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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – POMONA SOUTH DISTRICT

KAREN HOLTON, an individual,

Plaintiff.

v.

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

Defendants.

Case No.: 24PSCV00381

**NOTICE OF MOTION AND MOTION
FOR APPOINTMENT OF RECEIVER
FOR VAMPYRE COSMETICS, LLC;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

**[DECLARATIONS OF KAREN
HOLTON AND KEVIN SINGER FILED
CONCURRENTLY]**

Hearing Date: April 15, 2024
Time: 10:00 a.m.
Dept.: O
Judge: Hon. Christian R. Gullon

Reservation ID: 626903781162

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE THAT on April 15, 2024, at 10:00 a.m., or as soon thereafter
as the matter may be heard in Department O of the above-entitled court, located at 400 Civic
Center Plaza, Pomona, California, Plaintiff Karen Holton (“Holton”) will move the Court for an
order appointing receiver Kevin Singer to take possession of, service and

1 preserve the assets, and prevent further waste and depletion of Plaintiff's assets for Vampyre
2 Cosmetics, LLC.

3 This Motion is made pursuant to California Code of Civil Procedure section 564 on the
4 grounds that Defendants have engaged in fraud and gross mismanagement of the Vampyre
5 Cosmetics, LLC as shown more particularly in the attached Declaration of Plaintiff Karen
6 Holton, by engaging in the following acts, *inter alia*: Defendants are defaulting on credit
7 obligations owed by Vampyre Cosmetics, manipulating financial accounts connected with the
8 company, failing to fill customer orders and respond to customer complaints despite collecting
9 money from product sales, diverting income from sales to unrelated third parties, and have
10 misappropriated Plaintiff's identity and credit card information without Plaintiff's knowledge
11 and consent for business and personal expenses, paid themselves salaries in breach of the
12 company's Operating Agreement, and blocked Plaintiff from access to Vampyre Cosmetics bank
13 accounts and emails. By engaging in these and other acts as shown more particularly in these
14 moving papers, Defendants have put the company at risk of irreparable damage. A receivership
15 is necessary to protect the company as well as its creditors, innocent third parties, customers, and
16 Plaintiff.

17 This Motion is based upon this notice, the attached Memorandum of Points and
18 Authorities, the attached Declarations of Karen Holton and receiver Kevin Singer, the Court's
19 entire file, and any further oral and documentary evidence as may be presented at the time of the
20 hearing.

21
22 Respectfully submitted,
23 GARDNER + ASSOCIATES

24
25 DATED: February 15, 2024

//s Jennifer B. Gardner

26 _____
27 Jennifer B. Gardner
28 Attorney for Plaintiff Karen Holton

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 **A. Brief Factual Summary**

4 This dispute begs for the appointment of a receiver to take over possession, operation and
5 control of Vampyre Cosmetics, LLC (herein referred to sometimes as “Vampyre” and/or the
6 “Company”)) due to the fraud and gross mismanagement being waged primarily by the
7 company’s founder and 37.5% owner, Defendant Rachel Boese aka Clinesmith (hereinafter,
8 “Boese” or “Defendant”). *C.C.P.* §564(b)(1)

9 Plaintiff Karen Holton (hereinafter “Plaintiff”) presently owns 37.5% of Vampyre. She
10 joined Vampyre in July of 2022 as managing partner, and then stepped into the role of Chief
11 Operating Officer. In March of 2023 Lisa Malcolm (“Malcolm”), the Company’s publicist,
12 joined as the third member with a 25% membership interest.

