



NO. S-228521  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GOODNESS GROWTH HOLDINGS, INC.

PLAINTIFF

AND:

VERANO HOLDINGS CORP.

DEFENDANTS

**NOTICE OF APPLICATION  
(RULE 9-7 SUMMARY TRIAL)**

**Name of Applicant:** Goodness Growth Holdings, Inc.

**To:** Verano Holdings Corp.

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, B.C. on June 24, 2024 at 10:00 am for the orders set out in Part 1 below.

The applicant estimates that the application will take 4 days.

This matter is within the jurisdiction of an associate judge.

This matter is not within the jurisdiction of an associate judge.

**PART 1: ORDERS SOUGHT**

1. An order granting summary trial pursuant to Rule 9-7;
2. An order granting judgment to Goodness Growth Holdings, Inc., and damages for breach of contract in an amount equivalent to USD \$860,900,000.00, or such other amount as determined by the court;

3. Interest in accordance with the *Court Order Interest Act*, R.S.B.C., 1996, c. 79, as amended;
4. Costs; and
5. Such further or other relief as this Honourable Court deems just.

## **PART 2: FACTUAL BASIS**

### **Overview**

6. The parties to this proceeding entered into an Arrangement Agreement dated January 31, 2022 (the “**Arrangement Agreement**”). Pursuant to the Arrangement Agreement, the defendant Verano Holdings Corp. (“**Verano**”) agreed to acquire all of the outstanding shares of the plaintiff, Goodness Growth Holdings Corp. (“**Goodness Growth**”) in a stock-for-stock transaction.
7. In early 2021, Goodness Growth was (and still is) a relatively small cannabis company with significant but underdeveloped assets whose value could only be unlocked with access to capital that Goodness Growth, alone, did not have. With a looming debt facility deadline in March 2023, the company set out in the fall of 2021 to find a strategic partner.
8. By acquiring Goodness Growth, Verano—one of the largest cannabis companies in the United States—positioned itself to expand its operations through the acquisition of assets in new markets at a time when the U.S. cannabis sector was in a period of significant consolidation. However, early optimism and pressure to consolidate appears to have led Verano to “marry in haste.” In March 2022, and coincident with the beginning of significant (ultimately close to 60%) stock price drops across the sector, Verano began to behave in a manner consistent with having second thoughts about the transaction by:
  - (a) manufacturing significant delays that caused the parties to miss critical and contractually agreed-upon deadlines;
  - (b) demanding irrelevant, nonsensical disclosures be made to Goodness Growth’s shareholders in an apparent attempt to jeopardize transaction approval;
  - (c) pressuring Goodness Growth to accept a purchase price significantly lower than that which was agreed upon; and
  - (d) attempting to establish grounds for potential termination of the Arrangement Agreement.

9. Although Goodness Growth sought to accommodate many of Verano's requests, it refused to accept those that threatened the fulfilment of the transaction.
10. In response to that refusal, on October 13, 2022—the day before the interim order hearing was to be heard by this Court—Verano repudiated the Arrangement Agreement. It did so by claiming a right to terminate the Agreement on spurious and manufactured grounds:
  - (a) that Goodness Growth made misrepresentations in its public filings and in communications directly to Verano, particularly with regards to its New York and Minnesota operations, notwithstanding Verano having access to all information underlying the alleged “misrepresentations”;
  - (b) that, contrary to the Arrangement Agreement, Goodness Growth failed to “reaffirm” the Company Board Recommendation, when, in fact, Goodness Growth had not filed the circular containing the initial Company Board Recommendation (such that there could be no “reaffirmation”) at the time of repudiation;
  - (c) that there were changes, events, or occurrences that have had or could reasonably be expected to have a Material Adverse Effect (“MAE”) on Goodness Growth, when in fact each of the alleged MAEs was in respect of an event excluded from the MAE provision under contract and at common law; and
  - (d) that Goodness Growth failed to fulfil or comply with its covenants regarding the Definitive Company Circular, when, in fact, Goodness Growth had gone out of its way to fulfil its obligations and to accommodate Verano's often-unorthodox requests and comments, all in the face of Verano's delays and obstructions.
11. Rather than seek specific performance, Goodness Growth has accepted Verano's repudiation and seeks damages in an amount equivalent to USD \$860,900,000.00. Consistent with the authorities, those damages represent the loss of the value that would have accrued to Goodness Growth had Verano fulfilled its contractual obligation to carry out the transaction. As set out in the evidence, that value is largely comprised of the benefit of increased, lower-cost access to capital that Goodness Growth would have enjoyed had the transaction been carried out.
12. Goodness Growth seeks resolution of this matter on a summary basis. The bargain between the parties and their exchanges are reflected in the documentary record and resolution is, as is reflected, a matter of urgency.
13. Verano's repudiation of the Arrangement Agreement constitutes an existential threat to Goodness Growth's ongoing operation. It deprived the company of the access to capital it

needed in circumstances where its looming debt facility deadline made it particularly vulnerable. That vulnerability persists and increases with each passing day.

### **The Parties**

14. The defendant, 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.
15. Verano is a large, “tier one”, multi-state cannabis operator in the United States. It is a public company, and the Verano Subordinate Voting Shares are listed on the Canadian Securities Exchange (the “CSE”) under the symbol “VRNO.” The Verano Subordinate Voting Shares are also quoted for trading in the United States on the over-the-counter stock market operated by OTC Markets Group Inc. (“OTCQX”) under the symbol “VRNOF.”
16. The plaintiff, Goodness Growth, is a corporation incorporated under the laws of British Columbia, with a registered office located at Suite 2200, HSBC Building, 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.
17. Goodness Growth’s operations consist primarily of its multi-state cannabis company subsidiary, Vireo Health Inc., and its science and intellectual property developer, Resurgent Biosciences Inc. Through these subsidiaries, Goodness Growth manufactures proprietary, branded cannabis products and distributes its products and third-party products.<sup>1</sup>
18. Goodness Growth currently owns licenses and operates cannabis production facilities and retail stores in Minnesota, New York, and Maryland.<sup>2</sup>
19. Goodness Growth is a reporting issuer whose securities are listed for trading on the CSE under the symbol “GDNS” and on the OTCQX under the symbol “GDNSF”.

