

OCT 21 2022



S-228521

No. \_\_\_\_\_  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

GOODNESS GROWTH HOLDINGS, INC.

PLAINTIFF

AND:

VERANO HOLDINGS CORP.

DEFENDANT

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiffs for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiffs and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## CLAIM OF THE PLAINTIFF

### Part 1: STATEMENT OF FACTS

#### Overview

1. The plaintiff Goodness Growth Holdings Corp. (“**Goodness Growth**”) and defendant Verano Holdings Corp. (“**Verano**”) entered into an Arrangement Agreement dated January 31, 2022, later amended on June 22, 2022 (combined, the “**Arrangement Agreement**”). Pursuant to the Arrangement Agreement, Verano agreed, among other things, to acquire all of the outstanding shares of Goodness Growth.
2. As set out below, shortly after the execution of the Arrangement Agreement, Verano began raising issues and taking positions that suggested it was experiencing buyer’s remorse. This behaviour culminated with Verano expressly seeking, in August and September 2022, to either (i) renegotiate the Arrangement Agreement to pay a lower price than that agreed to; or (ii) get out of the Arrangement Agreement entirely.
3. When Goodness Growth declined to reduce the price that Verano had agreed to pay, Verano purported to terminate the Arrangement Agreement. It did so the day before the interim order hearing in respect of the proposed plan of arrangement was scheduled before this Court.

4. Goodness Growth sues for damages for Verano's breach and repudiation of the Arrangement Agreement.

### **The Parties**

5. Goodness Growth is a corporation incorporated under the laws of British Columbia, with a registered office located at Suite 2200, 885 West Georgia Street, Vancouver, British Columbia V6C 3E8, and with its head office located at 207 South 9<sup>th</sup> Street, Minneapolis, Minnesota 55402 USA.
6. Goodness Growth is a holding company, whose assets consist primarily of its multi-state cannabis company subsidiary, Vireo Health Inc., and its science and intellectual property developer, Resurgent Biosciences Inc. These and other subsidiaries manufacture proprietary, branded cannabis products and distribute them through a network of Green Goods and other retail locations and third-party dispensaries.
7. Goodness Growth is a reporting issuer whose securities are listed for trading on the Canadian Securities Exchange (the "CSE") under the symbol "GDNS" and on the over-the-counter stock market operated by OTC Markets Group Inc. ("OTCQX") under the symbol "GDNSF".
8. Verano is a corporation incorporated under the laws of British Columbia, with a registered office located at 250 Howe Street, 20<sup>th</sup> Floor, Vancouver British Columbia V6C 3R8, and with its head office located at 415 North Dearborn Street, 4<sup>th</sup> Floor, Chicago, Illinois 60654.
9. Verano is a multi-state cannabis operator in the United States. It is a public company, and the Verano Subordinate Voting Shares are listed on the CSE under the symbol "VRNO." The Verano Subordinate Voting Shares are also quoted for trading in the United States on the OTCQX under the symbol "VRNOF."



## The Arrangement Agreement and the Proposed Plan

10. On April 4, 2021, Goodness Growth and Verano entered into a mutual non-disclosure agreement (“**NDA**”) to facilitate discussions regarding a possible strategic transaction, and to provide for the related exchange of confidential information. Pursuant to that NDA, Goodness Growth created a secure data room populated with publicly available documents and other material agreements for Verano’s review.
11. On June 28, 2021, Goodness Growth engaged Hyperion Capital Inc. (“**Hyperion**”) as a financial advisor to assist in the consideration of potential strategic transactions, including any with Verano.
12. On August 4, 2021, Verano sent an indicative unsolicited offer letter to Goodness Growth, detailing an all-stock transaction valued at CDN\$425 million. After Goodness Growth concluded that the offer was too low, the parties had further discussions throughout August 2021, which were ultimately unsuccessful.
13. Following the rejection of the unsolicited offer letter from Verano (and failure of related negotiations) in August 2021, Goodness Growth formed a special committee (the “**Goodness Transaction Committee**”) for the purpose of considering potential strategic transactions. It also directed Hyperion to launch a formal strategic sales process to explore value-enhancing strategic transactions.
14. On October 19, 2021, Hyperion launched a formal sales process and, on November 12, 2021 it received five written, preliminary non-binding proposals from third parties, all subject to further terms, including due diligence. One of these proposals was from Verano.
15. On November 21, 2021, following further negotiations with Hyperion, at the direction of the Goodness Transaction Committee, Verano sent a formal proposal letter (the “**Verano Proposal Letter**”). The Verano Proposal Letter contained an exclusivity term.



