

DOCKET NO. UWY-CV-22-6073236-S : SUPERIOR COURT
SHAREHOLDER REPRESENTATIVE :
SERVICES LLC : JD OF WATERBURY
v. : AT COMPLEX LITIGATION
THE GREENROSE HOLDING CO. INC. : JANUARY 16, 2024

REVISED SECOND AMENDED COMPLAINT

Pursuant to the Notices issued by the Court (Pierson, J.) on November 30, 2023 regarding Nos. 168.00 and 176.00 the Plaintiff Shareholder Representative Services, LLC revises its Second Amended Complaint as follows:

COUNT ONE: BREACH OF CONTRACT (DEFERRED CASH PAYMENT)

1. The Plaintiff Shareholder Representative Services, LLC (“Plaintiff”) is a Colorado limited liability company with a principal place of business at 950 17th Street, Suite 1400, Denver, Colorado 80202.

2. Defendant The Greenrose Holding Co., Inc. (“Defendant” or “Greenrose”), f/k/a Greenrose Acquisition Corp., is a Delaware corporation with a principal place of business at 111 Broadway, Amityville, New York 11701.

3. Defendant William F. Harley (“Mickey Harley”) is an individual residing at 4395 Hortons Lane, Southold, New York 11971. At all times material Mickey Harley has been a member of the Greenrose Holding Company, Inc., f/k/a Greenrose Acquisition Corp. (hereinafter “Greenrose”) Board of Directors. From the formation of Greenrose on March 10, 2021 until his removal from the position on September 16, 2022, Mickey Harley served as the Chief Executive Officer (CEO) of Greenrose.

4. Defendant Daniel Harley is an individual residing at 16125 Sound View Avenue, Southold, New York 11971. He is the brother of Mickey Harley. Daniel Harley has been a member of the Greenrose Board of Directors since March 10, 2021.

5. Defendant Paul Otto Wimer is an individual residing at 2069 E. Crescent Way, Gilbert, Arizona 85298. He served as the President and Chief Operating Officer of Greenrose from March 10, 2021 until his position was eliminated on May 26, 2022.

6. Defendant Timothy Bossidy is an individual residing at 4338 Glencoe Avenue, Marina del Rey, California 90292. On or about September 17, 2022, Greenrose replaced Mickey Harley with Defendant Bossidy as Chief Executive Officer, at a cost in excess of \$100,000 per month.

7. Defendant DXR Finance, LLC, d/b/a Silver Point Capital, is a Delaware Corporation whose agent for service is Cogency Global Inc., 850 New Burton Road, Suite 201, Dover, Delaware 19904.

8. The Plaintiff and the Defendant Greenrose are parties to an Agreement and Plan of Merger effective as of March 12, 2021 (“the Merger Agreement”), and Amendments Nos. 1 and 2 to the Merger Agreement (the “Amendments”). The Plaintiff is a party to the Merger Agreement and the Amendments solely in its capacity as the representative of the Selling Securityholders of Theraplant and brings this action solely in that capacity. The Selling Securityholders, as defined in the Merger Agreement, “means each [Theraplant] Company Member that is entitled to receive cash consideration pursuant to Section 1.7(a) of the Merger Agreement.”

9. The purpose of the Merger Agreement was for Greenrose to purchase, acquire, and own 100% of Theraplant. Greenrose established its wholly owned entity,

GNRS CT Sub LLC, a Connecticut limited liability company, to merge with Theraplant, LLC also a Connecticut limited liability company, pursuant to the Delaware General Corporation Law, the Connecticut General Statutes Section 34-600 et seq., and the Connecticut Uniform Limited Liability Act, thereby making Theraplant the surviving entity wholly-owned and controlled by Defendant Greenrose.

10. Section 1.7(a) of the Merger Agreement provides that “Each Company Unit issued and outstanding immediately prior to the Effective Time shall be cancelled and extinguished and converted into the right to receive cash (without interest thereon) in accordance with the terms hereof.”

