

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

NOV 14 2022

No. S-228521
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GOODNESS GROWTH HOLDINGS, INC.

PLAINTIFF

AND:

VERANO HOLDINGS CORP.

DEFENDANT

COUNTERCLAIM

Filed by: Verano Holdings Corp.

To: Goodness Growth Holdings, Inc.

This action has been brought by the Plaintiff against the Defendant for the relief set out in the Notice of Civil Claim filed in this action.

TAKE NOTICE that the Defendant, Verano Holdings Corp., claims against you for the relief set out in Part 2 below.

IF YOU INTEND TO RESPOND to the claim made against you in this Counterclaim, or if you have a set-off or Counterclaim that you wish to have taken into account at the trial, YOU MUST FILE a Response to Counterclaim in Form 4 in the above-named registry of this Court within the time for Response to Counterclaim described below and SERVE a copy of the filed Response to Counterclaim on the address for service of the Defendant bringing this Counterclaim.

YOU OR YOUR LAWYER may file the Response to Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Counterclaim within the time for Response to Counterclaim described below.

Time for response to counterclaim

A Response to Counterclaim must be filed and served on the Defendant bringing this Counterclaim

- (a) if you were served with the Counterclaim anywhere in Canada, within 21 days after that service,

- (b) if you were served with the Counterclaim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Counterclaim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Counterclaim has been set by order of the Court, within that time.

CLAIM OF THE DEFENDANT BRINGING THE COUNTERCLAIM

Part 1: STATEMENT OF FACTS

A. The Parties

1. Verano Holdings Corp. (“**Verano**”) is a company incorporated under the laws of British Columbia, with a registered office at 2000–250 Howe Street, Vancouver, British Columbia. It is headquartered in Chicago, Illinois.
2. Verano is a vertically integrated, multi-state cannabis operator in the United States in the cannabis cultivation and dispensary business, with active operations in 13 states. It became a reporting issuer in Canada in February 2021, at which time a class of its shares began trading on the Canadian Securities Exchange (the “**CSE**”) under the symbol “VRNO” and subsequently under the symbol “VRNOF” in the United States on the OTC Markets (“**OTCQX**”). Verano is also a reporting issuer in the United States subject to the rules and regulations of the U.S. Securities and Exchange Commission (the “**SEC**”).
3. Goodness Growth Holdings Inc. (“**Goodness Growth**”) is a company incorporated under the laws of British Columbia, with a registered office at 2200–885 West Georgia Street, Vancouver, British Columbia. It is headquartered in Minneapolis, Minnesota. It has a class of shares that trade on the CSE under the symbol “GDNS” and under the symbol “GDNSF” in the United States on the OTCQX. Goodness Growth is also a reporting issuer in the United States subject to the rules and regulations of the SEC.
4. Goodness Growth is a multi-state cannabis operator in the United States. It operates through wholly owned subsidiaries, including Vireo Health Inc. (“**Vireo**”), in Minnesota, New York, Arizona, New Mexico, and Maryland.
5. After becoming a Canadian reporting issuer with shares listed on the CSE in February 2021, Verano’s business strategy included augmenting its operations in the United States by expanding into different states, such as Minnesota and New York, through acquisitions.

B. The Arrangement Agreement

6. On January 31, 2022, Verano and Goodness Growth entered into an arrangement agreement (the “**Arrangement Agreement**”), whereby Verano would, subject to the conditions therein, acquire all of Goodness Growth’s shares from its shareholders (the “**Shareholders**”) through a plan of arrangement (the “**Arrangement**”) under ss. 288–291 of the *Business Corporations Act*, S.B.C. 2002, c. 57 (the “**BCBCA**”).

7. In general terms, the Arrangement Agreement provided for the following steps to occur:
- (a) Goodness Growth would file one or more preliminary proxy statements with the SEC. The number of required filings would be determined by the SEC's comments, if any (individually and collectively, the "**Preliminary Company Circular**"). When the SEC stated it had no comments, Goodness Growth would file a definitive proxy statement with the SEC and with the Canadian Securities Administrators, which would then be distributed to the Shareholders as Goodness Growth's circular as required by Canadian corporate and securities laws (the "**Definitive Company Circular**").
 - (b) The parties were obligated to work together to prepare and finalize the Preliminary Company Circular and the Definitive Company Circular for filing with the SEC.
 - (c) Goodness Growth was obligated to seek an interim order (the "**Interim Order**") from this Court to obtain directions for the calling and holding of a special meeting of the Shareholders to vote on the Arrangement (the "**Company Meeting**").
 - (d) At the Company Meeting, the Shareholders would vote to either approve or reject the Arrangement.
 - (e) If the Shareholders approved the Arrangement at the Company Meeting and all other conditions to the Arrangement were satisfied, or waived in accordance with the terms of the Arrangement Agreement, the parties would seek a final order from this Court approving the transaction pursuant to s. 291 of the *BCBCA*.
 - (f) If the Arrangement obtained final Court approval and all other conditions were otherwise met or waived, the Shareholders would, upon completion of the Arrangement (the "**Effective Time**"), receive the following number of fixed shares in exchange for their shares of Goodness Growth:
 - (i) Each of Goodness Growth's subordinate voting shares ("**Goodness Growth Subordinate Shares**") would be exchanged for 0.22652 of a Class A subordinate voting share of Verano (the "**Verano Subordinate Shares**"); and
 - (ii) Each of Goodness Growth's two other classes of shares—multiple voting shares and super voting shares—would be exchanged for 22.652 Verano Subordinate Shares.
 - (g) If the transaction were consummated, Goodness Growth and its subsidiaries would become wholly-owned subsidiaries of Verano (Verano and Goodness Growth together, the "**Combined Company**").
8. Subject to any increases or decreases in the number of issued and outstanding shares of Verano prior to the Effective Time, the Shareholders would own approximately 10.1% of the Combined Company's shares on a fully-diluted basis. Verano's existing shareholders would own approximately 90% of the Combined Company on a fully-diluted basis.