16. After further consideration by the Goodness Transaction Committee, Goodness Growth executed the Verano Proposal Letter. In accordance with the exclusivity term, it then ceased all communications with other counterparties.
17. On the morning of February 1, 2022, Verano and Goodness Growth executed the Arrangement Agreement, effective January 31, 2022. The Arrangement Agreement contemplated a Plan of Arrangement:
  - (a) by which each Goodness Growth subordinate voting share for 0.22652 of a Verano Class A subordinate voting share (each, a “**Verano Share**”), and each Goodness Growth multiple voting share for 22.652 Verano Shares;
  - (b) by which Goodness Growth would have become a wholly owned subsidiary of Verano; and
  - (c) the value of which was approximately US\$413 million at the time the Arrangement Agreement was executed.
18. The Arrangement Agreement set an absolute deadline of having a Goodness Growth shareholder meeting held by May 31, 2022. This was subsequently extended to October 3, 2022 by written agreement of the parties.

### **Post-Execution Market Changes**

19. Throughout 2022, US cannabis companies suffered significant market declines. Verano’s stock price dropped at roughly the same rate as the market generally: its shares were trading on the CSE at \$13.40 on January 31, 2022, and closed at \$6.95 on the CSE on October 19, 2022, representing a decline of almost 47% over the period.

### **Verano’s Interference with and Undermining of the Arrangement Agreement**

20. Beginning in March 2022, Goodness Growth worked toward completion of steps contemplated by the Arrangement Agreement, intended to culminate in a

shareholder meeting and court process for approval of the proposed Plan of Arrangement.

21. Included among these early steps was the preparation of a management information circular to be provided to shareholder for consideration in advance of a court-ordered shareholder meeting to authorize the arrangement. Because of Goodness Growth's U.S. registrant status, this management information circular was required to be filed in the form of a proxy statement with the United States Securities and Exchange Commission, and to be approved by the same.
22. Between March and July 2022, Verano took various steps that interfered with Goodness Growth's ability to complete its finalization of the draft proxy statement for submission to the SEC:
  - (a) failure or refusal to provide on a timely basis (or at all) information (including information concerning Verano) or comments required for the proxy statement, thereby:
    - (i) causing delay of its finalization from March 2022 to July 20, 2022; and
    - (ii) necessitating the preparation of pro forma financial statements for 2022 Q1 for inclusion with the draft proxy statement and
  - (b) obstruction of timely filing of the draft proxy statement through:
    - (i) repetition of comments on drafts even after addressed;
    - (ii) seeking inclusion of references inconsistent with the Arrangement Agreement (*e.g.* adjustable Exchange Ratios);
    - (iii) attempting to insist on steps not provided for in the Arrangement Agreement (*e.g.* that the Company Board and the Transaction Committee obtain "updated" fairness opinions); and

- (iv) purporting to “object” to the filing notwithstanding the reasonable consideration of Verano’s comments that had already occurred.
23. Notwithstanding Verano’s interference, on July 20, 2022, Goodness Growth filed its draft proxy statement with the SEC.
24. Having filed the draft proxy statement, on July 22, Goodness Growth delivered draft court materials to Verano in relation to the interim hearing order proceeding before this Court. The proposed hearing date for the interim order was July 28, 2022, to accommodate the circulation of materials to shareholders in advance of an anticipated meeting prior to October 3, 2022.
25. On July 25, 2022 (only days after Goodness Growth filing its draft proxy statement, and delivering its draft court materials to Verano), Verano purported to put Goodness Growth on notice of alleged breaches of the Arrangement Agreement. Verano further purported to provide notice of its “right to terminate the Arrangement Agreement” in the absence of cure.
26. Next, on July 27, 2022, without notice to Goodness Growth, Verano publicly announced that it would be required to restate its annual financial statements for the year ended December 31, 2021, and its interim financial statements for the quarters ended March 31, 2021, June 30, 2021, September 30, 2021 and March 31, 2022 (collectively, the “**Prior Financial Statements**”). This development required the amendment of the pro forma financial statements included in the draft proxy statement that had been filed with the Securities and Exchange Commission only 10 days previously. At the same time, Verano failed or refused to advise Goodness Growth when it would deliver its restated Prior Financial Statements for incorporation into the draft proxy statement.
27. On August 16, 2022, Goodness Growth received a comment letter from the SEC, requiring a response by September 14, 2022. Goodness Growth prepared a draft response and draft amendment to its draft proxy statement but required certain input and information from Verano. Verano, *inter alia*:



- (a) failed to provide any response to Goodness Growth's drafts in a timely manner (giving no comments until Saturday, September 11, 2022);
  - (b) failed to (i) provide information requested about Verano; (ii) provide any input or comments from Verano's financial team; (iii) make necessary changes consequent on Verano's restated Prior Financial Statements;
  - (c) failed or refused to attend any meeting to resolve any issues regarding the draft response and amendment until the night of September 13, 2022; and
  - (d) as returned to below, suggested that it would provide input on the response and draft amendment to the proxy statement if Goodness Growth agreed to renegotiate the purchase price under the Arrangement Agreement.
28. Further, and consistent with its prior conduct causing delay and obstruction, Verano chose the weekend prior to the SEC deadline to send a letter setting out ten requests for information from Goodness Growth. Those requests were made notwithstanding broad access to information, facilities, personnel, contractors and books and records that had been granted to Verano since before the Arrangement Agreement had been executed, and notwithstanding that much of the information sought had been previously provided directly by Goodness Growth.
29. Notwithstanding Verano's conduct, Goodness Growth submitted its response and amendment to the SEC on September 14, 2022.
30. On September 28, 2022, Goodness Growth received the second comment letter of the SEC. Goodness Growth prepared a draft response and draft amendment to its Proxy Statement but required certain input and information from Verano. Verano, *inter alia*:
- (a) failed to provide any response to Goodness Growth's drafts in a timely manner;
  - (b) used the review of drafts as a pretence for advancing its own agenda: *viz.* asserting the position that the Goodness Growth board of directors was

obligated to “update” its recommendation to Goodness Growth shareholders, obtain updated fairness opinions with respect to such information, or both; and

- (c) related to (b), above, used the review of drafts as a pretence for asserting that the parameters of the proposed Plan of Arrangement had changed, when the only changed circumstances was the market price of Verano’s shares, albeit while expressly affirming that there had been no material change to Verano’s business.

31. Notwithstanding Verano’s conduct, Goodness Growth submitted its response and further amendment to the SEC. On October 7, 2022, the SEC advised Goodness Growth that it would approve the filing of the final version of the Proxy Statement, and it would have no further comments.

32. Following the SEC approval, Goodness Growth proceeded with steps toward the interim order hearing and its shareholder meeting. Once again, it sought input and comments from Verano in relation to the draft interim order hearing materials. Verano, *inter alia*:

- (a) failed to provide comments in a timely manner (taking from July 22 to October 11, 2022 to provide any feedback);
- (b) attempted to insist on the removal of the following term from the relief sought in the interim order hearing materials:

The Circular is hereby deemed to represent sufficient and adequate disclosure, including for the purpose of section 290(1)(a) of the BCBCA, and Goodness Growth shall not be required to send to the Shareholders any other or additional statement pursuant to section 290(1)(a) of the BCBCA.

33. Notwithstanding Verano’s conduct, Goodness Growth filed the materials in relation to the interim order hearing. The hearing was scheduled for October 14, 2022.

### **Verano Attempts to Demand a Renegotiated Purchase Price**

34. As referred to above, beginning in about July 2022, Verano began advancing claims of breach of the Arrangement Agreement as against Goodness Growth.
35. On a call held among representatives of Goodness Growth and Verano on August 31, 2022, representatives of Verano “requested” that Goodness Growth consider a reduction to the consideration offered to Goodness Growth shareholders of at least 20% in order for Verano to consider moving forward with the consummation of the Arrangement.
36. On September 1, 2022, Verano expressly stated that Verano’s “request for a purchase price reduction was offered as an opportunity to find a path forward” and that “if [Goodness Growth and Verano] are unable to find common ground, [Verano] will be exercising [its] legal right to terminate the Arrangement Agreement.”
37. Goodness Growth rejected Verano’s “request”.
38. Verano persisted in its attempts to demand a renegotiation on purchase price: on September 8, 2022, it provided a revised proposal to reduce the overall consideration of US\$413 Million by 5% (amounting to a purchase price reduction of US\$20.65 Million). It suggested that, if Goodness Growth accepted the purchase price reduction, Verano would waive the New York regulatory approval condition precedent “if the state will allow us”. Verano representatives further stated that Verano would provide its comments on the draft Proxy Statement if Goodness Growth accepted Verano’s revised proposal.
39. Accepting Verano’s proposal would have changed the material terms of the Arrangement Agreement and would have required a new fairness opinion (a basis for which Verano had been seeking for months). The proposal provided no assurance that, if accepted, further attempts to demand price reductions would not be made and there was no mechanism for waiver of regulatory approval.
40. Goodness Growth did not accept Verano’s revised proposal.