11. The parties agreed in the Merger Agreement (Section 9.7) that any claims or disputes related to the Merger Agreement “shall be governed by and construed in accordance with the laws of the State of Connecticut, without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the law of any jurisdiction other than the State of Connecticut.” The parties further agreed in the Merger Agreement (Section 9.9) “to the exclusive jurisdiction of any state or federal court sitting in the state of Connecticut in any action arising out of or relating to this agreement or any of the transactions related hereto . . .” Accordingly, this Court has personal jurisdiction over the parties and subject matter jurisdiction over the claims asserted herein.

12. The Parties entered into Amendment No. 2 to the Merger Agreement on November 26, 2021.

13. Section 1 of Amendment No. 2 to the Merger Agreement added the defined term “Deferred Cash Payment Amount” to the Merger Agreement, which was

defined, in relevant part, as “Ten Million (\$10,000,000) plus simple interest thereon at the rate of nine percent (9%) per annum, payable in equal monthly installments during the first twelve months following Closing.”

14. Section 2 of Amendment No. 2 to the Merger Agreement provides, in clause (g), that:

(g) Parent shall pay the Deferred Cash Payment Amount, as it becomes due and payable and with accrued interest thereon, to Paying Agent on behalf of the Company Members for further distribution by Paying Agent to the Company Members in accordance with the Allocation Certificate. Any agreement with any Financing Sources shall expressly permit payment by Parent of the Deferred Cash Payment Amount (either in cash or Parent Common Stock) (i) with respect to the first six monthly payments, without restriction, and (ii) with respect to the last six monthly payments, subject solely to blockage by the Financing Source as a result of an Event of Default (as defined in the credit agreement between Greenrose and the Financing Source) as a result of a payment default or the Financing Source accelerating the loan.

To provide assurance on payment of the Deferred Cash Payment Amount, Parent shall establish, for the benefit of the Company Members, a separate account to be funded at all times with two months' of payments on the Deferred Cash Payment Amount. It is expected that funding from such account will be from Company revenue, though funding can be from other sources as well. Parent agrees to maintain the amount available in such account for the benefit of the Company Members, until such time as the Deferred Cash Payment Amount has been paid to the Company Members in full, or all of such amount has been converted in accordance with this Section. Parent grants to the Steering Committee and its designated agents or representatives the right to review and inspect the records of Parent and the Company to confirm such account is operating in accordance with this paragraph.

15. Greenrose made only partial payments of the monthly payments of the Deferred Cash Payment Amount for the payments due in February and March of 2022, having paid only \$316,049.26 of a total payment of \$871,300.00 due for each such

month, and Greenrose has failed to make the monthly payments of the Deferred Cash Payment Amount for the payments due in April, 2022, and every month thereafter.

16. By the conduct as set forth, Greenrose breached its obligations under the Merger Agreement, as amended, owing to the Plaintiff. As a result of the failure to pay Plaintiff the Deferred Cash Payment Amounts due and owing, the Plaintiff has sustained money damages.

COUNT TWO: BREACH OF CONTRACT (TPT HOLDINGS PROCEEDS)

1- 12. The Plaintiff repeats, realleges, and incorporates by reference herein paragraphs 1 – 12 of Count One of this Complaint as paragraphs 1 – 12 of Count Two.

13. Section 3 of Amendment No. 2 provides:

Investment held by TPT Holdings, LLC. Parent and the Company agree that for purposes of calculating the New (sic) Working Capital of the Company, the Company's indirect investment in LLL shall be disregarded. Parent and the Company agree that any proceed realized from the disposition of the Company's investment in LLL held by TPT Holdings, LLC shall be split evenly (50-50), and the proceeds due to the Company from any such disposition shall be distributed to the Selling Securityholders through the Paying Agent in the same manner as Closing proceeds are distributed to the Selling Securityholders.

14. TPT Holdings, LLC is a wholly owned subsidiary of Theraplant. When Defendant Greenrose acquired Theraplant pursuant to the Merger Agreement it also acquired TPT Holdings. The Company's investment in LLL (Leafline Industries, LLC, a Minnesota Licensed cannabis company, acquired by Green Thumb Industries, Inc., a Canadian public company) realized proceeds as result of the acquisition of LLL by Green Thumb Industries. However, despite demand, neither Defendant Greenrose nor its Paying Agent have distributed the Company's (i.e. Theraplant's) share of cash and

stock to the Selling Securityholders. The amount due the Plaintiff on behalf of the Selling Securityholders is no less than \$260,000 plus shares of stock of Green Thumb Industries, Inc.