13 In June of 2023, without prior explanation or notice, Defendants Boese and Malcolm
14 (referred to herein sometimes collectively as “Defendants”) removed Plaintiff from access to her
15 business email and to Vampyre’s business checking account, denied Plaintiff from full access to
16 Quickbooks, and manipulated the ownership of the Vampyre PayPal Account that Plaintiff had
17 set up for Vampyre in her name. (Holton Decl., ¶ 3)

18 Defendants then began a campaign of gross mismanagement and fraud that is damaging
19 Vampyre and Plaintiff personally, consisting of the following:

- 20 1. Defendant Boese has used Plaintiff’s personal information (social security
21 number, date of birth, U.S. passport card and California drivers’ license) to obtain
22 new loans for the Company totaling \$53,000 in Plaintiff’s name, *without*
23 Plaintiff’s prior authorization, knowledge or consent. Plaintiff is concerned
24 Defendant may also be stealing the identity of unknown third parties to access the
25 funds to run the Company. (See Holton Decl., ¶¶ 3,4).
26 2. Defendant Boese has diverted funds from the “stolen” loans taken out in Holton’s
27 name to unknown debit card accounts, and the Company’s 1CB business checking
28 account. (See Holton Decl., ¶ 25)

3. Defendant Boese has diverted a substantial portion of funds that Vampyre receives from website sales to a **non-Vampyre related business** that she owns, known as “Undead Magazine.” (See Holton Decl., ¶ 26(a))
4. Defendant Boese has paid herself both a salary and distribution in breach of the Company’s operating agreement. (See Holton Decl., ¶¶ 26(b,d))
5. Defendant Boese has paid Defendant Malcolm for attorneys’ fees and for public relations services in breach of her agreement to render these services in exchange for her 25% interest in Vampyre. (See Holton Decl., ¶ 26(d))
6. Defendant Boese has made approximately 5,400 transactions on Plaintiff’s PayPal account since adding Holton’s name back as the owner of the account, yet Vampyre has failed to ship pre-orders for products purchased by customers, to communicate with customers, and to address customer complaints. This jeopardizes the reputation and viability of the Vampyre Cosmetics. (See Holton Decl., ¶¶ 21, 23)
7. Defendants are using Plaintiff’s intellectual property and product designs without her consent or without compensation. (See Holton Decl., ¶¶ 31, 32)
8. Defendants have defaulted on credit obligations owed by Vampyre to Plaintiff that pre-dated Plaintiff’s exclusion from the business, and failed to pay creditors who extended credit to Vampyre based on Holton’s name and identity. (See Holton Decl., ¶¶ 3(c), 14, 24, 30)

This pattern of fraud and gross mismanagement demonstrates a compelling need for a receivership. Defendant Boese has stolen the identity of Plaintiff to obtain loans in her name, used the funds to pay herself, Defendant Malcolm, unrelated businesses and non-Vampyre

1 expenses. Most troubling is the failure to fill customer orders despite collecting money from
2 product sales. If allowed to continue operating Vampyre, there is nothing to stop Boese from
3 continuing this misconduct which will only result in damage to the Company and to innocent
4 third parties..

5
6 A receiver is necessary to prevent fraud upon the public, potential third parties, and
7 creditors (including Plaintiff) alike as a consequence of the nefarious conduct of Defendants.
8 Having a neutral third party inside Vampyre making rational business decisions is the only way
9 to preserve this fledgling business that has so much potential.

10 **B. The Relationship Between the Members of Vampyre Cosmetics LLC**

11 Vampyre Cosmetics LLC is a California Limited Liability Company with its principal
12 place of business in the County of Los Angeles, State of California. Vampyre’s primary
13 business consists of the wholesale and ecommerce sale of cosmetics and the provision of white
14 label services. It was established by Defendant Boese in 2019.

15
16 Defendant Boese is the founder of Vampyre. In July of 2022, Plaintiff Holton joined
17 Vampyre in the role of “Managing Partner,” and soon thereafter assumed the role of Chief
18 Operating Officer (“COO”). (See Holton Decl., ¶ 7) in March, 2023 Defendant Malcolm joined
19 Vampyre . At that time membership interest in the company was distributed, and remains, as
20 follows: Boese has 37.5%, Holton has 37.5% and Malcolm has 25% . (See Holton Decl., ¶ 6)