9. As of January 31, 2022, the total number of Verano Subordinate Shares expected to be issued to the Shareholders in the Arrangement were valued at approximately US\$413 million, which implied a value of approximately US\$2.39 per each of the Goodness Growth Subordinate Shares. At the time, this represented a premium of approximately 45% over the then U.S. trading price of the Goodness Growth Subordinate Shares on the CSE (the “**Expected Premium**”).
10. On January 31, 2022, Goodness Growth’s board of directors (the “**Board**”), after consulting with its financial and legal advisors, determined that the Arrangement, based on then current economics, was fair to the Shareholders and in the best interests of Goodness Growth and the Shareholders, and unanimously resolved to recommend that the Shareholders vote in favour of the Arrangement. The Board approved the Arrangement and the Arrangement Agreement.
11. In the Preliminary Company Circular, the Board stated that it approved the Arrangement Agreement and endorsed the Arrangement based on, among other factors, the following considerations:
 - (a) The receipt of two fairness opinions—one from Hyperion, the other from Cormark Securities Inc. (together, the “**Fairness Opinions**”)—each of which concluded that, as of January 31, 2022, the consideration the Shareholders would receive was fair from a financial point of view;
 - (b) The Board’s transaction committee’s recommendation that the Board approve the Arrangement Agreement; and
 - (c) The legal and other financial advice the Board received as of January 31, 2022.
12. On February 1, 2022, Goodness Growth publicly announced that the deal value of the Arrangement was US\$413 million.
13. On February 2, 2022, Goodness Growth amended employment agreements with Goodness Growth’s management, some of whom are also members of the Board. The amendments provide for: (a) full acceleration and vesting of all unvested equity awards held by such individuals upon consummation of the Arrangement; (b) cash bonus payments of \$2,684,000 in the aggregate to be paid upon consummation of the Arrangement; and (c) additional cash severance payments of 50% of base salary, except for Dr. Kingsley, who would receive 200% of his base salary, upon certain qualifying terminations of employment after the consummation of the Arrangement, including as a result of resignation for “good reason”. In addition, on March 15, 2022, each non-employee member of the Board received a grant of restricted stock units, the terms of which provided that such restricted stock units would fully accelerate and vest immediately prior to a change in control transaction.

C. The Anticipated Transaction Value Declines Drastically

14. Over the next five months, Verano’s share price declined significantly. The Verano Subordinate Voting Shares lost approximately 43% of their market value. As a result, just

five months after the Board approved the Arrangement Agreement as being in both Goodness Growth's and the Shareholder's best interests, the anticipated transaction value of US\$413 million had declined to approximately US\$235 million. Similarly, the Expected Premium the Shareholders would receive had entirely dissipated.

15. Despite the precipitous and consistent decline of the anticipated transaction value and the Expected Premium the Shareholders would receive, Goodness Growth refused to: (a) obtain new fairness opinions; (b) have its Board publicly reaffirm its recommendation in favour of the Arrangement; or (c) provide notice to its Shareholders that they would in fact receive substantially less than the US\$413 million transaction value that Goodness Growth continued to extoll publicly.
16. Despite the significant decline in the anticipated transaction value, Goodness Growth continued to reference the original US\$413 million value in its public filings.

D. The Preliminary Company Circular

17. The Arrangement Agreement obligated Goodness Growth and Verano to cooperate in drafting the Preliminary Company Circular, and subsequently the Definitive Company Circular, which would be distributed to the Shareholders (the "**Company Circular**"). The purpose of the Company Circular was to: (a) give notice of the Company Meeting; and (b) provide the Shareholders with sufficient information to make a reasoned decision on the Arrangement.
18. In s. 1.1 of the Arrangement Agreement, the parties defined the Company Circular to mean and refer to both the Preliminary Company Circular and the Definitive Company Circular.
19. The Preliminary Company Circular and the Definitive Company Circular were required to be filed electronically with the SEC on its electronic data gathering, analysis and retrieval system ("**EDGAR**"), at which time they would be publicly available on the SEC's website for viewing by the Shareholders and any other parties.
20. Section 2.4(2) of the Arrangement Agreement obliged Goodness Growth to ensure that the Company Circular complied in all material respects with applicable law, including both Canadian and United States securities laws.
21. The Arrangement Agreement includes several corresponding covenants to ensure that the Company Circular would not misinform the Shareholders:
 - (a) Pursuant to s. 2.4(2), Goodness Growth was obligated to ensure that there were no "Misrepresentations" regarding Goodness Growth in the Company Circular, with a "Misrepresentation" defined under the Arrangement Agreement as "an untrue statement of material fact or an omission to state a material fact required or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made" (a "**Misrepresentation**");

- (b) Pursuant to s. 2.6(2), Goodness Growth was obligated to provide Verano and its advisors with a reasonable opportunity to review and comment upon drafts of all material to be filed with the SEC and this Court;
- (c) Pursuant to s. 2.6(2), Goodness Growth was obligated to give reasonable consideration to all of Verano's comments on those materials;
- (d) Pursuant to s. 2.6(4), Goodness Growth was obligated to ensure that all materials filed with the SEC and this Court were consistent with the Arrangement Agreement and had been reasonably approved by Verano;
- (e) Pursuant to s. 2.6(5), Goodness Growth could not file, or amend, either the Preliminary Company Circular with the SEC or materials submitted to this Court "except as contemplated by this Agreement" or with Verano's reasonable written consent; and
- (f) Pursuant to s. 4.5(4), Goodness Growth was obligated to give Verano notice regarding any meeting, discussion, appearance, or contacts with any Governmental Entity, including the SEC, and to provide Verano with the opportunity to attend and participate in any such meeting, discussion, appearance, or contact.

(1) Goodness Growth breaches the Arrangement Agreement by intentionally omitting critical and relevant information from the Preliminary Company Circular

- 22. On or about March 9, 2022, Goodness Growth delivered its first draft of the Preliminary Company Circular to Verano.
- 23. Verano provided Goodness Growth with reasonable, diligent, and punctual commentary on the drafts of the Preliminary Company Circular. Verano did not interfere with Goodness Growth's ability to complete the Preliminary Company Circular. Rather, Verano exercised its contractual rights to ensure that the Preliminary Company Circular did not give rise to complaints of material non-disclosure or Misrepresentations to the Shareholders.
- 24. Goodness Growth was, at all material times, aware that the respective filings of the Preliminary Company Circular could not be made with the SEC until the parties' respective auditors had completed their processes and procedures required by the SEC, including: (a) Goodness Growth's independent auditors review of Goodness Growth's consolidated financial statements as of and for the fiscal quarter ended March 31, 2022 and audit of Goodness Growth's consolidated financial statements as of and for the year ended December 31, 2021; and (b) Verano's independent auditors review of Verano's restated consolidated financial statements as of and for the fiscal quarter ended March 31, 2022 and audit of Verano's restated consolidated financial statements as of and for the year ended December 31, 2021.
- 25. By July 2022, if not earlier, it was clear to Verano that Goodness Growth's draft Preliminary Circular was deficient and misleading. It did not contain sufficient disclosure to allow the Shareholders to make an informed decision about the Arrangement at the Company Meeting and it included Misrepresentations, as it:

- (a) touted the outdated US\$413 million anticipated transaction value for the Arrangement, and did not disclose that the value had already declined by approximately 43% since the deal was announced on February 1, 2022;
- (b) referenced only the Board's approval and recommendation of the Arrangement on January 31, 2022 in discussing the Board's support for the transaction, despite the fact that conditions had drastically changed in the intervening period and the Board had not reconsidered the fairness of the transaction to the Shareholders;
- (c) included and relied upon the outdated Fairness Opinions, which were based on facts and circumstances as of January 31, 2022 and thus had become stale and outdated over the intervening period of over five months;
- (d) did not disclose the corresponding decline in the Expected Premium that the Shareholders could expect to receive; and
- (e) contained other Misrepresentations and insufficient disclosure regarding the deal process and the terms of the other bids that Goodness Growth had received.

(2) Verano requests further disclosure in the Preliminary Company Circular

- 26. At all material times, Verano consistently maintained that Goodness Growth must include in the Company Circular more robust disclosure regarding the deal process and the value and fairness of the transaction to the Shareholders from a financial point of view.
- 27. In June and July 2022, Verano repeatedly highlighted the inadequacies in the drafts of the Preliminary Company Circular to Goodness Growth. In particular, Verano advised Goodness Growth that the Preliminary Company Circular must include full, accurate, and up-to-date information relating to:
 - (a) the substantial decline in the original US\$413 million transaction value that Goodness Growth continued to tout publicly;
 - (b) the substantial decline in the Expected Premium that the Shareholders could expect to receive; and
 - (c) transparency about the deal process and the other bids Goodness Growth received.(collectively, the "Relevant Financial Disclosure").

(3) Goodness Growth breaches the Arrangement Agreement by rejecting Verano's reasonable comments and filing the Preliminary Company Circular without consent

- 28. At all material times, Goodness Growth was aware of Verano's comments to drafts of the Preliminary Company Circular and its concerns regarding Goodness Growth's failure to include the Relevant Financial Disclosure. Verano informed Goodness Growth that its Misrepresentations and inadequate disclosures in the Company Circular created material liability risks for the Combined Company under United States and Canadian securities laws.

29. Goodness Growth refused to give any—let alone reasonable—consideration to Verano’s comments and summarily dismissed Verano’s concerns. Goodness Growth expressed to Verano that it feared that, if it included these updates and additions to the Company Circular, the Shareholders would not approve the Arrangement and would exercise their dissent rights in numbers in excess of the limit set forth in the Arrangement Agreement.
30. On or about July 1, 2022, Goodness Growth, through its CEO and Chair of the Board, Dr. Kyle Kingsley, advised Verano that Goodness Growth was concerned that including the information Verano had requested would risk the Shareholders not approving the Arrangement. Verano’s representatives reiterated, once again, that this was precisely why it was important for the Shareholders to receive proper disclosure—to ensure they could make an informed decision.
31. On or about July 6, 2022, Goodness Growth, through its legal counsel, stated to Verano that: (a) the inclusion of Verano’s requested Relevant Financial Disclosure would provide a roadmap for the Shareholders to file lawsuits against Goodness Growth; (b) shareholder lawsuits were the cost of doing mergers and acquisitions, and questioned whether Verano wanted to complete the Arrangement if it insisted on adequate disclosure; and (c) posited that the Shareholders would not approve the Arrangement if the Relevant Financial Disclosure was included in the Company Circular. The reasons Goodness Growth articulated for not including the Relevant Financial Disclosure served to only heighten Verano’s concerns, including Verano’s obligations to its own shareholders. Again, Verano reiterated its position that it needed to be protected against post-closing shareholder litigation, and that was precisely why Verano required the Relevant Financial Disclosure to be included in the Company Circular.
32. On July 8, 2022, Verano sent further comments on the draft Preliminary Company Circular to Goodness Growth including, *inter alia*, the Relevant Financial Disclosure and a request that the Board obtain and consider updated fairness opinions in light of the passage of time—over five months—and the continued decline in the US\$413 million publicly announced transaction value.
33. Verano’s comments were reasonable, timely, and forthright. The failure to include the updated information that Verano was requesting resulted in misleading disclosures that would constitute Misrepresentations to the Shareholders. Further, as Verano repeatedly expressed to Goodness Growth, without the Relevant Financial Disclosure, the Combined Company would have significant exposure to lawsuits from the Shareholders, particularly in the United States, creating material economic risks for the Combined Company and Verano’s existing shareholders.
34. On July 16, 2022, Goodness Growth again rejected Verano’s comments to the draft Preliminary Company Circular and refused to include any of the Relevant Financial Disclosure.
35. On July 18, 2022, Verano notified Goodness Growth that it was withholding its approval for filing the Preliminary Company Circular with the SEC. Further, Verano requested that Goodness Growth provide a detailed explanation for why Goodness Growth believed Verano’s proposed comments to the Company Circular were unreasonable. Verano also

advised that it would be reasonable and prudent for the Board to obtain updated fairness opinions given the passage of time and the drastically changed circumstances.

36. Notwithstanding Verano's objections on July 20, 2022, Goodness Growth filed the Preliminary Company Circular with the SEC contrary to the requirements of the Arrangement Agreement and without Verano's consent. Upon filing, the Preliminary Company Circular became publicly available on EDGAR without including any of the Relevant Financial Disclosure.

(4) Verano issues a notice of termination rights to Goodness Growth pursuant to s. 4.8(3)

37. Pursuant to s. 7.2(1)(d)(i) of the Arrangement Agreement, Verano had the right to terminate the Arrangement Agreement if Goodness Growth failed to fulfill or comply with its covenants therein. In accordance with s. 4.8(3), if the breaches were not cured within ten business days or were otherwise incurable, Verano was entitled to terminate the Arrangement Agreement. Under the Arrangement Agreement, intentional breaches were expressly deemed to be incurable.
38. On July 25, 2022, Verano sent a notice to Goodness Growth setting forth Goodness Growth's breaches of the Arrangement Agreement that gave rise to Verano's right to terminate the Arrangement Agreement (the "**Notice of Termination Rights**"). The Notice of Termination Rights set out the contractual and factual bases for Goodness Growth's breaches of ss. 2.4(2), 2.6(2), 2.6(4), and 2.6(5) of the Arrangement Agreement as summarized above.

(5) Goodness Growth's breaches were incurable or, alternatively, not cured within ten business days

39. Goodness Growth's breaches of ss. 2.4(2), 2.6(2), 2.6(4), and 2.6(5) of the Arrangement Agreement were intentional and thus contractually deemed to be incurable. In particular, Goodness Growth rejected Verano's reasonable comments and proceeded to file the Preliminary Company Circular without Verano's consent. As such, Verano's right to terminate the Arrangement Agreement at any time was effective upon delivery of the Notice of Termination Rights.
40. Alternatively, if Goodness Growth's breaches were unintentional, which is not admitted but expressly denied, then Goodness Growth was required to cure those breaches within ten business days. It failed to do so, giving rise to Verano's right to terminate the Arrangement Agreement pursuant to s. 7.2(1)(d)(i).
41. In either case, by August 9, 2022, Verano had a contractual right to terminate the Arrangement Agreement pursuant to s. 7.2(1)(d)(i) as a result of Goodness Growth's breaches pertaining to the Preliminary Company Circular filed with the SEC.

(6) The SEC comments on the Preliminary Company Circular

42. On August 16, 2022, the SEC commented on the Preliminary Company Circular. It required numerous revisions, many of which related to the Relevant Financial Disclosure

that Verano had repeatedly requested be included. In particular, the SEC requested further disclosure in the Preliminary Company Circular with respect to the risks the Board had considered in its evaluation of the transaction, a summary of the terms of the other bids Goodness Growth received, and more specific detail regarding why the Transaction Committee determined that Verano's proposal was superior.

43. On August 17, 2022, without notifying Verano in advance or giving Verano the opportunity to participate in breach of s. 4.5(4), Goodness Growth scheduled and held a conference call with the SEC to discuss the SEC's comments to the Preliminary Company Circular. Upon subsequently learning of the call with the SEC, Verano requested a transcript or written detailed summary of the call. Goodness Growth failed or refused to provide either.
44. Notwithstanding Verano's persistent comments and concerns, and without its approval, Goodness Growth filed an amended Preliminary Company Circular with the SEC on September 14, 2022. Even then, the SEC had further comments on the Preliminary Company Circular. Verano provided Goodness Growth with its additional comments for inclusion in the further amended Preliminary Company Circular. Goodness Growth again ignored and refused to consider these comments. Goodness Growth filed the further amended Preliminary Company Circular with the SEC only hours after Verano provided comments, yet again without Verano's approval. The final Preliminary Company Circular still did not address Verano's concerns and did not rectify Goodness Growth's breaches.
45. The SEC, as a securities regulator, neither endorses nor approves the proxy statements it reviews. It merely provides commentary. A lack of commentary from the SEC is in no way indicative of the adequacy of the proxy statement. Indeed, the Preliminary Company Circular expressly warned:

NEITHER THE U.S. SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED THE ARRANGEMENT, PASSED UPON THE MERITS OR FAIRNESS OF THE ARRANGEMENT AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY, OR PASSED UPON THE ADEQUACY OR ACCURACY OF THE INFORMATION DISCLOSED IN THE ACCOMPANYING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

46. In its correspondence with Goodness Growth, the SEC again cautioned that Goodness Growth and its management "are responsible for the accuracy and adequacy of their disclosures, notwithstanding any review, comments, action or absence of action by the staff."

E. Intervening Material Adverse Effects

47. Pursuant to s. 7.2(1)(d)(iv), Verano had the right to terminate the Arrangement Agreement in the event of any intervening "Material Adverse Effect" ("MAE"). Pursuant to the Arrangement Agreement, a MAE is defined as any change, event, occurrence, effect or circumstance that, individually or in the aggregate could reasonably be expected to be material and adverse to Goodness Growth's business, operations, results of operations, or

financial condition. Changes affecting the cannabis industry in general and changes in law are excluded from the definition of MAE, unless those changes would have a materially disproportionate effect on Goodness Growth.

48. Since the Arrangement Agreement was executed, several non-curable MAEs occurred with respect to Goodness Growth's business, operations, results of operation, and financial condition.

(1) Construction cost and scope changes with Vireo's Johnstown Facility in New York

49. Goodness Growth's subsidiary, Vireo, is constructing a new cannabis cultivation facility in New York (the "**Johnstown Facility**").
50. On May 3, 2021, Vireo entered into a Construction Contract (the "**Construction Contract**") with Cordos Construction NY, LLC to construct the Johnstown Facility. The Construction Contract is an all-encompassing design-build contract requiring the contractor to provide design services, labour and materials and construct the Johnstown Facility.
51. Notably, the Construction Contract does not include a fixed fee or construction cost estimate with contractual force for the Johnstown Facility.
52. Since the Arrangement Agreement was executed, the construction costs for the Johnstown Facility have run significantly over budget. In the face of the increasing costs, the scope and size of the Johnstown Facility were extensively curtailed and the design required extensive revision. Despite the reduction in scope, the project continues to run significantly over budget and is months behind schedule.
53. The Johnstown Facility construction cost fluctuations, funding sources, timeline delays, and scope reduction are changes, events, and circumstances that could reasonably be expected to be material and adverse to Goodness Growth's business, operations, results of operations, or financial condition. The Johnstown Facility costs and delays are incapable of being cured.

(2) Regulatory changes in Minnesota

54. After the parties entered into the Arrangement Agreement, in June 2022, Minnesota passed legislation that permits the sale of hemp-derived THC edibles to adults over the age of 21 (the "**Minnesota Hemp Legislation**"). Notwithstanding that fact, it expressly prohibits licensed medical cannabis manufacturers, such as Vireo, from: (a) selling cannabis-derived THC edibles over the counter to adults over the age of 21 who are not qualified medical patients; and (b) selling hemp-derived THC edibles over the counter to adults over the age of 21. As a result, Vireo is limited to selling cannabis-derived THC edibles to qualified medical patients only.
55. On June 20, 2022, Vireo filed a request for a variance from the Minnesota Hemp Legislation regulations which prohibit it from selling medical cannabis-derived THC

edibles over the counter to adults over the age of 21 who are not qualified medical patients, as sellers of hemp-derived THC edibles can.

56. On July 1, 2022, the Minnesota Hemp Legislation was implemented.
57. On July 13, 2022, Vireo's request for variance was denied.
58. On September 14, 2022, Vireo filed a lawsuit challenging the constitutionality of the Minnesota Hemp Legislation on the basis that it unfairly discriminates against Vireo. In its complaint, Vireo admits that the Minnesota Hemp Legislation adversely impacts Vireo and its business by stating that it "has caused and will cause Vireo to lose patients, revenue and profit."
59. The Minnesota Hemp Legislation is an event or circumstance that could reasonably be expected to be material and adverse to Goodness Growth's business, operations, results of operations, or financial condition.
60. The Minnesota Hemp Legislation has, and will continue to have, a materially disproportionate effect on Goodness Growth.

F. Goodness Growth Breaches the Arrangement Agreement by Making Numerous Incurable Misrepresentations Amounting to a MAE

61. Section 3.1(1) of the Arrangement Agreement sets forth representations and warranties by Goodness Growth that were a material inducement to Verano entering into the Arrangement Agreement. These representations and warranties are set out in Schedule C to the Arrangement Agreement and include the following subsections of s. 1.1:
 - (a) Subsection (i) pertaining to no Misrepresentations in Goodness Growth's public filings;
 - (b) Subsection (j) pertaining to having a reasonable basis for forward-looking statements;
 - (c) Subsection (k) pertaining to financial statements;
 - (d) Subsection (m) pertaining to internal accounting controls;
 - (e) Subsection (p) pertaining to Goodness Growth's assets;
 - (f) Subsection (t) pertaining to Goodness Growth's business relationships;
 - (g) Subsection (cc) pertaining to no material changes in Goodness Growth and its subsidiaries; and
 - (h) Subsection (ff) pertaining to material contracts.
62. These representations and warranties are on-going and made not only at the time the Arrangement Agreement was entered into, but also must be made at the time the

Arrangement is consummated. It was a condition to closing the Arrangement that the representations and warranties provided by Goodness Growth must be true and correct as of the Effective Time, except to the extent that the failure of such representation and warranties to be true and correct would not, individually or in the aggregate, be a MAE.

63. Section 7.2(1)(d)(v) of the Arrangement Agreement provides Verano with the right to terminate if any condition to closing is not satisfied and such condition is incapable of being satisfied prior to the Effective Time.
64. Based on Verano's review of available information, it became clear in September 2022 that many of Goodness Growth's representations and warranties were not true or correct at the time the parties entered into the Arrangement Agreement, and/or were no longer true or correct and were not curable.
65. In particular, Goodness Growth made Misrepresentations in its public filings with the SEC and on the Canadian Securities Administrators' System of Electronic Document Analysis and Retrieval ("SEDAR"), and in its public communications, in addition to direct misrepresentations and omissions to Verano, resulting in material breaches of its representations in the Arrangement Agreement. These included:
 - (a) Goodness Growth's failure to disclose and provide representations and information about the Construction Contract, including its payment obligations and material changes. In particular, Goodness Growth did not disclose the existence of the Construction Contract in any of its filings with the SEC or on SEDAR.
 - (b) Goodness Growth's Misrepresentations as to the cost, source of funding, the scope and the completion delays of the Johnstown Facility. In particular, Goodness Growth's periodic reports filed with the SEC and on SEDAR understated the known costs of the Johnstown Facility. Further, Goodness Growth stated that the construction was being completely funded with proceeds of a sale-leaseback transaction previously entered into by Goodness Growth, which was not true.
 - (c) Goodness Growth's periodic reports filed with the SEC and on SEDAR in March and August 2022 disclosed that asset impairments existed as of December 31, 2021 and as of June 30, 2022, which were collectively in excess of US\$13 million.
 - (d) Goodness Growth's periodic reports filed with the SEC and on SEDAR in March, May, and August 2022 disclosed that as of December 31, 2021, March 31, 2022, and June 30, 2022 material weaknesses existed in its internal control over financial reporting that had not been remediated and its disclosure controls and procedures were not effective.
 - (e) Goodness Growth's periodic reports filed with the SEC and on SEDAR in May and August 2022 disclosed that it was restating its financial results for the three months ended March 31, 2021 and for the three and six months ended June 30, 2021.
 - (f) Goodness Growth's failure to disclose or even consider the material and deleterious impacts of the Minnesota Hemp Legislation in its public filings.

- (g) Goodness Growth not having a reasonable basis for the forward-looking information contained in its public disclosures.
- 66. Both individually, and in the aggregate, Goodness Growth's breaches of its representations are, or could reasonably be expected to be, material and adverse to Goodness Growth's business, operations, or financial condition.
- 67. Goodness Growth's material breaches of its representations and warranties in the Arrangement Agreement were incapable of being cured and form the basis for Shareholder claims being brought against Goodness Growth

G. Goodness Growth Fails to Publicly Reaffirm the Company Board Recommendation

- 68. Section 7.2(1)(d)(ii) of the Arrangement Agreement provides Verano with an unfettered right to terminate the Arrangement Agreement in the event that the Board "fails to publicly reaffirm (without qualification) within five Business Days after having been requested in writing by the Purchaser to do so, the Company Board Recommendation...."
- 69. Pursuant to s. 2.3(4) of the Arrangement Agreement, the Board's recommendation in the Company Circular must contain three statements:
 - (a) the Board has received the Fairness Opinions;
 - (b) the Board has unanimously determined after receiving financial and legal advice, that the consideration that the Shareholders would receive is fair from a financial point of view and that the Arrangement is in the best interests of both Goodness Growth and the Shareholders; and
 - (c) the Board unanimously recommends that the Shareholders vote in favour of the Arrangement

(together, the "**Company Board Recommendation**").
- 70. As noted above, the Company Circular includes the Preliminary Company Circular.
- 71. Goodness Growth made the Company Board Recommendation when it filed the Preliminary Company Circular with the SEC on July 20, 2022.
- 72. The Company Board Recommendation was based on:
 - (a) the outdated Fairness Opinions dated and based on facts and circumstances as of January 31, 2022;
 - (b) a statement that the Board assessed the transaction to be fair on January 31, 2022, but with no mention of the significant decline in the transaction value or any update as to the reduced Expected Premium the Shareholders would receive; and

- (c) an empty recommendation that the Board continues to support the Arrangement with no explanation for the Board's continued endorsement in light of the substantial decline in the transaction value and the Expected Premium.
73. Throughout August and September 2022, Verano repeatedly requested that Goodness Growth revise the Preliminary Company Circular to include the Board's current assessment of the Arrangement Agreement and update the basis for its recommendation that the Shareholders vote in favour of that Arrangement (the "**Reaffirmation Comments**").
74. Verano's rationale for the Reaffirmation Comments was reasonable and straightforward: it was misleading to the Shareholders to rely on a Company Board Recommendation that was based entirely on the outdated Fairness Opinions and a prior Board determination on January 31, 2022. Neither of the Fairness Opinions nor the prior Board approval considered the dramatic change in circumstances, including the precipitous decline in the transaction value, the Expected Premium, and the intervening MAEs of which Goodness Growth was aware. The Misrepresentations created material risk of liability to the Combined Company that could be easily remedied, or at least significantly mitigated, by Goodness Growth simply updating and correcting the Company Circular.
75. Goodness Growth refused to consider, or alternatively reasonably consider, the Reaffirmation Comments. On September 14, 2022, Goodness Growth filed its amended Preliminary Company Circular with the SEC without Verano's consent.
76. On September 16, 2022, Verano formally requested in writing that the Board publicly reaffirm the Company Board Recommendation within five business days as required by s. 7.2(1)(d)(ii), taking into account the change in circumstances (the "**Reaffirmation Request**"). The Reaffirmation Request was a straightforward, prudent, and customary task for a board of directors to undertake given the circumstances.
77. The Board failed or refused to publicly reaffirm the Company Board Recommendation.
78. On October 4, 2022, Verano again reiterated its Reaffirmation Comments in response to the further amended Preliminary Company Circular draft.
79. On October 4, 2022, Goodness Growth filed a further amended Preliminary Company Circular without including Verano's Reaffirmation Comments, and without Verano's consent.
80. On October 12, 2022, Goodness Growth filed materials with this Court to seek the Interim Order and set the hearing for October 14, 2022. The materials included the Preliminary Company Circular, which did not include Verano's Reaffirmation Comments.
81. Over Verano's objection, and despite the fact that it knew Verano's position was that the disclosure in the Company Circular was insufficient, Goodness Growth advised Verano that it was seeking an order from this Court that deemed the Preliminary Company Circular to represent sufficient and adequate disclosure for the purpose of section 290 of the *BCBCA*, and that it would immediately thereafter call the Company Meeting, file the Definitive Company Circular, and distribute it to the Shareholders.

82. Goodness Growth insisted on proceeding and ignoring Verano's reasonable concerns, even though the deal value had declined by roughly 56% to US\$182 million by October 5, 2022, and the Expected Premium had disappeared.

H. Verano Lawfully Exercises its Contractual Rights to Terminate the Agreement

83. As a result of the above circumstances, Verano had the right to terminate the Arrangement Agreement pursuant to:
- (a) Section 7.2(1)(d)(i)—as a result of Goodness Growth's intentional breaches of the Arrangement Agreement;
 - (b) Section 7.2(1)(d)(ii)—as a result of the Board's failure to publicly reaffirm the Company Board Recommendation;
 - (c) Section 7.2(1)(d)(iv)—as a result of the intervening non-curable MAEs; and
 - (d) Section 7.2(1)(d)(v)—as a result of both breaches of the Arrangement Agreement by Goodness Growth and the occurrence of non-curable MAEs
- (collectively, the "**Termination Rights**").
84. Faced with the impending hearing for the Interim Order and the dissemination of the Definitive Company Circular to the Shareholders, on October 13, 2022, Verano exercised its Termination Rights and brought the Arrangement Agreement to an end in accordance with its terms by providing Goodness Growth with written notice of its termination.

I. Verano is Entitled to Payment of the Termination Fee

85. Pursuant to s. 7.4(1) of the Arrangement Agreement, the "Party giving rise to the... Termination Fee Event shall pay the... Termination Fee to the other Party, in each case in accordance with the terms of this Section 7.4."
86. Pursuant to s. 7.4(5)(ii)(a) of the Arrangement Agreement, a "**Termination Fee Event**" occurs when, *inter alia*, Verano terminates the Arrangement Agreement pursuant to s. 7.2(1)(d)(ii) for Goodness Growth's failure to publicly reaffirm the Company Board Recommendation.
87. Pursuant to s. 7.4(5)(i) of the Arrangement Agreement, the "**Termination Fee**" is equal to US\$14,875,000.
88. The Parties agreed in s. 7.4(7) that the Termination Fee represents liquidated damages and not a penalty:

The Parties acknowledge that the agreements contained in this Section 7.4 are an integral part of the transactions contemplated by this Agreement, and that without these agreements the Parties would not enter into this Agreement, and that the amounts set out in this Section 7.4 represent agreed liquidated damages, and is not

a penalty. Each Party irrevocably waives any right it may have to raise as a defense that any such liquidated damages are excessive or punitive.

89. On October 13, 2022, Verano terminated the Arrangement Agreement, *inter alia*, pursuant to s. 7.2(1)(d)(ii) and notified Goodness Growth that Verano was entitled to payment of the Termination Fee pursuant to s. 7.4 of the Arrangement Agreement.
90. Section 7.4(6)(a)(i) of the Arrangement Agreement provides that the Termination Fee shall be paid within two business days of a Termination Fee Event.
91. Goodness Growth has failed to pay the Termination Fee to Verano.

J. Verano is Entitled to Payment of Transaction Expenses

92. Sections 7.4(1) and 7.4(2)(a) of the Arrangement Agreement provide that Goodness Growth shall pay Verano's "Transaction Expenses" when Verano terminates the Arrangement Agreement pursuant to s. 7.2(1)(d)(i).
93. Section 7.4(2)(b) of the Arrangement Agreement provides that Goodness Growth will pay Verano's "Transaction Expenses" when Verano terminates the Arrangement Agreement pursuant to s. 7.2(1)(d)(iv).
94. Section 7.4(2) defines "**Transaction Expenses**" as:

all out-of-pocket fees and expenses incurred by a Party in connection with this Agreement and the Plan of Arrangement, including all costs, expenses and fees of the Party incurred prior to or after the Effective Date in connection with, or incidental to, the Plan of Arrangement, and including all fairness opinion fees, legal fees, advisor and accounting fees to a maximum of \$3,000,000.
95. On October 13, 2022, Verano terminated the Arrangement Agreement, *inter alia*, pursuant to ss. 7.2(1)(d)(i) and 7.2(1)(d)(iv) and notified Goodness Growth that Verano was entitled to payment of its Transaction Expenses pursuant to s. 7.4 of the Arrangement Agreement.
96. Goodness Growth has failed to pay Verano's Transaction Expenses.

Part 2: RELIEF SOUGHT

1. Verano seeks the following relief:
 - (a) A declaration that Verano lawfully terminated the Arrangement Agreement pursuant to ss. 7.2(1)(d)(i), 7.2(1)(d)(ii), 7.2(1)(d)(iv), and s. 7.2(1)(d)(v);
 - (b) Liquidated damages in the amount of US\$14,875,000 for Goodness Growth's non-payment of the Termination Fee;
 - (c) Damages for Goodness Growth's non-payment of Verano's Transaction Expenses;
 - (d) Interest pursuant to the *Court Order Interest Act*;

- (e) Costs; and
- (f) Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

1. The Arrangement Agreement was a valid and enforceable contract. On the forgoing facts, Verano was contractually entitled to terminate the Arrangement Agreement on its terms.
2. Goodness Growth intentionally breached the Arrangement Agreement by:
 - (a) filing a Company Circular that did not provide the Shareholders with sufficient information to permit them to form a reasoned judgment concerning the matters to be placed before the Company Meeting, in breach of s. 2.4(2);
 - (b) not giving reasonable consideration to Verano's comments regarding the substantial decline in the touted US\$413 million transaction value, the corresponding reduction to the Expected Premium, the deal process, and the Reaffirmation Comments which it rejected entirely and without any reasonable explanation, in breach of s. 2.6(2); and
 - (c) filing the Preliminary Company Circular with the SEC without Verano's consent, which was then publicly available on EDGAR, in breach of s. 2.6(4) and s. 2.6(5).

(collectively, the "**Goodness Growth Breaches**").
3. Verano sent a valid Notice of Termination Rights pursuant to s. 4.8(3). The Goodness Growth Breaches were intentional and thus deemed to be incurable. Accordingly, Verano had the right to terminate the Arrangement Agreement pursuant to s. 7.2(1)(d)(i). It lawfully exercised that right on October 13, 2022.
4. The Board failed to publicly reaffirm the Company Board Recommendation within five business days after Verano's written request. Verano lawfully exercised its right to terminate the Arrangement Agreement pursuant to s. 7.2(1)(d)(ii) on October 13, 2022.
5. The MAEs outlined in Part 1 of this Counterclaim were objectively material and non-curable. Verano lawfully exercised its rights to terminate the Arrangement Agreement pursuant to s. 7.2(1)(d)(iv) and s. 7.2(1)(d)(v) on October 13, 2022.
6. The breaches of Goodness Growth's representations and warranties in the Arrangement Agreement amounted to a MAE, either individually or in the aggregate, and were not curable. Verano lawfully exercised its right to terminate the Arrangement Agreement, *inter alia*, pursuant to s. 7.2(1)(d)(iv) and s. 7.2(1)(d)(v) on October 13, 2022.

A. Verano is Contractually Entitled to the Termination Fee

7. Verano's exercise of its termination right under s. 7.2(1)(d)(ii) of the Arrangement Agreement was a Termination Fee Event per s. 7.4(5)(a). Goodness Growth failed to pay the Termination Fee to Verano.

8. Goodness Growth irrevocably waived its right under s. 7.4(7) to raise a defence that the Termination Fee is punitive.
9. In any event, the Termination Fee is a genuine pre-estimate of Verano's losses arising from Goodness Growth's failure to reaffirm the Company Board Recommendation and as such does not constitute a penalty.
10. The law of penalties does not apply to sums of money payable under a contract upon an event other than breach. A fee payable upon contingent termination does not offend the rule against enforcing penalty clauses.

B. Verano is contractually entitled to its Transaction Expenses

11. Verano lawfully terminated the Arrangement Agreement, *inter alia*, pursuant to s. 7.2(1)(d)(i) as a result of Goodness Growth's failure to cure its breaches. This was an Expense Fee Event pursuant to s. 7.4(2)(a). Verano also lawfully terminated the Arrangement Agreement, *inter alia*, pursuant to s. 7.2(1)(d)(iv) as a result of the incurable MAEs. This was an Expense Fee Event pursuant to s. 7.4 (2)(b).
12. Goodness Growth failed to pay Verano's Transaction Expenses.

Defendant's address for service: Fasken Martineau DuMoulin LLP
550 Burrard Street, Suite 2900
Vancouver, BC V6C 0A3

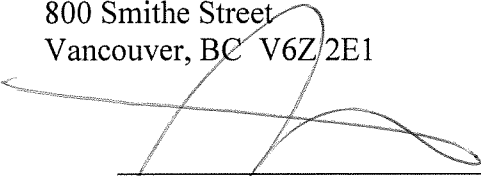
Attention : Tracey M. Cohen, K.C., Mark Pontin & Isaac Mills

Fax number address for service (if any): n/a

E-mail address for service (if any): n/a

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

Dated: November 14, 2022



Signature of
 Filing Party Lawyer for Filing Party

Mark Pontin

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 part 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.

The Solicitors for the Defendant are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131.(Reference: Tracey M. Cohen, K.C./ Mark Pontin / Isaac Mills / 315663.00012)