### **Goodness Growth’s Need for a Strategic Partner**

21. In early 2021, Goodness Growth owned licenses and assets in Maryland, Massachusetts, Minnesota, Nevada, New Mexico, New York, and Puerto Rico. However, it did not have the capital or operational expertise necessary to fully realize the value of those assets.<sup>3</sup>

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<sup>1</sup> Affidavit #1 of Kyle Kingsley at para 6 [“Kingsley Affidavit”].

<sup>2</sup> Kingsley Affidavit at para. 2.

<sup>3</sup> Kingsley Affidavit at para. 5.

22. Access to capital was a particularly urgent need, as Goodness Growth had recently entered into a collateralized credit facilities loan with Chicago Atlantic Admin, LLC (“**Chicago Atlantic**”), which had a March 31, 2023, maturity date and which Goodness Growth would not be able to fulfil at its current operational capacity.<sup>4</sup>
23. Goodness Growth’s Board of Directors determined that the company would best succeed by becoming a part of, or merging with, a larger enterprise. It considered that doing so would facilitate access to more affordable capital and contribute augmented operational expertise, both of which were needed to maximize the full potential of Goodness Growth’s assets and to relieve the company from its current financial vulnerability.<sup>5</sup>

### **The Search for a Strategic Partner**

20. On April 24, 2021, shortly after closing the credit facilities loan with Chicago Atlantic, Goodness Growth and Verano entered into a mutual non-disclosure agreement so that they could discuss a possible strategic transaction.<sup>6</sup>
21. With interest being expressed by Verano and others, Goodness Growth’s Board determined to engage a financial advisor, Hyperion Capital, Inc. (“**Hyperion Capital**”), to assist with the consideration of potential strategic transactions. They did so on June 28, 2021.<sup>7</sup>
22. On August 4, 2021, Verano sent an unsolicited offer letter to Goodness Growth, detailing an all-stock transaction valued at CDN \$425 million (approximately US \$340 million at that time). This offer was rejected, as the Board of Directors had already concluded that it was in the best interest of the company and its shareholders to hold a more formal process before committing to a strategic partnership.<sup>8</sup>
23. In October 2021, Goodness Growth formed a special committee (the “**Transaction Committee**”) to consider any transactions<sup>9</sup> and together with Hyperion Capital launched a formal sales process.<sup>10</sup> On November 12, 2021, Hyperion received four preliminary proposals from potential strategic partners, including Verano.<sup>11</sup> The Transaction Committee, alongside Hyperion Capital, considered each of these proposals, carefully

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<sup>4</sup> Affidavit #1 of Josh Rosen at paras. 18-19; Exh. A [“Rosen Affidavit”].

<sup>5</sup> Kingsley Affidavit at paras. 13-14.

<sup>6</sup> Kingsley affidavit at para 15, Exh. D.

<sup>7</sup> Kingsley Affidavit at para 18, Exh. E.

<sup>8</sup> Affidavit #1 of Judd Nordquist [“Nordquist Affidavit”], Exh. A.

<sup>9</sup> Nordquist Affidavit, para. 11.

<sup>10</sup> Kingsley Affidavit, paras. 21-22.

<sup>11</sup> Nordquist Affidavit, para. 16, Exh. F.

weighing not only the value of each offer but also each partner's operational footprint, perceived operational ability, and the liquidity of their publicly traded shares.<sup>12</sup>

24. After evaluating the preliminary proposals, Goodness Growth informed Verano that they were prepared to accept a formal proposal. Verano sent a formal proposal letter on November 20, 2021 (the "**Verano Proposal Letter**").<sup>13</sup> After further consideration by the Transaction Committee, Goodness Growth executed the Verano Proposal Letter on November 21, 2021 and ceased all communication with other counterparties per the letter's exclusivity requirement.<sup>14</sup>

### **The Arrangement Agreement**

25. Upon accepting Verano's offer, Goodness Growth and Verano worked collaboratively to formalize and execute an Arrangement Agreement, which outlined the terms by which Verano would acquire Goodness Growth. From November 28, 2021, to January 31, 2022, Goodness Growth made available to Verano all requested documentation and provided access to necessary Goodness Growth personnel as part of the transaction due diligence process.<sup>15</sup> Beginning December 2021, both parties' legal counsel were also engaged in exchanging drafts of the Arrangement Agreement.<sup>16</sup>
26. On the morning of February 1, 2022, Verano and Goodness Growth executed the Arrangement Agreement effective as of January 31, 2022.<sup>17</sup> The Arrangement Agreement stipulated that, upon shareholder approval and adoption:
- (a) each Goodness Growth subordinate voting share would be exchanged for 0.22652 of a Verano Class A subordinate voting share, and each Goodness Growth multiple voting share would be exchanged for 22.652 Verano Shares; and
  - (b) Goodness Growth would become a wholly owned subsidiary of Verano.
27. The value of the transaction (based on the relative numbers of issued shares, and Verano's stock price at the time) was approximately US \$413 million at the time the Arrangement Agreement was executed.

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<sup>12</sup> Nordquist Affidavit, para. 17, Exh. G.

<sup>13</sup> Nordquist Affidavit, para. 18, Exh. I.

<sup>14</sup> Nordquist Affidavit, para 20, Exh. K.

<sup>15</sup> Affidavit #1 of Russel Drew ["Drew Affidavit"], para 2, Exh. A.

<sup>16</sup> Nordquist Affidavit, para. 21, Exh. K.

<sup>17</sup> Nordquist Affidavit, Exh. P.

28. The Arrangement Agreement set an absolute deadline of holding a Goodness Growth shareholder meeting by May 31, 2022. At this meeting, the shareholders were to consider, and if deemed advisable, pass a shareholder resolution authorizing the arrangement.<sup>18</sup>

### **New York**

29. In 2020, Goodness Growth owned licenses and retail stores in New York and was looking to further expand its operations there.<sup>19</sup> In November 2020, Goodness Growth began working with Cordos Construction, a design-build company, to construct a facility in New York state that would consist of a warehouse and space to grow cannabis.<sup>20</sup>
30. Goodness Growth leased the land on which it was constructing this facility from Industrial Properties, Inc. IIP is a real estate investment trust that was in the business of acquiring, owning, and managing properties to lease to cannabis operators.<sup>21</sup>
31. As part of its lease agreement with IIP, IIP agreed to provide an allowance to Goodness Growth for tenant improvements. Since the construction of the New York facility constituted improvements to the property, this allowance from IIP went towards the monthly invoices from Cordos.<sup>22</sup> In September 2021, the tenant allowance provided by Cordos was \$55 million.<sup>23</sup>
32. In November 2021, Cordos provided a budget to Goodness Growth, which indicated the full cost of the construction project would be \$69.7 million.<sup>24</sup> At that time, IIP was prepared to cover the difference between the \$69.7 million projected cost and the \$55 million tenant allowance.<sup>25</sup>
33. During the due diligence process, and in anticipation of the proposed Arrangement Agreement, Goodness Growth provided Verano with extensive information regarding the Johnstown Project. This included floor plans and budgets Goodness Growth emailed to Verano. Verano also made visits to the construction site prior to the execution of the Arrangement Agreement.<sup>26</sup>

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<sup>18</sup> Nordquist Affidavit, Exh. P at Section 2.3(1).