21
22 When Holton first joined Vampyre in 2022, the Company was struggling financially and
23 its then sole member, Boese, needed funds and access to credit to keep Vampyre afloat. Holton
24 had excellent credit and access to capital. Defendants seized upon this opportunity by using
25 Holton’s credit and credit access to pay Company expenses. (See Holton Decl., ¶¶ 8, 9)

26
27 In her role as COO of Vampyre, Holton was responsible for managing business
28 expenditures, product creation, copywriting, graphic design, branding, sourcing of products,

1 packaging design and fulfillment relations. She helped Vampyre quickly evolve from a
2 “business-to-business” to a “business-to-consumer” company. (See Holton Decl., ¶ 10)

3 Due to Defendant Boese’s financial issues, Plaintiff lent Vampyre the use of her credit to
4 pay Vampyre expenses, in exchange for Vampyre’s promise to repay, as affirmed by Boese.
5 Boese signed Promissory Notes in which Vampyre agreed to repay the funds advanced by
6 Plaintiff. (See Holton Decl., ¶ 14)

7 Defendants Boese and Malcolm also encouraged Plaintiff to lend them still more money
8 using Company lines of credit on which Holton was the sole guarantor. They then ousted her
9 after repeatedly promising that Vampyre would repay her.. (See Holton Decl., ¶ 16)

10 ***Defendants broke every promise they made to repay both the promissory notes and***
11 ***credit lines guaranteed by Plaintiff before they kicked her out of Vampyre.***

12 Plaintiff trusted her co-members to be honest and ethical. They turned out to be anything
13 but, as they have grossly betrayed her. (See Holton Decl., ¶¶ 3,4)

14 **C. There is Substantial and Compelling Evidence of Gross Mismanagement and**
15 **Fraud by Defendants**

16 **1. Defendants’ Abuse of the Operations and Governance of Vampyre Cosmetics,**
17 **LLC Post-Excluding Plaintiff**

18 On or about June 25, 2023, Defendants Boese and Malcolm froze Plaintiff out of
19 Vampyre by removing her access to the business checking account at 1st Century Bank (“1CB”),
20 revoking her access to viewing Vampyre’s financial data in Quickbooks, and depriving her from
21 access to Vampyre email and chat. Defendants took these actions unilaterally in violation of the
22 Operating Agreement, without voting, and without Plaintiff’s prior knowledge or consent.
23 Thereafter, despite demand being made, Defendants and each of them failed and refused to
24 provide Holton access to the Company books and financial records, yet they continue to profit
25 from using Holton’s personal identity and intellectual property in order to produce product, make
26 sales and obtain credit for Vampyre in Plaintiff’s name. (See Holton Decl., ¶ 3)

27 ///

28 ///

Boese has paid Malcolm from Company funds for her attorneys' fees and public relations services, even though Malcolm agreed to provide public relations services in exchange for her 25% membership interest and later resigned from the Company. (See Holton Decl., ¶ 26(d))

2. Mismanagement Due To Failure to Pay Creditors

In 2022, Plaintiff made personal loans to Vampyre totaling \$75,497.28. On or about March 31, 2023, Boese signed a promissory note on behalf of Vampyre in which Vampyre agreed to repay those loans by making monthly payments of \$964.73 to Plaintiff, commencing June 9, 2023. (See Holton Decl., ¶ 14 and Exhibit D thereto.) However, Plaintiff has never received a payment. Defendants have failed and refused to make payments toward those notes. (Holton Decl., ¶ 14) Additionally, Plaintiff obtained two lines of credit for Vampyre expenses on which she is sole guarantor – one through American Express Business Platinum and the other through Capital On Tap. However, between July of 2022 and June 25, 2023, Defendants Boese and Malcolm charged approximately \$54,000, adding to the existing company balances on these cards, until they were “maxed out.” They have since failed and refused to make payments to reduce the debt. This has forced Plaintiff to make payments from her personal funds. (See Holton Decl., ¶ 16)