## **Verano Purports to Terminate the Agreement**

41. On October 13, 2022 - less than 24 hours before the interim order hearing was to be held – Verano delivered a Notice of Termination, purporting to terminate the Arrangement Agreement, including on the basis of “grounds” raised for the first time in the Notice.
42. On October 14, 2022, Goodness Growth accepted the repudiation of the Arrangement Agreement, reserving all rights to recover damages from Verano.
43. When the termination was publicly announced, Goodness Growth’s stock price fell by more than 60%.

## **Part 2: RELIEF SOUGHT**

1. Damages for breach of contract and breach of the duties of good faith and honest performance;
2. Special damages;
3. Punitive, aggravated, or exemplary damages;
4. Interest in accordance with the *Court Order Interest Act*, R.S.B.C., 1996, c. 79, as amended.
5. Costs; and
6. Such further or other relief as this Honourable Court deems just.

## **Part 3: LEGAL BASIS**

1. Goodness Growth relies on the following causes of action:
  - (a) breach of contract;
  - (b) breach of the duty of good faith; and
  - (c) breach of the duty of honest performance in contracts.

2. The Arrangement Agreement was a lawful, valid, and binding contract.
3. Verano breached the Arrangement Agreement including through:
  - (a) failure to cooperate with Goodness Growth to prepare the Company Circular as promptly as practicable (section 2.4(6));
  - (b) failure to take all necessary steps to cooperate in good faith and use commercially reasonable efforts to take all necessary steps to make effective the Arrangement Agreement and the transactions contemplated therein (section 4.3(3));
  - (c) taking actions that are inconsistent with the Arrangement Agreement or that would reasonably be expected to prevent, delay, or otherwise impede the consummation of the Arrangement (section 4.5(2)(e));
  - (d) failure to take commercially reasonable efforts to satisfy the conditions precedent set out in the Arrangement Agreement (section 4.5(2)(i)); and
  - (e) wrongful repudiation of the Arrangement Agreement through the issuance of the Notice of Termination; more specifically:
    - (i) the Notice of Termination was invalid: none of the alleged breaches had occurred in fact and constituted a valid basis for termination either pursuant to the Arrangement Agreement, or at all; and
    - (ii) further, or in the alternative, as a result of Verano's own pre-existing breaches of the Arrangement Agreement (as referred to above), section 7.2(1)(d)(i) of the Arrangement Agreement precluded Verano from terminating the Arrangement Agreement.
4. At all material times, Verano owed a duty of good faith and a duty of honest performance in connection with the Arrangement Agreement. By virtue of the facts described above, Verano breached those duties.

5. Goodness Growth has suffered and will suffer loss and damage as a result of Verano's breaches as described above, including the transaction costs associated with the Arrangement Agreement, opportunity costs in relation to other potential transactions both during the exclusivity period and following the Arrangement Agreement, and loss of synergies associated with the proposed transaction.

Plaintiff's address for service: c/o J. Kenneth McEwan, K.C.p  
Emily Kirkpatrick  
McEwan Cooper Dennis LLP  
900-980 Howe Street  
Vancouver BC V6Z 0C8

Fax number address for service (if any): (778) 300-9393

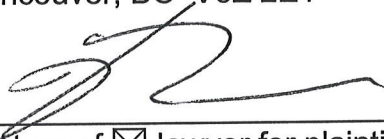
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[ekirkpatrick@mcewanpartners.com](mailto:ekirkpatrick@mcewanpartners.com)

Place of trial: Vancouver, BC

The address of the registry is: 800 Smithe Street  
Vancouver, BC V6Z 2E1

October 21, 2022

Dated

  
Signature of  lawyer for plaintiff  
McEwan Cooper Dennis LLP (J. Kenneth  
McEwan, K.C./Emily Kirkpatrick)

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.



## APPENDIX

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

### Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

### Part 4: THIS CLAIM INVOLVES:

No. \_\_\_\_\_  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GOODNESS GROWTH HOLDINGS INC.

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AND:

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**NOTICE OF CIVIL CLAIM**

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