filed its MD&A for the period from inception through September 30, 2018 and three months ended September 30, 2018 prepared as of December 7, 2018 on SEDAR.

70. TILT's MD&A omitted to disclose the following risks that goodwill reported elsewhere could be reduced as a result of:

- (a) the legalized recreational market's impact on the medical cannabis industry in Canada;
- (b) the adoption of a new accounting method based on cash flows;
- (c) the fact that TILT's goodwill disclosure was not approved or attributable to TILT;
- (d) TILT's failure to account for the business combination in accordance with IFRS; and
- (e) the fact that TILT's goodwill had determined by an outside third party such as Canaccord.

71. TILT's MD&A for the period from inception through September 30, 2018 and three months ended September 30, 2018 is a core document as defined by the *OSA* and the Securities Legislation.

D. TILT's Disclosures in its Offering Memoranda

72. The Subscription Agreement stated that in assessing an investment in the securities offered under the Offering Memoranda, purchasers should carefully consider the risks described and other information contained in, or incorporated by reference in, TILT's Joint Management Information Circular dated October 11, 2018.

73. The Subscription Agreement incorporated by reference TILT's Joint Management Information Circular dated October 11, 2018 and all of the information therein.

74. The Subscription Agreement also stated that TILT's financial statements had been or would be prepared in accordance with IFRS.

75. TILT's Joint Management Information Circular dated October 11, 2018 included the disclosures set out in paragraphs 48 – 56.

E. TILT's Goodwill, Total Asset, and IFRS Disclosures Were Misrepresentations

i. TILT's Goodwill and Intangibles and Total Assets Misrepresentations

76. TILT's disclosures of goodwill and intangibles as well as total assets, total non current assets, share capital, shareholders' equity and total liabilities and shareholders' equity in its Joint Management Information Circular, Listing Statement, Amended Listing Statements, Pro Forma Consolidated Financial Statements as at June 30, 2018, and MD&A for the year ended December 31, 2017 and the three and six months ended June 30, 2018 and incorporated by reference into the Subscription Agreement were untrue statements of material fact.

77. These disclosures materially overstated TILT's goodwill and intangibles as well as total assets.

ii. TILT's IFRS Misrepresentations

78. TILT's statement in its Joint Management Information Circular, Listing Statements and amended Listing Statements and the Subscription Agreement that its financial statements were prepared in accordance with IFRS was an untrue statement of material fact.

79. TILT omitted to disclose in the Subscription Agreement that its financial statements were not prepared in accordance with IFRS. This was an omission to state a material fact that was required to be stated.

80. TILT's goodwill and intangibles and total assets in its Joint Management Information Circular, Listing Statement and amended Listing Statement were not prepared in accordance with IFRS.

81. TILT's financial statements were not prepared in accordance with IFRS.

82. TILT's disclosure in its Joint Management Information Circular that IFRS 3 was applied in accounting for the business combination was an untrue statement of material fact.

83. IFRS 3 was not applied in accounting for the business combination.

84. Under IFRS 3, goodwill is initially measured as the "excess of the cost of the business combination over the acquirer's interest in the net fair value of the identifiable assets, liabilities and contingent liabilities." IFRS 3 also prescribes the method for calculating the cost of the business combination, which includes "the fair values, at the date of exchange, of the equity instruments issued by the acquirer, in exchange for control of the acquiree."

85. In calculating the cost of the business combination, TILT incorrectly used the purported fair value of its own shares. But since TILT was not the accounting acquirer, TILT should not have

used the fair value of its own shares. Instead, in accordance with IFRS 3, TILT should have used the fair value of the accounting acquirer. As a result, the cost of the business combination and the goodwill were misstated and therefore not calculated in accordance with IFRS 3.