15. By its conduct as set forth above, Defendant breached its obligations under the Merger Agreement, as amended, owing to the Plaintiff. As a result of the Defendant's failure to pay or distribute to the Plaintiff the monies and stock due and owing, the Plaintiff has sustained money damages. Plaintiffs have sustained additional damages from the delay in Company Members receiving Green Thumb Industries stock as the price of the stock has gone down.

COUNT THREE: BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING AS TO GREENROSE

1 – 19. The Plaintiff repeats, realleges, and incorporates by reference herein paragraphs 1 – 16 of Count One of this Complaint and paragraphs 13, 14, and 15 of Count Two of this Complaint as paragraphs 1 – 19 of Count Three.

20. The Merger Agreement, as amended, contained an implied covenant of good faith and fair dealing, requiring that the Defendants not do anything that would injure the right of the Selling Securityholders to receive the benefits of the agreement. The Defendant Greenrose intentionally misled the Selling Securityholders into believing that Greenrose had or would have sufficient funds to make the payments to or provide the additional consideration to the Selling Securityholders due under the Merger Agreement, as amended. Greenrose was motivated not by an honest mistake but by a dishonest purpose intended to benefit Greenrose at the expense of the Selling Securityholders.

21. As a result of the conduct of the Defendants described above, the Plaintiff is entitled to punitive damages in addition to money damages, on behalf of the Selling Securityholders.

COUNT FOUR: CONVERSION

1-20. The Plaintiff repeats, realleges, and incorporates by reference herein paragraphs 1 – 20 of Count Three of this Complaint as paragraphs 1 – 20 of Count Four.

21. Section 3 of Amendment No. 2 to the Merger Agreement makes clear that one half of the proceeds realized from the disposition of the Defendant Greenrose's investment in Leafline Industries, LLC belongs to the Selling Securityholders. Despite demand, Defendant Greenrose has refused to turn over to the Plaintiff the monies and stock belonging to the Selling Securityholders, and has deprived them of those monies and stock for an indefinite period of time. Defendant Greenrose was not authorized to withhold the monies and stock due to the Selling Securityholders.

22. Greenrose was also required to hold the sum of \$1,742,000 as restricted funds pursuant to Amendment 2 to the Merger Agreement, the purpose of which was to be used solely to make the deferred payments of the Deferred Cash Payment Amount. However, as recently as July 19, 2022, Plaintiff learned that instead of using this money to make the deferred payments, Greenrose used this sum for other unauthorized purposes.

23. Greenrose has made payments to the family members and/or friends of Greenrose officers from Greenrose funds that should have been used to make the deferred payments referred to above. These payments to such family members and

friends of William F. (Mickey) Harley, III, Greenrose Chief Executive Officer, Daniel Harley, a member of the Board of Directors, and Paul Otto Wimer, Greenrose's Chief Operating Officer. Such payments were either excessive for work done, or were paid although no services or work was provided to Greenrose. Such amounts are well over \$600,000.

24. As a result of the Defendant Greenrose's conversion, the Selling Securityholders have been harmed and have sustained money damages. Greenrose's conduct, as set forth above, further shows as intentional and wanton violation of the Plaintiff's rights to those monies and stock.

COUNT FIVE: CONVERSION BY MICKEY HARLEY, DANIEL HARLEY, AND PAUL WIMER

1-23. Plaintiff repeats, realleges and incorporates by reference herein paragraphs 1 – 23 of Count Four of this Complaint as paragraphs 1 – 23 of Count Five

24. The Greenrose Acquisition Corporation Code of Ethics provides that officers and directors of the Defendant Greenrose must "[a]void conflicts of interest, wherever possible, except under guidelines or resolutions approved by the Board of Directors" Improper conduct under the Code includes "being in the position of supervising, reviewing, or having any influence on the job evaluation, pay, or benefit of any close relative."

25. Daniel Harley received \$350,000 per year as an employee of Greenrose and substantial insurance benefits despite working rarely and irregularly and providing no value to Greenrose, which Greenrose retained outsider vendors to perform the duties that Daniel Harley was supposed to perform. Furthermore, Daniel Harley took unsanctioned trips to Colorado and used Company funds for personal use.

26. Mickey Harley further made a \$10,834.00 payment to his son James Harley, who had worked for Greenrose but who had resigned in June, 2022, before the payment was made.

27. Paul Wimer obtained funds from Greenrose for personal use, unrelated to the business of Greenrose

28. As a result of the conduct set forth above the Defendants have converted fund that properly belongs to the Selling Securityholders, who have been harmed and have sustained money damages. The individual defendants' conduct shows an intentional and wanton disregard and violation of the Plaintiff's rights to monies and stock.

COUNT SIX: TORTIOUS INTERFERENCE BY WILLIAM HARLEY, DANIEL HARLEY AND PAUL WIMER (STOCK)

1-26. Plaintiff repeats, realleges, and incorporates by reference herein paragraphs 1-26 of Count Five of this Complaint as paragraphs 1-26 of Count Six.

27. Section 1.6(f) of Amendment No. 2 to the Merger Agreement provides for additional consideration of stock in the aggregate amount of Fifty Million Dollars (\$50,000,000) of unregistered Greenrose shares with upward adjustment in the event that the Registration Statement filed pursuant to the Registration Agreement has not been declared effective 75 days after completion of the Merger and the Parent Common Stock Price is less than \$10.00 per share.

28. Defendants Mickey Harley, Daniel Harley, and Paul Wimer knew of the contractual relationship between Plaintiff and Greenrose. However, the individual defendants acted without justification, and with an intent to deprive the Plaintiff and the Selling Securityholders of the benefits of the contract with Greenrose conspired to and

purposely prevented Greenrose from registering an effective Registration and/or effectively delivering to the Selling Security Holders their shares of Greenrose stock, thereby preventing Selling Security Holders from using those Greenrose shares in any manner, including obtaining any value there or therefrom. The Greenrose stock shares have dropped precipitously in value.

28. As a result of the Defendants' conduct, the Plaintiff has sustained money damages.

COUNT SEVEN: TORTIOUS INTERFERENCE BY WILLIAM HARLEY, DANIEL HARLEY AND PAUL WIMER (STOCK)

1-26. Plaintiff repeats, realleges, and incorporates by reference herein paragraphs 1-26 of Count Five of this Complaint as paragraphs 1-26 of Count Seven.

27. Defendants Mickey Harley, Daniel Harley, and Paul Wimer knew of the contractual relationship between Plaintiff and Greenrose. These individual defendants have distributed funds earmarked for Plaintiff to pay equity holders and themselves. By using the funds earmarked for payment to the Selling Securityholders the Defendants have interfered with and prevented Greenrose from making the payments due under the contract. The individual defendants acted without justification, and with an intent to deprive the Plaintiff and the Selling Securityholders of the benefits of the contract with Greenrose.

28. As a result of the Defendants' conduct, the Plaintiff has sustained money damages.

COUNT EIGHT: TORTIOUS INTERFERENCE BY TIMOTHY BOSSIDY AND DXR

1-19. Plaintiff repeats, realleges, and incorporates by reference herein paragraphs 1-19 of Count Three of this Complaint as paragraphs 1-19 of Count Seven.

20. In its Annual Report submitted to the U.S. Securities and Exchange Commission, in Form 10-K, Greenrose admitted, “Greenrose’s senior management does not have significant experience managing a publicly-traded company and have limited experience complying with the increasingly complex laws pertaining to public companies.”

21. In 2022, contemporaneous with ceasing to pay the deferred cash payments called for in Amendment No. 2, Mickey Harley began discussions with DXR, Greenrose’s senior secured lender, about entering into an agreement to allow DXR to foreclose on all or substantially all of Greenrose’s assets (a “consensual foreclosure,” so as to avoid the deferred cash obligations and to thereby acquire Theraplant, LLC at a substantially reduced price.

22. In September, 2022, DXR offered Mickey Harley an employment contract and equity in a new owner entity if he agreed to work with DXR on the consensual foreclosure.

23. On September 16, 2022, the Greenrose Board of Directors removed Mickey Harley as its Chief Executive Officer, effective immediately.

24. That same day Greenrose entered into an agreement with Sierra Constellation Partners, LLC to provide management services to the Company, and as part of the engagement, Timothy Bossidy was appointed as Interim Chief Executive Officer of Greenrose. Greenrose agreed to pay Defendant Bossidy \$24,000 per week and to pay for services to be provided by Sierra Constellation Partners at the rate of \$995 per hour.

25. Thereafter, Defendant Bossidy continued to negotiate with DXR regarding a consensual foreclosure, to, *inter alia*, void the deferred cash payment and other obligations owing to Plaintiff and the Selling Securityholders.

26. On October 13, 2022, Greenrose filed a Form 8-K with the U.S. Securities and Exchange Commission. In this Form 8-K Greenrose disclosed that on October 12, 2022 it had entered into a Forbearance Agreement with DXR. That Forbearance Agreement has been extended by agreement.

27. On November 14, 2022, Greenrose filed a Form 8-K with the Securities and Exchange Commission, disclosing that it had entered into a Transaction Support Agreement with DXR, stating that Greenrose will not provide any further updates.

28. Pursuant to the Transaction Support Agreement, Greenrose has agreed to a consensual foreclosure that would permit DXR to foreclose on all of Greenrose's assets and to take ownership and control of Greenrose's business, to the detriment of Plaintiff and the Selling Securityholders and other equity and unsecured creditors of Greenrose.

29. Defendant Bossidy is cooperating with DXR in DXR's effort to take ownership and control of Greenrose in coordination with the start of authorized sales of adult use cannabis in Connecticut, which will significantly increase Theraplant, LLC's cannabis market and sales.

30. By its conduct as set forth above, Defendants Bossidy and DXR are wrongfully and tortiously interfering with the performance of the Merger Agreement, as amended, between Plaintiff and Greenrose, to the detriment of the Plaintiff and the Selling Securityholders.

31. As a result of the Defendants' conduct, the Plaintiff and the Selling Securityholders have sustained money damages.

COUNT NINE: VIOLATION OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT BY GREENROSE, MICKEY HARLEY, DANIEL HARLEY AND PAUL WIMER

1-27. The Plaintiff repeats, realleges, and incorporates by reference herein paragraphs 1-27 of Count Six of this Complaint as paragraphs 1-27 of Count Nine.

28. These individual Defendants have, by their conduct, not only sought to deprive the Plaintiff and the Selling Securityholders of the deferred payments and/or escrow monies due them, but have intentionally deprived them of the ability to control and to value and to trade their stock and equity in Greenrose, and have given to others the monies, interest and value that belong to Plaintiff. Defendants Mickey Harley and Daniel Harley provided false information to one or more lenders, having failed to review Company financials. These individual Defendants, by cooperating with Silver Point and DXR, having further attempted to and intend to create a new company or entity in which Plaintiff will have no interest, equity or otherwise. Moreover, by their conduct set forth above these individual defendants breached their duty of loyalty owed to Plaintiff and the Selling Securityholders and other shareholders. The conduct of these individual Defendants is adverse to the interests of Greenrose and to the Plaintiff and the Selling Securityholders.

29. The conduct of the Defendants as set forth above constitutes a violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Section 42-110b, *et seq.* ("CUTPA"), in that Defendants' conduct is unethical, oppressive, unscrupulous, and

deceptive, and designed to maximize the Defendants' income and profits at the expense of the Plaintiff and the Selling Securityholders.

30. As a result of the Defendants' wrongful conduct in violation of CUTPA the Plaintiff and the Selling Securityholders have sustained money damages.

COUNT TEN: VIOLATION OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT BY TIMOTHY BOSSIDY AND DXR FINANCE

1-30. Plaintiff repeats, realleges, and incorporates by reference herein paragraph 1-30 of Count Eight of this Complaint as paragraphs 1-30 of Count Ten.

31. Defendant Bossidy and DXR have conspired to enter into an agreement pursuant to which Greenrose could consent to a foreclosure by DXR on all of Greenrose's assets, including Theraplant and the deferred payments and escrow monies owed to Plaintiff and the Selling Securityholders, as well as the shares of stock that have not been transferred to the Selling Securityholders, depriving them of the monies and values to which they are entitled. The conduct of these Defendants is adverse to the interests of Greenrose and of the Plaintiff and the Selling Securityholders.

32. The conduct of the Defendants as set forth above constitutes a violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Section 42-110b, et seq. ("CUTPA"), in that Defendants' conduct is unethical, oppressive, unscrupulous and deceptive, and designed to maximize the Defendants' income and profits at the expense of the Plaintiff and the Selling Securityholders.

33. As a result of the Defendants' wrongful conduct in violation of CUTPA the Plaintiff and the Selling Securityholders have sustained money damages.

COUNT ELEVEN: BREACH OF CONTRACT

1-6. Plaintiff repeats, realleges, and incorporates by reference herein paragraphs 1-2, and 8-11 of Count One of this Complaint as paragraphs 1-6 of Count Eleven.

7. Pursuant to the Merger Agreement the Selling Securityholders were promised shares of common stock in Greenrose. Despite such promise, Greenrose repeatedly failed or refused to issue the shares to the Selling Securityholders. The value of the shares has substantially declined, precluding the Selling Securityholders from selling the shares at the value at the time they were promised.

8. As a result of the Defendant's failure or refusal to issue the shares the Plaintiff and the Selling Securityholders have sustained money damages.

WHEREFORE, the Plaintiff seeks the following relief as to all counts:

As to Count One:

1. Money damages;
2. Interest;
3. Costs; and
4. Such other and further relief as the Court deems just and equitable.

As to Count Two:

1. Money damages;
2. Interest;
3. Costs; and
4. Such other and further relief as the Court deems just and equitable.

As to Count Three:

1. Punitive damages;
2. Interest;
3. Costs; and
4. Such other and further relief as the Court deems just and equitable.

As to Count Four:

1. Money damages;
2. Punitive damages;
3. Interest;
4. Costs; and
5. Such other and further relief as the Court deems just and equitable.

As to Count Five:

1. A mandatory injunction requiring the Defendant to instruct the Escrow Agent to release \$10,000,000.00 held by the Escrow Agent pursuant to the Escrow Agreement;
2. Money damages;
3. Interest;
4. Costs;
5. A reasonable attorney's fee; and
6. Such other and further relief as the Court deems just and proper.

As to Count Six:

7. Money damages;
8. Punitive damages;
9. Interest;
10. Costs; and
11. Such other and further relief as the Court deems just and proper.

As to Count Seven:

1. Money damages;
2. Punitive damages;
3. Interest;
4. Costs; and
5. Such other and further relief as the Court deems just and proper.

As to Count Eight:

1. Money damages;
2. Punitive damages;
3. Interest;
4. Costs; and
5. Such other and further relief as the Court deems just and proper.

As to Count Nine:

1. Money damages;
2. Punitive damages;
3. Attorney's fees;
4. Interest;
5. Costs; and
6. Such other and further relief as the Court deems just and proper.

As to Count Ten:

1. Money damages;
2. Punitive damages;
3. Attorney's fees;
4. Interest;
5. Costs; and
6. Such other and further relief as the Court deems just and proper.

As to Count Eleven:

1. Money damages;
2. Interest;

3. Costs;
4. A mandatory injunction requiring Defendant to issue any shares that have not been issued;
5. Such other and further relief as the Court deems just and proper.

THE PLAINTIFF,

SHAREHOLDER REPRESENTATIVE
SERVICES LLC

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STATEMENT OF AMOUNT IN DEMAND

The amount, legal interest, or property in demand under this Complaint is greater than Fifteen Thousand Dollars (\$15,000.00), exclusive of interest and costs.

THE PLAINTIFF,

SHAREHOLDER REPRESENTATIVE
SERVICES LLC

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was sent via electronic mail on this 16th day of January, 2024 to the following:

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