<sup>19</sup> Affidavit #1 of Christian Gonzalez [“Gonzalez Affidavit”], paras. 17-18.

<sup>20</sup> Gonzalez Affidavit, paras. 10-11.

<sup>21</sup> Gonzalez Affidavit, paras. 17-19.

<sup>22</sup> Gonzalez Affidavit at para. 19, Exh. D.

<sup>23</sup> Gonzalez Affidavit, para. 20, Exh. E.

<sup>24</sup> Gonzalez Affidavit, para. 22, Exh. G.

<sup>25</sup> Gonzalez Affidavit, para 23, Exh. H.

<sup>26</sup> Gonzalez Affidavit, paras. 25, 27-29, 33, Exh. I.

34. After the execution of the Arrangement Agreement, Goodness Growth did not take any steps or make any approvals on the construction project without Verano's input. Verano did not approve any further steps on construction until March 31, 2022.<sup>27</sup>
35. Verano also took and maintained the position that they did not want to secure additional funding from IIP and would cover the approximately \$15 million difference between the tenant allowance and actual cost estimate of the project.<sup>28</sup>
36. From March 31, 2022, Verano began to take more control over the project, by:
  - (1) engaging an external company, Scale Microgrid, to switch the power and electrical path of the facility from the original set up specified by Cordos,<sup>29</sup> and
  - (2) meeting and directing Cordos.<sup>30</sup>
37. Verano also overhauled the designed the interior of the building. This redesign significantly increased construction costs but decreased the overall amount of cultivation space. The redesign, in combination with Verano's engagement of Scale Microgrid, increased the cost and time that would be required to finish constructing the facility.<sup>31</sup>

## **Minnesota**

38. Vireo, a subsidiary of Goodness Growth, was, in 2021, one of two companies that possessed licenses to distribute medical cannabis in Minnesota.<sup>32</sup>
39. In June, 2022, Minnesota passed new legislation, permitting an unlimited number of unlicensed entities to sell hemp-derived THC edibles to individuals older than 21. The effect of the legislation was such that Vireo, as a seller of medical cannabis-derived edibles, was subject to much more regulatory scrutiny than unlicensed operators who sold products with identical THC content.<sup>33</sup>

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<sup>27</sup> Gonzalez Affidavit, para. 44-45, Exh. N.

<sup>28</sup> Gonzalez Affidavit, paras. 38-40.

<sup>29</sup> Gonzalez Affidavit, paras. 47-52; Exh. Q.

<sup>30</sup> Gonzalez Affidavit, para. 59-61; Exhs. V-BB.

<sup>31</sup> Gonzalez Affidavit, paras. 55-57, Exh. S.

<sup>32</sup> Kingsley Affidavit, para. 26.

<sup>33</sup> Kingsley Affidavit, para. 27.

40. Following the introduction of the legislation, Vireo began considering a constitutional challenge.<sup>34</sup> In September, Goodness Growth informed Verano of its intention to that effect and provided copies of the complaint to Verano. Verano expressed its support.<sup>35</sup>

### **Verano's Campaign to Undermine the Arrangement Agreement**

41. As prescribed by the Arrangement Agreement, Verano was not to take or permit any action or inaction inconsistent with the Arrangement Agreement or which would prevent, delay, or otherwise impede its consummation. Notwithstanding this, as set out in further detail in the sections below, within a month of executing the Arrangement Agreement Verano began to implement what in hindsight appears to have been to be a multi-pronged campaign designed to:
- (a) delay the consummation of the Agreement;
  - (b) jeopardize shareholder approval by demanding irrelevant, nonsensical shareholder disclosures;
  - (c) force Goodness Growth into a position of vulnerability, pressuring them to accept a lower purchase price; and
  - (d) establish grounds for potential termination of the Arrangement Agreement.

### **Numerous Delays by Verano Threaten the Arrangement Agreement**

42. Soon after the execution of the Arrangement Agreement, U.S. cannabis companies suffered significant market declines, losing up to half of their value over the ensuing months.<sup>36</sup>
43. In light of these declines, Verano appears to have sought to delay the consummation of the Arrangement Agreement to determine if the terms of the Agreement remained economically favorable, at the same time that it struggled to gain control over its own internal financial turmoil.
44. Verano's delay tactics centered primarily on Goodness Growth's proxy statement (the "**Proxy Statement**"). This document was to ultimately serve as a management information circular ("**Definitive Company Circular**") that would be distributed to Goodness Growth shareholders ahead of the shareholder meeting, providing them the information needed to make a reasoned judgement regarding the potential transaction.<sup>37</sup> Because of Goodness

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<sup>34</sup> Kingsley Affidavit, para. 28.

<sup>35</sup> Kingsley Affidavit, paras. 29-32; Exh. G-H.

<sup>36</sup> Rosen Affidavit, para. 16.

<sup>37</sup> Affidavit #1 of Russel Drew ["Drew Affidavit"], para. 8.

Growth's U.S. registrant status, the Definitive Company Circular first had to be filed with and approved by the Securities and Exchange Commission (the "SEC") as a Proxy Statement before being sent to company shareholders.