86. In addition, TILT incorrectly included the accounting acquirer Sea Hunter in the valuation of the capital raise, which not in accordance with IFRS 3.

iii. TILT's Risk Disclosure Misrepresentations

87. TILT's omission to disclose the risks that goodwill could be reduced as a result of the aforementioned risks in its MD&A for the year ended December 31, 2017 and the three and six months ended June 30, 2018 and its MD&A for the period from inception through September 30, 2018 and three months ended September 30, 2018, and the Offering Memoranda, was an omission to state a material fact that was required to be stated.

iv. TILT's Certification Misrepresentations

88. The certification by Coleman, Herron, Orr and Halpern in TILT's Listing Statement that it contains full, true and plain disclosure of all material information relating to TILT and does not omit to state a material fact that is required to be stated or that is necessary to prevent a statement that is made from being false or misleading in light of the circumstances in which it was made, was an untrue statement of material fact.

89. For the aforementioned reasons, including with respect to misrepresentations relating to goodwill and intangibles, total assets, IFRS, and risk disclosure, TILT's Listing Statement did not contain full, true and plain disclosure of all material information relating to TILT.

XIII. THE PUBLIC CORRECTION OF TILT'S MISREPRESENTATIONS

90. On May 1, 2019, TILT released its Consolidated Financial Statements and MD&A for the year ended December 31, 2018 and the period September 20, 2017 to December 31, 2017.

91. TILT's Consolidated Financial Statements stated that:

- (a) TILT's goodwill was US\$7,345,818;
- (b) TILT's intangible assets were US\$18,734,892;
- (c) TILT's total assets were US\$220,919,898;
- (d) TILT had a net loss of US\$549,861,671.

92. With respect to its goodwill, TILT's Consolidated Financial Statements disclosed that it recorded a goodwill impairment charge totaling US\$496,447,782:

At December 31, 2018, the Company recorded an impairment charge of \$132,509,755 for Sante Veritas Holdings Inc., \$157,636,258 for Baker Technologies, and \$206,301,769 for Briteside Holdings LLC. This reduction reflects the Company's outlook on the medical cannabis industry in Canada as a result of the legalized recreational market. The impairment was determined by comparing the CGU's value-in-use to its carrying value.

This impairment charge was fully allocated to goodwill.

93. Similarly, TILT's MD&A disclosed that TILT was taking a goodwill impairment of US\$496,447,782.

94. This disclosure was a correction within the meaning of the *OSA* and the Securities Legislation.

95. On April 30, 2019, the day before the release of this information, the price of TILT's shares closed at \$2.79.

96. On this news, the price of TILT's shares sank to \$2.17 on May 2, 2019 and continued to drop thereafter.

97. Subsequent to this corrective disclosure, in addition to the reason provided in TILT's Consolidated Financial Statements, TILT's directors and officers offered several, at times conflicting, explanations for TILT's goodwill writedown. These explanations were, among other things, that:

- (a) the goodwill writedown was based on an accounting change, since the goodwill attributable to the merger was based on an intrinsic-value allocation, and TILT's auditor MNP subsequently adopted a new accounting method to calculate goodwill based on cashflow;
- (b) the explanation for the goodwill writedown in TILT's May 1, 2019 Consolidated Financial Statements about Canada's medicinal market was inaccurate;
- (c) TILT's auditor MNP was under resourced;
- (d) the explanation for the goodwill writedown in TILT's May 1, 2019 Consolidated Financial Statements was not attributable to TILT;
- (e) the difference in goodwill arose as a result of the difference between TILT's expectation of its potential, which did not take into account discounted cash flow assumptions, and MNP's expectation of its potential, which used discounted cash flow assumptions; and
- (f) the valuation of TILT's goodwill in its pre-May 2019 disclosures had been determined by Canaccord.

98. TILT's aforementioned pre-May 2019 disclosures materially overstated TILT's goodwill, and the Defendants failed to calculate goodwill in accordance IFRS.

99. On July 30, 2019, TILT issued a press release announcing that, following a continuous disclosure review by the British Columbia Securities Commission of TILT's disclosure records, it had filed amended and restated MD&A for the quarters and year ended December 31, 2018.

100. TILT disclosed that the British Columbia Securities Commission requested TILT to provide more prominent and comprehensive disclosures regarding its goodwill impairment.

