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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AARON HOFFNUNG,

Plaintiff,

against –

GOODNESS GROWTH HOLDINGS, INC. f/k/a VIREO HEALTH INTERNATIONAL, INC. and VIREO HEALTH, INC

Defendants.

Index No.

COMPLAINT

Plaintiff AARON HOFFNUNG, by his attorneys, Moskowitz & Book, LLP, as and for his Complaint against GOODNESS GROWTH HOLDINGS, INC. f/k/a VIREO HEALTH INTERNATIONAL, INC. and VIREO HEALTH, INC. (collectively, "Vireo" or "Defendants") alleges as follows:

NATURE OF ACTION

1. The causes of action alleged herein are based upon Defendants' retroactive misclassification of Plaintiff as an independent contractor, rather than an employee.

2. Plaintiff is a former employee, officer, and director of Defendants. As a component of his compensation, Plaintiff was issued stock options.

3. The laws of the United States and Internal Revenue Code provide a company that wishes to issue stock options with two types of stock options to choose from.

Specifically, the company can issue either incentive stock options ("ISOs") or non-qualified stock options, which are sometimes called non-statutory stock options ("NSOs").

4. These two types of stock options are treated differently under the Internal Revenue Code. Specifically, the exercise of ISOs by an optionee is treated more favorably for tax purposes than the exercise of NSOs. NSOs are generally valued for tax purposes at an amount equal to the difference between the exercise price established by the stock option agreement and the fair market value of the shares on the date of exercise, and that value is immediately taxable as ordinary income. By contrast, ISOs are generally not taxed until the optionee sells or otherwise disposes of the shares, at which point the difference between the exercise price and sale price is taxable as capital gains, usually at a rate far lower than the rate applicable to ordinary income. Thus, from the point of view of the optionee, because of the special tax treatment ISOs receive, it is generally preferable to receive ISOs rather than NSOs.

5. However, the law sets forth strict requirements concerning when ISOs can be granted or exercised. For example, ISOs can be granted only to employees, and they must be exercised within three months following termination of employment—even if the former employee remains affiliated with the grantor in some other capacity. If the strict requirements applicable to ISOs treatment are not met, then the stock options must instead be treated for tax purposes as NSOs.

6. When Plaintiff exercised his stock options at the end of 2020 and in early 2021, Defendant was correctly treating Plaintiff as an employee by (i) withholding employee payroll taxes on biweekly basis (ii) providing benefits in the form of New York Family Leave Insurance (FLI) and State Disability Insurance (SDI) (iii) allowing for monthly stock

option vesting (iv) confirming the number of ISOs on record (v) accepting Written Notices to exercise ISOs (vi) not withholding taxes based on the "spread" between the grant price and the price of the stock on the exercise date as would have been appropriate with the exercise of NSOs.

7. More than a year later, Defendant retroactively re-classified Plaintiff as an independent contractor, rather than an employee, effective prior to the dates on which he exercised his stock options. As a result of that reclassification, Plaintiff's options were retroactively recategorized from ISOs to NSOs. That recategorization created a substantial tax obligation that Plaintiff did not anticipate when he exercised the options, which were then considered ISOs, and that he would not have incurred if Defendant had continued to treat Plaintiff as an employee and the options as ISOs. Indeed, Plaintiff would not have exercised those options had they not qualified for ISO treatment.

8. Plaintiff now seeks a declaratory judgment that he was an employee of Defendant when he exercised his stock options and that those options therefore qualified as ISOs. Plaintiff further seeks an equitable order directing Defendant retroactively to correct the incorrect classification of Plaintiff and to issue to Plaintiff an amended Form W-2 C along with Form 3921 and any other appropriate tax documentation reflecting that the options he exercised qualified as ISOs. In the alternative, Plaintiff seeks an award of damages for Defendant's negligent misrepresentations that Plaintiff was an employee and that his stock options qualified as ISOs and for its breach of the Termination Agreement, in an amount calculated to compensate Plaintiff for the tax burden that arose because of those misrepresentations and that breach. Plaintiff approximates his pre-tax damages at approximately $1,200,000.

THE PARTIES

9. Plaintiff Aaron ("Ari") Hoffnung is an individual resident of Bronx County, New York.

10. Defendant Goodness Growth Holdings, Inc. (formerly known as Vireo Health International, Inc.) is a foreign corporation, incorporated in and existing under the laws of the state of British Columbia, Canada, with its primary United States offices in Minneapolis, Minnesota.

11. Defendant Vireo Health, Inc. is a foreign corporation, incorporated in and existing under the laws of the state of Delaware, with its primary offices in Minneapolis, Minnesota.

12. Upon information and belief, defendant Vireo Health, Inc. is a wholly-owned subsidiary of defendant Goodness Growth Holdings, Inc.

13. Upon information and belief, neither of the Defendants is authorized to do business in New York pursuant to Business Corporation Law § 1301 *et seq.*

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of $75,000 and there exists complete diversity between the parties.

15. This Court is empowered to exercise personal jurisdiction over Defendants because Defendants are physically present in, and transact business in, the State of New York and because this dispute arises out of Defendants' employment of Plaintiff within the State of New York.

16. This Court is empowered to issue a declaratory judgment pursuant to 28 USC §§ 2201 and 2202.

17. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(1) because Plaintiff resides in this District, Defendants employed Plaintiff in this District, and a substantial part of the events that are the subject of the litigation transpired in this District.

FACTS

18. Vireo is a multi-state cannabis company that is licensed to grow, process, and/or distribute cannabis in eight state markets where cannabis has been legalized for medical or recreational use. The Company "manufactures proprietary, branded cannabis products in environmentally friendly facilities and state-of-the-art cultivation sites" and operates 18 dispensaries across the United States.

19. On or around November 5, 2015, Plaintiff became an employee of Vireo when he was hired as Chief Executive Officer of Vireo's wholly-owned New York State subsidiary, Vireo Health of New York, LLC (f/k/a Empire State Health Solutions, LLC").

20. Plaintiff worked primarily in Vireo's New York City offices located on 205 East 42nd Street in Manhattan.

21. As a component of his compensation as an employee of Vireo, Plaintiff was granted Restricted Unit Awards in Vireo Health, LLC, the predecessor to defendant Goodness Growth Holdings, Inc. (f/k/a Vireo Health International, Inc.), in November of 2015.

22. In 2016, Plaintiff took on an additional role of serving as Chief Operating Officer of the U.S. holding company, Vireo Health, Inc. (f/k/a Vireo Health, LLC).

23. Over time, Plaintiff became involved in nearly every facet of the Company's business and was responsible for managing more than 400 employees across the country and serving as an Officer and/or Director of more than a dozen subsidiaries, including those

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