45. As noted above, the Arrangement Agreement stipulated that the shareholder meeting was to be held on May 31, 2022. To accommodate the SEC review process, the Proxy Statement had to be submitted to the SEC well ahead of the May 31 deadline. Accordingly, in early March 2022, Goodness Growth developed and disseminated a draft closing agenda and timeline, in which it was contemplated that all comments between Verano and Goodness Growth regarding the Proxy Statement would be settled by March 31 to facilitate timely submission to the SEC.<sup>38</sup>
46. The following summarizes the correspondence between Goodness Growth and Verano regarding the Proxy Statement and illustrates the steps Verano took almost immediately to delay its submission and render the timeline unworkable. These actions included significant correspondence delays, failure to provide required information, unexpected financial restatements, and requests for the inclusion of nonsensical and unnecessary information.
  - (a) March 9, 2022: Goodness Growth delivered a first draft of the Proxy Statement to Verano.<sup>39</sup>
  - (b) March 17, 2022: Verano provided initial comments on the Proxy Statement but failed to include required financial disclosures.<sup>40</sup>
  - (c) March 25, 2022: Verano provided preliminary financial disclosures but advised that they would need to be updated after filing their annual information form ("AIF") and Form 10 with the SEC, which they did not intend to do until April 6, 2022, six days after the deadline contemplated by the draft closing agenda.<sup>41</sup>
  - (d) April 13, 2022: Goodness Growth provided a second draft of the Proxy Statement to Verano, incorporating the majority of Verano's comments from March 17<sup>th</sup>.<sup>42</sup>
  - (e) April 27, 2022: Verano filed its Form 10 with the SEC, 20 days after it had communicated to Goodness Growth that it would do so.<sup>43</sup>

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<sup>38</sup> Drew Affidavit, para. 6, Exh B.

<sup>39</sup> Drew Affidavit, para. 9, Exh C.

<sup>40</sup> Drew Affidavit, para. 11, Exh. D.

<sup>41</sup> Drew Affidavit, para. 12, Exh. E.

<sup>42</sup> Drew Affidavit, para 13, Exh. F.

<sup>43</sup> Drew Affidavit, para. 14, Exh. G.

- (f) May 12, 2022: Verano provided comments on the second draft of the Proxy Statement, 30 days after first receiving it.<sup>44</sup>
- (g) May 20, 2022: Verano filed its AIF with the SEC, 44 days after it had communicated to Goodness Growth that it would do so.<sup>45</sup>
- (h) May 31, 2022: The original shareholder meeting date. Due to Verano's unnecessary delays, the Proxy Statement had not yet been submitted to the SEC and thus the shareholder meeting could not take place. On this date Goodness Growth also delivered a third draft of the Proxy Statement, incorporating the majority of Verano's comments from May 12<sup>th</sup>.<sup>46</sup>
- (i) June 22, 2022: Goodness Growth and Verano agreed to amend the Arrangement Agreement, extending the deadline by which to hold the shareholder meeting until October 3, 2022.<sup>47</sup>
- (j) June 30, 2022: Verano provided what appeared to be its final comments on the draft Proxy Statement, 30 days after receiving the third draft. Verano described the comments as "minor and not many." Goodness Growth subsequently requested a meeting with Verano to discuss these final outstanding comments.<sup>48</sup>
- (k) July 1, 2022: Verano informed Goodness Growth that they were now receiving U.S. securities law counsel from Winston & Strawn LLP ("**Winston**") and asked Goodness Growth for the first time to obtain updated fairness opinions—which were originally received before execution of the Arrangement Agreement—citing declining share prices, the corresponding decrease in the value of the transaction, and the amount of time that had elapsed since the original opinions. These original fairness opinions were provided by third party evaluators and had concluded that the value of the transaction was fair to Goodness Growth's shareholders.<sup>49</sup>
- (l) July 7, 2022: A meeting was held to discuss Verano's outstanding comments, seven days after the meeting was first requested by Goodness Growth.
- (m) July 8, 2022: Verano circulated a new draft of the Proxy Statement, revised in consultation with Winston. Although Verano's previous comments were "minor and not many," this new version contained 1,352 total changes, including many

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<sup>44</sup> Drew Affidavit, para. 16, Exh. H.

<sup>45</sup> Drew Affidavit, para. 17, Exh. I.

<sup>46</sup> Drew Affidavit, para. 18.

<sup>47</sup> Drew Affidavit, para. 22, Exh. M.

<sup>48</sup> Drew Affidavit, para. 25, Exh. N.

<sup>49</sup> Drew Affidavit, para. 26-27, Exh. O.

comments that were novel and without precedent and a reiterative request for updated fairness opinions.<sup>50</sup>

- (n) July 18, 2022: Goodness Growth provided an updated draft Proxy Statement to Verano, accepting the majority of the comments made but rejecting the request to obtain updated fairness opinions for the following reasons:
  - (i) A disclosure was already included in the Proxy Statement stating that the value of the transaction will change based on changes to both companies' share prices;
  - (ii) There was no basis in law for providing updated fairness opinions;
  - (iii) There was no requirement in the Arrangement Agreement that Goodness Growth must obtain updated fairness opinions; and
  - (iv) Most importantly, obtaining updated fairness opinions would cause significant delay in the circulation of the Definitive Company Circular, again causing Goodness Growth's failure to comply with Agreement covenants regarding the shareholder meeting deadline.<sup>51</sup>
- (o) Upon receiving this draft, Verano sent a letter to Goodness Growth objecting to the preliminary filing of the Proxy Statement and demanding that Goodness Growth not do so.<sup>52</sup>
- (p) July 20, 2022: Goodness Growth responded to Verano's letter, stating that the Proxy Statement must be submitted to ensure compliance with the October 3, 2022, shareholder meeting deadline. Accordingly, Goodness Growth then filed the Proxy Statement with the SEC on this date.<sup>53</sup>

47. As reflected above, Verano's responses were unpredictable and apparently self-serving: they waited long stretches between communications and disclosures at times when it suited them, but acting swiftly to make numerous, novel, and unprecedented material requests at other times. Consistently however, their actions had the effect of preventing the timely submission of the Proxy Statement and organization of the shareholder meeting.

48. The deadline for the original shareholder meeting had been missed by nearly two months and had to be rescheduled for October 3, 2022. However, Verano's subsequent actions

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<sup>50</sup> Drew Affidavit, para. 28, Exh. P.

<sup>51</sup> Drew Affidavit, paras. 20-30, Exh. Q

<sup>52</sup> Drew Affidavit, Exh. R.