101. TILT's restated MD&A states:

Total Other Expense

For the year ended December 31, 2018, total other expenses were \$493.8 million, up from \$nil in the prior period. The total other expenses in 2018 reflect a goodwill impairment of \$494.4 million, up from \$nil in the prior period. The goodwill impairment taken at the end of 2018 is a one-time, non-cash expense related to the Company's business acquisitions of SVH, Baker and Briteside.

Goodwill represents the excess of the purchase price paid for the acquisition of a business (Briteside, Baker and SVH) over the fair value of the net tangible and intangible assets acquired. Fair values of the net tangible and intangible assets acquired as well as the consideration paid to acquire these assets were determined in accordance with the IFRS 13 "Fair Value Measurements".

The Company has determined that they have three separate CGUs that include goodwill (Canadian cannabis, software services, and consulting services). Goodwill is tested annually for impairment, or more frequently if there is any indication that they might be impaired.

Impairment is determined for goodwill by assessing if the carrying value of a CGU, including the allocated goodwill, exceeds its recoverable amount determined as the greater of the estimated fair value less costs of disposal and the value in use. Impairment losses recognized in respect of a CGU are first allocated to the carrying value of goodwill and any excess is allocated to the carrying amount of assets in the CGU.

The initial consideration allocated to each entity in the business combination was determined based upon the business combination agreement ("BCA") which allocated the TILT shares to the owners of each entity who participated in the business combination. The total purchase price paid for each entity used in the goodwill calculation described above, was determined by the Company based upon the price of the shares in an offering which closed concurrently with the closing of the business combination.

Qualitatively, the dissimilar units of measurement (CGU reporting unit vs overall business level) created the need for the goodwill impairment to the extent which occurred in such a short period of time. In addition, the Company believes that those investors who invested during that capital raise noted above, took into account the synergies of the entities and their long term perspective regarding the industry. This was reflected in the performance of the cannabis sector stock prices during the offering period when initial share offerings performed well. Those considerations did not appear in the quantifiable measurement process of the cash flows of each CGU as opposed to the qualitative information used in the offerings by investors which are more descriptive, subjective or difficult to measure. Also, the valuation of the capital raise included the accounting acquirer, Sea Hunter Therapeutics, LLC, which under IFRS continues its historical books and does not recognize any purchase price accounting, including the

recognition of goodwill and intangibles, in the business combination but qualitatively being the CGU for the U.S. cannabis market for TILT would generate significant projected cash flows which would support a substantial portion of the share price used in the valuation of goodwill.

102. On January 4, 2019, TILT announced that, effective January 7, 2019, Herron was being replaced as CFO.

103. On April 5, 2019, TILT announced the resignations of Orr and Halpern.

104. On May 10, 2019, TILT announced that Coleman has stepped down as CEO.

105. On June 13, 2019, TILT announced that Coleman has stepped down as Chairman and Director.

IX. THE RIGHTS OF ACTION

A. Statutory right of action for misrepresentation in secondary market disclosures

106. On behalf of himself and all other members of the Non-Primary Market Class, the Plaintiff asserts as against all Defendants the right of action found in section 138.3 of the *OSA* and, if necessary, the concordant provisions of the Securities Legislation.

107. Each of the Impugned Documents other than the Subscription Agreement is a core document within the meaning of the *OSA* and the Securities Legislation.

108. This claim is being asserted in respect of all Impugned Documents other than the Subscription Agreement, which contained misrepresentations within the meaning of the *OSA*, as particularized herein.

109. TILT is a reporting issuer in Ontario and a responsible issuer within the meaning of the *OSA* and the Securities Legislation.

110. The Individual Defendants were directors of TILT at the time of the release of the Impugned Documents and/or were officers of TILT at those times and they authorized, permitted or acquiesced in the release of the Impugned Documents.

111. The Defendants:

- (a) knew, at the time that each the Impugned Documents was released, that the document contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time; or
- (b) were guilty of a gross fault in connection with the release of each of the Impugned Documents.