Prior to being frozen out, Plaintiff became a signatory on Vampyre's business checking account at First Century Bank (hereinafter referred to as “1CB”) and obtained a PayPal account for use by Vampyre in Plaintiff's name. (See Holton Decl., ¶ 12 and Exhibit C thereto.) Boese could not create an account with PayPal because Boese had been “banned for life” by PayPal from using its platform. (See Holton Decl., ¶ 9)

After June 25, 2023, Defendants removed Plaintiff from the 1CB account without prior notice to Plaintiff. Also, without Plaintiff's knowledge or consent, Boese has removed Plaintiff from the PayPal account and then added her back on as the owner of the account. (See Holton Decl., ¶ 28) She has done this in connection with seeking various loans using Plaintiff's protected personal information (date of birth, social security number, California drivers' license

1 and USA Passport card hereinafter referred to as “Holton’s Personal Information”). (See Holton
2 Decl., ¶¶ 3(b), 29)

3 **3. Fraudulent Use of Plaintiff’s Personal Identity To Obtain Credit for Vampyre**

4 Between October 2023 and December 2023, Boese has stolen Plaintiff’s identity by using
5 Plaintiff’s Personal Information and Company email address to obtain business loans for
6 Vampyre in Plaintiff’s name without prior authorization, knowledge or consent, which include,
7 potential *inter alia*, the following:

- 8 a. \$15,000 PayPal Capital Loan applied for and obtained on October 22, 2023;
9 b. \$15,000 Onramp Funds Capital (“Onramp”) Loan on November 14, 2023;
10 c. \$23,000 PayPal Capital Loan on December 19, 2023;

11 (See Holton Decl., ¶¶ 22, 29)

12 The proceeds from these loans have been transferred to unknown debit cards and into the
13 Company’s 1CB bank account which Plaintiff has been removed from. Further, Defendants
14 have defaulted on these loans with one in collections. (See Holton Decl., ¶¶ 24, 25 and Exhibits
15 G and H, respectively.)

16 **4. Diverting Funds to Undead Magazine**

17 Defendants Boese and Malcolm have engaged in various acts of self-dealing, including
18 but not limited to the following:

19 a. Boese has diverted all incoming Vampyre PayPal funds to an Undead Magazine
20 PayPal account. (Undead Magazine is an unrelated business owned by Boese). (See Holton
21 Decl., ¶¶ 24,30)

22 b. Boese has paid herself a distribution of \$38,976.62 in violation of the Vampyre
23 Operating Agreement. (See Holton Decl., ¶ 26(b))

24 c. Upon Malcolm’s resignation from Vampyre on August 23, 2023, Malcolm stated
25 that she would *no longer provide public relations services* to the Company, yet she still retains
26 her 25% membership interest in Vampyre.

1 d. In September of 2023, Malcolm received Vampyre funds for her attorney's fees
2 and public relations services, even though Malcolm had resigned from the Company and was in
3 breach of her obligation to provide public relations services for Vampyre. (See Holton Decl.,
4 ¶26(d), Exhibit I and K.)

5 e. In November of 2023, Vampyre paid Malcolm still more money care of Lynk PR
6 for public relations services. (See Holton Decl., ¶ 26(c,d) and Exhibit K thereto)

7 **5. Defendants' Nefarious PayPal Account Activity and the Removal of Plaintiff**

8 During Plaintiff's investigation of the unauthorized charges to her credit cards, she was
9 informed by a PayPal representative that charges were made from the Vampyre PayPal and that
10 Plaintiff was the account holder. Unbeknownst to Plaintiff, Boese and Malcolm were using
11 Plaintiff's personal information, but linked their own contact information to the account. (See
12 Holton Decl., ¶¶ 27,28)

13 Further investigation and communication with PayPal representatives revealed the
14 following:

15 a. On June 25, 2023, Plaintiff was removed from the Vampyre PayPal and replaced
16 by Malcolm.

17 b. On August 30, 2023, Malcolm was removed from the Vampyre PayPal and
18 replaced by Boese's domestic partner Joseph Keens as the new account holder.

19 c. On October 22, 2023, Keens was removed from the Vampyre PayPal and Plaintiff
20 was added back as the account holder without her knowledge or consent.

21 d. On October 22, 2023, without Plaintiff's knowledge or consent, a \$15,000
22 Vampyre PayPal Capital Loan was taken out under Plaintiff's name. The \$15,000 funds were
23 transferred to Vampyre's account at 1CB. The loan was repaid on December 13, 2023.
24 (See Holton Decl., ¶ 29).

25 e. On December 19, 2023, without Plaintiff's knowledge or consent, a second \$23,000
26 PayPal Capital Loan was taken out under Plaintiff's name. The \$23,000 funds were transferred to
27 an undisclosed debit card. (See Holton Decl., ¶¶ 29,30).
28

Boese and Malcolm used the limited liability form and setup of Vampyre, to perpetuate a fraud, circumvent statutes, and/or accomplish some other wrongful or inequitable purpose to harm Plaintiff. Boese and Malcolm dominated, controlled, and used Vampyre as a mere shell and conduit for their own purposes and profit. Boese has failed to follow corporate formalities, and used Vampyre as a shell for her own ventures and personal expenses.

Boese and Malcolm repeatedly used Plaintiff's name and identity to obtain credit. Thereafter, they failed to communicate with Plaintiff or account to her charges made in her name to various creditors, and refused to comply with Plaintiff's requests for demands to repay the debt. (See Holton Decl., ¶¶ 3,28).

6. Theft of Plaintiff's Intellectual Property

In addition to stealing Plaintiff's identity and bank accounts, Defendants have used Plaintiff's product and packaging designs without her consent by tapping into a "cloud service" that belonged wholly to Plaintiff. Since freezing Plaintiff out of the company, Boese and Malcolm have used her designs to produce hundreds of products that Vampyre is selling without her consent and without compensation. They continue to profit from Plaintiff's intellectual property while refusing to pay its bills for which Holton is guarantor. (See Holton Decl., ¶ 31,32)

Boese and Malcolm engaged in deceptive and fraudulent business practices and violated numerous laws governing the making of loans and credit transactions. Allowing them to escape liability for their wrongdoing would allow them to be financially enriched by their misconduct.

7. Failure to Fill Orders for Vampyre Customers

Boese continued to use Plaintiff's identity and credit cards without her consent or authorization. Between December 13, 2023, and January 1, 2024, Boese made nine unauthorized charges totaling \$26,231.27 to Plaintiff's personal credit cards. (See Holton Decl., ¶ 20) Plaintiff disputed these charges only to later find out they were made on behalf of Vampyre, the majority transacted through the Vampyre PayPal Account. Some of these charges were for product runs. Plaintiff is concerned that Vampyre will not be able to fill the demand (and orders) for products, resulting in customer complaints. (See Holton Decl., ¶ 21) Indeed, customer complaints are on the rise due to Boese's failure to communicate with customers, which is causing reputational

1 harm to the Company. Moreover, Plaintiff is financially responsible for the customer orders
2 placed through the PayPal Account, as she is the “owner” of the account. (See Holton Decl., ¶
3 23) Thus, while Plaintiff is responsible for paying the customer disputes, she is unable to do so
4 because Boese has diverted incoming funds to a completely different business. (See Holton
5 Decl., ¶ 23)

6 **II. ARGUMENT**

7 **A. Legal Standard for Appointment Receiver**

8 Receivership is a centuries-old remedy used by courts of equity “to assure neutral control
9 of property in which the litigants have an interest in order to preserve and maintain the property
10 and any rights of persons in the property pending a judgment in the litigation” and is “ordinarily
11 intended to protect and preserve the property . . . until the rights of the parties can be
12 determined.” (Miller & Starr, 12 Cal. Real Est. (4th Ed. 2021) § 41:1 [citing Cal. Rules of Court,
13 rule 3.1179; Code Civ. Proc. (“C.C.P.”), § 564]. Receivers are appointed for the benefit of all
14 stakeholders who have an interest in the property under court control, not merely the applicant.
15 (Cal. Rules of Court 3.1179, subd. (a).) In this case, the “property” involves the business assets
16 and goodwill of Vampire.

