

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT**

**HAMPDEN, ss.**

**SUPERIOR COURT DEPARTMENT**

**12/21/2023**

ERIC GRANGER,

Plaintiff,

v.

Docket No. 23-cv-585

TREE HOUSE BREWING COMPANY,  
INC., NATHAN P. LANIER, and DAMIEN  
L. GOUDREAU,

Defendants.

**ANSWER OF  
TREE HOUSE BREWING COMPANY, INC.**

Defendant Tree House Brewing Company, Inc. (“Tree House” or the “Company”) hereby responds to the Verified Complaint (the “Complaint”) of Eric Granger (“Granger”). Tree House denies all allegations of the Complaint not expressly admitted below. Headings stated in the Complaint are repeated for ease of reference below; to the extent any heading purports to allege facts those allegations are denied.

**THE PARTIES**

1. Tree House admits that, on information and belief, Granger resides at 251 Wilbraham Road, Monson, MA 01057. Tree House states that Nathan P. Lanier (“Lanier”) owns 41.5 “Class A Voting” shares of the Company which he acquired as a founder of Tree House, Damien L. Goudreau (“Goudreau”) owns 41.5 “Class A voting” shares of the Company which he acquired as a founder of Tree House, Granger owns two (2) “Class B Non-voting” shares of the Company. Tree House has no other shareholders. Tree House accordingly denies that any other

shareholders of Tree House exist, or that Granger has brought any claim on behalf of any shareholder but himself. Tree House denies that the Complaint states a claim on behalf of Tree House for the reasons set forth in Tree House's Motion for Judgment on the Pleadings filed herewith. The remainder of paragraph 1 states conclusions of law to which no response is required and, to the extent a response is deemed required, are denied.

2. Tree House admits that it is a Massachusetts corporation and that its principal place of business is 129 Sturbridge Road, Charlton, MA 01507. Tree House denies any remaining allegations of paragraph 2.

3. Tree House admits the first sentence of paragraph 3. Tree House states that Lanier has been as a member of the board of directors, treasurer, and secretary of Tree House since founding the Company. Tree House created the office of Chief Executive Officer and named Lanier to this position in 2022, a role he had in practice occupied since the Company's inception. Tree House denies any remaining allegations in paragraph 3.

4. Tree House admits the first sentence of paragraph 4. Tree House states that Goudreau has served as a member of the board of directors of Tree House since founding the Company. He became president of Tree House in 2015. Tree House denies any remaining allegations in paragraph 4.

### **STATEMENT OF FACTS**

5. Tree House admits that, despite ongoing headwinds in the craft brewing industry, it is a successful brewer which makes beer on its premises that it sells directly to consumers; and that its beer has been highly rated by consumers and third parties including BeerAdvocate.com and Untapped.com. Tree House denies any remaining allegations in paragraph 5.

6. Admitted.

7. Tree House admits that its business has grown substantially since 2011, including because it expanded its product offerings to include beer, spirits, cider, coffee, seltzer, merchandise, entertainment, pizza, and recreation, and because it opened a variety of attractive venues, including Massachusetts venues in Charlton, Deerfield (which includes a concert venue), Sandwich (which is located on the ocean), and Tewksbury (which includes a golf course). Tree House denies any remaining allegations in paragraph 7.

8. Tree House admits that in 2023 the Donahue Institute of the University of Massachusetts, Amherst, produced a report describing its economic impact study estimating the impact of the Company's operations on the economy of the Commonwealth of Massachusetts. According to the report, the Institute attempted to determine how Tree House's business in Massachusetts provided economic opportunity to others. Accordingly, the economic impact figure contained in the report is not an estimate of Tree House's financial results and is rather an attempt to estimate the total impact of Tree House on the Massachusetts economy taking into account the large "multiplier effect" that the Institute believes is achieved by the impact of Tree House's economic activities upon the revenue of and employment opportunities provided by other businesses. Tree House denies that Granger or any other shareholder was ever deprived of financial benefit from ownership of Tree House shares. Granger has never been employed by Tree House, and other than a small passive investment his contributions to the Company amount to providing some materials used by Tree House to make signs and supplying some decorative tap handles. In 2012, Granger made a passive investment in the amount of \$10,000 for two percent of the ownership interest in Tree House's predecessor, Tree House Brewing Company, LLC ("LLC"). Since then, he has received **over \$850,000** in distributions from Tree House. Tree House initially suggested that Granger earmark much of that amount for tax payments that Granger, like

Tree House's other shareholders, is required to make with respect to the percentage of Tree House's income represented by his share ownership, but Granger was permitted to use that money any way he pleased. To date, Tree House has distributed to Granger ***more than \$250,000*** in excess of the amount he needed to pay taxes on income of Tree House. At the time he verified his Complaint, this cash flow represented a 2,500 percent return on Granger's investment, some of which is subject to reduction to the extent needed to pay future taxes, but all of which was available to Granger to be invested as he pleased. Moreover, to permit the Company to distribute a meaningful dividend to small shareholders like Granger without adversely affecting the Company's financial position, on at least one occasion Tree House made a distribution not intended to cover taxes to all shareholders, after which Lanier and Goudreau, in order to prevent an adverse impact on Tree House's cash flow, immediately returned their respective proportionate dividend distributions to Tree House in the form of interest-free loans. The total amount Lanier and Goudreau returned was in excess of \$700,000. In addition, before Granger verified and filed his Complaint, Tree House sent a letter to Granger dated October 3, 2023, informing him that commencing in the fourth quarter of this year, and continuing from quarter-to-quarter indefinitely for so long as payments of dividends to all shareholders in proportion to their holdings were consistent with Tree House's performance, plans and prospects, he would receive a dividend of \$5,000 per quarter (\$20,000 per year), representing ***a 200 percent annual return*** (each year into the indefinite future) on his \$10,000 passive investment. In addition, during his tenure as shareholder, Tree House has twice offered to purchase Granger's two-percent passive, minority, interest in Tree House for fair market value. Most recently, in 2023, after full disclosure of relevant financial information to all shareholders and their advisors, including valuation reports from an independent expert, two other minority shareholders accepted Tree House's proposal and sold their