112. Accordingly, each of the Defendants are, pursuant to *OSA* section 138.3(1), liable in respect of the misrepresentations that are contained in the Impugned Documents other than the Subscription Agreement.

B. Statutory right of action for misrepresentation in primary market disclosures

113. On behalf of all members of the Primary Market Sub-Class, the Plaintiff asserts as against the Defendants the right of action found in section 130.1 of the *OSA* and, if necessary, the concordant provisions of the Securities Legislation.

114. This claim is being asserted in respect of the Offering Memoranda which contained misrepresentations within the meaning of the *OSA*, as particularized herein.

115. The Offering Memoranda are, both collectively and separately, an “offering memorandum” within the meaning of the OSA.

116. The Offering Memoranda were prescribed disclosure documents and/or prescribed offering documents.

117. The Offering Memoranda offered TILT’s shares to the Primary Market Sub-Class. The members of the Primary Market Sub-Class purchased TILT shares offered by the Offering Memoranda during the period of distribution. TILT was the issuer of the shares offered by the Offering Memoranda.

118. The Offering Memoranda were documents purporting to describe the business and affairs of TILT.

119. The Offering Memoranda had been prepared primarily for delivery to and review by prospective purchasers of TILT shares to assist prospective purchasers to make investment decisions in respect of the shares being sold in the distribution.

120. The Offering Memoranda were delivered by TILT to prospective purchasers.

121. Purchasers of TILT securities reviewed the Offering Memoranda prior to purchasing TILT securities offered by the Offering Memoranda that were sold in a distribution.

122. The statutory right of action under the OSA for misrepresentations in the Offering Memoranda and, if necessary, the concordant provisions of the Securities Legislation, is available to each member of the Primary Market Sub-Class.

C. Negligent Misrepresentation

123. Against the Defendants, and on behalf of the Class, the Plaintiff pleads negligent misrepresentation for misrepresentations in all the Impugned Documents.

124. Each of the Impugned Documents contained misrepresentations as particularized above.

125. The Impugned Documents were prepared for the purpose of attracting investment and inducing members of the investing public to purchase securities.

126. The Defendants undertook to provide the Impugned Documents to those current and prospective securities holders (i.e. the Class Members) for the purpose of allowing them to make informed decisions as to whether to acquire securities.

127. The Defendants knew and intended at all material times that those documents had been prepared for that purpose, and that the Class Members would reasonably rely to their detriment upon such documents in making their decision to purchase securities.

128. The Defendants had a duty at common law to exercise care and diligence to ensure that the Impugned Documents were free from material misstatement. Those defendants breached that duty by making the misrepresentations as particularized above.

129. The Plaintiff and other Class Members directly or indirectly relied upon the misrepresentations in deciding to purchase securities, and suffered damages when the falsity of the information was revealed.

130. Alternatively, the Plaintiff and other Class Members relied upon the misrepresentations by the act of acquiring securities in an efficient market that promptly incorporated into the price

of those securities all publicly available information regarding TILT, including the misrepresentations, which were false. As a result, the repeated publication of these misrepresentations caused the price of securities to trade at inflated prices during the Class Period, thus directly resulting in damages to the Plaintiff and Class Members.

D. Relationship Between the Misrepresentations and the Price of TILT's Securities

131. The price of TILT's securities was directly affected during the Class Period by the release of the documents containing the misrepresentations as particularized herein. The Defendants were aware at all material times of the effect TILT's disclosure documents upon the price of TILT's securities.

132. The Impugned Documents were filed, among other places, with SEDAR, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.

133. TILT routinely transmitted the Impugned Documents to the financial press, financial analysts and certain prospective and actual holders of TILT's securities. TILT provided either copies of the Impugned Documents or links thereto on its website.

134. TILT regularly communicated with investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including on newswire services in Canada, the United States and elsewhere. When TILT communicated that new material information about its business, and operations and its financial results to the public, the price of TILT's securities was directly affected.

135. TILT was the subject of analysts' reports that incorporated certain of the information contained in the Impugned Documents, with the effect that any recommendations to buy, hold or sell TILT's securities in such reports during the Class Period were based, in whole or in part, upon that information.

136. TILT's securities were and are traded, among other places, on the CSE and the OTCQB, which is are efficient and automated markets. The price at which TILT's securities traded promptly incorporated material information from TILT's disclosure documents about TILT's business and affairs, including the misrepresentations alleged herein, which were disseminated to the public through the Impugned Documents referred to herein and distributed by TILT, as well as by other means.

E. Damages

137. The Class Members suffered damages as a result of the Defendants' breach of their duties and misrepresentations. The Plaintiff and the other Class Members suffered damages equivalent to the inflation in the price of securities they acquired during the Class Period which was related to the misrepresentations alleged herein.

138. If the Defendants had not breached their duties and made the misrepresentations described above, TILT's securities would not have traded or been sold at artificially high levels that Class Members paid for them, and the Class Members would not have suffered losses as alleged herein.

139. The Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, motivated by economic considerations, and amounted to an abuse of the capital markets. Such conduct renders the Defendants liable to pay punitive damages.

X. VICARIOUS LIABILITY

140. TILT is vicariously liable for the acts and omissions of the Individual Defendants particularized in this claim.

141. The acts or omissions alleged herein to have been done by TILT were authorized, ordered and done by the Individual Defendants and other agents, employees and representatives of TILT, while engaged in the management, direction, control and transaction of the business and affairs of TILT. Such acts and omissions are, therefore, not only the acts and omissions of the Individual Defendants, but are also the acts and omissions of TILT.

142. At all material times, the Individual Defendants were officers and/or directors of TILT. As their acts and omissions are independently tortious, they are personally liable for same to the Plaintiff and the other Class Members.

XI. REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

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

- (a) TILT is a reporting issuer in Ontario;
- (b) TILT carries on business in Ontario;
- (c) the TILT disclosure documents referred to herein were disseminated in and from Ontario;
- (d) a substantial portion of Class Members reside in Ontario;
- (e) a substantial portion of the damages sustained by the Class were sustained by person and entities domiciled in Ontario.

XI. LEGISLATION

144. The Plaintiff pleads and relies upon the *Courts of Justice Act*, RSO 1990, c C43, the *CPA*, the *OSA*, and the Securities Legislation, all as amended.

XII. SERVICE OUTSIDE OF ONTARIO AND PLACE OF TRIAL

145. The Plaintiff pleads and relies on Rules 17.02(a), (g), (n), and (p) of *the Rules of Civil Procedure* to serve this statement of claim outside Ontario without leave.

146. The Plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario.

~~April 21, 2020~~
September 28, 2020

Kalloghlian Myers LLP
250 University Avenue, Suite 200
Toronto, ON M5H 3E5

Serge Kalloghlian (LSO#: 55557F)
serge@kalloghlianmyers.com
Tel: (647) 812-5615
Fax: (647) 243-6620

Garth Myers (LSO#: 62307G)
garth@kalloghlianmyers.com
Tel: (647) 969-4472
Fax: (647) 243-6620

Paul Bates (LSO#22619D)
pbates@batesbarristers.com
Tel: (416) 869-9898 x 101
c/o Kalloghlian Myers LLP

Lawyers for the Plaintiff

Steve Pinizzotto TILT Holdings, Inc. et al.
Plaintiff and Defendants

Court File No.: CV-20-00639799-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AMENDED STATEMENT OF CLAIM

Kalloghlian Myers LLP
250 Yonge St., Suite 2201
Toronto, ON M5H M5B2L7

Paul Bates (LSO#22619D)
pbates@batesbarristers.com
Tel: (416) 869-9898 x 101

Serge Kalloghlian (LSO#:
55557F)
serge@kalloghlianmyers.com
Tel: (647) 812-5615
Fax: (647) 243-6620

c/o Kalloghlian Myers LLP

Garth Myers (LSO#:
62307G)
garth@kalloghlianmyers.com
Tel: (647) 969-4472
Fax: (647) 243-6620

Lawyers for the Plaintiff