17 The Court may appoint a receiver at the request of owners or creditors of a business
18 where the applicant demonstrates that material injury could befall business assets unless the
19 court exercises neutral control. C.C.P. §564(b)(1) provides that “[a] receiver may be appointed
20 by the court . . . [i]n an action . . .between partners or others jointly owning or interested in any
21 property or fund or interested in any property or fund . . . where it is shown that the property or
22 fund is in danger of being lost, removed, or materially injured.” C.C.P. §564(b)(5) provides that
23 a receiver may be appointed “[w]here a corporation has been dissolved, as provided in Section
24 565.” C.C.P. §564(b)(6) provides that a receiver may be appointed “[w]here a corporation is
25 insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.” C.C.P.
26 §564(b)(9) is a catchall provision which provides that a receiver may be appointed “[i]n all other
27 cases where necessary to preserve the property or rights of any party.”
28

1 The appointment of a receiver is a provisional equitable remedy. The receiver's role is to
2 preserve the status quo between the parties while litigation is pending. (*Southern California*
3 *Sunbelt Developers, Inc. v. Banyan Limited Partnership* (2017) 8 Cal.App.5th 910, 925, 214 Cal.
4 Rptr. 3d 719.) Further, it is "an ancillary remedy which does not affect the ultimate outcome of
5 the action." (*Ibid.*)

6 To invoke the authority of the court to appoint a receiver under section 564, subdivision
7 (b)(1), the plaintiff must establish by a preponderance of the evidence a "joint interest with [the]
8 defendant in the property; that the same was in danger of being lost, removed or materially
9 injured, and that plaintiff's right to possession was probable." (*Alhambra-Shumway Mines, Inc. v.*
10 *Alhambra Gold Mine Corp.* (1953) 116 Cal.App.2d 869, 873, 254 P.2d 599.)

11 Importantly, "[t]he trial court on the motion for receivership is not required to determine
12 the ultimate issues involving the precise relationship of the parties. At this stage of the
13 proceedings, nothing more than a probable joint or common interest in the property concerned
14 need be shown." *Maggiora v. Palo Alto Inn, Inc.*, (1967) 249 Cal.App.2d 706, 711.

15 Plaintiff's attached declaration abundantly demonstrates by a preponderance of the
16 evidence Plaintiff's joint interest in the business of Vampyre and its danger of being lost and
17 materially destroyed due to the abuse of authority and unfairness of Defendants Boese and
18 Malcolm. Therefore, the Court should appoint a receiver.

19 **B. All Traditional Factors That Support the Appointment of a Receiver Over the**
20 **Business Are Present In This Case**

21 The trial court has extraordinarily broad discretion in determining whether a receiver
22 should be appointed, based on the facts of the case before it, and no one factor is determinative.
23 *See Armbrust v. Armbrust* (1946) 75 Cal.App.2d 272, 275–276. There are a number of
24 traditional factors upon which courts have relied in appointing receivers, which are analyzed
25 below. Each of these factors, standing alone, would be sufficient grounds for the appointment of
26 a receiver. When taken together, the case for an appointment here is ironclad.
27
28

1 **1. The Company is Experiencing Profound Dysfunction**

2 Equity jurisprudence has long provided that business strife and breakdown of leadership
3 should weigh heavily in a court’s decision whether to appoint a receiver over a business. (*Boyle*
4 *v. Superior Court of City and County of San Francisco* (1917) 176 Cal. 671, 672 [evidence that
5 four member board was divided and no decisions could be made by Board sufficient to appoint
6 receiver even where no evidence of fraud: “the court based its decision solely upon the fact that
7 dissensions existed between the two factions which had brought the affairs of the company to a
8 deadlock ‘so far as any corporate action by the board of directors is concerned.’”

9 In this matter, it is beyond dispute that there is a total breakdown of leadership with
10 respect to the company, as Boese, a 37.5% owner, unilaterally froze out an equal owner,
11 Plaintiff. Boese and Malcolm denied Plaintiff the ability to participate and cut off her access to
12 company information such as emails, accounts receivable ledgers, accounts payable ledgers, and
13 bank accounts. Boese has refused to cooperate in any way and continues to use Plaintiff’s
14 personal information and funds without her consent. Boese has been draining all of Vampyre’s
15 accounts and obtaining new loans in Plaintiff’s name without Plaintiff’s prior authorization,
16 knowledge or consent. (See Holton Decl., ¶ 3) Moreover, Boese diverted a substantial portion of
17 funds received from these loans to another non-Vampyre related business that she wholly owns,
18 known as “Undead Magazine.” (See Holton Decl., ¶¶ 26(a),30)

19 Thus, Boese has hijacked Vampyre and is acting solely out of self interest, without regard
20 to those of her partner or customers. This factor supports the appointment of a receiver.

21 **2. Defendant is not paying its Creditors, which is a Badge of Insolvency**

22 Insolvency is a factor weighing heavily in favor of the appointment of a receiver, and has
23 long been relied on by courts as clear evidence of potential irreparable harm sufficient to grant a
24 provisional remedy such as a receiver: *California Retail Portfolio Fund GMBH & Co. KG v.*
25 *Hopkins Real Estate Group* (2011) 193 Cal.App.4th 849, 858 [“Second, ‘irreparable harm’
26 includes the concepts of insolvency and the inability to pay a damage award” and finding that
27 insolvency was a basis for a finding of irreparable harm in provisional remedies (receivership)
28 context].) While a receiver may certainly be appointed over a solvent concern, as noted above,

standards for appointment are relaxed where it is demonstrated that the business is insolvent.

“The term “insolvency” has two generally accepted definitions: (1) where there is an excess of liabilities over assets; and (2) where one is unable to meet his obligations as they mature in the ordinary course of business. In the absence of a controlling statutory definition, the second definition is preferred.” (Emphasis added). (*California Retail Portfolio, supra*, 193 Cal.App.4th at pp. 859–860; Statements made by corporate representatives regarding inability to pay amounts due are strong evidence of insolvency. (*California Retail Portfolio, supra*, 193 Cal.App.4th at pp. 859–860.)

As noted above, Boese has taken multiple loans using Plaintiff’s personal information and has not repaid them. (See Holton Decl., ¶ 22) Further, Boese has failed to meet orders of paying customers, drained the account, and missed scheduled outgoing payments due to a lack of funds in the account.(See Holton Decl., ¶¶ 21,32,33)

Since Boese is not paying the debts of Vampyre when they become due, she is demonstrating Vampyres inability to meet its obligations in the ordinary course of its business. (*Id.*)These facts support the inference that Vampyre Cosmetics, LLC either is or is about to be insolvent, justifying the appointment of a receiver to clawback the funds wrongfully taken by Defendants in order to pay creditors.

3. Defendants have Engaged in Gross Mismanagement and Self-Dealing

Mismanagement is another traditional and obvious hallmark counseling toward the appointment of a receiver. “[I]t is well established that a court of equity has inherent power to appoint a receiver at the request of a stockholder on the grounds of fraud and mismanagement or where, because of dissension on the board, it cannot properly function.” *Koshaba v. Koshaba*, (1942) 56 Cal. App.2d 302, 314.

The facts set forth in the Holton Declaration and the documentary evidence attached thereto show fraud, mismanagement and dissension amongst the members prohibiting the proper functioning of Vampyre.

1 The evidence unmistakably shows that the wrongful conduct towards Plaintiff committed
2 by Boese and Malcolm evinces dissension in addition to fraud and mismanagement. What other
3 conclusion can be drawn from freezing out a 37.5% member without notice, failing to pay
4 creditors and claims, failing to ship product, and diverting Vampyre's income to an unrelated
5 enterprise and stealing the identity of a member post-ouster to finance these illegal activities?
6 (See Holton Decl., ¶¶ 3, 4)

7 Boese's conduct is scorched-earth fraud and mismanagement without regard for its
8 members, its creditors or Vampyre's reputation. The Court should appoint a receiver to take
9 control of this enterprise before further harm results.

10 **4. The Appointment of Experienced Receiver Kevin Singer Would Confer an**
11 **Enormous Benefit for Third Party Creditors and Customers**

12 Finally, courts should also consider whether the appointment of a receiver would confer a
13 benefit. "The receiver is an agent of the court and not of any party, and as such: (1) is neutral;
14 (2) acts for the benefit of all who may have an interest in the receivership property; and (3) holds
15 assets for the court and not for [any party]." (Cal. Rules of Court, Rule 3.1179(a); *see Lesser &*
16 *Son v. Seymour* 35 Cal.2d 494, 499 (1950).

17 A neutral third party must step in to stop the mismanagement and fraudulent conduct
18 here. Were this Court to appoint Kevin Singer, the receiver proposed by Plaintiff, these issues
19 would be resolved.

20 Mr. Singer has a remarkable industry pedigree for State and Federal Court Receiverships,
21 Referee Assignments, Partition Sales, Provisional Director Assignments, Professional Trustee
22 Assignments and Bankruptcy Trustee Assignments for the last 22 years. (Singer Decl. ¶ 3.)

23 Mr. Singer has run many successful businesses over the years, and has been appointed by
24 the Los Angeles Superior Court over scores of businesses during the past two decades. (*Id.* ¶ 3.)

25 If appointed, Plaintiff proposes that Mr. Singer move quickly to preserve the assets of
26 Vampyre, to report to this Court regarding the financial state of Vampyre, and to present the
27 Court with the best manner in which to resolve the self-dealing and mismanagement of
28 Defendants. Additionally, Plaintiff believes that the Receiver will be able to quickly determine

whether fraudulent transfers or other financial misconduct has occurred.

A receiver should be able to move quickly, take stock of Vampyre's financial condition, and potentially claw back misappropriated assets for the benefit of Vampyre's customers and creditors with the authority of this Court. An adult in the form of a receiver is needed at the helm of Vampyre Cosmetics, LLC to immediately ensure that all creditors and customers are protected.

III. CONCLUSION

Grounds for the immediate appointment of a receiver exist to prevent Boese from further defrauding Plaintiff and Vampyres' customers and creditors alike, from mismanaging the business, from damaging the business's reputation by failing to fill orders and communicate timely with customers, and from defaulting on various loans taken out in Plaintiff's name for the benefit of Vampyre. If Defendants' nefarious conduct continues, Vampyre is at risk of having its reputation – and very business – be damaged irreparably.

The appointment of a receiver over Vampyre is necessary to protect the interests of Plaintiff, creditors, and customers; therefore, Plaintiff respectfully requests that the Court grant her Motion.

DATE: February 16, 2024

GARDNER + ASSOCIATES

/s/ Jennifer B. Gardner

Jennifer B. Gardner
Attorneys for Plaintiff
KAREN HOLTON



Court Reservation Receipt

Reservation	
Reservation ID: 626903781162	Status: RESERVED
Reservation Type: Motion re: (Appointment of Receiver)	Number of Motions: 1
Case Number: 24PSCV00381	Case Title: KAREN HOLTON vs VAMPYRE COSMETICS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, et al.
Filing Party: KAREN HOLTON (Plaintiff)	Location: Pomona Courthouse South - Department O
Date/Time: April 15th 2024, 10:00AM	Confirmation Code: CR-HNJFTV6CHDQHWZUNR

Fees			
Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment	
Amount: \$61.65	Type: Visa
Account Number: XXXX9578	Authorization: 053148
Payment Date: 2024-02-12	

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