<sup>53</sup> Drew Affidavit, Exh. S.

showed that they had no intention of permitting that meeting to occur either. From July to October 2022, they implemented many other delay tactics, which included:

- (a) Publicly announcing on July 27, 2022 (without prior notice to Goodness Growth) that they were required to restate their annual financial statements for the year ending December 31, 2021, and their interim financial statements for the first, second, and third quarters of 2021 and the first quarter of 2022. This required an amendment be made to the pro forma financial statements included in the Proxy Statement, which had been submitted to the SEC only seven days prior. At the same time, Verano failed or refused to advise Goodness Growth regarding when it would deliver these restated financial statements.<sup>54</sup>
  - (b) Failing to provide a timely response to the first SEC comment letter, despite several requests and reminders from Goodness Growth. The SEC comment letter was received on August 16<sup>th</sup>, sent to Verano on August 17<sup>th</sup>, and due for resubmission on September 14<sup>th</sup>. Verano did not deliver comments until September 11<sup>th</sup>, which included 10 requests for information from Goodness Growth (despite broad access to Goodness Growth's documentation, facilities, personnel, contractors, and books and records) but did not provide necessary input from Verano's financial team.<sup>55</sup>
  - (c) Waiting 92 days to provide comments on the draft interim order materials regarding the hearing to schedule the shareholder meeting.<sup>56</sup>
49. As a result of these actions, the October 3 deadline was also missed and the hearing had to be rescheduled for October 14, 2022, again significantly impeding the consummation of the Arrangement Agreement. However, as detailed below, by this point, Verano appears to have been intent on not only delaying the shareholder meeting, but either escaping the transaction entirely, or negotiating materially different consideration.<sup>57</sup>

### **Verano Makes Spurious and Nonsensical Demands to Jeopardize Shareholder Approval**

50. Verano's second strategy for impeding the Arrangement Agreement was to repeatedly request that Goodness Growth make unprecedented and illogical disclosures to shareholders under the guise of fiduciary responsibility. This appears to have been an effort to coerce Goodness Growth to disseminate misleading information to its shareholders with the goal of undermining shareholder approval of the transaction.

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<sup>54</sup> Drew Affidavit, para. 38.

<sup>55</sup> Drew Affidavit, paras. 42-47; Exh. AA.

<sup>56</sup> Drew Affidavit, para. 37. Exh. KK.

<sup>57</sup> Drew Affidavit, paras. 58-60.

51. Verano's initial disclosure requests were primarily centred on adding information to the Proxy Statement regarding the other preliminary proposals Goodness Growth received during their search for a strategic partner. The following summarizes the initial disclosure requests made by Verano and Goodness Growth's subsequent justifications for their exclusion.
- (a) March 17, 2022: Verano provided comments on the first draft of the Proxy Statement, requesting that Goodness Growth include information on each of the other preliminary proposals, including the number received and the composition of each. Goodness Growth accepted many of these comments, including the requests regarding the preliminary proposals.<sup>58</sup>
  - (b) May 12, 2022: Verano provided comments on the second draft of the Proxy Statement. As part of these comments, Verano requested the addition of more detailed information regarding each of the other preliminary proposals, including the value of each proposal.
  - (c) May 31, 2022: Goodness Growth circulated a revised Proxy Statement that accepted or addressed the majority of Verano's comments, but, after consultation with legal counsel and its financial advisors, did not include the requested information on the other preliminary proposals. Goodness Growth justified this exclusion for several reasons, including that the proposals were submitted on a confidential basis and that Goodness Growth was not required by applicable law to disclose such information. More importantly, Goodness Growth explained that including this information would be potentially misleading to shareholders, as:
    - (i) Goodness Growth did not conduct any due diligence on these potential partners and the transaction value of each proposal was only one consideration when weighing potential strategic partners (for the other considerations, see 23 above); and
    - (ii) Each proposal was entirely preliminary and non-binding, and there was no certainty that Goodness Growth would have entered into an Agreement with any of those parties or that the value of each proposal would not have been revised during the diligence and negotiation process.<sup>59</sup>
  - (d) June 27, 2022: Verano delivered comments on the Proxy Statement to Goodness Growth, again asking for expanded disclosure of the other preliminary proposals.

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<sup>58</sup> Drew Affidavit, para. 11 Exh. D.

<sup>59</sup> Drew Affidavit, para. 18, Exh. J.

Goodness Growth incorporated all of Verano's comments except for the expanded disclosures, for the reasons described above.<sup>60</sup>

- (e) June 30, 2022: Verano circulated additional comments on the Proxy Statement and again asked Goodness Growth to include additional information regarding the other preliminary proposals, despite Goodness Growth having repeatedly justifying its exclusion due to its potential to mislead shareholders.<sup>61</sup>
- (f) July 8, 2022: Verano, in conjunction with Winston, provided Goodness Growth with extensive comments to the most recent draft of the Proxy Statement. These comments again demanded inclusion of additional details on the other preliminary proposals, but now also requested that Goodness Growth include information regarding the diminished total dollar value of the transaction consequent on Verano's fallen share price.<sup>62</sup>
- (g) July 18, 2022: Goodness Growth circulated a revised Proxy Statement that incorporated many of Verano's comments but that rejected their requests to include additional information on the other preliminary proposals (for the aforementioned reasons) and on the declining value of the transaction, as:
  - (i) this subject was already addressed in the Proxy Statement in the form of a disclosure informing shareholders that share price fluctuations will affect their total consideration received as a result of the transaction;
  - (ii) it was clearly indicated in the Proxy Statement that the total value of the transaction was only as of January 31, 2022, the day the Arrangement Agreement was executed; and
  - (iii) more importantly, such information was potentially misleading. Although the total monetary value of the transaction had changed, *its actual value to shareholders had not*, as the transaction was never predicated on its total dollar value but on the number of Verano shares that would be received:
    - (A) because the Exchange Ratio (*i.e.*, the number of Verano shares to be received for each Goodness Growth share) is fixed, the total number of Verano shares to be received by each Goodness Growth shareholder had not changed; and

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<sup>60</sup> Drew Affidavit, para. 24.

<sup>61</sup> Drew Affidavit, para. 25, Exh. N.

<sup>62</sup> Drew Affidavit, para. 28, Exh. P.

(B) because both Verano's and Goodness Growth's share prices decreased by approximately the same percentage, the value of the transaction as a function of the ratio of the share prices remained unchanged.<sup>63</sup>

52. At this point, Goodness Growth and Verano were at an impasse as Goodness Growth refused to acquiesce to Verano's repeated demands to provide what Goodness Growth considered to be misleading information to shareholders. Goodness Growth went so far as to get a second opinion on the legal advice it was receiving in order to ensure that its position was reasonable.
53. Goodness Growth ultimately filed the Proxy Statement with the SEC on July 20 to ensure that the October 3, 2022, deadline for the shareholder meeting would be met.<sup>64</sup>
54. On July 25<sup>th</sup>, Verano sent Goodness Growth a Notice of Breach over their refusal to incorporate the material comments from their July 8<sup>th</sup> revision of the Proxy Statement. From July to October 2022, Goodness Growth and Verano exchanged many letters wherein Verano made repetitive demands that Goodness Growth provide information regarding the other preliminary proposals and the diminished total value of the transaction and Goodness Growth provided justifications as to why this information should be excluded, as it was unnecessary and misleading to shareholders.
55. Verano's repeated demands that Goodness Growth disclose potentially misleading information to its shareholders suggested that they were no longer convinced that this transaction was in its best interests. Consistent with this, while making these numerous and repeated requests, Verano also sought to renegotiate the original terms of the Agreement to their benefit, as detailed below.

