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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES – POMONA COURTHOUSE SOUTH

14
15 KAREN HOLTON, an individual,

16 Plaintiff.

17 v.

18 VAMPYRE COSMETICS, LLC, a California
19 Limited Liability Company; RACHEL BOESE
20 aka RACHEL CLINESMITH; and LISA
21 MALCOLM, and DOES 1 – 100, inclusive

22 Defendants.

23 Case No.: 24PSCV00381

24
25
26
27 **DECLARATION OF KAREN HOLTON
28 IN SUPPORT OF MOTION FOR
APPOINTMENT OF RECEIVER**

29
30 Hearing Date: April 15, 2024
31 Time: 10:00 a.m.
32 Dept.: O
33 Judge: Hon. Christian R. Gullon
34
35 Reservation ID: 626903781162

36
37
38 **DECLARATION OF KAREN HOLTON IN SUPPORT OF MOTION FOR**
APPOINTMENT OF RECEIVER

39 I, Karen Holton, declare as follows:

40
41 1. I am the Plaintiff in this case, and 37.5% owner/member of Defendant Vampyre
42 Cosmetics, LLC, and its Chief Operating Officer. I am also a resident of Santa Clara County,
43 State of California.

44
45 2. I have personal knowledge of each of the facts stated herein, and if called upon to

1 testify, I could and would testify competently under oath as follows:

2 3. As I will demonstrate more particularly below, I filed this lawsuit and this motion for
3 the appointment of a receivership because I have been “frozen out” of Vampyre Cosmetics LLC
4 (“VC,” “Vampyre” and/or the “Company) since June 25, 2023 when co-members Defendants
5 Rachel Boese aka Clinesmith and Lisa Malcolm (hereinafter referred to sometimes collectively
6 as “Defendants”) suddenly and without notice, vote or explanation cut off my access to the
7 Company’s financial data including its QuickBooks and bank accounts, as well as my business
8 email and chat. As this dispute ensued, Defendants engaged in the following conduct:

9 a. Defendants have Denied me access to VC’s books and financial records, yet

10 VC continues to sell products and profit from my stolen intellectual property.

11 b. Boese has repeatedly used my personal identifying information (date of birth,

12 social security number, U.S. passport card) to manipulate the company PayPal

13 account and obtain loans for VC in my name and as sole guarantor without my

14 prior authorization, knowledge, or consent.

15 c. Boese and Vampyre have defaulted on the above mentioned loans and

16 other financial obligations. These include:

17 i. \$75,497.28 loan made by me to Vampyre - Refuse to make payments.

18 ii. Over \$118,000 in company credit card debt - Refuse to make payments.

19 iii. PayPal and Onramp Funds Loans – Both defaulted, Onramp in
20 collections.

21 iv. Multiple electronic payments scheduled via VC PayPal which have been
22 declined by VC’s 1CB account due to non-sufficient funds.

23 d. Boese has made numerous unauthorized charges to my personal credit cards.

24 e. Boese diverted funds from VC website sales to a separate business of hers.

f. Boese and Vampyre have not fulfilled orders in a timely manner and subsequently refused to communicate with consumers and/or address their concerns.

g. Boese and Malcolm have both taken personal distributions in violation of the Operating Agreement.

h. Boese has also paid herself a salary in violation of the Operating Agreement.

- i. Boese has removed Malcolm and added two new VC “members” online via Secretary of State websites in violation of the Operating Agreement.

j. The decision to cut me out of the business also violates the Operating Agreement's terms, requiring *unanimous agreement of all members to all decisions* affecting the Company.

4. The Company has made approximately \$600,000 in sales since June 25th 2023 (See also ¶ 30 below) and received +\$100,000 in funds from loans (with and without my name) in the past three months. I am gravely concerned about where all this money went and why VC can't pay its bills. Given Boese's flagrant misuse of credit and capital I am extremely concerned that unless a receiver is appointed, she will continue to pillage Vampyre by illegally diverting company funds to outside entities, by failing to fulfill customer orders and address customer complaints, by taking out more fraudulent loans, by defaulting on and missing payments on loans, by stealing my (and possibly others) identity, and by ruining this fledgling cosmetics company that has so much potential. The evidence and facts comprising Defendants' wrongful conduct are described more particularly below.

**BACKGROUND FACTS CONCERNING THE MEMBERS AND BUSINESS OF
VAMPYRE COSMETICS LLC**

5. Vampyre is an e-commerce cosmetics company that manufactures and sells its products business-to-business and business-to-consumer. Most of its business consists of internet

1 sales of cosmetics (e.g., eyeshadow and lipstick) using platforms like Shopify and PayPal.

2 Products are made using vendors on Alibaba. When sales are made, the product is shipped to
3 customers through a fulfillment center in the United States.

4 6. I am one of the three members and co-owners of Vampyre. Boese and I each have a
5 37.5% interest, and Malcolm has a 25% interest which she received in exchange for her promise
6 to provide public relations services for Vampyre. A true and correct copy of Vampyre's
7 Operating Agreement is attached hereto as Exhibit "A" and incorporated herein by this reference.

8 7. Boese founded Vampyre in California in 2019. I joined the company in 2022 in the
9 role of "managing partner," and later assumed the role of Chief Operating Officer.

10 8. When I first joined Vampyre, it was struggling financially. Boese needed funds and
11 access to credit to pay for license contracts, product design, advertising, software and
12 manufacturing necessary to keep the Company afloat.

13 9. Boese had been banned for life from PayPal and had poor credit. I had excellent credit
14 and access to capital, so she was very happy to use my name, credit and credit access to finance
15 Vampyre's operations. A true and correct copy of documentation wherein Boese explains to me
16 via text message that she has been "banned for life" from PayPal is attached hereto as Exhibit
17 "B" and incorporated herein by this reference.

18 10. As Chief Operating Officer, I was responsible for managing business expenditures,
19 product creation, copywriting, graphic design, branding, sourcing of products, packaging design
20 and fulfillment relationships. I helped Vampyre quickly evolve from a "business-to-business" to
21 a "business-to-consumer" company.

22 11. Between July 2022 and June 25, 2023, I developed several products and designed
23 unique packaging for VC as well as created most product images Vampyre uses on its website.

24 12. Shortly after joining Vampyre, I was added as a signatory to the business checking
25 account at 1st Century Bank ("1CB"). A true and correct copy of the documentation from 1CB is

1 attached hereto as Exhibit "C" and incorporated herein by this reference. I also obtained a PayPal
2 Account for Vampyre (hereinafter referred to as "VC PayPal") using my personal information.
3

4 13. In my role as the Chief Operating Officer, I had full access to Vampyre's
5 QuickBooks and Shopify accounts and was completely aware of all expenses and income
6 generated through product manufacture, sales, and fulfillment.
7

8 14. In 2022, over and above my initial capital investment, I loaned Vampyre the sum
9 of \$75,497.28. Payments were supposed to begin June 2023 (the month I was excluded from
10 the Company). I have yet to receive payment. A true and correct copy of this promissory note
11 signed by Boese on behalf of Vampyre is attached hereto as Exhibit "D" and incorporated
12 herein by this reference.
13

14 15. In addition to my capital investment of over \$53,000, I allowed Vampyre use of
15 many company lines of credit I secured as sole guarantor in reliance upon the promises of Boese
16 and Malcolm to make monthly payments.
17

18 16. Between on or about June 16, 2023, and August 1 2023, Boese and Malcolm charged
19 approximately \$54,000 to these lines of credit, on top of existing Vampyre balances. They
20 threatened me that if I did not give them unfettered access to these credit lines, they would refuse
21 to pay down the current balances. *I gave in*, but they still refused to make payments after
22 "maxing out" the credit limits. Defendants have not made payments on the American Express
23 and Capital on Tap credit lines since approximately July of 2023. The interest rate on the Capital
24 on Tap credit line is approximately 43%. True and correct copies of American Express and
25 Capital On Tap statements demonstrating activity between June 16, 2023 and August 1, 2023
26 (and my payments from Star One Credit Union covering it) are attached hereto collectively as
27 Exhibit "E" and incorporated herein by this reference.
28

1 17. In addition, Boese made ten unauthorized charges totaling \$26,231.27 to my
2 personal credit cards between December 13, 2023 through January 1st 2024. (See ¶ 20 below,
3 and Exhibit "F".)

4

5 **MY REMOVAL FROM THE COMPANY AND THE THEFT OF MY PERSONAL**
6 **FINANCIAL INFORMATION TO FINANCE VAMPYRE OPERATIONS**

7 18. On or about June 25, 2023, Boese and Malcolm froze me out of Vampyre by:

8 a. Removing my access to the business checking account at 1st Century Bank.
9 b. Severely limiting my access to Vampyre's financial data in QuickBooks.
10 c. Depriving me of access to Vampyre email and chat.

11 19. Defendants took these actions without prior notice to me. Months later, despite the fact
12 Defendants are represented by legal counsel, they still refuse to provide me with access to the
13 Company books and financial records.

14 20. Between December 13th 2023 and January 1st 2024, Boese made ten unauthorized
15 charges totaling \$26,231.27 to my personal credit cards. True and correct copies of the credit
16 card statements showing this unauthorized activity are attached hereto as Exhibit "F" and
17 incorporated herein by this reference.

18 21. I did not know who made these charges when I initially disputed them. I discovered
19 that most of these charges were made on behalf of Vampyre and transacted through the VC
20 PayPal Account. Some of the charges were for Alibaba product runs. These products are now
21 delayed, causing an increase in consumer complaints. (See ¶ 32 below)

22 22. Following my exclusion from the Company operations, Boese used my personal
23 information and Vampyre email to return me as "owner" of VC PayPal without consent. She
24 then used my personal information and Vampyre email again to obtain three loans in my name.
25 Two loans (\$15,000 and \$23,000 respectively) were through PayPal Capital and one \$15,000

1 loan was through Onramp Funds. All three loans were taken under my name, as sole guarantor,
2 and without my prior authorization, knowledge, or consent. True and correct copies of VC
3 PayPal loans and Onramp Funds loan histories as well and mine *and Boese's correspondence*
4 *with Onramp where she discusses the loans with them after they notified her of default* are
5 attached hereto as Exhibits "G" and "H" respectively, and incorporated herein by this reference.
6

7 23. Further, as "owner" of the VC PayPal Account, I am not only guarantor on its loan,
8 but also financially responsible for *all* dispute refunds arising from the 5,400 transactions which
9 occurred after I was added back. Boese is now *diverting incoming funds from sales to a*
10 *completely different PayPal business account* which currently leaves me *solely financially*
11 *responsible for customer refunds* without access to funds from Vampyre sales to satisfy them.
12

13 24. Defendants have defaulted on these loans. Onramp defaulted after multiple payments
14 were unsuccessful and/or returned. It is in collections. The VC PayPal loan is now in default
15 because Boese changed the PayPal Account used for sales on the Vampyre website to funnel
16 sales to another business she owns! (See Exhibit "H", p.13 and Exhibit "G" p. 9,11)
17

SELF-DEALING BY BOESE AND MALCOLM

19 25. When Boese obtained the funds from the PayPal Capital she diverted the funds to an
20 unknown debit card. The Onramp Funds loan was deposited into VC's 1CB which I was
21 removed from. (See Exhibit "G" p.3 and Exhibit "H" p.13)

22 26. In addition to stealing my identity to obtain credit, Defendants and each of them have
23 engaged in various additional acts of self-dealing, including but not limited to the following:
24

25 a. Boese has diverted website sales from VC PayPal to a PayPal account for an
26 unrelated business of hers, known as Undead Magazine (See Exhibit "G" p. 9, and ¶ 30
27 below).

28 b. Boese has paid herself a "distribution" of \$38,976.62 and a salary in violation of

1 the Vampyre Operating Agreement which provides that neither can be paid unless all
2 members agree. All members have not agreed. Correct copies of QuickBooks information
3 for Vampyre showing distributions to member Boese are attached hereto as Exhibit "J"
4 (see also Exhibit "A" the Operating Agreement).

5 c. Upon Malcolm's resignation from Vampyre on August 23, 2023, Malcolm
6 stated that **she and her company "Lynk PR" would no longer provide public**
7 **relations services** to the Company, yet she still retains her 25% membership interest
8 in Vampyre.

9
10 d. In September and November of 2023, after Malcolm "resigned" from Vampyre,
11 she received Vampyre funds for her attorney's fees **and public relations services**
12 **invoiced by "Lynk PR"**. Payment for these services is a breach of the Operating
13 Agreement which provides that third party vendors shall only be paid upon full
14 consent of all members. I did not consent. A true and correct copy of Malcolm's
15 resignation letter is attached hereto as Exhibit "I" and incorporated herein by this
16 reference. See also true and correct copies of VC QuickBooks and VC PayPal
17 information showing distributions to Malcolm for legal fees and public relations
18 services, attached hereto as Exhibit "K" and incorporated herein by this reference.

19
20 e. Boese has recently removed Malcolm as a member of the company and
21 attempted to add two new members, in violation of the Operating Agreement with the
22 California Secretary of State which is Vampyre's principal place of business. (See
23 Exhibit "J", p.11).

24
25 **ADDITIONAL DETAILS DEMONSTRATING BOESE'S NEFARIOUS**
PAYPAL ACCOUNT ACTIVITIES

26
27 27. Boese has deliberately manipulated the VC PayPal Account for her benefit without
28 notice to me in order to use it to obtain additional credit lines using my identity. Her first step
was removing my email and telephone number from being associated with the account on or

1 about June 25, 2023. I discovered this on January 3, 2024, during my investigation of the
2 unauthorized charges to my credit cards: the PayPal representative informed me that Boese had
3 added me back on to the account as the current account holder but linked my former, now
4 inaccessible VC email address and Boese's and Malcolm's telephone numbers to the account
5 instead of mine. (See Exhibit "H", pages 9-10 for email and Exhibit "G", pages 8-9 for phone
6 numbers subsequently)

7 28. After numerous subsequent calls with PayPal and countless hours digging through the
8 account, I discovered that Boese has been manipulating the PalPay Account's "ownership"
9 designation. She did this to conceal from me her use of that account to obtain credit (in my name
10 using my personal information and identity) without my knowledge or consent. The illustrative
11 facts are as follows:

- 12 a. June 25, 2023, Boese adds Malcolm as owner, and removes me from the
13 account.
- 14 b. August 30, 2023, Boese adds Joseph Keens (her life-partner) as owner,
15 removing Malcolm.
- 16 c. October 22, 2023, Boese ***adds me back as owner without knowledge or***
17 ***consent***, removing Joseph Keens.

18 True and correct copies of the PayPal documents that illustrate the changes in the "owners"
19 associated with the VC PayPal are attached hereto as Exhibit "L" and incorporated herein by this
20 reference.

21 29. Once Boese added me back as "Owner" on the VC PayPal account, Boese used the
22 account and my name to get two loans through PayPal:

- 23 a. October 22, 2023, Boese took out the first \$15,000 VC PayPal Capital Loan.
- 24 b. December 19, 2023, Boese took out a second \$23,000 VC PayPal Capital Loan.

25 Both loans were ***taken under my name, as sole guarantor, without my knowledge***
26 ***and consent.*** (See Exhibit "G").

27 30. Boese recently caused the most recent \$23,000 PayPal Capital Loan to go into default

1 by removing the VC PayPal as the payment platform on the Company' website and diverting
2 funds from all VC PayPal product sales to a new PayPal account for another business she owns,
3 Undead Magazine! (See Exhibit "G", p.9) (See also ¶ 26(a) above.) Per PayPal Capital loan's
4 contract, *this action automatically defaults the loan* Boese took under my name. (See Exhibit
5 "G", p.11) Making matters worse, the \$23,000 from the most recent PayPal loan in my name
6 was deposited into an "unknown debit card". (See Exhibit "G", p.3)

7 31. The VC PayPal transaction history shows that between approximately November of
8 2023 through January of 2024, Boese made many personal purchases and payments of thousands
9 of dollars to *known family members* that have no legitimate Vampyre purpose. (See Exhibit "J"
10 p.15-19 and p.2 respectively). She has also used this account to pay herself "salary," contrary to
11 the terms of the Operating Agreement. (See Exhibit "J" p.3-4)

12 32. Customer complaints are increasing. Many recent VC PayPal complaints and
13 inquiries state Vampyre has not fulfilled orders in a timely manner and has refused to
14 communicate with consumers and address their concerns. True and correct copies of my
15 summary of the complaints and the actual customer complaints sent to PayPal are attached hereto
16 collectively as Exhibit "M" and incorporated herein by this reference.

17 33. Despite making approximately \$600,000 in sales since June 25th, 2023 (See Exhibit
18 "J", p.14), many recent electronic payments scheduled via VC PayPal have been declined by
19 VC's 1CB account due to "non-sufficient funds". One of these declined transactions was for *an*
20 *amount under \$9.00*. Copies of VC PayPal emails detailing these transactions are attached
21 hereto collectively as Exhibit "N" and incorporated herein by this reference.

22 **BREACH OF PRE-FREEZE-OUT AGREEMENTS BETWEEN**
23 **VAMPYRE AND HOLTON**

24 34. Defendants have breached their promises to make monthly payments to reduce the
25 company debt owing on VC's American Express and Capital on Tap accounts, for which I am
26 sole guarantor. As a result, I entered into payment plans with both financial institutions.
27 Pursuant to those plans, I am paying out of my own pocket for all the VC expenses charged to
28 both these cards by Defendants, as well as many personal charges made by Boese. (See Exhibit

1 "E" p.2-3). As a result of this I no longer have access to three of my personal lines of credit with
2 American Express in addition to the business credit lines.

3 35. Defendants breached their promise to repay the sum of \$75,497.28 that I lent to the
4 Company pursuant to the promissory note. I have not received a single payment, contrary to the
5 assurances of Boese (See Exhibit "D").
6

7 36. As of the date of this declaration, I am informed and believe that Boese has been
8 attempting to cancel scheduled monthly payments to two separate credit lines that are also in my
9 name, namely Chase Sapphire and Capital One.
10

THEFT OF INTELLECTUAL PROPERTY

12 37. During this dispute Defendants accessed my personal Microsoft OneDrive account,
13 obtained my designs and manufactured them without my consent. VC has produced and
14 continues to sell hundreds of these products without my consent and without compensating me.
15 True and correct copies of the "Spirit Board Palette" and "Dracula Book Palette" VC product
16 webpages as well as screenshots of my adobe illustrator design files for both products and a
17 promotional VC email are attached hereto collectively as Exhibit "O" and incorporated herein by
18 this reference.

19 38. I designed most of the cosmetics on the Vampyre Cosmetics website
20 (www.vampyrecosmetics.com), as well as 100% of the consumer-facing product images the VC
21 uses to help sell these products. Defendants continue to profit from my intellectual property
22 while refusing to pay VC's debt to me and as well as its other creditors.
23

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed this 14th day of February, 2024, at San Jose, California.
27



Karen Holton