

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): March 15, 2021

Tilray, Inc.

(Exact name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-38594
(Commission
File Number)

82-4310622
(IRS Employer
Identification No.)

**1100 Maughan Rd.,
Nanaimo, BC, Canada**
(Address of Principal Executive Offices)

V9X 1J2
(Zip Code)

Registrant's Telephone Number, Including Area Code: (844) 845-7291

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instructions A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class 2 Common Stock, \$0.0001 par value per share	TLRY	The Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01. Other Events.

As previously disclosed on December 15, 2020, Tilray, Inc., a Delaware corporation (“Tilray”), and Aphria Inc., a corporation existing under the laws of the Province of Ontario (“Aphria”), entered into an Arrangement Agreement, as amended on February 19, 2021, (the “Arrangement Agreement”), pursuant to which all of the issued and outstanding common shares of Aphria will be exchanged for Class 2 common stock of Tilray, in accordance with a specified exchange ratio, pursuant to a plan of arrangement under the Business Corporations Act (Ontario) (the “Arrangement”). On March 12, 2020, Tilray filed with the Securities and Exchange Commission (the “SEC”) a definitive joint proxy statement/circular (the “Proxy Statement/Circular”) with respect to the special meeting of Tilray stockholders scheduled to be held on April 16, 2021 pursuant to the Arrangement.

Litigation Related to the Merger

In connection with the Arrangement, after the Proxy Statement/Circular was filed, three stockholder lawsuits have been filed:

- (i) in the United States District Court for the Southern District of New York, captioned *Violini v. Tilray, Inc. et al.*, Case No. 1:21-cv-02256 (the “Violini Complaint”);
- (ii) in the United States District Court for the Southern District of New York, captioned *Barron-Archer v. Tilray, Inc. et al.*, Case No. 1:21-cv-02497 (the “Barron-Archer Complaint”); and
- (ii) in the United States District Court for the Eastern District of New York, captioned *Reveles v. Tilray, Inc. et al.*, Case No. 1:21-cv-01543 (the “Reveles Complaint”), and together with the Violini Complaint and the Barron-Archer Complaint, the “Complaints”)

The Complaints generally allege, among other things, that Tilray and the members of its Board of Directors omitted purportedly material information from the Proxy Statement/Circular. The Barron-Archer Complaint includes the additional claim that the members of the Board of Directors breached their fiduciary duties with respect to the alleged omissions. The Complaints seek, among other things, additional disclosure of facts relating to the Arrangement and/or injunctive relief. Additional similar lawsuits may be filed in the future. Tilray believes that the plaintiffs’ allegations in the Complaints lack merit. If additional similar complaints are filed, or if the Complaints are amended, absent new or different allegations that are material, Tilray will not necessarily disclose such additional filings or subsequent amendments. The foregoing description is qualified in its entirety by reference to the Complaints which are attached hereto as Exhibits 99.1, 99.2, and 99.3 are incorporated by reference herein.

Additional Information and Where to Find It

In connection with the proposed business combination (the “Transaction”), Tilray has filed a Proxy Statement/Circular containing important information about the Transaction and related matters. The Proxy Statement/Circular has also been made available by Aphria and Tilray on their respective SEDAR profiles. Additionally, Aphria and Tilray will file other relevant materials in connection with the Transaction with the applicable securities regulatory authorities. Investors and security holders of Aphria and Tilray are urged to carefully read the entire Proxy Statement/Circular (including any amendments or supplements to such documents), respectively, before making any voting decision with respect to the Transaction because they contain important information about the Transaction and the parties to the Transaction. The Proxy Statement/Circular will be mailed to the Aphria Shareholders and Tilray Stockholders and is accessible on the SEDAR and EDGAR profiles of the respective companies.

Investors and security holders of Tilray can obtain a free copy of the Proxy Statement/Circular, as well as other relevant filings containing information about Tilray and the Transaction, including materials incorporated by reference into the Proxy Statement/Circular, without charge, at the SEC’s website (www.sec.gov) or from Tilray by contacting Tilray’s Investor Relations at (203) 682-8253, by email at Raphael.Gross@icrinc.com, or by going to Tilray’s Investor Relations page on its website at <https://ir.tilray.com/investor-relations> and clicking on the link titled “Financials.”

Investors and security holders of Aphria are able to obtain a free copy of the Proxy Statement/Circular, as well as other relevant filings containing information about Aphria and the Transaction, including materials incorporated by reference into the Proxy Statement/Circular, without charge, under Aphria’s profile on SEDAR at www.sedar.com or from Aphria by contacting Aphria’s investor relations at investors@aphria.com.

Participants in the Solicitation

Tilray and Aphria and certain of their respective directors, executive officers and employees may be deemed to be participants in the solicitation of Tilray proxies in respect of the Transaction. Information regarding the persons who may, under SEC rules, be deemed participants in the solicitation of proxies to Tilray stockholders in connection with the Transaction will be set forth in the Tilray proxy

statement for the Transaction when available. Other information regarding the participants in the Tilray proxy solicitation and a description of their direct and indirect interests in the Transaction, by security holdings or otherwise, will be contained in such proxy statement and other relevant materials to be filed with the SEC in connection with the Transaction. Copies of these documents may be obtained, free of charge, from the SEC or Tilray as described in the preceding paragraph.

Notice Regarding Forward-Looking Statements

Certain information in this email constitutes forward-looking information or forward-looking statements (together, “forward-looking statements”) under Canadian securities laws and within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are intended to be covered by the safe harbor created by such sections and other applicable laws. The forward-looking statements are expressly qualified by this cautionary statement. Forward-looking statements are provided for the purpose of presenting information about management’s current expectations and plans relating to the future, and readers are cautioned that such statements may not be appropriate for other purposes. Any information or statements that are contained in this email that are not statements of historical fact may be deemed to be forward-looking statements, including, but not limited to, statements in this email with regards to: (i) statements relating to the strategic business combination of Aphria and Tilray and the expected timing and closing of the Transaction; Transaction including, receipt of required shareholder approvals, court approvals and satisfaction of other closing customary conditions; (ii) estimates of pro-forma financial information of the Combined Company, including in respect of expected revenues and production of cannabis; (iii) the expected strategic and financial benefits of the business combination, including estimates of future cost reductions, synergies, including expected pre-tax synergies, savings and efficiencies; (iv) statements that the Combined Company anticipates having scalable medical and adult-use cannabis platforms expected to strengthen the leadership position in Canada, internationally and, eventually in the United States; (v) statements that the Combined Company is expected to offer a diversified and branded product offering and distribution footprint, state-of-the-art cultivation, processing and manufacturing facilities; (vi) statements in respect of operational efficiencies expected to be generated as a result of the Transaction in the amount of approximately C\$100 million of pre-tax annual cost synergies; (vii) statements regarding the value and returns to shareholders expected to be generated by the business combination; (viii) expectations of future balance sheet strength and future equity; (ix) expectations regarding the Combined Company’s future M&A strategy; and (x) the expectation that the Combined Company’s shares will be listed on the Toronto Stock Exchange concurrently with, or as soon as possible after, the closing of the Transaction. Aphria and Tilray use words such as “forecast”, “future”, “should”, “could”, “enable”, “potential”, “contemplate”, “believe”, “anticipate”, “estimate”, “plan”, “expect”, “intend”, “may”, “project”, “will”, “would” and the negative of these terms or similar expressions to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Certain material factors or assumptions were used in drawing the conclusions contained in the forward-looking statements throughout this email, including the ability of the parties to receive, in a timely manner and on satisfactory terms, the necessary shareholder and court approvals for the Transaction, the ability of the parties to satisfy, in a timely manner, the conditions to closing of the Transaction and other expectations and assumptions concerning the Transaction. Forward-looking statements reflect current beliefs of management of Aphria and Tilray with respect to future events and are based on information currently available to each respective management team including the reasonable assumptions, estimates, analysis and opinions of management of Aphria and Tilray considering their experience, perception of trends, current conditions and expected developments as well as other factors that each respective management believes to be relevant as at the date such statements are made. Forward-looking statements involve significant known and unknown risks and uncertainties. Many factors could cause actual results, performance or achievement to be materially different from any future forward-looking statements. Factors that may cause such differences include, but are not limited to, risks assumptions and expectations described in Aphria’s and Tilray’s critical accounting policies and estimates; the adoption and impact of certain accounting pronouncements; Aphria’s and Tilray’s future financial and operating performance; the competitive and business strategies of Aphria and Tilray; the intention to grow the business, operations and potential activities of Aphria and Tilray; the ability of Aphria and Tilray to complete the Transaction; Aphria’s and Tilray’s ability to provide a return on investment; Aphria’s and Tilray’s ability to maintain a strong financial position and manage costs, the ability of Aphria and Tilray to maximize the utilization of their existing assets and investments and that the completion of the Transaction is subject to the satisfaction or waiver of a number of conditions as set forth in the Arrangement Agreement. There can be no assurance as to when these conditions will be satisfied or waived, if at all, or that other events will not intervene to delay or result in the failure to complete the Transaction. There is a risk that some or all the expected benefits of the Transaction may fail to materialize or may not occur within the time periods anticipated by Aphria and Tilray. The challenge of coordinating previously independent businesses makes evaluating the business and future financial prospects of the Combined Company following the Transaction difficult. Material risks that could cause actual results to differ from forward-looking statements also include the inherent uncertainty associated with the financial and other projections as well as market changes arising from governmental actions or market conditions in response to the COVID-19 public health crisis; the prompt and effective integration of the Combined Company; the ability to achieve the anticipated synergies and value-creation contemplated by the Transaction; the risk associated with Aphria’s and Tilray’s ability to obtain the approval of the proposed transaction by their shareholders required to consummate the Transaction and the timing of the closing of the Transaction, including the risk that the conditions to the Transaction are not satisfied on a timely basis or at all; the risk that a consent or authorization that may be required for the Transaction is not obtained or is obtained subject to conditions that are not anticipated; the outcome of any legal proceedings that may be instituted against the parties and others related to the Arrangement Agreement; unanticipated difficulties or expenditures relating to the Transaction, the response of business partners and retention as a

result of the announcement and pendency of the Transaction; risks relating to the value of Tilray's common stock to be issued in connection with the transaction; the impact of competitive responses to the announcement of the Transaction; and the diversion of management time on transaction-related issues. Readers are cautioned that the foregoing list of factors is not exhaustive. Other risks and uncertainties not presently known to Aphria and Tilray or that Aphria and Tilray presently believe are not material could also cause actual results or events to differ materially from those expressed in the forward-looking statements contained herein. For a more detailed discussion of risks and other factors, see the most recently filed annual information form of Aphria and the annual report filed on form 10-K of Tilray made with applicable securities regulatory authorities and available on SEDAR and EDGAR. The forward-looking statements included in this email are made as of the date of this email and neither Aphria nor Tilray undertake any obligation to publicly update such forward-looking statements to reflect new information, subsequent events or otherwise unless required by applicable securities laws.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits.