#### **Verano Pressures Goodness Growth to Reduce the Value of the Transaction**

56. By August of 2022, Goodness Growth was in an increasingly vulnerable position. Verano's continual delays had pushed Goodness Growth ever closer to its debt maturity dates; debts it could not fulfil without closing the transaction with Verano.
57. As deadlines under the revised timeline approached, Verano attempted to leverage Goodness Growth's weakness to obtain a more favourable purchase price.
58. On a call between Goodness Growth and Verano on August 31, 2022, Verano announced that they would not move forward with the consummation of the Arrangement unless

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<sup>63</sup> Drew Affidavit, paras. 29-30, Exh. Q.

<sup>64</sup> Drew Affidavit, para. 24, Exh. T.

Goodness Growth agreed to a reduction in the value of the transaction of at least 20%.<sup>65</sup> Their reasons for the price reduction were (a) Verano's perception that Goodness Growth's New York State licenses were less valuable than they initially thought (a first-ever mention of this concern), (b) general macroeconomic factors, and (c) the changes to the cannabis market since January 2022.<sup>66</sup> Goodness Growth declined Verano's request for a price adjustment.<sup>67</sup>

59. The following day, Verano expressly restated their demand for a price reduction and threatened that if Verano and Goodness Growth could not find common ground, Verano would terminate the Arrangement Agreement. Despite this threat, Goodness Growth again declined Verano's request to adjust the purchase price.<sup>68</sup>
60. One week later, on September 8<sup>th</sup>, Verano delivered a revised offer requesting a 5% reduction in the purchase price. Verano's representatives further stated that they would provide comments to the latest draft of the Proxy Statement only if Goodness Growth accepted Verano's revised proposal.<sup>69</sup>
61. Goodness Growth rejected Verano's revised proposal on September 9, 2022.<sup>70</sup> For Goodness Growth, accepting even the smaller purchase price reduction was not tenable. Verano's proposal would have:
  - (a) significantly changed the material terms of the Arrangement Agreement;
  - (b) required a new fairness opinion;
  - (c) required updated disclosure and additional steps in advance of the shareholder meeting, which would in turn have impacted the closing date; and
  - (d) provided no assurances that, if accepted, further attempts to demand price reductions would not be made.
62. Accepting Verano's predatory proposal would have been a disservice to Goodness Growth and its shareholders. The corresponding delay of closing would have put Goodness Growth closer to its debt maturities and in an even more financially precarious position.

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<sup>65</sup> Nordquist Affidavit, para. 41.

<sup>66</sup> Nordquist Affidavit, para. 41.

<sup>67</sup> Nordquist Affidavit, para. 42, Exh. X.

<sup>68</sup> Nordquist Affidavit, para. 43, Exh. X.

<sup>69</sup> Nordquist Affidavit, paras. 45-46, Exh. Z.

<sup>70</sup> Nordquist Affidavit, paras 46-47, Exhs, AA-BB.

63. Having failed to reduce the price of the transaction, Verano's remaining option (apart from following through on its contractual commitment) was to terminate the Arrangement Agreement on the ostensible basis of Goodness Growth's breach. It did so on October 13, 2022.<sup>71</sup>

### **Goodness Growth, Post-Termination**

64. After the Arrangement Agreement was terminated, Goodness Growth was left with imminent substantial debt maturities coming within six months and more than \$15 million in capital commitments related to its New York operations and expansion project, creating meaningful solvency risks.
65. Following the termination, Chicago Atlantic was unwilling to provide the last \$7 million draw against the Delayed Draw Term Loan and IIP was unwilling to provide the unfunded construction commitments related to the New York expansion project, as it had previously indicated it would.<sup>72</sup>
66. Similarly, following the termination, Scale Microgrid was unwilling to complete its work on Goodness Growth's New York expansion project, which when combined with the lack of available capital for the project created significant delays, despite Goodness Growth's ongoing requirements to be paying rent payments for the completed work.<sup>73</sup>
67. After the Arrangement Agreement was terminated, Goodness Growth was forced to make very expensive decisions to survive, including significant workforce reductions, asset divestitures, amended credit agreements and a capital raise with its secured lender of convertible debt with warrants at a time the equity price was down by more than 89% from the day before the wrongful termination by Verano.<sup>74</sup>
68. Because of the solvency risk, Goodness Growth had limited access to capital and the capital that was available was expensive; these capital constraints prevent Goodness Growth from investing in its most attractive growth opportunities. Furthermore, Goodness Growth's amended credit facility included the commitment to divest its New York license and operations, preventing Goodness Growth from maximizing this asset and resulting in significant lost opportunity cost.<sup>75</sup>
69. Ultimately, in March 2023 and again in in October 2023, IIP agreed to provide \$4 million and \$14 million, respectively, in funding, permitting the New York expansion project to

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<sup>71</sup> Nordquist Affidavit, para. 58, Exh. LL.

<sup>72</sup> Rosen Affidavit, para. 27, Exh. F.

<sup>73</sup> Gonzalez Affidavit, paras. 53-54, Exh. R.

<sup>74</sup> Rosen Affidavit, para. 43.