shares. Granger did not. Both times that Tree House has offered to purchase his shares for fair market value, Granger demanded more than twice the amount he had been offered to sell his shares. Tree House maintains, accordingly, that Granger's sworn assertion that Tree House's shareholders other than Granger "continue to deprive" him "from enjoying any real financial benefit" from owning his shares is materially false; and that his sworn assertion that there has been a "historical refusal to issue dividends to shareholders" is utterly false. These false statements were made in derogation of the statutory purposes for requiring derivative complaints to be made under oath, which include discouraging shareholders from bringing specious claims for ulterior purposes. *See, e.g.,* Reporter's Notes to Mass. R. Civ. P. 23.1 (drafter's purpose in requiring oath was that it would "tend to discourage 'strike suits' ... brought primarily for the purposes of coercing 'corporate managers to settle worthless claims in order to get rid of them.'" (*quoting Surowitz. v. Hilton Hotels Corp.*, 383 U.S. 363 (1966))). Tree House denies any remaining allegations in paragraph 8.

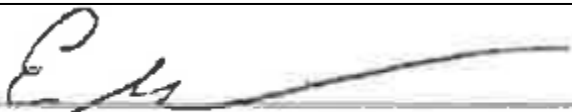
#### **CORPORATE FORMATION**

9. Tree House admits that Lanier owns 41.5 "Class A Voting" shares, Goudreau owns 41.5 "Class A voting" shares, and Granger owns two (2) "Class B Non-voting" shares of Tree House, and all other Tree House shares are presently held by the Company in treasury. Tree House admits that its shares are not publicly traded. The remainder of paragraph 9 states conclusions of law to which no response is required and, to the extent a response is deemed required, are denied.

10. Tree House admits that LLC was a Massachusetts limited liability company formed on August 16, 2011. Tree House denies any remaining allegations in paragraph 10.

11. Tree House admits that in or about July 2012, Granger acquired a 2% non-admitted, non-voting member interest in LLC in exchange for a capital contribution of \$10,000. Further

answering, Tree House states that on or about June 26, 2014, Granger signed LLC's Manager-Managed Operating Agreement (the "2014 Operating Agreement") in which he confirmed that he was a "Non Admitted Non Voting Member" who had purchased a 2% interest in exchange for an investment of \$10,000. A true and accurate copy of his signature on the 2014 Operating Agreement is set forth below.

Eric Granger, Non Admitted Non Voting Member

The 2014 Operating Agreement defined "Non Voting Non Admitted Member" as a person "holding no voting rights in the operation and management of the Company." A true and accurate copy of Granger's entry on Exhibit A to the 2014 Operating Agreement, stating his investment amount and percentage interest, is set forth below.

|                                                   |             |       |
|---------------------------------------------------|-------------|-------|
| Eric Granger 251 Wilbraham Rd.<br>monson ma 01057 | \$10,000.00 | 2.00% |
|---------------------------------------------------|-------------|-------|

Tree House denies any remaining allegations in paragraph 11.

12. Tree House admits that on or about June 12, 2015, Granger authorized the merger of LLC into Tree House Brewing Company, Inc. by signing a document providing his consent. A true and accurate copy of that document is attached hereto as Ex. 1. Pursuant to the consent, the voting and admitted members of LLC received class A voting stock and the nonvoting and nonadmitted members of LLC received class B nonvoting stock. A true and accurate copy of Granger's signature on the document giving effect to the merger is set forth below.

  
Eric-Granger, Non Voting Non Admitted  
Member

Granger's signature on his consent to the merger acknowledged that he was a "Non Voting Non Admitted Member." The merger did not alter Granger's rights relative to voting or management of the business, because the 2014 Operating Agreement governing LLC provided not only that Granger could not vote, but also that "the management and control of the business and affairs of the Company shall be vested exclusively in the Managing Members," which "shall be Nathan P. Lanier and Damien L. Goudreau." In the 2014 Operating Agreement, Granger acknowledged and agreed both that: (1) he held only a "2%" "Non Voting Non Admitted Member" interest in the Company, and thus had "no voting rights in the operation and management of the Company"; and (2) Lanier and Granger each held a "41.5%" voting interest in the Company, and were the sole "Managing Members" vested "exclusively" with "the right and power to manage, operate, and control the Company and do all things which the Managing Members deem necessary or desirably for the Company or its business[.]" Accordingly, the allegations of paragraph 12 calculated to imply that Granger was harmed by the merger of LLC into Tree House are materially misleading and false, and Tree House denies this implication. Tree House is without information or belief sufficient to respond to the remaining allegations of paragraph 12 and therefore denies them.

13. Tree House incorporates by reference its response to paragraph 12, and on that basis denies that Granger's rights were adversely impacted by the merger and denies that the merger permitted Lanier and Goudreau to "arrest[] absolute control" of Tree House. Indeed, Granger agreed in the 2014 Operating Agreement that "the management and control of the business and affairs of the Company shall be vested *exclusively* in [Lanier and Goudreau]" including all "right

and power to manage, operate, and control the Company and to do all things which [Lanier and Goudreau] deem necessary or desirable for the Company or its business[.]”<sup>1</sup> Tree House denies any remaining allegations in paragraph 13.