<u>Exhibit Number</u>	<u>Exhibit Description</u>
99.1	Complaint, <i>Violini v. Tilray, Inc. et al.</i> , Case No. 1:21-cv-02256, filed on March 15, 2021
99.2	Complaint, <i>Barron-Archer v. Tilray, Inc. et al.</i> , Case No. 1:21-cv-02497, filed on March 23, 2021
99.3	Complaint, <i>Reveles v. Tilray, Inc. et al.</i> , Case No. 1:21-cv-01543, filed on March 24, 2021
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

TILRAY, INC.

Date: March 26, 2021

By: /s/ Brendan Kennedy

Brendan Kennedy

President and Chief Executive Officer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PATRICIA VIOLINI,

Plaintiff,

v.

TILRAY, INC., BRENDAN KENNEDY,
CHRISTINE ST. CLARE, REBEKAH
DOPP, MICHAEL AUERBACH, and
SOREN SCHRODER,

Defendants.

Case No.:

JURY TRIAL DEMANDED

**COMPLAINT FOR VIOLATIONS OF
FEDERAL SECURITIES LAWS**

Plaintiff, by her undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to herself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

BACKGROUND

1. This action concerns a proposed transaction (“Proposed Transaction”) announced on December 16, 2020, pursuant to which Tilray, Inc. (“Tilray” or the “Company”) will merge with Aphria Inc. (“Aphria”).

2. On December 15, 2020, Tilray’s Board of Directors (the “Board” or “Individual Defendants”) caused the Company to enter into an arrangement agreement (the “Merger Agreement”). Pursuant to the terms of the Merger Agreement, each share of Aphria common stock will be converted into approximately 0.8381 shares of Tilray common stock (the “Merger Consideration”). Upon closing of the Proposed Transaction, stockholders of Aphria will own approximately 62% of the outstanding common stock of Tilray, while stockholders of Tilray are expected to own approximately 38% of Tilray.

3. On March 12, 2021, in order to convince Tilray's shareholders to vote in favor of the Proposed Transaction, Defendants filed a materially incomplete and misleading preliminary proxy statement (the "Proxy Statement") with the United States Securities and Exchange Commission ("SEC").

4. The Proxy Statement omits material information with respect to the Proposed Transaction, which renders the Proxy Statement false and misleading. Accordingly, Plaintiff alleges herein that defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act") in connection with Proxy Statement.

5. In addition, a special meeting of Tilray stockholders will be held on April 16, 2021 to vote on the Proposed Transaction (the "Stockholder Vote"). It is therefore imperative that the material information that has been omitted from the Proxy Statement is disclosed prior to the Stockholder Vote so Tilray stockholders can properly exercise their corporate voting rights and make an informed decision on whether to vote in favor of the merger.

JURISDICTION & VENUE

6. This Court has jurisdiction over the claims asserted herein pursuant to Section 27 of the 1934 Act and 28 U.S.C. §1331 because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.

7. This Court has jurisdiction over Defendants because each defendant is either a corporation that conducts business in this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because, among other things: (a) the conduct at issue

will have an effect in this District; (b) a substantial portion of the transactions and wrongs complained of herein, occurred in this District; and (c) certain Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District. Additionally, the Company's common stock trades on the NASDAQ, which is headquartered in this District.

THE PARTIES

9. Plaintiff is, and has been continuously throughout all times relevant hereto, a Tilray shareholder.

10. Defendant Tilray is a Delaware corporation and a party to the Merger Agreement. Tilray shares are traded on the NASDAQ under the ticker symbol "TLRY."

11. Defendant Brendan Kennedy is President, Chief Executive Officer, and a director of the Company.

12. Defendant Christine St. Clare is a director of the Company.

13. Defendant Rebekah Dopp is a director of the Company.

14. Defendant Michael Auerbach is a director of the Company.

15. Defendant Soren Schroder is a director of the Company.

FACTS

16. Tilray supplies high-quality medical cannabis products to tens of thousands of patients in fifteen countries spanning five continents across the world through Tilray's Subsidiaries in Australia, Canada, Germany, Latin America and Portugal and through agreements with established pharmaceutical distributors. Tilray cultivates medical and adult-use cannabis in Canada and medical cannabis in Europe.

17. Aphria is a leading global cannabis-lifestyle consumer packaged goods company, with operations in Canada, the United States, Europe and Latin America. Aphria cultivates, processes, markets and sells medical and adult-use cannabis, cannabis-derived extracts and derivative cannabis products in Canada under the provisions of the Cannabis Act and globally pursuant to applicable international regulations. Aphria, through its SweetWater subsidiary, also manufactures, markets and sells alcoholic beverages in the United States.

18. On December 15, 2020, Tilray's Board caused the Company to enter into the Merger Agreement.

19. The Merger Agreement provides that Tilray will merge with and into Aphria with Aphria surviving as a wholly owned subsidiary of Tilray.

20. At the Effective Time (as defined in the Merger Agreement), and as a result of the Merger:

[E]ach Aphria Share outstanding immediately prior to the Effective Time (other than Dissenting Shares held by Aphria Dissenting Shareholders who are ultimately determined to be entitled to be paid the fair value of their Dissenting Shares as determined in accordance with Article 4), shall be, and shall be deemed to be, transferred by the holder thereof to Tilray (free and clear of all Liens) in exchange for issuance of the Share Consideration.

21. The Merger Consideration is unfair because, among other things, the intrinsic value of the Company is in excess of the amount the Company's stockholders will receive in connection with the Proposed Transaction.

22. It is therefore imperative that the Company shareholders receive the material information that Defendants have omitted from the Proxy Statement so that they can meaningfully assess whether the Proposed Transaction is in their best interests prior to the vote.

23. Section 5.1 of the Merger Agreement has a "non-solicitation" clause that prevents

Tilray from soliciting alternative proposals and constraints its ability to negotiate with potential buyers:

Section 5.1 Non-Solicitation

From the date hereof until the date that this Agreement is terminated pursuant to Article 7, except as expressly provided in this Article 5, neither Party shall, directly or indirectly, do or authorize or permit any of its Representatives to do, any of the following:(a) solicit, initiate or knowingly encourage or otherwise facilitate (including by way of furnishing or providing copies of, access to, or disclosure of, any confidential information, properties, facilities, books or records of a Party or any Subsidiary) any Acquisition Proposal in respect of such Party or any inquiries, proposals or offers relating to any Acquisition Proposal or that could reasonably be expected to lead to an Acquisition Proposal in respect of such Party; (b)enter into, engage in, continue or otherwise participate in any discussions or negotiations with any person (other than the other Party hereto) regarding any Acquisition Proposal in respect of such Party or any inquiries, proposals or offers relating to any Acquisition Proposal or that could reasonably be expected to constitute or lead to an Acquisition Proposal in respect of such Party;(c)make a Change in Recommendation;(d)accept, approve, endorse or recommend, execute or enter into, or publicly propose to accept, approve, execute or enter into, any letter of intent, agreement in principle, agreement, arrangement, offer or understanding in respect of an Acquisition Proposal (other than a confidentiality and standstill agreement contemplated under Section 5.3(1)).

24. In addition, Section 7.3 of the Merger Agreement requires Tilray to pay up to a \$65,000,000 “termination fee” in the event this agreement is terminated by Tilray and improperly constrains the Company from obtaining a superior offer. Such a termination fee is excessive and unduly restrictive to Tilray’s ability to consider other offers.

25. Defendants filed the Proxy Statement with the SEC in connection with the Proposed Transaction.

26. As alleged herein, the Proxy Statement omits material information with respect to the Proposed Transaction, which renders the Proxy Statement false and misleading.

27. First, the Proxy Statement omits material information regarding Tilray’s, Aphria’s, and the pro forma company’s financial projections.

28. With respect to Tilray's financial projections, the Proxy Statement fails to disclose all line items used to calculate net revenue, gross profit, adjusted EBITDA, EBIT, unlevered free cash flow (calculated by Cowen), and unlevered free cash flow (calculated by Imperial). The Proxy Statement also fails to disclose a reconciliation of all non-GAAP to GAAP metrics.

29. With respect to Aphria's financial projections, the Proxy Statement fails to disclose all line items used to calculate net revenue, gross profit, adjusted EBITDA excluding NCI, non-GAAP gross profit, EBIT, and unlevered free cash flow. The Proxy Statement also fails to disclose a reconciliation of all non-GAAP to GAAP metrics.

30. With respect to the pro forma company's financial projections, the Proxy Statement fails to disclose all line items used to calculate non-GAAP gross profit, adjusted EBITDA, and unlevered free cash flow. The Proxy Statement also fails to disclose a reconciliation of all non-GAAP to GAAP metrics.

31. The disclosure of projected financial information is material information necessary for stockholders to gain an understanding of the basis for any projections as to the future financial performance of the combined company. In addition, this information is material and necessary for stockholders to understand the financial analyses performed by the companies' financial advisors rendered in support of any fairness opinion.

32. Second, the Proxy Statement omits material information regarding the analyses performed by the Company's financial advisors Cowen and Company, LLC ("Cowen") and Imperial Capital, LLC ("Imperial") and Aphria's financial advisor Jefferies LLC ("Jefferies") in connection with the Proposed Transaction.

33. With respect to Cowen's *Analysis of Selected Publicly-Traded Companies*, the Proxy Statement fails to include the individual metrics for each company observed. This

information must be disclosed to make the Proxy Statement not materially misleading to Tilray stockholders and provide stockholders with full and relevant information in considering how to vote.

34. With respect to Cowen's *Tilray Discounted Cash Flow Analysis*, the Proxy Statement fails to include: (i) the terminal value of Tilray at December 31, 2023, (ii) the individual inputs and assumptions underlying the range of discount rates of 10.0% to 12.0%, (iii) Tilray's estimated weighted average cost of capital ("WACC"), and (iv) Cowen's full basis for applying an adjusted EBITDA multiples range of 15.0x to 20.0x. This information must be disclosed to make the Proxy Statement not materially misleading to Tilray stockholders and provide stockholders with full and relevant information in considering how to vote.

35. With respect to Cowen's *Aphria Discounted Cash Flow Analysis Based on Aphria Management Projections*, the Proxy Statement fails to include: (i) the terminal value of Aphria at May 31, 2024, (ii) the individual inputs and assumptions underlying the range of discount rates of 8.5% to 10.5%, (iii) Aphria's estimated WACC, and (iv) Cowen's full basis for applying an adjusted EBITDA multiples range of 15.0x to 20.0x. This information must be disclosed to make the Proxy Statement not materially misleading to Tilray stockholders and provide stockholders with full and relevant information in considering how to vote.

36. With respect to Cowen's *Aphria Discounted Cash Flow Analysis Based on Aphria Management Projections as Adjusted by Tilray Management*, the Proxy Statement fails to include: (i) the terminal value of Aphria at May 31, 2024, (ii) the individual inputs and assumptions underlying the range of discount rates of 8.5% to 10.5%, (iii) Aphria's estimated WACC, and (iv) Cowen's full basis for applying an adjusted EBITDA multiples range of 15.0x to 20.0x. This information must be disclosed to make the Proxy Statement not materially misleading to Tilray

stockholders and provide stockholders with full and relevant information in considering how to vote.

37. With respect to Imperial's *Comparable Companies Analysis*, the Proxy Statement fails to include the individual metrics for each company observed. This information must be disclosed to make the Proxy Statement not materially misleading to Tilray stockholders and provide stockholders with full and relevant information in considering how to vote.

38. With respect to Imperial's *Precedent Transactions Analysis*, the Proxy Statement fails to include the individual metrics for each transaction observed. This information must be disclosed to make the Proxy Statement not materially misleading to Tilray stockholders and provide stockholders with full and relevant information in considering how to vote.

39. With respect to Imperial's *Discounted Cash Flow Analysis*, the Proxy Statement fails to include: (i) estimated terminal values for Tilray and Aphria, (ii) Imperial's full basis for applying TEV/EBITDA multiples of 20x to 22x for Tilray and 18x to 20x for Aphria and a range of perpetuity growth rates of 8.5% to 9.5% to the free cash flow, (iii) the individual inputs and assumptions underlying the discount rate of 12.5%, and (iv) WACC for Tilray and Aphria. This information must be disclosed to make the Proxy Statement not materially misleading to Tilray stockholders and provide stockholders with full and relevant information in considering how to vote.

40. With respect to Jefferies' *Discounted Cash Flow Analysis of Aphria Stand-Alone, and of Aphria Shareholders' Share of the Combined Company at the Exchange Ratio Analysis*, the Proxy Statement fails to include: (i) the individual inputs and assumptions underlying the range of discount rates of 10.0% to 12.0% and 9.8% to 11.8%, (ii) Aphria's and the combined company's estimated WACC, (iii) the range of Aphria's terminal year values, (iii) Jefferies' full basis for

applying exit multiples ranging from 10.5x to 14.5x, and (iv) estimates of the tax benefits from non-capital loss carry forward as provided by Aphria management. This information must be disclosed to make the Proxy Statement not materially misleading to Tilray stockholders and provide stockholders with full and relevant information in considering how to vote.

41. With respect to Jefferies' *Discounted Cash Flow Analyses of Tilray Stand-Alone and Tilray Including Synergies*, the Proxy Statement fails to include: (i) the individual inputs and assumptions underlying the range of discount rates of 10.0% to 12.0% and 9.8% to 11.8%, (ii) Tilray's and the combined company's estimated WACC, (iii) the range of Tilray's terminal year values, (iii) Jefferies' full basis for applying exit multiples ranging from 10.5x to 14.5x, and (iv) estimates of the tax benefits from non-capital loss carry forward as provided by Tilray management. This information must be disclosed to make the Proxy Statement not materially misleading to Tilray stockholders and provide stockholders with full and relevant information in considering how to vote.

42. With respect to Jefferies' *Selected Public Companies Analysis*, the Proxy Statement fails to include the individual metrics for each company observed. This information must be disclosed to make the Proxy Statement not materially misleading to Tilray stockholders and provide stockholders with full and relevant information in considering how to vote.

43. The omission of the above-referenced material information renders the Proxy false and misleading.

44. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to the Company's stockholders.

CLAIMS FOR RELIEF

COUNT I

(AGAINST ALL DEFENDANTS FOR VIOLATIONS OF SECTION 14(a) OF THE EXCHANGE ACT AND RULE 14a-9 PROMULGATED THEREUNDER)

45. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

46. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, requires that proxy communications with stockholders shall not contain “any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R. § 240.14a-9.

47. Defendants issued the Proxy with the intention of soliciting stockholder support for the Proposed Transaction. Each of the Defendants reviewed and authorized the dissemination of the Proxy and the use of their name in the Proxy, which fails to provide critical information regarding, among other things, the financial projections that were prepared by the Company and relied upon by the Board in recommending the Company’s stockholders vote in favor of the Proposed Transaction.

48. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. By virtue of their roles as officers and/or directors, each of the Individual Defendants were aware of the omitted information but failed to disclose such information, in violation of Section 14(a). The Individual Defendants were therefore negligent, as they had reasonable grounds to believe material facts existed that were misstated or omitted from the Proxy, but nonetheless failed to obtain and disclose such information to stockholders as required.

49. The preparation of a Proxy by corporate insiders containing materially false or misleading statements or omitting a material fact constitutes negligence. Defendants were negligent in preparing and reviewing the Proxy. Defendants were also negligent in choosing to omit material information from the Proxy or failing to notice the material omissions in the Proxy upon reviewing it, which they were required to do carefully.

50. The misrepresentations and omissions in the Proxy are material to Plaintiff, who will be deprived of her right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the vote on the Proposed Transaction. Plaintiff has no adequate remedy at law.

COUNT II

(AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT)

51. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

52. The Individual Defendants acted as controlling persons of the Company within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as directors of the Company, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the Proxy filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that Plaintiff contends are materially incomplete and misleading.

53. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy and other statements alleged by Plaintiff to be misleading prior to and/or

shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

54. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein, and exercised the same. The omitted information identified above was reviewed by the Board prior to voting on the Proposed Transaction. The Proxy at issue contains the unanimous recommendation of the Board to approve the Proposed Transaction. The Individual Defendants were thus directly involved in the making of the Proxy.

55. In addition, as the Proxy sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The Proxy purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

56. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

57. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff will be irreparably harmed.

58. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction; B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages; C. Directing the Individual Defendants to disseminate a proxy that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading; D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the 1934 Act, as well as Rule 14a-9 promulgated thereunder; E. Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and experts' fees; and F. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff hereby requests a trial by jury on all issues so triable.

Dated: March 15, 2021

MOORE KUEHN, PLLC

/s/Justin Kuehn

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ALICIA BARRON-ARCHER,

Plaintiff,

v.

TILRAY, INC., BRENDAN KENNEDY,
CHRISTINE ST.CLARE, REBEKAH
DOPP, MICHAEL AUERBACH, and
SOREN SCHRODER,

Defendants.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

Plaintiff, Alicia Barron-Archer (“Plaintiff”), by her undersigned attorneys, for this Complaint against defendants, alleges upon personal knowledge with respect to herself, and upon information and belief based upon, *inter alia*, the investigation of counsel, as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This is an action brought by Plaintiff against Tilray, Inc. (“Tilray” or the “Company”) and the members of the Company’s board of directors (collectively referred to as the “Board” or the “Individual Defendants” and, together with Tilray, the “Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a) and Rule 14a-9, 17 C.F.R. § 240.14a-9. Plaintiff’s claims arise in connection with the proposed merger between the Company and Aphria Inc. (“Aphria”) (“Proposed Transaction”). Plaintiff also asserts a claim against the Individual Defendants for breaching their fiduciary duty of candor/disclosure under state law.

2. On December 15, 2020, Tilray and Aphria entered into an arrangement agreement

that was later amended on February 19, 2021 (“Arrangement Agreement”), whereby Aphria shareholders will be entitled to receive 0.8381 of a share of Tilray common stock for each share of Aphria common stock they hold (“Merger Consideration”).

3. Upon consummation of the Proposed Transaction, Aphria shareholders will own 61.2% of the outstanding Tilray common stock, while Tilray shareholders will only own 38.8%.

4. On March 12, 2021, in order to convince Tilray’s public common shareholders to vote in favor of the Proposed Transaction, the Defendants authorized the filing of a materially incomplete and misleading Definitive Proxy Statement (“Proxy”) with the SEC, in violation of Sections 14(a) and 20(a) of the Exchange Act.

5. In particular, the Proxy contains materially incomplete and misleading information concerning: (i) the financial projections; and (ii) the valuation analyses performed by the Company’s financial advisors, Cowen and Company, LLC (“Cowen”) and Imperial Capital, LLC (“Imperial”).

6. The special meeting of Tilray’s shareholders to vote on the Proposed Transaction will be held on April 14, 2021 (“Shareholder Vote”). Therefore, it is imperative that the material information that has been omitted from the Proxy is disclosed prior to the Shareholder Vote, so Tilray’s shareholders can properly exercise their corporate voting rights.

7. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against Defendants for violations of Sections 14(a) and 20(a) of the Exchange Act and Rule 14a-9. Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction, unless and until the material information discussed below is disclosed to Tilray’s shareholders sufficiently before the Shareholder Vote or, in the event the Proposed Transaction is consummated, to recover damages resulting from the Defendants’ violations of the Exchange Act.

JURISDICTION AND VENUE

8. This Court has jurisdiction over all claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.

9. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over each Defendant by this Court permissible under the traditional notions of fair play and substantial justice. "Where a federal statute such as Section 27 of the [Exchange] Act confers nationwide service of process, the question becomes whether the party has sufficient contacts with the United States, not any particular state." *Sec. Inv'r Prot. Corp. v. Vigman*, 764 F.2d 1309, 1315 (9th Cir. 1985). "[S]o long as a defendant has minimum contacts with the United States, Section 27 of the Act confers personal jurisdiction over the defendant in any federal district court." *Id.* at 1316.

10. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as 28 U.S.C. § 1391, because Defendants are found or are inhabitants or transact business in this District. Indeed, Tilray's common stock trades on the NasdaqGS, which is headquartered in this District. *See, e.g., United States v. Svoboda*, 347 F.3d 471, 484 n.13 (2d Cir. 2003) (collecting cases). Additionally, Cowen is located in this District at 599 Lexington Avenue, New York, NY 10022.

PARTIES

11. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of Tilray common stock.

12. Defendant Tilray is a public company incorporated under the laws of Delaware with principal executive offices located at 1100 Maughan Road, Nanaimo, BC, Canada, V9X 1J2. Tilray's common stock trades on the NasdaqGS under the ticker symbol "TLRY."

13. Defendant Brendan Kennedy is, and has been at all relevant times, a director of the Company, and Chief Executive Officer.

14. Defendant Christine St.Clare is, and has been at all relevant times, a director of the Company.

15. Defendant Rebekah Dopp is, and has been at all relevant times, a director of the Company.

16. Defendant Michael Auerbach is, and has been at all relevant times, a director of the Company.

17. Defendant Soren Schroder is, and has been at all relevant times, a director of the Company.

18. Defendants identified in paragraphs 13 through 17 are collectively referred to herein as the "Board" or the "Individual Defendants," and together with the Company, the "Defendants."

SUBSTANTIVE ALLEGATIONS

I. Background of the Company, Aphria, and the Proposed Transaction

19. Tilray engages in the research, cultivation, processing, and distribution of medical cannabis. The Company offers its products to patients, physicians, clinics, pharmacies, governments, and hospitals; and for researchers for commercial purposes, as well as compassionate access and clinical research applications. It operates in Argentina, Australia, Canada, Chile, Croatia, Cyprus, Germany, Israel, New Zealand, Portugal, Spain, Africa,

Switzerland, the United States, Malta, and the United Kingdom.

20. Aphria cultivates, processes, produces, markets, distributes, and sells medical cannabis in Canada and internationally. It offers pharmaceutical-grade medical cannabis, adult-use cannabis, and cannabis-derived extracts and derivative cannabis products under the Solei, RIFF, Good Supply, Aphria, P'tite Pof, and Broken Coast brands. Aphria serves patients and consumers through distributors and online.

21. According to the December 16, 2020, joint press release announcing the Proposed Transaction:

**APHRIA AND TILRAY COMBINE TO CREATE
LARGEST GLOBAL CANNABIS COMPANY WITH PRO FORMA
REVENUE OF C\$874 MILLION (US\$685 MILLION)**

Leamington, Ontario and Nanaimo, British Columbia – December 16, 2020 – Aphria Inc. (“**Aphria**”) (TSX: **APHA** and Nasdaq: **APHA**), a leading global cannabis company inspiring and empowering the worldwide community to live their very best life, and Tilray, Inc. (“**Tilray**”) (Nasdaq: **TLRY**), a global pioneer in cannabis research, cultivation, production and distribution, today announced that they have entered into a definitive agreement (the “**Agreement**”) to combine their businesses and create the world’s largest global cannabis company (the “**Combined Company**”) based on pro forma revenue¹. The deal is pursuant to a plan of arrangement (the “**Arrangement**”) under the *Business Corporations Act* (Ontario), and the implied pro forma equity value of the Combined Company is approximately C\$5.0 billion (US\$3.9 billion), based on the share price of Aphria and Tilray at the close of market on December 15, 2020. Following the completion of the Arrangement, the Combined Company will have principal offices in the United States (New York and Seattle), Canada (Toronto, Leamington and Vancouver Island), Portugal and Germany, and it will operate under the Tilray corporate name with shares trading on NASDAQ under ticker symbol “TLRY”.

The Combined Company, supported by low-cost, state-of-the-art cultivation, processing, and manufacturing facilities, will have a complete portfolio of branded Cannabis 2.0 products in Canada. Internationally, the Combined Company will be well-positioned to pursue growth opportunities with Aphria’s medical cannabis and distribution footprint in Germany, and Tilray’s European Union Good Manufacturing Practices (“**EU-GMP**”) low-cost cannabis production facility in Portugal, which has export capabilities and tariff-free access to the European Union (“**EU**”) to meet increasing global demand for medical

cannabis. In the United States, the Combined Company will have a strong consumer packaged goods presence and infrastructure with two strategic pillars, including SweetWater Brewing Company (“**SweetWater**”), a cannabis lifestyle branded craft brewer, and Manitoba Harvest, a leading hemp food manufacturer and a pioneer in branded CBD and wellness products. The Combined Company is expected to have a strong, flexible balance sheet, cash balance and access to capital giving it the ability to accelerate growth and deliver attractive returns for stockholders.

Under the terms of the Arrangement, the shareholders of Aphria (the “**Aphria Shareholders**”) will receive 0.8381 shares (the “**Exchange Ratio**”) of Tilray for each Aphria common share (each, an “**Aphria Share**”), while holders of Tilray shares (the “**Tilray Stockholders**”) will continue to hold their Tilray shares (the “**Tilray Shares**”) with no adjustment to their holdings. Upon the completion of the Arrangement, Aphria Shareholders will own approximately 62 percent of the outstanding Tilray Shares on a fully diluted basis, resulting in a reverse acquisition of Tilray, representing a premium of 23 percent based on the share price at market close on December 15, 2020 to Tilray shareholders. On a pro forma basis for the last twelve months reported by each company, the Combined Company would have had revenue of C\$874 million (US\$685 million).

(Emphasis in original).

22. The Merger Consideration represents inadequate compensation for the Company’s shareholders because under the original deal structure from February 14, 2020, Tilray’s shareholders were to own 56% of the combined company, whereas under the Merger Consideration now, the Company’s shareholders will own only 38.8%. Proxy, 48, 62.

23. Therefore, it is imperative that the Company’s shareholders receive the material information (discussed in detail below) that Defendants have omitted from the Proxy, necessary for them to properly exercise their corporate suffrage rights and cast an informed vote on the Proposed Transaction.

II. The Proxy Omits Material Information

24. Defendants filed a materially incomplete and misleading Proxy with the SEC, despite the Individual Defendants being obligated to carefully review the Proxy before it was filed with the SEC and disseminated to the Company’s shareholders, to ensure that it did not contain

any material misrepresentations or omissions. Thus, the Proxy should be amended prior to the Shareholder Vote, so the Company's shareholders can make an informed voting decision in connection with the Proposed Transaction.

25. First, the Proxy fails to disclose material information regarding the financial projections.

26. To start, the Proxy omits crucial information regarding the following five sets of financial projections disclosed in *Certain Tilray Forecasts* (section of the Proxy): (1) Tilray Management Financial Projections; (2) Aphria Management Projections used by Cowen; (3) Tilray Adjusted Aphria Management Projections used by Cowen; (4) Aphria Management Projections used by Imperial; and (5) Certain Pro Forma Projections used by Imperial. Proxy, 90-94. In each of these five sets of projections, the Proxy fails to disclose the figures underlying the inputs used to calculate EBIT, Adjusted EBITDA, and Unlevered Free Cash Flow ("UFCF"). *Id.* The importance of disclosing these figures is highlighted in the Tilray Management Financial Projections, where Cowen and Imperial used two separate methods to calculate UFCF, which resulted in significant differences in their view of the Company's UFCF for fiscal years 2020 through 2023. *Id.* at 92.

27. Additionally, the Proxy fails to disclose Net Income projections, despite the five sets of projections above referencing use of Net Income in calculating EBIT and Adjusted EBITDA. *Id.* at 90-94. By disclosing certain projections in the Proxy and withholding the Net Income projections, Defendants render the projections on pages 90 to 94 of the Proxy materially incomplete and provide a misleading valuation picture of Tilray and Aphria. Simply put, Net Income projections are irreplaceable when it comes to fully, fairly, and accurately understanding a company's projections and value.

28. Unlike poker where a player must conceal her unexposed cards, the object of a proxy statement is to put all of one's cards on the table face-up. In this case, only some of the cards were exposed—the others were concealed. If a proxy statement discloses financial projections and valuation information, such projections must be complete and accurate. The question here is not the duty to speak, but liability for not having spoken enough. With regard to future events, uncertain figures, and other so-called soft information, a company may choose silence or speech elaborated by the factual basis as then known—but it may not choose half-truths. See *Campbell v. Transgenomic, et al.*, No. 18-2198 (8th Cir., March 1, 2019) (noting that “half-truths” are actionable misrepresentations under securities laws and collecting cases). Accordingly, Defendants must disclose the figures underlying the inputs used to calculate EBIT, Adjusted EBITDA, and UFCF, and Defendants must also disclose the Net Income projections as well.

29. Second, the Proxy omits material information regarding Cowen and Imperial's respective financial analyses for the Proposed Transaction.

Cowen's Financial Analyses

30. The Proxy discloses that Cowen utilized the Wall Street Projections for both Tilray and Aphria, and the Projected Synergies prepared by Tilray's management, in rendering its fairness opinion but neither of these projections are disclosed. Proxy, 78. In fact, for the Projected Synergies, Defendants opted to include a summary over disclosing the actual projections. *Id.* at 94-95.

31. With respect to the *Analysis of Selected Publicly-Traded Companies*, the Proxy omits the individual multiples observed for each of the selected companies. *Id.* at 79-80. Further, the Proxy fails to disclose the inputs and assumptions underlying Cowen's selection and application of the following two reference range of multiples: (i) 5.5x to 8.0x; and (ii) 3.0x to 5.0x.

Id. at 80.

32. For *Tilray's Discounted Cash Flow Analysis*, the Proxy omits the inputs and assumptions underlying Cowen's selection of the discount rates ranging from 10.0% to 12.0%, based on an estimate of Tilray's weighted average cost of capital ("WACC"). *Id.* at 81. Moreover, the Proxy fails to disclose the inputs and assumptions underlying the selected Adjusted EBITDA multiples of 15.0x to 20.0x. *Id.*

33. As for the *Aphria Discounted Cash Flow Analysis Based on Aphria Management Projections*, the Proxy does not disclose the inputs and assumptions underlying Cowen's selection of the discount rates ranging from 8.5% to 10.5%, based on an estimate of Aphria's WACC. *Id.* Also, the Proxy fails to disclose the inputs and assumptions underlying the selected Adjusted EBITDA multiples of 15.0x to 20.0x. *Id.*

34. Similarly, for the *Aphria Discounted Cash Flow Analysis Based on Aphria Management Projections as Adjusted by Tilray Management*, the Proxy fails to disclose the inputs and assumptions underlying Cowen's selection of the discount rates ranging from 8.5% to 10.5%, based on an estimate of Aphria's WACC. *Id.* In addition, the Proxy fails to disclose the inputs and assumptions underlying the selected Adjusted EBITDA multiples of 15.0x to 20.0x. *Id.*

35. These key inputs are material to the Company's shareholders, and their omission renders the summary of Cowen's three Discounted Cash Flow Analyses incomplete and misleading. As one highly-respected law professor explained regarding these crucial inputs, in a discounted cash flow analysis a banker takes management's forecasts, and then makes several key choices "each of which can significantly affect the final valuation." Steven M. Davidoff, *Fairness Opinions*, 55 Am. U.L. Rev. 1557, 1576 (2006). Such choices include "the appropriate discount rate, and the terminal value..." *Id.* As Professor Davidoff explains:

There is substantial leeway to determine each of these, and any change can markedly affect the discounted cash flow value. For example, a change in the discount rate by one percent on a stream of cash flows in the billions of dollars can change the discounted cash flow value by tens if not hundreds of millions of dollars....This issue arises not only with a discounted cash flow analysis, but with each of the other valuation techniques. This dazzling variability makes it difficult to rely, compare, or analyze the valuations underlying a fairness opinion unless full disclosure is made of the various inputs in the valuation process, the weight assigned for each, and the rationale underlying these choices. The substantial discretion and lack of guidelines and standards also makes the process vulnerable to manipulation to arrive at the “right” answer for fairness. This raises a further dilemma in light of the conflicted nature of the investment banks who often provide these opinions.

Id. at 1577-78 (emphasis added). Without the above-mentioned information, the Company’s shareholders cannot evaluate for themselves the reliability of Cowen’s Discounted Cash Flow Analyses, make a meaningful determination of whether the implied equity value ranges reflect the true value of the Company and Aphria, or were the result of an unreasonable judgment by Cowen, and make an informed decision regarding whether to vote in favor of the Proposed Transaction.

36. Regarding the *Current Trading Metrics Analysis*, the Proxy omits the Company’s total debt and the number of shares outstanding as of December 14, 2020. Proxy, 83.

37. Last, the *Wall Street Analyst Share Price Targets Analysis* does not disclose the 22 total research analysts Cowen observed, and the individual metrics observed for each of those analysts. *Id.* at 84.

Imperial’s Financial Analyses

38. The Proxy notes that Imperial “reviewed certain publicly available research reports,” yet the Proxy fails to disclose the sources of those reports. *Id.* at 85.

39. For the *Comparable Companies Analysis*, the Proxy fails to disclose the individual multiples observed for each of the selected companies. *Id.* at 87-88.

40. Similarly, for the *Precedent Transactions Analysis*, the Proxy does not provide the individual multiples observed by Cowen for each of the selected transactions. *Id.* at 88.

41. As for the *Discounted Cash Flow Analysis* for both the Company and Aphria, the Proxy omits the following information: (i) the inputs and assumptions underlying Imperial's application of a range of TEV/EBITDA multiples of 20x to 22x for Tilray, and 18x to 20x for Aphria; (ii) the inputs and assumptions underlying Imperial's application of a range of perpetuity growth rates from 8.5% to 9.5%; and (iii) the inputs and assumptions underlying selection of a discount rate of 12.5%, based upon the WACC for Aphria and Tilray. *Id.* at 89. The importance of a Discounted Cash Flow Analysis to shareholders is explained above. See paragraph 33.

42. Finally, regarding the *Securities Analysts' Price Targets Analysis*, the Proxy fails to disclose the names of the six equity analysts observed by Imperial. Proxy, 90.

43. In sum, the omission of the above-referenced information renders the Proxy materially incomplete and misleading, in contravention of the Exchange Act. Absent disclosure of the foregoing material information prior to the Shareholder Vote concerning the Proposed Transaction, Plaintiff will be unable to make an informed decision regarding whether to vote her shares in favor of the Proposed Transaction, and she is thus threatened with irreparable harm, warranting the injunctive relief sought herein.

CAUSES OF ACTION

COUNT I

(Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9)

44. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

45. Section 14(a)(1) of the Exchange Act makes it "unlawful for any person, by the

use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 78l of this title.” 15 U.S.C. § 78n(a)(1).

46. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, provides that proxy communications shall not contain “any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R. § 240.14a-9.

47. The omission of information from a proxy will violate Section 14(a) and Rule 14a-9 if other SEC regulations specifically require disclosure of the omitted information.

48. Defendants have issued the Proxy with the intention of soliciting the Company’s public common stockholders support for the Proposed Transaction. Each of the Individual Defendants reviewed and authorized the dissemination of the Proxy, which fails to provide critical information regarding, amongst other things: (i) the financial projections; and (ii) the valuation analyses performed by Cowen and Imperial, respectively.

49. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as officers and/or directors, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a). The Individual Defendants were therefore negligent, as they had reasonable grounds to believe material facts existed that were

misstated or omitted from the Proxy, but nonetheless failed to obtain and disclose such information to the Company's shareholders although they could have done so without extraordinary effort.

50. The Individual Defendants knew or were negligent in not knowing that the Proxy is materially misleading and omits material facts that are necessary to render it not misleading. The Individual Defendants undoubtedly reviewed and relied upon most if not all of the omitted information identified above in connection with their decision to approve and recommend the Proposed Transaction; indeed, the Proxy states that Cowen and Imperial reviewed and discussed its financial analyses with the Individual Defendants, and further states that the Individual Defendants considered the financial analyses provided by Cowen and Imperial, as well as their fairness opinions and the assumptions made and matters considered in connection therewith. Further, the Individual Defendants were privy to and had knowledge of the Company's projections and the details surrounding the process leading up to the signing of the Arrangement Agreement. The Individual Defendants knew or were negligent in not knowing that the material information identified above has been omitted from the Proxy, rendering the sections of the Proxy identified above to be materially incomplete and misleading. Indeed, the Individual Defendants were required to, separately, review Cowen and Imperial's analyses in connection with their receipt of the fairness opinions, question Cowen and Imperial as to their derivation of fairness, and be particularly attentive to the procedures followed in preparing the Proxy and review it carefully before it was disseminated, to corroborate that there are no material misstatements or omissions.

51. The Individual Defendants were, at the very least, negligent in preparing and reviewing the Proxy. The preparation of a proxy statement by corporate insiders containing materially false or misleading statements or omitting a material fact constitutes negligence. The

Individual Defendants were negligent in choosing to omit material information from the Proxy or failing to notice the material omissions in the Proxy upon reviewing it, which they were required to do carefully as the Company's directors. Indeed, the Individual Defendants were intricately involved in the process leading up to the signing of the Arrangement Agreement, and preparation and review of the Company's financial projections.

52. Tilray is also deemed negligent as a result of the Individual Defendants' negligence in preparing and reviewing the Proxy.

53. The misrepresentations and omissions in the Proxy are material to Plaintiff, who will be deprived of her right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the Shareholder Vote. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

COUNT II

(Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act)

54. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

55. The Individual Defendants acted as controlling persons of Tilray within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of Tilray, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the Proxy filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that Plaintiff contends are materially incomplete and

misleading.

56. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

57. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein, and exercised the same. The Proxy contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were thus directly involved in preparing this document.

58. In addition, as the Proxy sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Arrangement Agreement. The Proxy purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

59. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

60. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9 by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff will be irreparably harmed.

61. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

COUNT III

(Against the Individual Defendants for Breach of Fiduciary Duty of Candor/Disclosure)

62. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

63. By virtue of their role as directors and/or officers of the Company, the Individual Defendants directly owed Plaintiff and all Company shareholders a fiduciary duty of candor/disclosure, which required them to disclose fully and fairly all material information within their control when they seek shareholder action, and to ensure that the Proxy did not omit any material information or contain any materially misleading statements.

64. As alleged herein, the Individual Defendants breached their duty of candor/disclosure by approving or causing the materially deficient Proxy to be disseminated to Plaintiff and the Company's other public shareholders.

65. The misrepresentations and omissions in the Proxy are material, and Plaintiff will be deprived of her right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the Shareholder Vote. Where a shareholder has been denied one of the most critical rights he or she possesses—the right to a fully informed vote—the harm suffered is an individual and irreparable harm.

66. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

- A. Preliminarily enjoining Defendants and all persons acting in concert with them from proceeding with the Shareholder Vote or consummating the Proposed Transaction, unless and until the Company discloses the material information discussed above which has been omitted from the Proxy;
- B. Directing the Defendants to account to Plaintiff for all damages sustained as a result of their wrongdoing;
- C. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and expert fees and expenses; and
- D. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: March 23, 2021

MONTEVERDE & ASSOCIATES PC

/s/ Juan E. Monteverde

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

ARTHUR REVELES,

Plaintiff,

v.

TILRAY, INC., BRENDAN KENNEDY,
CHRISTINE ST. CLARE, REBEKAH
DOPP, SOREN SCHRODER, and
MICHAEL AUERBACH,

Defendants.

Case No:

**COMPLAINT FOR VIOLATION OF
THE FEDERAL SECURITIES LAWS**

JURY TRIAL DEMANDED

Plaintiff Arthur Reveles (“Plaintiff”), by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys.

NATURE OF THE ACTION

1. This is an action against Tilray, Inc. (“Tilray” or the “Company”) and its Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a) and 78t(a), and Rule 14a-9 promulgated thereunder by the SEC, 17 C.F.R. § 240.14a-9, in connection with Tilray’s proposed merger (the “Proposed Transaction”) with Aphria Inc. (“Aphria”).

2. In connection with the Proposed Transaction, shareholders of Aphria will receive 0.8381 shares of Tilray common stock for each Aphria share held. Tilray stockholders will continue to hold their Tilray common stock, which will remain outstanding. Upon the completion of the Proposed Transaction, it is expected that the exchange ratio will result in shareholders of each of Aphria and of Tilray owning approximately 61.2% and 38.8%, respectively, of the post-closing outstanding Tilray common stock (on a fully diluted basis).

3. On March 12, 2021, Defendants caused to be filed with the SEC a Schedule 14A Definitive Proxy Statement (the “Proxy Statement”) under the Exchange Act in connection with the Proposed Transaction.

4. The Proxy Statement, which recommends that Tilray shareholders vote in favor of, among other things, the issuance of Tilray common stock in connection with the Proposed Transaction (the “Stock Issuance”), omits and/or misrepresents material information concerning: (1) Tilray’s and Aphria’s financial projections; (2) the financial analyses performed by Tilray’s financial advisors, Cowen and Company, LLC (“Cowen”) and Imperial Capital, LLC (“Imperial”), in connection with their fairness opinions; (3) potential conflicts of interest involving Imperial; and (4) potential conflicts of interest involving Company insiders.

5. These material misrepresentations and omissions prevent the Company’s shareholders from making a fully informed voting decision on the Stock Issuance proposal before the April 16, 2021 shareholder vote. Accordingly, the Company’s shareholders will be irreparably harmed if these material misrepresentations and omissions are not remedied before the anticipated shareholder vote on the Stock Issuance.

JURISDICTION AND VENUE

6. The claims asserted herein arise under and pursuant to Sections 14(a) and 20(a) of the Exchange Act (15 U.S.C. §§ 78n(a) and 78t(a)) and Rule 14a-9 promulgated thereunder by the SEC (17 C.F.R. § 240.14a-9).

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as a substantial portion of the transactions and wrongs complained of herein had an effect in this District, and the alleged misstatements entered and the subsequent damages occurred in this District.

9. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

10. Plaintiff is, and has been at all relevant times hereto, an owner of Tilray common stock.

11. Defendant Tilray engages in the research, cultivation, processing, and distribution of medical cannabis. The Company is incorporated in Delaware. The Company's common stock trades on the NASDAQ under the ticker symbol, "TLRY."

12. Defendant Brendan Kennedy ("Kennedy") is Chief Executive Officer and a director of the Company.

13. Defendant Christine St. Clare ("St. Clare") is a director of the Company.

14. Defendant Rebekah Dopp (“Dopp”) is a director of the Company.
15. Defendant Soren Schroder (“Schroder”) is a director of the Company.
16. Defendant Michael Auerbach (“Auerbach”) is a director of the Company.
17. Defendants Kennedy, St. Clare, Dopp, Schroder, and Auerbach are collectively referred to herein as the “Individual Defendants.”
18. Defendants Tilray and the Individual Defendants are collectively referred to herein as the “Defendants.”

SUBSTANTIVE ALLEGATIONS

A. The Proposed Transaction

19. On December 16, 2020, Tilray and Aphria issued a press release announcing the Proposed Transaction, stating in pertinent part:

**Aphria and Tilray Combine to Create Largest Global Cannabis Company
With Pro Forma Revenue of C\$874 Million (US\$685 Million)**

Complementary, Scalable Medical and Adult-Use Cannabis Businesses Strengthen Leadership Position in Canada; Expands U.S. and International Reach through World-Class Cultivation, Manufacturing, Diversified Product Portfolio and Distribution Footprint

Robust Supply Chain and Operational Efficiencies Expected to Generate Approximately C\$100 Million of Pre-Tax Annual Cost Synergies

Aphria and Tilray to Host a Conference Call and Webcast at 8:30 a.m. Eastern Time

December 16, 2020 07:00 AM Eastern Standard Time

LEAMINGTON, Ontario & NANAIMO, British Columbia—(BUSINESS WIRE)—Aphria Inc. (“**Aphria**”) (TSX: **APHA** and Nasdaq: **APHA**), a leading global cannabis company inspiring and empowering the worldwide community to live their very best life, and Tilray, Inc. (“**Tilray**”) (Nasdaq: **TLRY**), a global pioneer in cannabis research, cultivation, production and distribution, today announced that they have entered into a definitive agreement (the “**Agreement**”) to combine their businesses and create the world’s largest global cannabis company (the “**Combined Company**”) based on pro forma revenue¹. The deal is pursuant to a plan of

arrangement (the “**Arrangement**”) under the *Business Corporations Act* (Ontario), and the implied pro forma equity value of the Combined Company is approximately C\$5.0 billion (US\$3.9 billion), based on the share price of Aphria and Tilray at the close of market on December 15, 2020. Following the completion of the Arrangement, the Combined Company will have principal offices in the United States (New York and Seattle), Canada (Toronto, Leamington and Vancouver Island), Portugal and Germany, and it will operate under the Tilray corporate name with shares trading on NASDAQ under ticker symbol “TLRY”.

The Combined Company, supported by low-cost, state-of-the-art cultivation, processing, and manufacturing facilities, will have a complete portfolio of branded Cannabis 2.0 products in Canada. Internationally, the Combined Company will be well-positioned to pursue growth opportunities with Aphria’s medical cannabis and distribution footprint in Germany, and Tilray’s European Union Good Manufacturing Practices (“**EU-GMP**”) low-cost cannabis production facility in Portugal, which has export capabilities and tariff-free access to the European Union (“**EU**”) to meet increasing global demand for medical cannabis. In the United States, the Combined Company will have a strong consumer packaged goods presence and infrastructure with two strategic pillars, including SweetWater Brewing Company (“**SweetWater**”), a cannabis lifestyle branded craft brewer, and Manitoba Harvest, a leading hemp food manufacturer and a pioneer in branded CBD and wellness products. The Combined Company is expected to have a strong, flexible balance sheet, cash balance and access to capital giving it the ability to accelerate growth and deliver attractive returns for stockholders.

Under the terms of the Arrangement, the shareholders of Aphria (the “**Aphria Shareholders**”) will receive 0.8381 shares (the “**Exchange Ratio**”) of Tilray for each Aphria common share (each, an “**Aphria Share**”), while holders of Tilray shares (the “**Tilray Stockholders**”) will continue to hold their Tilray shares (the “**Tilray Shares**”) with no adjustment to their holdings. Upon the completion of the Arrangement, Aphria Shareholders will own approximately 62 percent of the outstanding Tilray Shares on a fully diluted basis, resulting in a reverse acquisition of Tilray, representing a premium of 23 percent based on the share price at market close on December 15, 2020 to Tilray shareholders. On a pro forma basis for the last twelve months reported by each company, the Combined Company would have had revenue of C\$874 million (US\$685 million).

Proven Leadership Team

The Combined Company will be led by a best-in-class management team and board of directors, with strong track records in consumer-packaged goods and cannabis experience internationally. Upon completion of the Arrangement, Aphria’s current Chairman and Chief Executive Officer, Irwin D. Simon, will lead the Combined Company as Chairman and Chief Executive Officer. The board of directors will consist of nine members, seven of which, including Mr. Simon, are current Aphria directors and two of which will be from Tilray, including Brendan Kennedy, and

one of which is to be designated. Aphria and Tilray are confident that the leadership team and proposed board of directors of the Combined Company provides a strong foundation for the Combined Company to accelerate growth. Additional senior leadership positions at the Combined Company will be named at a later date.

* * *

Agreement Details

Under the terms of the Agreement, the Arrangement will be carried out by way of a court approved plan of arrangement under the *Business Corporations Act* (Ontario) and will require the approval of at least two-thirds of the votes cast by the Aphria Shareholders at a special meeting. Approval of a majority of the votes cast by Tilray stockholders will be required to, among other things contemplated by the Agreement, authorize the issuance of Tilray shares to Aphria shareholders pursuant to the Arrangement. Following completion of the Arrangement, Aphria will become a wholly-owned subsidiary of Tilray, with Aphria shareholders owning approximately 62 percent of Tilray.

Completion of the Arrangement is subject to regulatory and court approvals and other customary closing conditions. Regulatory approvals expected to be required include Competition Bureau (Canada), U.S. HSR and Germany FDI. The Agreement includes certain reciprocal customary provisions, including covenants in respect of the non-solicitation of alternative transactions, a right to match superior proposals and C\$65 million (US\$50 million) reciprocal termination fee payable under certain circumstances. The Arrangement is expected to close in the second quarter of calendar year 2021 following the receipt of such regulatory approvals, as well as court approval of the Arrangement.

Each of Aphria's and Tilray's respective directors and officers and certain principal Tilray Stockholders have entered into voting support agreements agreeing to vote their Aphria Shares or Tilray Shares, as applicable, in favor of the resolutions put before them pursuant to the Agreement.

For further information on the terms and conditions of the Arrangement, please refer to the Agreement in its entirety, which will be available on SEDAR at www.sedar.com and on EDGAR at www.sec.gov. Full details of the Arrangement will be included in a management information circular of Aphria and in a proxy statement of Tilray to be delivered to Aphria Shareholders and the Tilray Stockholders, respectively, in the coming weeks.

Board of Directors' Approval

Each of Aphria's and Tilray's respective board of directors has unanimously approved the Agreement and the Arrangement. Jefferies LLC provided a fairness opinion to the Board of Directors of Aphria on December 15, 2020, stating that, as

of the date of such opinion and based upon the scope of review and subject to the assumptions, limitations and qualifications stated in such opinion, the Exchange Ratio is fair, from a financial point of view, to the Aphria Shareholders. Cowen provided a fairness opinion dated December 15, 2020 to the board of directors of Tilray stating that, as of the date of such opinion and based upon and subject to the assumptions, limitations and qualifications stated in such opinion, the Exchange Ratio is fair, from a financial point of view, to Tilray.

Advisors

Jefferies LLC is serving as financial advisor and DLA Piper LLP (US), DLA Piper (Canada) LLP and Fasken Martineau Dumoulin LLP are acting as legal counsel to Aphria. Cowen is serving as financial advisor and Cooley LLP and Blake, Cassels and Graydon LLP are acting as legal counsel to Tilray.

* * *

About Aphria Inc.

Aphria Inc. is a leading global cannabis company inspiring and empowering the worldwide community to live their very best life. Headquartered in Leamington, Ontario – the greenhouse capital of Canada – Aphria Inc. has been setting the standard for the low-cost production of high-quality cannabis at scale, grown in the most natural conditions possible. Focusing on untapped opportunities and backed by the latest technologies, Aphria Inc. is committed to bringing breakthrough innovation to the global cannabis market. The Company’s portfolio of brands is grounded in expertly researched consumer insights designed to meet the needs of every consumer segment. Rooted in our founders’ multi-generational expertise in commercial agriculture, Aphria Inc. drives sustainable long-term shareholder value through a diversified approach to innovation, strategic partnerships, and global expansion.

For more information, visit: aphriainc.com

About Tilray®

Tilray (Nasdaq: TLRY) is a global pioneer in the research, cultivation, production and distribution of cannabis and cannabinoids currently serving tens of thousands of patients and consumers in 15 countries spanning five continents.

B. The Proxy Statement Contains Materially False and Misleading Statements and Omissions

20. The Proxy Statement omits and/or misrepresents material information concerning: (1) Tilray’s and Aphria’s financial projections; (2) the financial analyses performed by Tilray’s

financial advisors in connection with their fairness opinions; (3) potential conflicts of interest involving Imperial; and (4) potential conflicts of interest involving Company insiders.

21. The omission of the material information (referenced below) renders the following sections of the Proxy Statement false and misleading, among others: (i) Our Reasons for the Arrangement; (ii) Recommendation of the Tilray Board; (iii) Opinion of Tilray's Financial Advisors; (iv) Certain Tilray Forecasts; and (v) Aphria Unaudited Financial Projections.

22. Unless and until the material misstatements and omissions (referenced below) are remedied before the April 16, 2021 shareholder vote, the Company's shareholders will be forced to make a voting decision on the Stock Issuance without full disclosure of all material information. In the event Defendants fail to disclose the following information before the shareholder vote, Plaintiff may seek to recover damages resulting from Defendants' misconduct.

1. Material Omissions Concerning Tilray's and Aphria's Financial Projections

23. The Proxy Statement fails to disclose information concerning Tilray's and Aphria's financial projections.

24. With respect to the "Tilray Management Financial Projections," the Proxy Statement fails to disclose the following: (1) all line items underlying (i) Revenue, (ii) Non-U.S. GAAP Gross Profit, (iii) EBIT, (iv) Adjusted EBITDA, (v) Unlevered Free Cash Flow (calculated by Cowen), and (vi) Unlevered Free Cash Flow (calculated by Imperial); (2) Tilray's net income projections; and (3) a reconciliation of all non-GAAP to GAAP financial metrics.

25. With respect to the "Aphria Management Projections used by Cowen," the Proxy Statement fails to disclose the following: (1) all line items underlying (i) Revenue, (ii) Non-GAAP Gross Profit, (iii) EBIT, (iv) Adjusted EBITDA, and (v) Unlevered Free Cash Flow; (2) Aphria's net income projections; and (3) a reconciliation of all non-GAAP to GAAP financial metrics.

26. With respect to the "Tilray Adjusted Aphria Management Projections used by

Cowen,” the Proxy Statement fails to disclose the following: (1) all line items underlying (i) Revenue, (ii) Non-GAAP Gross Profit, (iii) EBIT, (iv) Adjusted EBITDA, and (v) Unlevered Free Cash Flow; (2) Aphria’s net income projections; and (3) a reconciliation of all non-GAAP to GAAP financial metrics.

27. With respect to the “Aphria Management Projections used by Imperial,” the Proxy Statement fails to disclose the following: (1) all line items underlying (i) Revenue, (ii) Non-GAAP Gross Profit, (iii) Adjusted EBITDA, and (iv) Unlevered Free Cash Flow; (2) Aphria’s net income projections; and (3) a reconciliation of all non-GAAP to GAAP financial metrics.

28. With respect to the “Certain Pro Forma Projections used by Imperial,” the Proxy Statement fails to disclose the following: (1) all line items underlying (i) Revenue, (ii) Non-GAAP Gross Profit, (iii) Adjusted EBITDA, and (iv) Unlevered Free Cash Flow; (2) the combined company’s net income projections; and (3) a reconciliation of all non-GAAP to GAAP financial metrics.

29. With respect to the “Summary of the Financial Projections by Aphria,” the Proxy Statement fails to disclose the following: (1) all line items underlying (i) Net Revenue, (ii) Gross Profit, and (iii) Adjusted EBITDA excluding NCI; (2) Aphria’s net income projections; and (3) a reconciliation of all non-GAAP to GAAP financial metrics.

30. With respect to the “Summary of the Tilray Financial Projections by Aphria,” the Proxy Statement fails to disclose the following: (1) all line items underlying (i) Net Revenue, (ii) Gross Profit, and (iii) Adjusted EBITDA; (2) Tilray’s net income projections; and (3) a reconciliation of all non-GAAP to GAAP financial metrics.

31. When a company discloses non-GAAP financial metrics in a Proxy Statement, the company must also disclose all projections and information necessary to make the non-GAAP

metrics not misleading, and must provide a reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial metrics disclosed or released with the most comparable financial metrics calculated and presented in accordance with GAAP. The SEC has increased its scrutiny of a company's use of non-GAAP financial measures as such measures can be misleading and "crowd out" more reliable GAAP information.¹

32. The disclosure of this information is material because it would provide the Company's shareholders with a basis to project the future financial performance of the Company and combined company and would allow shareholders to better understand the financial analyses performed by the Company's financial advisors in support of their fairness opinions. Shareholders cannot hope to replicate management's inside view of the future prospects of the Company. Without such information, which is uniquely possessed by Defendant(s) and the Company's financial advisors, the Company's shareholders are unable to determine how much weight, if any, to place on the Company's financial advisors' fairness opinions in determining whether to vote for or against the Proposed Transaction.

33. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to the Company's shareholders.

2. Material Omissions Concerning the Financial Advisors' Analyses

34. In connection with the Proposed Transaction, the Proxy Statement omits material

¹ Mary Jo White, *Keynote Address, International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability* (June 27, 2016), <https://www.sec.gov/news/speech/chair-white-icgn-speech.html> (footnotes omitted) (last visited Mar. 24, 2021) ("And last month, the staff issued guidance addressing a number of troublesome practices which can make non-GAAP disclosures misleading: the lack of equal or greater prominence for GAAP measures; exclusion of normal, recurring cash operating expenses; individually tailored non-GAAP revenues; lack of consistency; cherry-picking; and the use of cash per share data. I strongly urge companies to carefully consider this guidance and revisit their approach to non-GAAP disclosures.").

information concerning analyses performed by Cowen and Imperial.

35. The valuation methods, underlying assumptions, and key inputs used by Cowen and Imperial in rendering their purported fairness opinions must be fairly disclosed to Tilray shareholders. The description of Cowen's and Imperial's fairness opinions and analyses, however, fail to include key inputs and assumptions underlying those analyses. Without the information described below, Tilray shareholders are unable to fully understand Cowen's and Imperial's fairness opinions and analyses, and are thus unable to determine how much weight, if any, to place on them in determining whether to vote for or against the Proposed Transaction. This omitted information, if disclosed, would significantly alter the total mix of information available to the Company's shareholders.

A. Cowen's Analyses

36. With respect to Cowen's "*Analysis of Selected Publicly-Traded Companies*," the Proxy Statement fails to disclose the individual multiples and financial metrics of each company Cowen observed in its analyses.

37. The Proxy Statement fails to disclose the following concerning Cowen's "*Tilray Discounted Cash Flow Analysis*": (1) all line items underlying the projected unlevered free cash flows of Tilray for the fiscal years ended December 31, 2021 through December 31, 2023; (2) the terminal value of Tilray at December 31, 2023; (3) the assumptions described by management of Tilray; and (4) the individual inputs and assumptions underlying the (i) discount rates ranging from 10.0% to 12.0%, and (ii) multiples ranging from 15.0x to 20.0x.

38. The Proxy Statement fails to disclose the following concerning Cowen's "*Aphria Discounted Cash Flow Analysis Based on Aphria Management Projections*": (1) all line items underlying the projected unlevered free cash flows of Aphria for the fiscal years ended May 31,

2021 through May 31, 2024; (2) the terminal value of Aphria at May 31, 2024; (3) the assumptions described by management of Aphria; and (4) the individual inputs and assumptions underlying the (i) discount rates ranging from 8.5% to 10.5%, and (ii) multiples ranging from 15.0x to 20.0x.

39. The Proxy Statement fails to disclose the following concerning Cowen's "Aphria Discounted Cash Flow Analysis Based on Aphria Management Projections as Adjusted by Tilray Management": (1) all line items underlying the projected unlevered cash flows of Aphria for the portion of the fiscal year from January 1, 2021 through May 31, 2021 and the fiscal years ended May 31, 2022 through May 31, 2024; (2) the terminal value of Aphria at May 31, 2024; (3) the assumptions described by management of Aphria and Tilray; and (4) the individual inputs and assumptions underlying the (i) discount rates ranging from 8.5% to 10.5%, and (ii) multiples ranging from 15.0x to 20.0x.

40. With respect to Cowen's "Wall Street Analyst Share Price Targets," the Proxy Statement fails to disclose: (1) the individual price targets observed by Cowen in its analysis; and (2) the sources thereof.

B. Imperial's Analyses

41. With respect to Imperial's "Comparable Companies Analysis" and "Precedent Transactions Analysis," the Proxy Statement fails to disclose the individual multiples and financial metrics of each company and transaction Imperial observed in its analyses as well as the transaction values and premiums paid therein.

42. The Proxy Statement fails to disclose the following concerning Imperial's "Discounted Cash Flow Analysis": (1) the terminal values of Tilray and Aphria; (2) the individual inputs and assumptions underlying the (i) multiples of 20x to 22x for Tilray and 18x to 20x for Aphria, (ii) range of perpetuity growth rates of 8.5% to 9.5%; and (iii) discount rate of 12.5%; and

(3) the net debt of Aphria and Tilray, respectively.

43. With respect to Imperial's "Securities Analysts' Price Targets," the Proxy Statement fails to disclose: (1) the individual price targets observed by Imperial in its analysis; and (2) the sources thereof.

3. Material Omissions Concerning Potential Conflicts of Interest Involving Imperial

44. The Proxy Statement omits material information concerning potential conflicts of interest involving Imperial.

45. The Proxy Statement provides that "Imperial received a fee (\$300,000) prior to the delivery of its opinion, in addition to other fees (\$298,637.50) received for advisory services provided to the Tilray Transaction Committee in connection with the Tilray Transaction Committee's previous review of Tilray's potential strategic alternatives."

46. The Proxy Statement, however, fails to make clear the **total** amount of compensation Imperial will receive for serving as Tilray's financial advisor in connection with the Proposed Transaction, including the amount of Imperial's compensation that is contingent upon consummation of the Proposed Transaction.

47. Disclosure of a financial advisor's compensation and potential conflicts of interest to shareholders is required due to their central role in the evaluation, exploration, selection, and implementation of strategic alternatives and the rendering of any fairness opinions. Disclosure of a financial advisor's potential conflicts of interest may inform shareholders on how much weight to place on that analysis.

48. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to the Company's shareholders.

4. Material Omissions Concerning Company Insiders' Potential Conflicts of Interest

49. The Proxy Statement omits material information concerning potential conflicts of interest involving Company insiders.

50. The December 16, 2020 press release announcing the Proposed Transaction provides that Defendant Kennedy, who serves as CEO and a director of Tilray, as well as another Tilray director, will serve as directors of the combined company, stating in pertinent part:

Proven Leadership Team

The Combined Company will be led by a best-in-class management team and board of directors, with strong track records in consumer-packaged goods and cannabis experience internationally. Upon completion of the Arrangement, Aphria's current Chairman and Chief Executive Officer, Irwin D. Simon, will lead the Combined Company as Chairman and Chief Executive Officer. ***The board of directors will consist of nine members, seven of which, including Mr. Simon, are current Aphria directors and two of which will be from Tilray, including Brendan Kennedy, and one of which is to be designated.*** Aphria and Tilray are confident that the leadership team and proposed board of directors of the Combined Company provides a strong foundation for the Combined Company to accelerate growth. Additional senior leadership positions at the Combined Company will be named at a later date.

(emphasis added.)

51. The Proxy Statement, however, fails to sufficiently disclose the details of all employment-related and compensation-related discussions and negotiations concerning the Company's officers and directors, including the parties to such communications, when they occurred, and the specific content discussed/communicated.

52. The Proxy Statement further fails to sufficiently disclose the extent to which Aphria's proposals mentioned management retention or equity participation in the combined company.

53. Any communications regarding post-transaction employment during the negotiation of the underlying transaction must be disclosed to shareholders. This information is

necessary for shareholders to understand potential conflicts of interest of management and the Board. Such information may illuminate the motivations that would prevent fiduciaries from acting solely in the best interests of the Company's shareholders.

54. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to the Company's shareholders.

COUNT I
For Violations of Section 14(a) and Rule 14a-9 Promulgated Thereunder
Against All Defendants

55. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

56. During the relevant period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false and misleading Proxy Statement specified above, which failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder by the SEC.

57. Each of the Individual Defendants, by virtue of his/her positions within the Company as officers and/or directors, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a) of the Exchange Act. Defendants, by use of the mails and means and instrumentalities of interstate commerce, solicited and/or permitted the use of their names to file and disseminate the Proxy Statement with respect to the Proposed Transaction and/or Stock Issuance. The Defendants were, at minimum, negligent in filing the materially false and misleading Proxy Statement.

58. The false and misleading statements and omissions in the Proxy Statement are material in that a reasonable shareholder would consider them important in deciding how to vote on the Stock Issuance.

59. By reason of the foregoing, Defendants have violated Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder.

60. Because of the false and misleading statements and omissions in the Proxy Statement, Plaintiff is threatened with irreparable harm.

COUNT II
Violations of Section 20(a) of the Exchange Act
Against the Individual Defendants

61. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

62. The Individual Defendants acted as control persons of the Company within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their senior positions as officers and/or directors of the Company and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Proxy Statement filed with the SEC, they had the power to and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the false and misleading Proxy Statement.

63. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy Statement and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to the Proxy Statement, and to correct promptly any public statements issued by the Company which were or had become materially false or misleading.

64. In particular, each of the Individual Defendants had direct and supervisory

involvement in the operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The Individual Defendants were provided with or had unlimited access to copies of the Proxy Statement and had the ability to prevent the issuance of the statements or to cause the statements to be corrected. The Proxy Statement at issue contains the recommendation of the Individual Defendants to approve the Proposed Transaction and/or Stock Issuance. Thus, the Individual Defendants were directly involved in the making of the Proxy Statement.

65. In addition, as the Proxy Statement sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Proposed Transaction and/or Stock Issuance. The Proxy Statement purports to describe the various issues and information that they reviewed and considered—descriptions which had input from the Individual Defendants.

66. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

67. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9 promulgated thereunder, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' conduct, the Company's shareholders will be irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Preliminarily and permanently enjoining Defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction and any vote on the Stock Issuance, unless and until Defendants disclose and disseminate the material information identified above to Company shareholders;

B. In the event Defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages;

C. Declaring that Defendants violated Sections 14(a) and 20(a) of the Exchange Act, and Rule 14a-9 promulgated thereunder;

D. Awarding Plaintiff reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

E. Granting such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: March 24, 2021

Respectfully submitted,

HALPER SADEH LLP

By: /s/ Daniel Sadeh
Daniel Sadeh, Esq.
Zachary Halper, Esq. (to be admitted *pro hac vice*)
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