<sup>75</sup> Rosen Affidavit, para. 30-31, Exh. H.

continue while Goodness Growth was attempting to divest New York. Although this additional funding provided some relief, due to Goodness Growth's financial distress the negotiated interest rate (18%) was significantly higher than that negotiated for prior loans and another deterrent to potential acquirors. The funds were also not enough to cover all the remaining construction expenses, requiring an additional approximately \$2-3 million out of pocket from Goodness Growth.<sup>76</sup>

70. Although the company endures, the fallout from the termination of the Arrangement Agreement has forced Goodness Growth to the brink of insolvency with its secured lender and forced decisions to ensure survival, as opposed to growth. The cost of and limited access to capital makes it difficult to fund operational needs and because Goodness Growth is not able to meet its financial covenants, it is perpetually on the edge of or in default of the loan agreement with Chicago Atlantic, facing additional near-term debt maturities. This puts Chicago Atlantic in a position, as a secured lender, to collect or threaten to collect assets as collateral at any point.<sup>77</sup>

### **Part 3: LEGAL BASIS**

#### **This Matter is Suitable for Summary Trial**

71. Summary trials are governed by Rule 9-7 of the *Supreme Court Civil Rules*. In general, cases may be decided summarily if the court is able to make the necessary findings of fact on the documentary evidence, even if there are disputed issues of fact or law, so long as it is not unjust to do so.
72. In considering whether it would be unjust to proceed summarily, the courts have considered the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings, whether credibility is a critical factor in the determination of the dispute, whether the summary trial may create an unnecessary complexity in the resolution of the dispute, and whether the application would result in litigating in slices.
- Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989),  
36 B.C.L.R. (2d) 202 (C.A.); *Gichuru v. Pallai*, 2013 BCCA 60 at  
paras. 30-31.
73. Where the primary issue in the case concerns a question of law such as the interpretation of a contract, it is an appropriate case for summary trial.

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<sup>76</sup> Rosen Affidavit, paras. 40-41, Exh. J-K.

<sup>77</sup> Rosen Affidavit, para. 35.

*Dahl v. Royal Bank of Canada*, 2005 BCSC 1263 at para. 26,  
aff'd 2006 BCCA 369

74. This matter is appropriate for summary trial and requires a determination only as to whether Verano's actions constituted a breach of the Arrangement Agreement. Obtaining a resolution to this matter is additionally a matter of urgency for Goodness Growth, and, due to its current financial position, a delay in resolving this matter would be highly prejudicial to it and its business operations.
75. Goodness Growth's April 2024 debt maturity is a matter of urgency, and it currently does not have the resources to pay that debt back in its entirety and is in discussions with its lender to further extend, with current discussions including significant costs and equity dilution. The lack of resolution of this matter would put Goodness Growth in danger of receivership, which would prevent Goodness Growth from being able to carry out business operations. This would in turn prevent Goodness Growth from being able to take the case to a conventional trial or defend its position, at all.

#### **Verano's Termination of the Arrangement Agreement**

76. From August 31, 2022, Verano set out to attempt a renegotiation of the deal. When that failed, Verano wrongfully repudiated the Arrangement Agreement on October 13, 2022 by purporting to terminate on the grounds that Goodness Growth had breached the Arrangement Agreement.
77. By sending its Notice of Termination, Verano renounced its intentions to decline to perform its subsequent obligations under the Arrangement Agreement and thus repudiated the Arrangement Agreement.

*Doman Forest Products Ltd v. GMAC Commercial Credit Corp. – Canada*,  
2007 BCCA 88

78. Goodness Growth accepted the repudiation on October 23, 2022, bringing the contract to an end, and opting to file a notice of civil claim seeking damages for breach of contract.

#### **Verano Wrongfully Terminated the Arrangement Agreement**

79. 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.

*Allegations that Goodness Growth breached Section 3.1*

80. Verano, in its Notice of Termination, alleged that Goodness Growth made misrepresentations in its public filings and in its dealings with Verano, contrary to section 3.1 of the Arrangement Agreement. Those alleged misrepresentations are as follows.

*Cordos / Funding of Johnstown Facility*

81. The first allegation of breach included in the Notice of Termination refers to “Goodness Growth’s failure to disclose and provide representations about the Cordos Building Design Contract for the Johnstown Facility in New York as a Material Contract in the Company Disclosure Letter and in its public filings.”
82. Assuming this is a reference to the pending “Guaranteed Maximum Price Construction Agreement”, such pending agreement was clearly disclosed in “Section 1.1 – Permitted Liens” of the Company Disclosure Schedule. Additional references to the work that was being completed by Cordos Development & Associates LLC (“Cordos”) on the Johnstown Facility was included throughout Section 4.1(1) of the Company Disclosure Schedule.
83. Moreover, Verano had been extensively involved in every aspect of the Cordos agreement negotiations, from revising the scope of the project, which added additional cost and time, to meeting with Cordos regularly and independently. Cordos took instructions directly from Verano related to the building schedule and design of the Johnstown Facility.
84. The second allegation of breach included in the Notice of Termination refers to “Goodness Growth’s misleading statements as to the funding, financing, cost and completion delays of its Johnstown Facility in New York”. Verano was intimately involved in, and at times directed, the discussions surrounding the completion of the Johnstown Facility. No misleading statements were ever made to Verano regarding the Johnstown Facility. In any event, such allegation of breach does not amount to an actual breach of any representation and warranty or covenant of the Arrangement Agreement.
85. Additionally, any such breach could not be reasonably expected to have a Material Adverse Effect on the Company, and as such, Verano does not have a termination right in this respect.
86. In evaluating whether a Material Adverse Effect clause has been breached, this court will consider whether it is substantially likely that any undisclosed information would have affected the deliberations of the reasonable purchaser in the same circumstances. Materiality depends on the particular circumstances of the contract and the parties involved.

*AM Gold Inc. v Kaizen Discovery Inc.*, 2021 BCSC 515 at para 94, aff'd *AM Gold Inc. v. Kaizen Discovery Inc.*, 2022 BCCA 21

87. With a consideration of the particular circumstances of the contract, a material adverse event is one that is all of the following:
- (a) unknown;
  - (b) substantially threatening to the overall earnings potential of the target; and
  - (c) durationally-significant.

*Fairstone Financial Holdings Inc. v. Duo Bank of Canada*, 2020 ONSC 7397 at para. 65

88. The construction and associated budget of the Johnstown facility was not an unknown event to Verano. Verano visited the New York site before the Arrangement Agreement was signed and had all of the relevant budgets and plans. Any cost and completion delays associated therewith were caused by Verano's actions or inactions, including its almost entire redesign of the floorplan and its refusal to agree to terms regarding price, scope and schedule on the pending "Guaranteed Maximum Price Construction Agreement" with Cordos.

#### ***Asset Impairments***

89. The third allegation of breach included in the Notice of Termination refers to "Goodness Growth disclosing asset impairments totalling \$13 million". In the nine months since the execution of the Arrangement Agreement, Verano had not brought this up as an issue, despite Goodness Growth having disclosed any asset impairments in its financial statements in the normal course.
90. In any event, such allegation of breach does not amount to an actual breach of any representation and warranty or covenant of the Arrangement Agreement, nor could such breach be reasonably expected to have a Material Adverse Effect on the Company due to the known nature of the asset impairments, and as such, Verano does not have a termination right in this respect.