14. Tree House admits that it held annual meetings of all shareholders during 2016, 2017, and 2018 and provided shareholders with financial and other information relating to the Company’s operations and business plans. For example, and without limitation, at the shareholder meeting held in 2016, which Granger attended, the shareholders discussed Landreau Realty, LLC (“Landreau”), that Landreau would hold real estate leased by Tree House, that this structure would remove liabilities that would otherwise fall on Tree House, and that Landreau was owned by Lanier and Goudreau. A true and accurate copy of the relevant portions of Company’s official minutes of this meeting are set forth below:

|                                                                                                                                                                                                                            |                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| March 28, 2016                                                                                                                                                                                                             |                                                                                                                                                                                                                               |
| Tree House Brewing Company<br>Annual Meeting<br>Present: Nate Lanier, Dean Rohan, Kim Goudreau, Jonathan Weisbach, Damien Goudreau, Donald Klisiewicz, Denise Koran-Klisiewicz, Eric Granger, Tammy Granger, Lauren Lanier |                                                                                                                                                                                                                               |
| 6:41PM                                                                                                                                                                                                                     | <ul style="list-style-type: none"><li>• Bank required life insurance on Damien and Nate</li><li>• Discussed development of Landreau Realty to handle land purchase. Removes liabilities from Tree House Brewing Co.</li></ul> |

Tree House denies any remaining allegations in paragraph 14.

15. Tree House admits that the Covid-19 pandemic that began in 2020 presented an unprecedented challenge to the Company’s direct-to-consumer business model (including prohibitions upon on-premises consumption of alcohol and limitations on in-person gatherings),

---

<sup>1</sup> Emphasis appearing in quotations has been added unless otherwise indicated.

that addressing this challenge and figuring out how to keep Tree House functioning consumed considerable management resources during this period, and as a result Tree House did not conduct an annual shareholder meeting for 2020 and beyond. Instead, Tree House reported to shareholders on the Company's performance in writing during the pandemic, including without limitation through the M.G.L. c. 156D, §§ 16.02 and 16.20 documents Granger admits in paragraph 16 of his Complaint that he received in 2021, and through correspondence summarizing the Company's business operations that Granger admits in paragraph 44 of his Complaint that he received in 2022, and a wide variety of confidential business information that Tree House provided to Granger and former shareholders pursuant to confidentiality agreements in 2022 and 2023. In early 2023, Tree House held in-person meetings with all shareholders at its Charlton, Massachusetts headquarters at which it presented on the Company's performance, business plans, industry headwinds, share value, and more. Tree House denies any remaining allegations in paragraph 15.

16. Tree House admits that in January 2021 it provided to Granger information about the Company consistent with M.G.L. c. 156D, § 16.02 ("Inspection of records by shareholders") and § 16.20 ("Financial statements for shareholders"). Tree House denies that it has "refus[ed] to provide" Granger with information to which he is entitled as a shareholder of the Company. To the contrary, in reliance on Granger's fiduciary obligations to the Company and subject to a confidentiality agreement that he signed, Tree House has provided Granger with access to highly confidential, proprietary, and competitively sensitive information regarding the Company's operations, finances, financial performance, business plans, and more. Tree House denies any remaining allegations in paragraph 16.

17. Tree House admits that in 2019, by agreement, it redeemed the non-voting Class B shares then held by Goudreau's sister-in-law, Denise Koran-Klisiewicz, and her husband Donald

Klisiewicz, for fair market value. Later in 2019, Tree House extended an offer to Granger to redeem his non-voting Class B shares for slightly more per share than it paid to these shareholders. Granger rejected this offer and ***demanded approximately ten times the amount*** per share greater than the fair market value agreed upon with these other shareholders. Tree House admits that in 2023 it redeemed the non-voting Class B shares then held by Dean Rohan and Jonathan Weisbach for fair market value. Tree House offered the same terms to Granger, ***who declined and demanded more*** than twice the amount per share greater than the fair market value agreed upon by these other shareholders. In connection with his counterproposal, Granger ***threatened litigation*** if his unreasonable demand was not accepted. Tree House denies any remaining allegations in paragraph 17.

18. Tree House denies the first sentence of paragraph 18. Tree House admits that by letter dated October 3, 2023, it informed Granger of its intention to pay a dividend for the fourth quarter of 2023, and for future quarters if circumstances permitted, such that absent changed circumstances Granger would obtain a 200% return on his passive investment every year. Tree House denies any remaining allegations in paragraph 18.

### **DOCUMENTATION**

19. Tree House states that any written communication from Ms. Lawrence speaks for itself, that the Complaint does not reproduce all of any such communication, and that no further response to the Complaint's characterization of such an incomplete communication is required. Tree House admits that in April 2022, it requested that Granger provide a signed CORI form to be submitted to the Massachusetts Alcoholic Beverage Control Commission ("ABCC"). Tree House admits that ABCC uses such forms to obtain information about shareholders of companies seeking licenses to make and sell alcohol, because conviction of certain criminal offenses by a shareholder

may affect an applicant's ability to obtain a particular license or permit from ABCC. Tree House denies all allegations of paragraph 19 to which a response is required that have not specifically been admitted.

20. Tree House admits that Granger did not provide a signed CORI form in April 2022. Instead, he made a condition of doing so that he be provided information to which he was not entitled, and which was useless to him given his agreement that he would have no role whatsoever in the management of Tree House. Because the ABCC's regulations do not require a recently signed CORI form with respect to each license application, Tree House submitted the same CORI form previously signed by Granger—with no alteration of his signature or of the date of signature or of the notary's dated signature—while indicating on the form that it was being submitted with respect to the new Deerfield project for which Tree House first filed a license application in 2022. The ABCC could not have been misled by the form not only because it obviously was signed and dated long before Tree House had any plans in Deerfield, but also because ABCC does not rely on the form. Instead, it used the form to obtain official records about Granger that he was legally required to permit ABCC to review. Tree House provided a copy of the CORI form to the ABCC, not Granger. Tree House followed a similar procedure with respect to its license application for its Sandwich, Massachusetts, location. Granger's refusal to complete ministerial acts having no cost or impact upon him without concessions to which he was not entitled was a breach of his fiduciary duty. Tree House mitigated the harm that would have been caused by Granger's refusal to submit the form and caused no harm thereby to Granger. Tree House denies any remaining allegations in paragraph 20.

21. Denied.

22. Tree House admits that Granger complained to the ABCC about his CORI form, and is without information or belief sufficient to respond to the allegation of paragraph 22 concerning the date upon which Granger communicated his complaint. Tree House denies any remaining allegations in paragraph 22.

23. Tree House admits that the ABCC closed its investigation into Granger's complaint with no decision finding wrongdoing. Tree House is without information and belief sufficient to respond to any remaining allegations in paragraph 23, and accordingly denies them.

### **REAL ESTATE & OTHER HOLDINGS**

24. Tree House admits that Landreau is a Massachusetts limited liability company formed in 2016 that was owned by Lanier and Goudreau until, as Granger was aware when he verified and filed his Complaint, it became subsidiary of Tree House in June 2023. Landreau was formed to hold real property, in Charlton, Massachusetts, that ultimately became Tree House's headquarters and a facility to manufacture and serve Tree House's products. At that time, Tree House was incapable of obtaining the bank financing necessary to buy that property on its own because, without personal guarantees from Lanier and Goudreau, it was deemed insufficiently creditworthy; and certain of its other shareholders were likewise deemed not creditworthy. The bank that financed Landreau's purchase of the property required Lanier and Goudreau to pledge all of their assets to secure repayment of the loan. The bank declined to do business with two of the non-voting shareholders of Tree House. Using a separate entity to take out this loan permitted the bank to deal with creditworthy parties willing to pledge all of their assets, and insulated Tree House from liabilities associated with ownership of and payment for real estate with respect to which Lanier and Goudreau pledged all of their assets. Because Tree House was itself incapable of borrowing the funds necessary to buy this property, use of Landreau to do so did not divert to

Lanier and Goudreau any opportunity available to Tree House. Rather, by taking *substantial personal risk not taken by other shareholders*, this structure allowed Lanier and Goudreau to facilitate growth of Tree House that could not be achieved by Tree House itself. Granger was aware of these purposes of Landreau at or about the time of its formation and discussed Landreau with the other shareholders in 2016. No shareholder other than Lanier and Goudreau expressed willingness to pledge all of their assets to secure the repayment of loans used to purchase real estate owned by Landreau because, on information and belief, they did not wish to participate in Landreau because they were unwilling to assume responsibility for Landreau's liabilities and personally guarantee repayment of the bank loans. Tree House thereafter continued to disclose its relationship with Landreau in its annual financial statements. For example, the Company's Financial Statement for 2017 disclosed that "Landreau Realty, LLC owns land and buildings in Charlton, MA and generates revenue through its rental agreement with Tree House Brewing Company, Inc.;" that Landreau is "an entity affiliated with Tree House Brewing Company, Inc. through common ownership;" and that "[t]he Company leases its Charlton, MA facility from [Landreau] in a tenancy at will agreement," among other disclosures. Tree House denies the remaining allegations in paragraph 24.

25. Tree House admits that Pride and Purpose, LLC ("Pride") is a Connecticut limited liability company that, similar to Landreau, was formed to hold real property in Connecticut. In June 2023, Pride became a subsidiary of Landreau which in turn became a subsidiary of Tree House, thereby transferring all of the assets of Pride and Landreau to Tree House. Lanier and Goudreau obtained nothing of value in return for their contribution of Pride and Landreau to Tree House. Tree House disclosed Pride to shareholders, including in its financial statements. Tree House denies any remaining allegations in paragraph 25.

26. Tree House admits that it entered into lease agreements with Landreau and Pride that allows the more than \$13 million in mortgage debt incurred to purchase and improve real property leased to Tree House (and that Lanier and Goudreau guaranteed) to be serviced. In addition, Landreau made substantial payments to and on behalf of Tree House. Except for rent payments, Landreau paid Tree House more than \$2 million more than Tree House paid Landreau. Landreau also paid more than \$1 million in expenses that Tree House otherwise would have been required to pay. Tree House denies the remaining allegations in paragraph 26.

27. Tree House admits that Landreau incurred (and that Lanier and Goudreau guaranteed) mortgage debt in excess of \$13 million in order to purchase and improve real property leased to Tree House, including 5 Freeman Avenue, Sandwich, Massachusetts. That property, which is zoned “business limited” (i.e., “BL-1,” not residential), is located adjacent to Landreau’s properties at 3 Freeman Avenue and 98 Town Neck Road (each of which are also zoned “BL-1”). Tree House’s lease of this property was essential for Tree House to construct a beer garden in the space between these properties, allowing customers to enjoy Tree House products in a unique seaside setting while at the same time creating a buffer between the Company’s activities and its neighbors that was necessary to preserve the historic character of the surrounding coastal neighborhood. A true and accurate photograph of the beer garden is below. The small building on the right in the photograph is located at 5 Freeman Avenue.



In June 2023, Lanier and Goudreau caused Landreau to become a subsidiary of Tree House, and Lanier's and Goudreau's beneficial interest in Landreau decreased from 100% to 98%. As a consequence of the transfer, Lanier and Goudreau were relieved of their personal guarantee of the debt incurred to buy and improve the real property owned by Landreau. Tree House denies the remaining allegations in paragraph 27.

28. Tree House admits that it entered into lease agreements with Landreau and Pride that enabled the more than \$13 million in mortgage debt incurred to purchase and improve properties leased to Tree House (that Lanier and Goudreau personally guaranteed) to be serviced. Tree House denies the remaining allegations in paragraph 28.

29. Admitted.

30. Tree House denies the first sentence of paragraph 30. In or about the fourth quarter of 2021, as Tree House's financial condition continued to improve, Lanier, Goudreau and others began to discuss whether it would be able to cause Tree House itself to purchase future real estate necessary for its expansion, without any pledge of assets by Lanier and Goudreau. Tree House's lender thereafter agreed that it would provide financing directly to Tree House to allow it to purchase real property in Tewksbury, and would not require personal guarantees going forward.

In March 2022, Lanier and Goudreau met with others at Tree House to, among other things, discuss transferring Landreau and Pride into Tree House after the acquisition of Tewksbury had closed, in connection with obtaining a waiver of their personal guarantees. These events occurred in the ordinary course of business at Tree House, and more than six months before Granger's September 28, 2022 letter. Tree House denies the remaining allegations in paragraph 30.

31. Tree House denies the allegations in paragraph 31.

32. Paragraph 32 alleges conclusions of law to which no response is required and, to the extent a response is deemed required, such allegations are denied.

33. Tree House denies the allegations in paragraph 33.

34. Tree House lacks information sufficient to form a belief as to what "other companies" Granger is referring to in the first sentence of paragraph 34, the allegations of which accordingly are denied. Tree House admits that Landreau Transport, LLC ("Transport") and Tree House Motors, LLC ("Motors") were formed during the Covid-19 pandemic when it was unclear how the pandemic would impact the Company's business model, but that fortunately these entities have proven unnecessary. Transport and Motors have never conducted any operations. Tree House admits that Tree House Orchard & Farm Fermentory, LLC ("Fermentory") is an indirect, wholly-owned subsidiary (via Pride) that owns and operates an approximately 100-acre farm facility at 54 Joy Road, Woodstock, Connecticut, about 25 minutes south of the Company's Charlton, Massachusetts headquarters. Fermentory produces fruit and other ingredients used in the manufacture of Tree House products, has operated a farm-share program, and hosts a research and development facility, the Tree House Fermentory. It also manufactures and sells hard and soft cider as well as other fermented beverages, and in 2023 began making and selling Connecticut beer. Tree House denies that any of these subsidiaries "has or may have usurped corporate

opportunity away from Tree House.” Tree House lacks information sufficient to form a belief regarding what Granger means by “loaning money from various entities” and “undefined withdrawals” in the fourth sentence of paragraph 34, and thus denies the allegations in that sentence. Tree House denies that Lanier and Goudreau usurped any opportunity of Tree House, denies that Granger was harmed by the actions or omissions addressed in the Complaint, and denies the remaining allegations in paragraph 34.

### **SALARIES, BONUSES, & BENEFITS**

35. Tree House admits that, as employees of Tree House, Lanier, Goudreau, and Rohan were paid salaries and bonuses. Rohan was a non-voting shareholder of Tree House whose employment compensation was set by Lanier and Goudreau, who had no incentive to overcompensate him. Lanier and Goudreau have for more than a decade worked day and night, on weekdays and weekends and holidays, to make Tree House a success. Granger is a passive investor who has never been employed by Tree House. Lanier and Goudreau together received from Landreau and Pride about ***\$1.4 million less*** than they were required to pay in tax due to their ownership interests in those companies, and when they transferred those companies to Tree House in June 2023, they transferred all of the assets of those companies (real estate and other) and obtained nothing in return. Accordingly, Lanier and Goudreau received nothing by virtue of their ownership of Landreau and Pride despite taking substantial personal risk that enabled Tree House to prosper. As noted above, Landreau made substantial payments to and on behalf of Tree House. Tree House denies that it did “not issu[e] any dividends” to Granger or others during the period 2017 to 2020. Granger has never worked for Tree House. In 2011, he made a passive investment in the amount of \$10,000 for two percent of the ownership interest in LLC. Since then, he has received over \$850,000 in distributions from Tree House. Tree House suggested that Granger

earmark much of that amount for tax payments which Granger, like Tree House's other shareholders, is required to pay with respect to the percentage of Tree House's income represented by his share ownership, but Granger was permitted to invest or use that money any way he pleased. To date, Tree House has distributed to Granger more than \$250,000 in excess of the amount he needed to pay taxes on income of Tree House. At the time he verified his Complaint, this cash flow represented a 2,500 percent return on Granger's investment, some of which is subject to reduction to the extent needed to pay future taxes, but all of which was available to Granger to be invested as he pleased. In addition, before Granger verified his Complaint, Tree House sent a letter to Granger dated October 3, 2023 informing him that commencing in the fourth quarter of this year, and continuing from quarter-to-quarter indefinitely for so long as payments of dividends to all shareholders in proportion to their holdings were consistent with Tree House's performance, plans and prospects, he would receive a dividend of \$5,000 per quarter (\$20,000 per year), representing a 200 percent annual return (each year into the indefinite future) on his \$10,000 passive investment. Tree House denies the remaining allegations in paragraph 34. Tree House denies the allegations in paragraph 35.

36. Tree House owns and operates facilities in Deerfield, Charlton, Tewksbury, and Sandwich, Massachusetts, as well as Woodstock, Connecticut. In other words, Tree House operates at locations on opposite ends of the Mass Pike, up U.S. Interstate 91 nearly to Vermont, over the Sagamore Bridge, and along the Route 128 corridor. To facilitate employees' frequent need to commute between these locations, Tree House owns and operates two Tesla Model 3 vehicles that are available on a first-come-first-served basis for employees to sign out and use for business purposes. The Company's sign-out sheets for these vehicles, for example, reflect their recent use by at least eighteen different employees. The Company provided company cars to

Rohan and Goudreau due to their frequent business travel, over time including a used 2016 Range Rover Sport, a 2021 Mercedes GLC300, and a 2020 Audi Q8. Tree House denies any remaining allegations in paragraph 36.

37. Tree House admits that Tree House officers were paid salary and bonus in excess of \$4 million in the four-year period referenced in paragraph 37. Tree House denies that it has not paid dividends to minority shareholders. As explained above, Lanier and Goudreau together received about \$1.4 million *less* than they were required to pay in tax due to their ownership interests in the Tree House companies and returned over \$700,000 to Tree House as interest-free loans rather than accept their proportional share of a dividend paid to all shareholders. In contrast, as explained above, in connection with his total investment of \$10,000 in Tree House Granger received in excess of \$250,000 *more* than his Tree House-related tax during the period 2017 through 2020, including dividends that Tree House did *not* earmark for tax payments. Tree House denies the remaining allegations in paragraph 37.

#### **TAX DOCUMENTATION**

38. Tree House denies the allegations in paragraph 38.

39. Tree House admits that it is a Subchapter-S corporation for Internal Revenue Service purposes. Tree House admits that, as a Subchapter-S corporation, its net income is taxed on a pass-through basis to each individual shareholder in proportion to his or her ownership interest. Tree House denies that “all net income, whether realized or not, is passed through to each individual shareholder in proportion to their ownership interest.” Tree House admits that it has estimated the quarterly payments due from shareholders to the government on their proportional share of the Company’s net income. Tree House denies the third sentence of paragraph 39. Since 2017, Tree House distributed to Granger more than he was required to pay in taxes on income

passed through from Tree House. For the years 2017-2020, for example, Granger received distributions that exceeded his Tree House-related tax liability by more than \$175,000. Although some of that amount may be necessary to pay future tax, Granger is permitted to invest or spend this money as he wishes. Tree House denies the remaining allegations in paragraph 39.

40. Tree House admits that the Company's then Director of Finance wrote to all shareholders on or about June 10, 2022, advising as follows:

As you are aware, the Company has made a number of internal investments in property improvements, capital equipment, additional locations, personnel to operate our five locations – including onboarding more than 100 additional employees – and more. We believe that these forward-looking investments in the Company's core operations have us well positioned for continued success into the future. As a result of these investments, moreover, we have seen the Company's share of taxable income relative to top line revenue for 2019, 2020, and 2021 drop from 48.1% to 23.8% to 6.2%, respectively. In addition to the foregoing reductions, the Company also has additional deferred tax assets that could further reduce tax estimates for 2022 with the opening of the Deerfield taproom. As you may recall, the reduction in taxable income as a percentage of revenue in 2021 caused the distributions you received from Company to significantly exceed your estimated federal and state tax liabilities related to the Company. In order to avoid making such excess distributions in 2022, the Company has paused making estimated tax distributions. Unless and until such time as the Company can reasonably estimate that shareholders will have tax liability over and above the amount of the overdistribution for 2021 (as communicated to you and/or your accountants), the Company does not plan to resume making tax distributions.

By that time, Tree House had distributed to Granger more than \$280,000 in excess of his tax obligations, and the total amount he ultimately was required to pay Tree House related tax for 2022 was less than \$15,000. Tree House denies the remaining allegations in paragraph 40.

41. Tree House denies the allegations stated in the first sentence of paragraph 41. On or about January 20, 2022, the Company's then Director of Finance wrote to Granger informing him that, due to an unanticipated decline in Tree House taxable income over the course of 2021,

the Company had inadvertently overpaid shareholders' estimated tax distributions during the first three quarters of 2021. On or about March 22, 2022, he then wrote to Granger a second time advising him of this overpayment. The subject of that letter was "Tree House Brewing Company, Inc. ('Tree House') 2021 K-1 Reporting and 2022 Estimated Tax Payments," and in the body of his letter he both (1) reiterated that the tax distributions the Company had paid to Granger for the first three quarters of 2021 substantially exceeded Granger's tax obligations for 2021 on net income related to Tree House, and (2) advised Granger that if he had made estimated quarterly tax payments during these quarters using these funds he may qualify for a refund or credit of both Federal and State taxes. The letter informed Granger that the tax distributions Tree House had paid to him in excess of his Tree House-related tax obligations for 2021 were estimated to be more than \$100,000, and that in future periods:

Tree House plans to apply the estimated overpayment amount stated above (which you may claim as a credit refund on your federal and state tax returns) toward the amounts it would normally be distributing to fund each shareholder's federal and state estimated tax payments during 2022 and future periods, until the overpayment is exhausted.

It also suggested that Granger may wish to consult with his own financial advisors, and concluded by explaining that "[o]nce the excess distributions from 2021 have been fully applied to shareholders' tax obligations with respect to their estimated distributive share income from Tree House, Tree House expects to begin making tax distributions again." Tree House admits that it has provided documents to Granger in his capacity as a Tree House shareholder and in reliance on his fiduciary duties to the Company and his agreement to maintain the confidentiality of Tree House proprietary information. Tree House denies the remaining allegations in paragraph 41.

42. Tree House denies the allegations stated in the first sentence of paragraph 42. Tree House lacks information sufficient to form a belief as to whether Granger has paid his taxes, and

thus denies the allegations stated in the second sentence of paragraph 42. Tree House denies any remaining allegations in paragraph 42.

43. Tree House denies the allegations stated in paragraph 43.

44. Tree House admits that Lanier sent a letter to shareholders in his capacity as chief executive officer on or about June 10, 2022, summarizing the Company's business in 2021. Tree House admits that this letter discussed both challenges that arose during 2021 and the Company's strategies for addressing those challenges. Further answering, Tree House states that the document speaks for itself and Granger's characterizations are denied. Tree House denies the remaining allegations in paragraph 44.

45. Tree House denies the allegations stated in paragraph 45.

46. Tree House admits that its external audit firm prepared an Internal Revenue Service ("IRS") Schedule K-1 that the Company provided to Granger for tax year 2022, and states that Tree House caused no harm to Granger with respect to his taxes for 2022. Tree House denies the remaining allegations in paragraph 46.

47. Tree House denies the allegations in paragraph 47.

#### **SHAREHOLDER DERIVATIVE DEMAND LETTER**

48. Tree House admits that on or about September 28, 2022, Geoffrey R. Farrington sent the letter attached as Exhibit A to the Complaint to Antonio E. Dos Santos ("Demand Letter"). Tree House denies any remaining allegations in paragraph 48.

49. Tree House states that the Demand Letter speaks for itself, and Granger's characterizations of that document are denied. Tree House denies any remaining allegations in paragraph 49.

50. Tree House states that the Demand Letter speaks for itself, and Granger's characterizations of that document are denied. Tree House denies any remaining allegations in paragraph 50.

51. Tree House states that the Demand Letter speaks for itself, and Granger's characterizations of that document are denied. Tree House denies any remaining allegations in paragraph 51.

52. Tree House denies that "Lanier, Goudreau, and Tree House never directly responded to the specific request in Granger's Demand letter." Among other things, Tree House promptly responded that it would respond to plaintiff's counsel after evaluating the claims made in the Demand Letter. After reasonable inquiry, Tree House outside counsel wrote a letter to all non-voting shareholders dated January 23, 2023. This letter explained, among other things, why Tree House had concluded that the claims made in the Demand Letter lacked merit. Addressing Landreau, for example, this letter, a true and accurate copy of relevant portions of which are set forth below, explained:

Rather than delaying or foregoing the Company's expansion plans, Damien and Nate decided in January 2016 to put their own personal assets at risk and to make the personal guarantees that Country Bank required in connection with providing the necessary financing. Landreau was formed to purchase the new property, and Landreau, Damien, and Nate personally guaranteed the mortgage used to purchase 129 Sturbridge Road in Charlton, Massachusetts.

The Company's Financial Statement for 2017 disclosed in considerable detail these mortgage and bond transactions, as well as the Company's lease of the Charlton campus from Landreau following its construction as the principal means to fund the debt Landreau incurred in purchasing and building out this campus. For example, the 2017 Financial Statement disclosed:

- "Landreau Realty, LLC owns land and buildings in Charlton, MA and generates revenue through its rental agreement with Tree House Brewing Company, Inc."; is "an entity affiliated with Tree House Brewing Company, Inc. through common ownership"; and "[t]he Company leases its Charlton, MA facility from [Landreau] in a tenancy at will agreement."

Thereafter, Tree House pursuant to a confidentiality agreement made confidential business and financial information available to each of the non-voting shareholders and their counsel, and made a presentation to them in which they were permitted to ask questions about information relevant to the valuation of their shares, including a valuation report by an independent expert. Thereafter, two of the three shareholders sold their shares to Tree House for fair market value consistent with the expert report. Granger declined to sell his shares, demanding that the Company pay more than twice fair market value. Thereafter, he requested and received additional financial information and was given the opportunity to ask any questions arising from it. Rather than ask questions about what had or may have occurred, he filed this action. Tree House denies any remaining allegations in paragraph 52.

53. Paragraph 53 states a conclusion of law to which no response is required and, to the extent a response is deemed required, is denied. Tree House specifically denies that Granger has suffered any legally cognizable harm.

54. Tree House admits that the Demand Letter failed to raise numerous allegations stated in the Complaint, as required by M.G.L. c. 156D, § 7.42, prior to filing a derivative claim, including those concerning corporate formation (Complaint, ¶¶ 9-18), ABCC documentation (Complaint, ¶¶ 19-23), executive compensation (Complaint, ¶¶ 35-37), or tax documentation (Complaint, ¶¶ 38-47). Tree House states that the Demand Letter speaks for itself, and Granger's characterizations of that document are denied. The remainder of paragraph 54 states conclusions of law to which no response is required and, to the extent a response is deemed required, are denied.

55. Tree House denies paragraph 55.

**COUNT I – Breach of Fiduciary Duty**

56. Tree House reasserts and realleges its response to the previous paragraphs as if fully set forth here.

57. Paragraph 57 states conclusions of law to which no response is required.

58. Tree House denies paragraph 58.

59. Tree House denies paragraph 59.

**COUNT II – Breach of Fiduciary Duty**

60. Tree House reasserts and realleges its response to the previous paragraphs as if fully set forth here.

61. Paragraph 61 states conclusions of law to which no response is required.

62. Tree House denies paragraph 62.

63. Tree House denies paragraph 63.

**COUNT III – Breach of Fiduciary Duty**

64. Tree House reasserts and realleges its response to the previous paragraphs as if fully set forth here.

65. Paragraph 65 states conclusions of law to which not response is required.

66. Tree House denies paragraph 66.

67. Tree House denies paragraph 67.

**COUNT IV – Breach of Fiduciary Duty**

68. Tree House reasserts and realleges its response to the previous paragraphs as if fully set forth here.

69. Paragraph 69 states conclusions of law to which no response is required.

70. Tree House denies paragraph 70.

71. Tree House denies paragraph 71.

**COUNT V – Breach of Fiduciary Duty**

72. Tree House reasserts and realleges its response to the previous paragraphs as if fully set forth here.

73. Paragraph 73 states conclusions of law to which no response is required.

74. Tree House denies paragraph 74.

75. Tree House denies paragraph 75.

**COUNT VI – Breach of Fiduciary Duty**

76. Tree House reasserts and realleges its response to the previous paragraphs as if fully set forth here.

77. Paragraph 77 states conclusions of law to which no response is required.

78. Tree House denies paragraph 78.

79. Tree House denies paragraph 79.

**COUNT VII – Breach of Fiduciary Duty**

80. Tree House reasserts and realleges its response to the previous paragraphs as if fully set forth here.

81. Paragraph 81 states conclusions of law to which no response is required.

82. Tree House denies paragraph 82.

83. Tree House denies paragraph 83.

**COUNT VIII – Breach of Fiduciary Duty**

84. Tree House reasserts and realleges its response to the previous paragraphs as if fully set forth here.

85. Paragraph 85 states conclusions of law to which no response is required.

86. Tree House denies paragraph 86.

87. Tree House denies paragraph 87.

**COUNT IX – Violation of Mass. Gen. Law Ch. 93A**

88. Tree House reasserts and realleges its response to the previous paragraphs as if fully set forth here.

89. Paragraph 85 states conclusions of law to which no response is required.

90. Tree House denies paragraph 90.

91. Tree House lacks information sufficient to form a belief as to what “actions” Granger purports to reference in paragraph 91, and on that basis denies paragraph 91.

92. Tree House denies paragraph 92.

93. Tree House denies paragraph 93.

**COUNT X – Civil Conspiracy**

94. Tree House reasserts and realleges its response to the previous paragraphs as if fully set forth here.

95. Tree House denies paragraph 95.

96. Tree House denies paragraph 96.

97. Tree House denies paragraph 97.

98. Tree House denies paragraph 98.

**RESPONSE TO PRAYER FOR RELIEF**

99. The remainder of the Complaint recites a prayer for relief for which no response is required. To the extent any response is required, Tree House denies that Granger is entitled to any remedy or relief.

### **JURY DEMAND**

Tree House demands a trial by jury on any issue so triable.

### **DEFENSES**

Wherefore, having answered Granger's Complaint, Tree House asserts the additional defenses set forth below. By pleading these defenses, Tree House does not agree or concede that it has the burden of production or persuasion on any of these defenses.

Tree House does not presently know all facts concerning the conduct of Granger and the nature of his claims sufficient to state all defenses at this time. In addition to the defenses described below, Tree House reserves the right to allege additional defenses and amend its Answer to Granger's Complaint if and when information becomes known through the course of discovery or otherwise.

### **FIRST DEFENSE**

#### **(Failure to State a Claim for Relief)**

Granger's Complaint, and each purported claim for relief asserted therein, fails to state a claim upon which relief can be granted. Further support for this defense is set forth in Tree House's Motion for Judgment on the Pleadings, seeking dismissal of all purported derivative claims, and the motion to dismiss of Lanier and Goudreau, seeking dismissal of all claims, served contemporaneously with this Answer pursuant to Superior Court Rule 9A.

### **SECOND DEFENSE**

#### **(Unclean Hands)**

Granger's claims for equitable relief and damages are barred by the doctrine of unclean hands.

### **THIRD DEFENSE**

#### **(Failure to Mitigate)**

Granger has failed to mitigate any harm that he claims to have sustained, if any.

### **FOURTH DEFENSE**

#### **(Statute of Limitations)**

Granger's claims are untimely and barred by the statute of limitations. Granger has had or should have had sufficient knowledge of the conduct complained of in his Complaint, yet let the relevant statutory limitations period expire before filing this Action.

TREE HOUSE BREWING COMPANY, INC.

By its attorneys,

Dated: December 21, 2023

/s/ William H. Paine

William H. Paine (BBO # 550506)

Jeffrey M. Soller (BBO # 703959)

Edward W. Hasen (BBO # 709251)

Wilmer Cutler Pickering Hale and Dorr LLP

60 State Street

Boston, MA 02109

(617) 525-6000 (p)

617-526-5000 (f)

[william.paine@wilmerhale.com](mailto:william.paine@wilmerhale.com)

[jeff.soller@wilmerhale.com](mailto:jeff.soller@wilmerhale.com)

[ted.hasen@wilmerhale.com](mailto:ted.hasen@wilmerhale.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on December 21, 2023, I caused a true copy of the foregoing to be served on all counsel via email.

/s/ William H. Paine  
William H. Paine