

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____, Individually and On Behalf
of All Others Similarly Situated,

Plaintiff,

v.

SUNDIAL GROWERS INC., TORSTEN
KUENZLEN, JAMES KEOUGH,
EDWARD HELLARD, GREG MILLS,
GREGORY TURNBULL, COWEN AND
COMPANY LLC, BMO NESBITT
BURNS INC., RBC DOMINION
SECURITIES INC., BARCLAYS
CAPITAL CANADA INC., CIBC WORLD
MARKETS INC., and SCOTIA CAPITAL
INC.,

Defendants.

Case No.: DRAFT

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

Law Offices of Howard G. Smith

Plaintiff _____ (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, his counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by Sundial Growers Inc. (“Sundial” or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by Sundial; and (c) review of other publicly available information concerning Sundial.

NATURE OF THE ACTION AND OVERVIEW

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired Sundial securities pursuant and/or traceable to the registration statement and prospectus (collectively, the “Registration Statement”) issued in connection with the Company’s August 2019 initial public offering (“IPO” or the “Offering”). Plaintiff pursues claims against the Defendants under the Securities Act of 1933 (the “Securities Act”).

2. Sundial is a company that produces and markets cannabis for adult use and researches the use of cannabis and cannabinoids.

3. On August 1, 2019, the Company filed its prospectus on Form 424B4 with the SEC, which forms part of the Registration Statement. In the IPO, the Company sold approximately 11 million shares of common stock at a price of \$13.00 per share. The Company received proceeds of approximately \$131 million from the Offering, net of underwriting discounts and commissions. The proceeds from the IPO were purportedly to be used to complete the construction and expansion of certain facilities and for research through Pathway Rx, Sundial’s joint venture that uses advanced technologies to identify and customize cannabis treatments.

4. On August 14, 2019, Zenabis Global Inc. stated that 554 kg of cannabis had been returned to a third-party producer because it was not in line with contractual obligations.

5. On August 19, 2019, MarketWatch published an article identifying Sundial as the third-party producer and that the cannabis contained visible mold, parts of rubber gloves and other non-cannabis material.

6. The same day, Sundial confirmed that it was the supplier, stating that it is an “isolated immaterial matter.”

7. On this news, the Company’s share price fell \$0.45 per share, over 4%, to close at \$10.00 per share on August 20, 2019, thereby injuring investors.

8. By the commencement of this action, Sundial stock was trading as low as \$7.86 per share, a nearly 40% decline from the \$13 per share IPO price.

9. The Registration Statement was false and misleading and omitted to state material adverse facts. Specifically, Defendants failed to disclose to investors: (1) that certain of the Company’s product did not meet quality standards; (2) that, as a result, the Company’s partners returned a significant shipment; (3) that, as a result, the Company was reasonably likely to suffer reputational harm and legal costs; and (4) that, as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations, and prospects, were materially misleading and/or lacked a reasonable basis.

10. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in the market value of the Company’s securities, Plaintiff and other Class members have suffered significant losses and damages.

JURISDICTION AND VENUE

11. The claims asserted herein arise under and pursuant to Sections 11, 12, and 15 of the Securities Act (15 U.S.C. §§ 77k and 77o).

12. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 22 of the Securities Act (15 U.S.C. § 77v).

13. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b).

14. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the

United States mail, interstate telephone communications, and the facilities of a national securities exchange.

PARTIES

15. Plaintiff _____, as set forth in the accompanying certification, incorporated by reference herein, purchased or otherwise acquired Sundial securities pursuant and/or traceable to the Registration Statement issued in connection with the Company's IPO, and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

16. Defendant Sundial is incorporated under the laws of Alberta, Canada with its principal executive offices located in Calgary, Alberta, Canada. Sundial's common stock trades on the NASDAQ exchange under the symbol "SNDL."

17. Defendant Torsten Kuenzlen ("Kuenzlen") was, at all relevant times, the Chief Executive Officer and a director of the Company, and signed or authorized the signing of the Company's Registration Statement filed with the SEC.

18. Defendant James Keough ("Keough") was, at all relevant times, the Chief Financial Officer of the Company, and signed or authorized the signing of the Company's Registration Statement filed with the SEC.

19. Defendant Edward Hellard ("Hellard") was a director of the Company and signed or authorized the signing of the Company's Registration Statement filed with the SEC.

20. Defendant Greg Mills ("Mills") was a director of the Company and signed or authorized the signing of the Company's Registration Statement filed with the SEC.

21. Defendant Gregory Turnbull ("Turnbull") was a director of the Company and signed or authorized the signing of the Company's Registration Statement filed with the SEC.

22. Defendants Kuenzlen, Keough, Hellard, Mills, and Turnbull are collectively referred to hereinafter as the "Individual Defendants."

23. Defendant Cowen and Company, LLC ("Cowen") served as an underwriter for the Company's IPO.

24. Defendant BMO Nesbitt Burns Inc. (“BMO”) served as an underwriter for the Company’s IPO.

25. Defendant RBC Dominion Securities Inc. (“RBC”) served as an underwriter for the Company’s IPO.

26. Defendant Barclays Capital Canada Inc. (“Barclays”) served as an underwriter for the Company’s IPO.

27. Defendant CIBC World Markets Inc. (“CIBC”) served as an underwriter for the Company’s IPO.

28. Defendant Scotia Capital Inc. (“Scotia”) served as an underwriter for the Company’s IPO.

29. Defendants Cowen, BMO, RBC, Barclays, CIBC, and Scotia are collectively referred to hereinafter as the “Underwriter Defendants.”

CLASS ACTION ALLEGATIONS

30. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired Sundial securities issued in connection with the Company’s IPO. Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

31. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Sundial’s shares actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or thousands of members in the proposed Class. Millions of Sundial shares were traded publicly during the Class Period on the NASDAQ. Record owners and other members of the Class may be identified from records maintained by Sundial or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in

securities class actions.

32. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

33. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

34. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business, operations, and prospects of Sundial; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

35. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

SUBSTANTIVE ALLEGATIONS

Background

36. Sundial is a company that produces and markets cannabis for adult use and researches the use of cannabis and cannabinoids

**The Company's False and/or Misleading
Registration Statement and Prospectus**

37. On July 30, 2019, the Company filed its final amendment to the Registration Statement with the SEC on Form F-1/A, which forms part of the Registration Statement. The Registration Statement was declared effective on July 31, 2019.

38. On August 1, 2019, the Company filed its prospectus on Form 424B4 with the SEC, which forms part of the Registration Statement. In the IPO, the Company sold approximately 11 million shares of common stock at a price of \$13.00 per share. The Company received proceeds of approximately \$131 million from the Offering, net of underwriting discounts and commissions. The proceeds from the IPO were purportedly to be used to complete the construction and expansion of certain facilities and for research through Pathway Rx, Sundial's joint venture that uses advanced technologies to identify and customize cannabis treatments.

39. The Registration Statement was negligently prepared and, as a result, contained untrue statements of material facts or omitted to state other facts necessary to make the statements made not misleading, and was not prepared in accordance with the rules and regulations governing its preparation.

40. Under applicable SEC rules and regulations, the Registration Statement was required to disclose known trends, events or uncertainties that were having, and were reasonably likely to have, an impact on the Company's continuing operations.

41. The Registration Statement repeatedly touted the Company's product as "high quality" and stated: "We also believe that our premium, high quality brands and products will deliver superior consumer experiences, resulting in strong consumer loyalty and advocacy."

42. Regarding certain risks concerning inventory and product quality, the Registration Statement stated, in relevant part:

We may be unable to sustain and effectively manage our growth and development.

We are an early-stage company attempting to grow our business rapidly. . . . Any failure to effectively manage our growth could result in difficulty or delays in servicing our customers, ***declines in quality or consumer satisfaction***, increases in costs, difficulties in introducing new products or other operational difficulties, and any of these difficulties ***could adversely impact our business and results of operations***. There can be no assurance that we will be able to effectively manage our expanding operations, achieve profitability, attract and retain sufficient personnel or successfully make or integrate strategic investments or acquisitions.

* * *

Failure in our quality control systems may adversely impact our sales volume, market share and profitability.

The quality and safety of our products are critical to the success of our business and operations. As such, it is imperative that our (and our service providers') quality control systems operate effectively and successfully. Quality control systems can be negatively impacted by the design of the quality control systems, the quality training program, and adherence by employees to quality control guidelines. Although we strive to ensure that all of our service providers have implemented and adhere to high caliber quality control systems, we could experience a significant failure or deterioration of such quality control systems. ***If, as a result of a failure in our (or our service providers') quality control systems, contamination of, or damage to, our inventory or packaged products occurs, we may incur significant costs in replacing the inventory and recalling products.*** We may be unable to meet customer demand and may lose customers who have to purchase alternative brands or products. In addition, consumers may lose confidence in the affected products. A loss of sales volume from a contamination event may occur, and such a loss may affect our ability to supply our current customers and to recapture their business in the event they are forced to switch products or brands, even if on a temporary basis. ***We may also be subject to legal action as a result of a contamination, which could result in negative publicity and affect our sales.*** During this time, our competitors may benefit from an increased market share that could be difficult and costly to regain.

(Emphases added.)

43. As to the distribution of Sundial's product, the Registration Statement stated, in relevant part:

In Canada, we currently produce and market premium cannabis for the adult-use (*Play*) market. In our purpose-built indoor modular grow rooms, we produce high-quality, consistent cannabis in individual, fully controlled room environments. . . . In the past, we have entered into agreements to supply cannabis to other licensed producers in Canada, and although currently most of our sales are to other licensed producers, we expect our sales to other licensed producers to

decrease as a percentage of our total sales throughout the remainder of 2019 and constitute a minority of total sales in the future.

44. The Registration Statement was materially false and misleading and omitted to state: (1) that certain of the Company's product did not meet quality standards; (2) that, as a result, the Company's partners returned a significant shipment; (3) that, as a result, the Company was reasonably likely to suffer reputational harm and legal costs; and (4) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects, were materially misleading and/or lacked a reasonable basis.

The Subsequent Disclosures

45. On August 14, 2019, Zenabis Global Inc. stated that 554 kg of cannabis had been returned to a third-party producer because it was not in line with contractual obligations. Zenabis stated, in relevant part:

Certain third-party producers failed to supply saleable cannabis in line with contractual obligations. Due to quality issues, Zenabis had to return or reject a total of 554 kg of cannabis from a third-party. To ensure there was sufficient inventory on-hand in order to provide consistent supply to provincial counterparties beyond June of 2019, Zenabis held back certain products it had produced in May and June. Subsequent to the quarter end, Zenabis provided notice to terminate its agreement to purchase cannabis from the third-party who shipped the cannabis that was not saleable.

46. On August 19, 2019, MarketWatch published an article identifying Sundial as the third-party producer and that the cannabis contained visible mold, parts of rubber gloves and other non-cannabis material. The article stated, in relevant part:

The newest cannabis company on Wall Street, Sundial Growers Inc., sold a half ton of pot that was returned by corporate buyer Zenabis Global Inc. because it contained visible mold, parts of rubber gloves and other non-cannabis material, according to people familiar with the matter.

The attempted sale would be the equivalent of 10% of Sundial's total second-quarter cannabis sales of five metric tons. The batch of cannabis would be worth roughly C\$2.5 million (\$1.9 million), assuming a price of C\$5 per gram. Sundial has not disclosed that a shipment has been returned; a spokeswoman for the company didn't return requests for comment. Sundial announced earnings Wednesday morning.

47. The same day, Sundial confirmed that it was the supplier, stating that it is an “isolated immaterial matter.” In a press release, the Company stated, in relevant part:

Sundial is aware of an online article involving a commercial relationship with another Licensed Producer. There were factual inaccuracies in the article. While Sundial cannot comment on specific customer agreements due to contractual confidentiality, we can confirm that this isolated immaterial matter is being resolved between Sundial and the Licensed Producer. There is no impact on Q2 financial reporting and we anticipate that the impact on Q3 earnings will be negligible. Sundial follows strict Good Production Practices (GPP) in accordance with all Health Canada standards. Our company also uses standard provisions for potential returns which is consistent with industry practice.

Sundial is committed to producing safe, innovative and high-quality products.

48. On this news, the Company’s share price fell \$0.45 per share, over 4%, to close at \$10.00 per share on August 20, 2019, thereby injuring investors.

49. By the commencement of this action, Sundial stock was trading as low as \$7.86 per share, a nearly 40% decline from the \$13 per share IPO price.

FIRST CLAIM
Violation of Section 11 of the Securities Act
(Against All Defendants)

50. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein, except any allegation of fraud, recklessness or intentional misconduct.

51. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. § 77k, on behalf of the Class, against the Defendants.

52. The Registration Statement for the IPO was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

53. Sundial is the registrant for the IPO. The Defendants named herein were responsible for the contents and dissemination of the Registration Statement.

54. As issuer of the shares, Sundial is strictly liable to Plaintiff and the Class for the misstatements and omissions.

55. None of the Defendants named herein made a reasonable investigation or

possessed reasonable grounds for the belief that the statements contained in the Registration Statement was true and without omissions of any material facts and were not misleading.

56. By reasons of the conduct herein alleged, each Defendant violated, and/or controlled a person who violated Section 11 of the Securities Act.

57. Plaintiff acquired Sundial shares pursuant and/or traceable to the Registration Statement for the IPO.

58. Plaintiff and the Class have sustained damages. The value of Sundial Class A common stock has declined substantially subsequent to and due to the Defendants' violations.

SECOND CLAIM
Violation of Section 12(a)(2) of the Securities Act
(Against All Defendants)

59. Plaintiff repeats and re-alleges each and every allegation contained above, except any allegation of fraud, recklessness or intentional misconduct.

60. This Count is brought pursuant to Section 12(a)(2) of the Securities Act, on behalf of the Class, against all Defendants.

61. Defendants were sellers, offerors, and/or solicitors of purchasers of Class A common stock offered by Sundial pursuant to the IPO. Defendants issued, caused to be issued, and/or signed the Registration Statement in connection with the Offering. The Registration Statement was used to induce investors, such as Plaintiff and other members of the Class, to purchase Sundial securities.

62. The Registration Statement was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

63. Defendants' actions of solicitation included participating in the preparation of the false and/or misleading Registration Statement.

64. None of the Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement were true and without omissions of any material facts and were not misleading.

65. Plaintiff and other Class members did not know, nor could they have known, of the untruths and/or omissions contained in the Registration Statement.

66. By virtue of the conduct alleged herein, the Defendants are liable for the aforesaid wrongful conduct and are liable to Plaintiff and the Class for damages suffered.

THIRD CLAIM
Violation of Section 15 of the Securities Act
(Against the Individual Defendants)

67. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein, except any allegation of fraud, recklessness or intentional misconduct.

68. This count is asserted against the Individual Defendants and is based upon Section 15 of the Securities Act.

69. The Individual Defendants, by virtue of their offices, directorship, and specific acts were, at the time of the wrongs alleged herein and as set forth herein, controlling persons of Sundial within the meaning of Section 15 of the Securities Act. The Individual Defendants had the power and influence and exercised the same to cause Sundial to engage in the acts described herein.

70. The Individual Defendants' positions made them privy to and provided them with actual knowledge of the material facts concealed from Plaintiff and the Class.

71. By virtue of the conduct alleged herein, the Individual Defendants are liable for the aforesaid wrongful conduct and are liable to Plaintiff and the Class for damages suffered.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

(b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in