#### ***Minnesota Constitutional Challenge***

91. The fourth allegation of breach included in the Notice of Termination refers to "Goodness Growth's failure to disclose its constitutional challenge to certain Minnesota legislation and the material adverse impact of such legislation to its financial condition".

92. At all material times, Verano was fully aware of the constitutional challenge and in fact supported it. Not only did Kyle Kingsley of Goodness Growth speak to Darren Weiss and James Liventis about the issue, on September 22, 2022, the General Counsel of Goodness Growth held a meeting with Verano’s external litigation counsel regarding the constitutional challenge. Verano was fully aware of the challenge and reviewed the pleadings that Goodness Growth and its external litigation counsel prepared on this challenge.
93. More technically, the enacting of such legislation does not amount to a Material Adverse Effect that is material or adverse to Goodness Growth’s business, operations or financial condition. The definition of “Material Adverse Effect” set out in the Arrangement Agreement contains a specific carve-out, precluding any change, event, occurrence, effect, or circumstance resulting from or arising in connection with “changes, developments or conditions generally affecting the Cannabis industry in any state in which such Party and its Subsidiaries operate generally, or in the United States generally” or “any adoption, proposal, implementation or change in Law or any interpretation of Law by any Governmental Entity”, provided that any such change does not have does not have “a materially disproportionate effect on the Party and its Subsidiaries, taken as a whole, relative to other comparable companies and entities operating in the industries and the geographic areas in which the Party and its Subsidiaries operate.”

**Verano’s Contractual Basis for Termination**

94. Verano relies on the following provisions from the Arrangement Agreement as the basis that it validly terminated the Arrangement Agreement. None withstands scrutiny.

***Section 7.2(i)(d)(ii)***

95. The Notice of Termination relies upon section 7.2(i)(d)(ii) of the Arrangement Agreement, which requires Goodness Growth to “reaffirm” its recommendation to shareholders upon written request by Verano. Section 7.2(1)(d)(ii) is not applicable, and there is nothing to “reaffirm”, since there has been no prior affirmation made to Company Shareholders in a Definitive Company Circular that was sent to the Company Shareholders. The Company Circular containing the Company Board Recommendation was never mailed to Company Shareholders.
96. Had Verano not delivered the Notice of Termination to Goodness Growth on October 13, 2022, Goodness Growth was scheduled to appear at a hearing on October 14, 2022 to obtain the Interim Order and had planned to file the Definitive Company Circular on SEDAR and with the SEC on EDGAR on October 17, 2022. Once this had occurred, Goodness Growth would have publicly reaffirmed the Company Board Recommendation made in the Definitive Company Circular, if Verano had made such a request at the relevant time.

***Section 7.2(1)(d)(iv) and Section 7.2(1)(d)(v)***

97. Finally, the Notice of Termination makes reference to sections 7.2(1)(d), (iv) and 7.2(1)(d)(v) of the Arrangement Agreement. Neither are applicable. Section 7.2(1)(d)(iv) is inapplicable, as no “change, event, occurrence, effect or circumstance that, individually or in the aggregate with other changes, events, occurrences, effects or circumstances, has had or could reasonably be expected to have, a Material Adverse Effect on the Company” has occurred, as described above.
98. Further, Verano has failed to substantiate how any of the alleged breaches described in the Notice of Termination have had or could reasonably be expected to have a Material Adverse Effect on the Company, considering that in these particular circumstances, these were not unknown events to Verano.
99. Sections 7.2(1)(d)(v) is also not a valid basis of termination, given that no event has occurred that would cause Goodness Growth to fail satisfy any of the conditions set forth in Sections 6.1 or 6.2. The Notice of Termination does not provide particulars regarding how Goodness Growth would fail to satisfy any of the conditions set forth in Sections 6.1 and 6.2, and Verano has failed to substantiate this allegation in any respect.

**Verano’s Breaches Precluded it from Terminating the Contract**

100. As a result of Verano’s own pre-existing breaches of ss. 2.4(6), 4.3(3), 2.5(2)(e), and 4.5(2)(i) of the Arrangement Agreement, section 7.2(1)(d)(i) precluded Verano from terminating the Arrangement Agreement.
101. 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)); and
  - (d) failing to take commercially reasonable efforts to satisfy the conditions precedent set out in the Arrangement Agreement (section 4.5(2)(i)).

102. From March 2022 through to October 2022, as detailed above, Verano consistently delayed providing comments on regulatory filings and other materials, sought the inclusion of items in public disclosure to increase the risk that Goodness Growth shareholders would not approve the transaction or that the transaction would be sufficiently delayed that the agreed upon steps could not be completed within the dates required, and otherwise took steps to impede the consummation of the Arrangement Agreement and thwart the ability of Goodness Growth to complete the transaction.

### **Damages**

103. Goodness Growth has suffered loss and damages as a result of the Verano's breaches as described above. Most significant among these is the loss of anticipated synergies that would have followed consummation of the Arrangement Agreement. On the evidence, those losses amount to USD \$860,900,000.00. It is entitled to damages for Verano's breach of contract.

*Cineplex v. Cineworld*, 2021 ONSC 8016

### **Part 4: MATERIAL TO BE RELIED ON**

104. Affidavit #1 of Judd Nordquist, dated April 26, 2024
105. Affidavit #1 of Josh Rosen, dated April 25, 2024
106. Affidavit #1 of Kyle Kingsley, dated April 25, 2024
107. Affidavit #1 of Christian Gonzalez, dated April 26, 2024
108. Affidavit #1 of Russel Drew, dated April 30, 2024
109. Affidavit #1 of Neil Maruoka, dated April 28, 2024
110. The pleadings and proceedings filed within; and
111. Such further and other material as counsel may advise.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9)

Dated:

May 2 2024

  
\_\_\_\_\_  
**Signature of Lawyer for the Applicant**  
Ken McEwan, K.C.  
Emily Kirkpatrick  
Ariyana Dhawan

*To be completed by the court only:*

Order made

- in the terms requested in paragraphs *[specify]* of Part 1 of this notice of application
- with the following variations and additional terms:

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Dated: *[month, day, year]*. \_\_\_\_\_

Signature of

Judge    Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- X summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts