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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – POMONA COURTHOUSE

KAREN HOLTON,

Plaintiff.

v.

VAMPYRE COSMETICS, LLC, a California
Limited Liability Company; RACHEL
BOESE aka RACHEL CLINESMITH; and
LISA MALCOLM, and DOES 1-100,
inclusive,

Defendants.

Case No.: 24PSCV00381

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF:**

- 1. BREACH OF CONTRACT –
OPERATING AGREEMENT**
- 2. BREACH OF PROMISSORY
NOTE**
- 3. BREACH OF FIDUCIARY
DUTY**
- 4. BREACH OF IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING**
- 5. FRAUD**
- 6. CONVERSION**
- 7. UNLAWFUL AND UNFAIR
BUSINESS PRACTICES (CAL
B&P § 17200)**
- 8. MONEY LENT**
- 9. ACCOUNT STATED**
- 10. UNJUST ENRICHMENT –
CONSTRUCTIVE TRUST**
- 11. PRELIMINARY AND
PERMANENT INJUNCTIVE
RELIEF**
- 12. DECLARATORY RELIEF**

COMES NOW PLAINTIFF KAREN HOLTON, who complains and alleges as follows:

I. THE PARTIES

1. Plaintiff Karen Holton (“Holton”) is and all times mentioned herein was an individual who has resided in the County of Santa Clara, State of California, and she is a 37.5% owner of Vampyre Cosmetics, LLC.

2. Defendant Rachel Boese aka Rachel Clinesmith (“Boese”) is and at sometimes mentioned herein was a resident of the County of Los Angeles, State of California. Plaintiff is informed and believes and based thereon alleges that Boese has recently relocated to and is living in New Orleans, Louisiana. Boese is the founding member of Vampyre and has a 37.5% interest in the Company.

3. Defendant Lisa Malcolm (“Malcolm”) is, and at all times herein mentioned was, a resident of the County of Los Angeles, State of California. Malcolm is a member of Vampyre and has a 25% membership interest in the Company. Malcolm acquired her interest in consideration for public relations services that she agreed to provide through her company Lynk Public Relations.

4. Defendant Vampyre Cosmetics, LLC, (referred to herein as “Vampyre” and/or the “Company”) is, and at all times herein mentioned was, a California Limited Liability Company with its principal place of business in the County of Los Angeles, State of California. Vampyre’s primary business consists of the ecommerce and wholesale sale of cosmetics and the provision of white label services.

5. Plaintiff is ignorant of the true names of defendants DOES 1 to 20, inclusive, and have therefore sued them by the foregoing names which are fictitious, and on information and belief, alleges that each of said defendants is responsible in some manner for the events and happenings referred to herein, and legally caused the injuries and damages alleged in this Complaint. Plaintiff will seek leave of the Court to amend this Complaint to allege their true names and capacities when ascertained.

1 6. On information and belief, Plaintiff alleges that at all relevant times, Defendants,
2 and each of them, were and are the authorized agents, servants, employees, joint venturers,
3 partner, principal, instrumentalities, alter egos, representatives and co-conspirators, actual or
4 ostensible, of all the other Defendants and each of them, and had the full authority to do as
5 alleged herein, unless alleged otherwise. On information and belief, Plaintiff alleges that each of
6 the acts of Defendants as alleged herein are within the course and scope of the aforementioned
7 agency, employment and conspiracy at the advice, order, instruction, direction and control of each
8 of the other Defendants, and with the consent and ratification of their co-Defendants, and are
9 responsible for Plaintiff's damages.

10
11 7. Each allegation made against the named Defendants named herein includes a
12 reference to each of the fictitiously named Defendants.

13 **II. GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

14 8. Plaintiff Holton joined Vampyre in July 2022 in the role of "Managing Partner,"
15 and soon thereafter assumed the role of Chief Operating Officer ("COO"). Soon after joining as a
16 member of Vampyre and making her initial investment, Holton's 36% interest in the Company
17 was increased to 50%, and then subsequently reduced to 37.5% when Malcolm became a 25%
18 member in March of 2023.

19
20 9. When Holton first joined Vampyre, the company was struggling financially and its
21 then sole member, Defendant Boese, needed funds and access to credit to keep Vampyre
22 afloat. Holton had excellent credit and access to capital. Defendants seized upon this opportunity
23 by using Holton's credit and credit access to finance Company expenses.

24 10. In her role as COO of Vampyre, Holton was responsible for managing business
25 expenditures, product creation, copywriting, graphic design, branding, sourcing of products,
26 packaging design and fulfillment relations. She helped Vampyre quickly evolve from a
27 "business-to-business" to a "business-to-consumer" company.

28 11. Between July of 2022 and June 25, 2023, Holton developed several products and

1 designed unique packaging for potential use by the Company that she is the sole copyright owner
2 of.

3 12. In 2022, Holton made personal loans to Vampyre totaling \$75,497.28. On or
4 about March 31, 2023, Boese signed a promissory note in which she agreed on behalf of
5 Vampyre to repay those loans by making monthly payments of \$964.73 to Holton, commencing
6 June 9, 2023. Defendants have failed and refused to make payments towards those notes.
7

8 13. Soon after joining Vampyre, Holton became a signatory on Vampyre's business
9 checking account at First Century Bank (hereinafter referred to as "1CB") and obtained a PayPal
10 account for use by Vampyre in Holton's name (the "VC PayPal Account"), because Boese had
11 been "banned for life" by PayPal from using its platform.

12 14. Upon joining Vampyre, Holton agreed to allow Defendants to use her credit in
13 reliance upon the promises of Boese and Malcolm and each of them, to make monthly payments
14 in accordance with the terms and conditions of those accounts. Between July of 2022 and June
15 25, 2023, Boese, Malcolm and Vampyre used Holton's American Express and Capital One credit
16 lines until they were "maxed out," however, contrary to their promises and representations, they
17 have failed and refused to make payments to reduce the debt.

18 15. On or about June 25, 2023, Defendants and each of them froze Plaintiff Holton out
19 of Vampyre by removing her access to the business checking account at 1st Century Bank
20 ("1CB"), revoking her access to viewing Vampyre's financial data in Quickbooks, and cutting off
21 her access to Vampyre email and chat. Defendants took these actions unilaterally without
22 Holton's prior knowledge or consent. Thereafter, despite demand being made, Defendants and
23 each of them have failed and refused to provide Holton access to the Company books and
24 financial records.
25

26 16. After removing Holton's access to Company information as alleged herein,
27 Defendants have engaged in a campaign of gross mismanagement, fraud, and violations of the.
28

17. Operating Agreement. They have breached their promises to repay lines of credit

1 that Holton obtained for Vampyre, stolen her personal information to take new loans with her as
2 sole guarantor, and then breached the agreements of the new loans. They have stolen Holton's
3 intellectual property to manufacture new products and increase product sales.

4 18. On or about June 25, 2023, without vote, notice or explanation, Defendants
5 removed Holton from the 1CB account without prior notice to Holton, denied Holton the ability
6 to see all financial activity in Quickbooks, and cut off her access to her company email account.
7 Without Holton's prior authorization and consent, Defendant Boese has removed Holton from the
8 PayPal account and then added her back on when applying for various loans using Holton's
9 personal information (date of birth, social security number, California drivers' license and USA
10 Passport card [hereinafter referred to as "Holton's Personal Information"]). She also has made
11 unauthorized charges to Plaintiff's credit cards totaling \$26,231.27.

12 19. Between October 2023 and December 2023, Defendant Boese has stolen Holton's
13 identity by using Holton's Personal Information and Company email address to obtain business
14 loans for Vampyre in Holton's name and with Holton as the guarantor, without Holton's prior
15 authorization, knowledge or consent. These include, potentially *inter alia*, the following:

- 16 a. \$15,000 PayPal Capital Loan applied for and obtained on October 22, 2023;
17 b. \$15,000 Onramp Funds Capital ("Onramp") Loan on November 14, 2023;
18 c. \$23,000 PayPal Capital Loan on December 19, 2023;

19 The proceeds from these loans have been transferred to unknown debit cards and into the
20 Company's 1CB bank account which Holton has been removed from.

21 20. Defendants and each of them have engaged in various acts of self-dealing, which
22 also amount to breaches of the Operating Agreement, including but not limited to the following:

- 23 a. Boese has diverted funds using the PayPal account to debit cards related to
24 an unrelated business known as Undead Magazine that she is an owner of;
25 b. Boese has paid herself a distribution of \$38,976.62 in violation of the
26
27
28

1 Vampyre Operating Agreement, a true and correct copy of which is attached hereto as
2 Exhibit “A” and incorporated herein by this reference.

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

6 d. In September of 2023, notwithstanding the fact that Malcolm had resigned
7 from the Company and was in breach of her obligation to provide public relations services
8 for Vampyre, using Vampyre funds Boese paid Malcolm for her attorney’s fees and public
9 relations services.

10 e. In November of 2023, Vampyre paid Malcolm still more money care of
11 Lynk PR for Malcolm’s public relations services.

12 f. Defendants threatened Plaintiff that they would stop making payments on
13 the credit lines used for Vampyre expenses unless she allowed them to borrow still more
14 money on those lines, which “maxed out” the available credit. Defendants then failed and
15 refused to pay any of the outstanding balances on the account Plaintiff allowed them to
16 use for Vampyre’s benefit, requiring that Plaintiff make payments in order to avoid being
17 delinquent.

18
19 21. During her year-long tenure with Vampyre, before this dispute arose, Holton
20 created several unfinished product and packaging designs as part of her creative process that she
21 never shared with Defendants. However, during this dispute Defendants accessed Holton’s
22 personal Microsoft OneDrive account to obtain and send to Vampyre’s manufacturer one product
23 design without Holton’s consent. Defendants have used this design to produce hundreds of
24 products that Vampyre continues to sell.

25
26 22. Holton designed most of the products sold through the Vampyre Cosmetics
27 website, as well as 100% of the consumer-facing product images used by the Company during my
28 tenure. Defendants continue to profit from Holton’s intellectual property while refusing to pay its

1 bills for which Holton is guarantor. Defendant Boese is using Holton's intellectual property for
2 multiple production runs without her consent and without compensation.

3 23. Since December of 2023, Defendants have made sales and pre-sales of product
4 through the Vampyre website but have failed to fill all orders or to respond to customer inquiries
5 or complaints.

6 **ALTER EGO RELATIONSHIPS BETWEEN DEFENDANTS**

7
8 24. At all times mentioned herein, there existed a unity of interest and ownership
9 between the Defendants and each of them, such that any individuality and separateness between
10 these Defendants has ceased and they are alter egos of each other.

11 25. On information and belief, Plaintiff alleges that the Defendants Vampyre, Boese
12 and Malcolm were alter egos of each other for the following reasons, *inter alia*

13 a. Defendants failed to follow corporate formalities;

14 b. Defendants did not maintain their own separate bank accounts;

15 c. Defendant Boese and Malcolm used Defendant Vampyre as a mere shell,
16 instrumentality and/or conduit for their own ventures and personal expenses, specifically,
17 Defendant Boese and Malcolm obtained funds from Plaintiff and used them for their own
18 purposes, failed to diligently pursue the stated business purpose of Vampyre, failed to
19 manage the business of Vampyre, failed to conduct its business legally;

20
21 d. The Defendants Boese and Malcolm managed Defendant Vampyre and
22 used Defendant Vampyre and the funds invested by its members to enter into contracts
23 with Plaintiff and others, in an effort to avoid personal liability for their unlawful and
24 unfair business practices;

25 e. On information and belief, at all relevant times herein the Defendants
26 Boese and Malcolm have dominated and personally controlled Defendant Vampyre;

27 f. On information and belief, the Defendants Boese and Malcolm used the
28 limited liability form and setup of Vampyre, to perpetuate a fraud, circumvent statutes,

1 and/or accomplish some other wrongful or inequitable purpose to harm Plaintiff. The
2 Defendants Boese and Malcolm dominated, controlled, and used Defendant Vampyre as a
3 mere shell and conduit for their own purposes and profit;

4 g. Defendants Boese and Malcolm, and each of them, used Defendant
5 Vampyre to perpetrate a fraud against Plaintiff. Pursuant to the representations of the
6 Defendants Boese and Malcolm, Plaintiff's name and identity was used to obtain credit in
7 Plaintiff's name with Plaintiff as guarantor. Defendants Boese and Malcolm thereafter
8 failed to communicate with Plaintiff or account to her charges made in her name to
9 various creditors, and refused to pay these lines of credit contrary to their
10 representations. Consequently, Plaintiff suffered damages.

11 h. By engaging in the conduct as alleged herein, Defendants have engaged in
12 the theft of Plaintiff's identity to obtain credit, the theft of her intellectual property,
13 breached their fiduciary duties owed to Plaintiff, breached the terms of the Operating
14 Agreement for Vampyre, and engaged in deceptive and fraudulent business practices.
15 Allowing the Defendants to escape liability for their wrongdoing would create a manifest
16 injustice: they would be financially enriched by their misconduct.

17
18 **FIRST CAUSE OF ACTION**
19 **FOR BREACH OF CONTRACT AGAINST ALL DEFENDANTS – THE OPERATING**
20 **AGREEMENT**
21 **(Against All Defendants and Does 1-20, Inclusive)**

22 26. Plaintiff repeats and realleges as if set forth in full at this place paragraphs 1- 26
23 herein.

24 27. The parties are signatories to the Operating Agreement that governs Vampyre
25 Cosmetics, LLC. A true and correct copy of the Operating Agreement is attached hereto as
26 Exhibit "A" and incorporated herein by this reference.

27 28. Defendants have breached the Operating Agreement as alleged herein by, *inter*
28 *alia*, excluding Plaintiff from her right to manage and operate the affairs of Vampyre and make

1 decision affecting its business and affairs, in violation of Section 3. Further, Defendants have
2 unilaterally paid themselves salaries and distributions without the unanimous consent of all
3 members, failed to pay into the Company's 1st Century Bank Account all funds received for
4 Vampyre, hired and compensated contractors without the unanimous consent of all members,
5 and removed Plaintiff's access to the business checking account at 1st Century Bank. Defendants
6 have failed to account for profits and losses, failed to allocate net profits, diverted Vampyre
7 funds to bank accounts other than the 1st Century Bank Account and manipulated the ownership
8 of the VC PayPal Account. Defendants have stolen the personal identity of Plaintiff to obtain
9 additional credit lines without Plaintiff's knowledge or consent. Each of these decisions were
10 made without Plaintiff's participation, knowledge or consent in violation of the Operating
11 Agreement.
12

13 29. Plaintiff has fully performed all contractual obligations to be performed on her part
14 as required by the Operating Agreement.

15 30. Defendants, and each of them have breached the Operating Agreement as more
16 particularly alleged herein.

17 31. As a direct consequence and proximate result of being excluded from
18 participating in the decisions and business affairs of Vampyre, Plaintiff has suffered monetary
19 losses. Plaintiff has suffered financial harm and monetary losses as a result of the rampant theft
20 of her identity by Defendants to obtain credit lines in her name using her personal identity
21 without her knowledge and consent, damage to her credit, suspension of her credit lines, loss of
22 available credit which is required for her support, and being required to personally pay
23 outstanding balances for Vampyre expenses. She has suffered further damages because she has
24 not been paid her share of the Company's net profits, as well as by Vampyre's failure to repay
25 the debt it owes her personally or the credit lines that were used to fund Vampyre's operations.
26

27 32. The Operating Agreement provides in Paragraph 8.4 for the award of attorneys'
28 fees to the prevailing party in any action to enforce or interpret any of its provisions.

1 33. Plaintiff has suffered compensatory damages in an amount in excess of the
2 jurisdictional minimum of this court and no less than \$5,000,000, according to proof at trial.

3 **SECOND CAUSE OF ACTION**
4 **FOR BREACH OF CONTRACT AGAINST ALL DEFENDANTS –**
5 **THE PROMISSORY NOTE**
6 **(Against All Defendants and Does 1-20, Inclusive)**

7 34. Plaintiff repeats and realleges as if set forth in full at this place paragraphs 1-33,
8 inclusive herein.

9 35. On or about November 15, 2022, Defendant Vampyre Cosmetics LLC through
10 Defendant Boese agreed to pay Plaintiff the sum of \$75,497.28 via monthly installments in the
11 amount of \$964.73, commencing June 9, 2023, with interest payable on the unpaid principal at
12 the rate of 13% per annum over 13 years. A true and correct copy of the Promissory Note
13 documenting this agreement is attached hereto as Exhibit “B” and incorporated herein by this
14 reference.

15 36. The Promissory Note states that it will be governed by the laws of the State of
16 California, and it contains an attorneys’ fees clause.

17 37. Defendants and each of them have breached the Promissory Note by failing to
18 make payments to Plaintiff in accordance with its terms.

19 38. Plaintiff has performed all conditions required to be performed on her part
20 pursuant to the Promissory Note.

21 39. As a direct and proximate result of the breaches of the Promissory Note by
22 Defendants, and each of them, Plaintiff has suffered damages in the sum of \$75,497.28, plus late
23 payment fees and interest on the outstanding balance as provided therein, and attorneys’ fees and
24 costs according to paragraph IV of the Promissory Note, according to proof at trial.

25 **THIRD CAUSE OF ACTION**
26 **BREACH OF FIDUCIARY DUTY**
27 **(Against All Defendants and Does 1-20, Inclusive)**

28 40. Plaintiff repeats and realleges as if set forth in full at this place paragraphs 1- 39

1 herein.

2 41. At all times herein mentioned there existed a fiduciary relationship between
3 Plaintiff, on the one hand, and Defendants, on the other hand. Specifically, Defendants occupied
4 a position of trust as co-members of Vampyre. Defendants owed Plaintiff a duty of loyalty, a
5 duty of care, a duty to refrain from engaging in grossly negligent or reckless conduct or
6 intentional misconduct, and a duty to not knowingly violate the law.
7

8 42. Plaintiff placed her trust and confidence in the fidelity and integrity of Defendants,
9 who owed her a fiduciary duty to refrain from doing anything to harm Plaintiff, to be honest and
10 communicate with Plaintiff on a regular basis, to provide documents and other information
11 concerning the operations of Vampyre, as a result of their position, to disclose, inform and fully
12 account to Plaintiff about Vampyre's finances and business operations, to not misappropriate
13 Vampyre's revenues. Defendants owed Plaintiff a duty of loyalty and the duty to use reasonable
14 care.
15

16 43. By engaging in the grossly negligent, reckless and intentional misconduct alleged
17 herein, including but not limited to, excluding Plaintiff from corporate governance and decision
18 making in violation of the Operating Agreement, failing to account for profits and losses and
19 allocate net profits to the members, diverting funds to businesses to unauthorized bank accounts
20 and unrelated businesses, paying themselves salaries and distributions without the consent of all
21 members, failing to pay Plaintiff's credit cards and credit lines with balances owed for
22 Vampyre's debts, engaging in the theft, misappropriation and/or conversion of Plaintiff's identity
23 and credit lines, the forgery and creation of unauthorized documents in order to obtain credit
24 lines in Plaintiff's name without her authorization, knowledge or consent of Plaintiff to pay
25 themselves and the expenses of Vampyre, misusing Plaintiff's credit and manipulating the
26 Company's PayPal Account to transact its business, knowing acting contrary to Plaintiff's
27 interests, and by failing to provide access to Vampyre's financial books and records, Defendants
28 and each of them have broken numerous laws and breached the duties of care and loyalty owed

1 to Plaintiff. Defendants breached the fiduciary duty by knowingly and intentionally acting
2 against Plaintiff's interests by fraudulently misappropriating and converting Plaintiff's identity
3 and credit lines to their own use, as alleged herein, without Plaintiff's knowledge or consent.

4 44. As a proximate result of this fraudulent and deceitful conduct of Defendants as
5 alleged herein, Plaintiff has been damaged in the amount of no less than \$5,000,000 according to
6 proof at trial.

7 45. Because Defendants acted willfully and in disregard of Plaintiff's rights and with
8 oppression, fraud and malice, Plaintiff is also entitled to an award of punitive damages to punish
9 and set an example of Defendants.

10
11 **FOURTH CAUSE OF ACTION**
12 **FOR BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
13 **(Against All Defendants and Does 1-20, Inclusive)**

14 46. Plaintiff repeats and realleges as if set forth in full at this place paragraphs 1- 45
15 herein.

16 47. At all times herein mentioned there existed a contractual relationship between
17 Plaintiff and Defendants, consisting of the Promissory Note and the Operating Agreement.

18 48. Plaintiff fully performed all obligations she was required to perform pursuant to
19 the agreement.

20 49. Defendants unfairly prevented Plaintiff from receiving the benefits she was
21 entitled to under the agreements.

22 50. As alleged herein, Defendants engaged in various acts of deceit and unfair
23 subterfuge towards Plaintiff, breached the agreements including the covenant of good faith and
24 fair dealing inherent in them, and unfairly prevented Plaintiff from receiving the reasonably
25 anticipated benefits she expected and was entitled to receive pursuant thereto.

26 51. As a direct and proximate result of the breaches by Defendants and each of them
27 as alleged herein, Plaintiff has been damaged in the amount of no less than \$5,000,000 according
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1 to proof at trial.

2 52. Because Defendants acted willfully and in disregard of Plaintiff's rights and with
3 oppression, fraud and malice, Plaintiff is also entitled to an award of punitive damages to punish
4 and set an example of Defendants.

5 **FIFTH CAUSE OF ACTION**
6 **FOR FRAUD**
7 **(Against All Defendants and Does 1-20, Inclusive)**

8 53. Plaintiff repeats and realleges as if set forth in full at this place paragraphs 1- 52
9 herein.

10 54. Based upon the representations and assurances of Defendants Boese and Vampyre
11 as alleged herein that they would abide by the terms of the Promissory Note by timely repaying
12 the funds advanced by Plaintiff to run, timely pay the credit cards and credit lines that Plaintiff
13 allowed them to use for Vampyre expenses, follow the terms of the Operating Agreement, and
14 use the VC PayPal Account for legitimate business expenses, Plaintiff invested and loaned
15 Defendants a substantial amount of money for the business, opened up the VC PayPal Account
16 and allowed the use of her credit.

17 55. Defendants promises and representations were false. Defendants knowingly
18 misrepresented their intentions for their own financial advantage and gain, to obtain access to
19 Plaintiff's credit and personal funds. Defendants lured Plaintiff into agreeing to their use of her
20 credit lines. Defendants maxed out her credit lines and used that money for salaries and other
21 expenses that were not related to the business, after threatening her that they would stop paying
22 the outstanding balances unless she allowed them to use more money. Defendants diverted
23 Vampyre funds from the VC PayPal account to pay themselves and to unrelated businesses.

24 56. Plaintiff reasonably trusted and relied upon Defendants' representations when they
25 were made. Plaintiff was justified in relying upon Defendants' representations because they were
26 business partners and co-members in Vampyre. Plaintiff assumed she was protected by the
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1 Operating Agreement, the Promissory Note and the multiple promises Defendants made to repay
2 Plaintiff's credit lines.

3 57. For their own financial advantage and gain, Defendants engaged in a manner of
4 theft and have received and converted the funds Plaintiff invested with and loaned Vampyre.
5 Defendants have also stolen Plaintiff's personal identity to obtain still more credit lines that they
6 have defaulted on. Defendants are therefore in knowing possession of stolen property that
7 belongs to Plaintiff.

8 58. Penal Code Section 496(a) makes receiving property "that has been obtained in
9 any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or
10 who conceals, sells, withholds, or aids in concealing, selling or withholding any property from
11 the owner, knowing the property to be so stolen or obtained, a criminal offence punishable by
12 imprisonment."

13 59. Theft includes the definition of Penal Code Section 484(a) as being: "Every
14 person who shall feloniously *steal, take, carry, lead, or drive away the personal property of*
15 *another, or who shall fraudulently appropriate property which has been trusted to him or her, or*
16 *who shall knowingly and designedly by any false or fraudulent representation or pretense,*
17 *defraud any other person of money, labor, or real or personal property or who... obtains credit*
18 *and thereby fraudulently gets or obtains possession of money or property or obtains the labor or*
19 *services of another, is guilty of theft."*

20 60. Plaintiff is informed and believes and thereon alleges that for their own financial
21 advantage and gain, Defendants have engaged in a manner of theft and have received and/or
22 concealed stolen property as defined by California Penal Code section 484(a) and 496(a).

23 61. Penal Code Section 496(c) entitles Plaintiff to the recovery of three times the
24 amount of actual damages, if any, sustained in addition to costs of suit and attorneys' fees.

25 62. As a direct and proximate result of the conduct alleged herein, Plaintiff was
26 damaged. After failing to make the payments, Defendants froze Plaintiff out of the company and
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1 stole her personal identity to obtain more credit without her knowledge or consent. Defendants
2 failed to make the payments as agreed upon for the credit lines, credit cards, and promissory
3 note. Defendants did not abide by the terms of the promissory note or the operating agreement.

4 63. As a direct and proximate result of the breaches by Defendants and each of them
5 as alleged herein, Plaintiff has been damaged in the amount of no less than \$5,000,000 according
6 to proof at trial.

7 64. Because Defendants acted willfully, in disregard of Plaintiff's rights and with
8 oppression, fraud and malice, Plaintiff is entitled to an award of punitive damages to punish and
9 set an example of Defendants.

10 65. Plaintiff constitutes a person who has been injured by a violation of Penal Code
11 Section 496(c) and therefore is entitled to damages and trebled and attorneys' fees by such
12 statute.

13
14 **SIXTH CAUSE OF ACTION**
15 **FOR CONVERSION**
16 **(Against All Defendants and Does 1-20, Inclusive)**

17 66. Plaintiff repeats and realleges as if set forth in full at this place paragraphs 1- 65
18 herein.

19 67. Plaintiff is, and at all times alleged herein was, the rightful owner of and entitled to
20 possession of her identity, the VC PayPal Account, her credit lines, and her personal funds.

21 68. Defendants, by the aforementioned fraudulent and deceptive means, and without
22 Plaintiff's knowledge or consent, intentionally misappropriated and converted to their own
23 personal use and possession, and exerted dominion and control over, Plaintiff's personal identity
24 for purposes of obtaining more credit without Plaintiff's knowledge or consent, the VC PayPal
25 Account, Plaintiff's credit lines and her personal funds. After gaining access to Plaintiff's
26 accounts and personal information, Defendants froze her out of Vampyre and thereafter refused
27 to provide access to the financial accounts and records. In so doing, Defendants have destroyed
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1 Plaintiff's credit and left her with the responsibility of paying for all of the expenses that they
2 charged to her account.

3 69. In addition, Defendants took control of Plaintiff's intellectual property by using
4 her designs for Vampyre products and packaging without her knowledge or consent.

5 70. Plaintiff did not consent to the interference and conversion by Defendants.

6 71. As a direct and proximate result of Defendants' wrongful conduct as alleged
7 herein, Plaintiff has suffered and will suffer consequential damages in an amount no less than
8 \$5,000,000 according to proof, including but not limited to attorney's fees and costs and other
9 time and money spent to recover the funds and access to credit that Defendants have improperly
10 misappropriated and converted to their own personal use.

11 72. Because Defendants acted willfully, in disregard of Plaintiff's rights and with
12 oppression, fraud and malice, Plaintiff is entitled to an award of punitive damages to punish and
13 set an example of Defendants.

14 73. Plaintiff is informed and believes, and on that basis alleges the Defendants may
15 have misappropriated other funds or credit lines of Plaintiff's and converted them to their own
16 personal use, the full extent of which Plaintiff is presently unaware. Plaintiff reserves the right to
17 amend this complaint to include any other wrongful acts of Defendants that Plaintiff discovers
18 during the course of this legal action, and any further damages that she has suffered as a result.

19 **SEVENTH CAUSE OF ACTION**

20 **VIOLATION OF BUS. & PROF. CODE § 17200 et seq**
21 **FOR UNLAWFUL AND UNFAIR BUSINESS PRACTICES**
22 **(Against All Defendants and Does 1-20, Inclusive)**

23 74. Plaintiff repeats and realleges as if set forth in full at this place paragraphs 1 – 73
24 herein.

25 75. California Business & Professions Code § 17200 prohibits "unfair competition,"
26 which is broadly defined to include "any unlawful, unfair or fraudulent business act or
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1 practice....” including but not limited to unfair, deceptive, and misleading advertising.

2 76. By engaging in the conduct alleged herein, including but not limited to stealing the
3 personal information and identity of Plaintiff in order to obtain credit lines in her name as sole
4 guarantor without her knowledge and consent to pay for, *inter alia*, manufacturing, distribution,
5 ancillary business expenses and advertising for products marketed for sale to the public, and by
6 failing to ship orders to customers and to communicate in response to customer complaints,
7 Defendants, and each of them, have engaged in conduct that violates Business & Professions
8 Code § 17200, et seq.
9

10 77. Defendants have made sales and pre-sales of products and collected revenue for
11 same, yet they have failed to ship the products and respond to customer inquiries and complaints.
12 Defendants have diverted the revenue from product sales to businesses unrelated to Vampyre and
13 failed to pay Vampyre’s creditors.

14 78. Defendants engaged in this unlawful, unfair, fraudulent, and deceptive conduct to
15 obtain an unfair advantage over Plaintiff and their competitors, and by so doing they injured
16 consumers, damaged the reputation of Vampyre Cosmetics and harmed Plaintiff. Plaintiff
17 suffered monetary damages as a direct and proximate consequence of the unlawful, deceptive,
18 and unfair conduct and predatory practices of Defendants, and each of them as alleged herein.
19

20 79. By reason of the foregoing acts, Plaintiff is entitled to temporary, preliminary and
21 permanent injunctive relief ordering Defendants to immediately cease and desist from engaging
22 in this wrongful and fraudulent conduct, in addition to pecuniary damages she has suffered as a
23 result of Defendants’ unlawful conduct, plus disgorgement of the benefits Cross-Defendants have
24 received as a result of their unfair and unlawful behavior, in an amount according to proof at trial.

25 80. For restitution from Defendants for all sums and other benefits resulting from
26 Defendants’ unlawful, unfair and/or fraudulent business acts and/or practices, in an amount
27 according to proof at trial.
28

1
2 **EIGHTH CAUSE OF ACTION**

3 **MONEY LENT**
4 **(Against All Defendants and Does 1-20, Inclusive)**

5 81. Plaintiff repeats and realleges as if set forth in full at this place paragraphs 1 – 80
6 herein.

7 82. Within two years past, Defendants have become indebted to Plaintiff in the amount
8 of not less than \$250,314.27 for Money lent from Plaintiff to Defendants at Defendants' request.

9 83. The whole of the above sum has not been paid, although demand therefor has been
10 made.

11 84. There is now due, owing and unpaid from Defendants to Plaintiff the sum of not
12 less than \$250,314.27 together with interest as provided by law.

13 **NINTH CAUSE OF ACTION**

14 **ACCOUNT STATED**
15 **(Against All Defendants and Does 1-20, Inclusive)**

16 85. Plaintiff repeats and realleges as if set forth in full at this place paragraphs 1 – 84
17 herein.

18 86. Within the last four years Defendants have become indebted to the Plaintiff in an
19 amount in excess of \$250,314.27 on a book account.

20 87. The whole of the above sum has not been paid, although demand therefore has
21 been made.

22 88. There is now due, owing, and unpaid from Defendants to Plaintiff the sum of not
23 less than \$250,314.27 together with interest as provided by law.

24 **TENTH CAUSE OF ACTION**

25 **UNJUST ENRICHMENT – RESTITUTION**
26 **(Against All Defendants and DOES 1 – 20, Inclusive)**

1 89. Plaintiff repeats and realleges as if set forth in full at this place paragraphs 1 – 88
2 herein.

3 90. As a direct and proximate result of the wrongful conduct of Defendants and each
4 of them, Defendants were unjustly enriched at the expense of and to the detriment of Plaintiff by
5 the unauthorized use of Plaintiff's money, credit, and intellectual property.

6 91. Plaintiff seeks restitution and disgorgement of all monies, profits, and benefits
7 obtained by Defendants from their wrongful conduct and breach of fiduciary duties, as alleged
8 herein.

9
10 **ELEVENTH CAUSE OF ACTION**

11 **PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**
12 **(Against All Defendants and Does 1 – 20, Inclusive)**

13 92. Plaintiff repeats and realleges as if set forth in full at this place paragraphs 1 – 91
14 herein.

15 93. As alleged more particularly hereinabove, Defendants have wrongfully and
16 unlawfully engaged in numerous illegal and unauthorized acts of unfair competition and fraud,
17 *inter alia*, that are outside the legal scope of their corporate powers and damaging to the rights of
18 Plaintiff, Vampyre, Vampyre's creditors and customers, and the public at large. Defendants'
19 misconduct includes, *inter alia*, self-dealing, identity theft and fraud, and decision making about
20 the business of Vampyre without including Plaintiff in violation of the Operating Agreement that
21 requires decisions be made with the unanimous consent of all members. If unrestrained,
22 Defendants threaten the very existence and viability of Vampyre and Plaintiff's rights therein.
23 Defendants have further failed and refused to permit Plaintiff access to inspect the books and
24 records for Vampyre in violation of her rights under the Operating Agreement and as provided
25 by law.

26
27 94. Plaintiff has demanded and requested that Defendants refrain from doing the
28 wrongful and unlawful conduct alleged herein and that they permit Plaintiff to inspect the books

1 and records, but Defendants have failed and refused the request and, unless restrained by an
2 order of this court, will continue to do so.

3 95. If Defendants' wrongful and illegal conduct is permitted to continue unrestrained,
4 it will render any judgment obtained ineffectual. By reason of the wrongful and unlawful acts,
5 Plaintiff has and will sustain great and irreparable injury and it will be impossible for Plaintiff to
6 obtain adequate relief by way of money damages, and therefore, Plaintiff is without an adequate
7 remedy at law.

8 96. Plaintiff therefore requests a preliminary and permanent order of injunctive relief
9 enjoining Defendants and each of them, directly or indirectly or through the use of its agents,
10 employees, servants or any other person acting with them from the following conduct:
11

- 12 a. refusing to provide Plaintiff access to the financial books, records and accounts of
13 Vampyre;
- 14 b. engaging in acts of self-dealing;
- 15 c. excluding Plaintiff from participation in all business decisions as required by the
16 Operating Agreement;
- 17 d. using Plaintiff's personal identity to obtain and then not pay credit lines to fund the
18 operations of Vampyre without Plaintiff's prior authorization, knowledge and consent;
- 19 e. failing to fulfill orders placed by customers;
- 20 f. failing to respond to customer complaints;
- 21 g. failing to pay Vampyre's bills with income from product sales;
- 22 h. making additional third parties members of Vampyre without the participation and
23 consent of all members;
- 24 i. transferring funds received from sales to unrelated businesses;
- 25 j. breaching the terms of the Operating Agreement;
- 26 k. failing to account for all profits and losses of the business;
- 27 l. using Plaintiff's intellectual property without Plaintiff's authorization or consent;
- 28

1 m. depriving plaintiff from access to the financial books and records, and business email
2 and all software and platforms utilized by Vampyre to transact business.

3 **TWELFTH CAUSE OF ACTION**

4 **FOR DECLARATORY RELIEF**
5 **(Against All Defendants and Does 1 – 20, Inclusive)**

6 97. Plaintiff repeats and realleges as if set forth in full at this place paragraphs 1 - 96
7 herein.

8 98. A dispute has arisen between Plaintiff and Defendants and each of them, wherein
9 Plaintiff asserts, and Defendants deny, that Plaintiff has been wrongfully excluded from the
10 business and from access to all financial records and accounts, that Defendants have diverted
11 funds for their own benefit and to third parties separate and apart from Plaintiff, engaged in acts of
12 self-dealing and unfair competition, used Plaintiff's intellectual property and personal identity
13 without Plaintiff's authorization, knowledge and consent.
14

15 99. Given the controversy between the parties, Plaintiff seeks a declaratory judgment
16 to resolve the disputes between the parties concerning the operation of Vampyre as alleged herein.

17 100. Plaintiff will suffer severe prejudice if the Court does not determine the rights and
18 interests of the parties, and each of them, in Vampyre and under the Operating Agreement,
19 because she could lose her investment and all the funds that were taken from her to finance
20 Vampyre's business operations, including those used by Defendants without her knowledge and
21 consent.
22

23 101. Due to the actual case and controversy regarding the competing claims and
24 allegations of the parties with respect to vampire, it is necessary that the court declared the actual
25 rights and interests of the parties in the business.
26
27

28 ///

1 ///

2
3 **PRAYER FOR RELIEF**

4 **Wherefore**, Plaintiff prays for the following relief:

5 **ON THE FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT –**
6 **OPERATING AGREEMENT**

- 7 1. For compensatory damages of not less than \$5,000,000 resulting from the loss of funds
8 and costs to recover such funds), in accordance with proof at trial, together with interest
9 thereon at the maximum legal rate.

10 **ON THE SECOND CAUSE OF ACTION FOR BREACH OF PROMISSORY**
11 **NOTE**

- 12 2. For compensatory damages according to proof at trial of the principal amount due under
13 the Note, together with interest thereon at the maximum legal rate.

14 **ON THE THIRD CAUSE OF ACTION FOR**
15 **BREACH OF FIDUCIARY DUTY**

- 16 3. For compensatory damages of not less than \$5,000,000 according to proof at trial, together
17 with interest thereon at the maximum legal rate.
18 4. For exemplary and punitive damages.

19 **ON THE FOURTH CAUSE OF ACTION FOR BREACH OF IMPLIED**
20 **COVENANT OF GOOD FAITH AND FAIR DEALING**

- 21 5. For compensatory damages of not less than \$5,000,000 according to proof at trial, together
22 with interest thereon at the maximum legal rate.
23 6. For exemplary and punitive damages.
24 7. For restitution from Defendants of all sums and other benefits resulting from Defendants'
25 wrongful conduct and breach of fiduciary duties in an amount according to proof at trial.

26 **ON THE FIFTH CAUSE OF ACTION FOR FRAUD**

- 27 8. For compensatory damages of not less than \$5,000,000 according to proof at trial, together
28 with interest thereon at the maximum legal rate.
9. For exemplary and punitive damages.
10. For an award of reasonable attorneys' fees pursuant to Penal Code 496 (c) including treble
damages.

1
2
3 **ON THE SIXTH CAUSE OF ACTION FOR CONVERSION**

- 4 11. For compensatory damages of not less than \$5,000,000 according to proof at trial together
5 with interest thereon at the maximum legal rate.
6 12. For exemplary and punitive damages.

7 **ON THE SEVENTH CAUSE OF ACTION FOR UNLAWFUL AND UNFAIR
8 BUSINESS PRACTICES (CAL B&P 17200)**

- 9 13. For compensatory damages of not less than \$5,000,000 according to proof at trial, together
10 with interest thereon at the maximum legal rate.
11 14. For disgorgement of all profits and revenues, benefits and ill-gotten gains received by
12 Defendants resulting from Defendants' unlawful, unfair and/or fraudulent business acts
13 and/or practices, in an amount according to proof at trial.

14 **ON THE EIGHTH CAUSE OF ACTION FOR MONEY LENT**

- 15 15. For compensatory damages of not less than \$5,000,000 according to proof at trial, together
16 with interest thereon at the maximum legal rate.

17 **ON THE NINTH CAUSE OF ACTION FOR ACCOUNT STATED**

- 18 16. For compensatory damages of not less than \$5,000,000 according to proof at trial, together
19 with interest thereon at the maximum legal rate.

20 **ON THE TENTH CAUSE OF ACTION FOR UNJUST ENRICHMENT –
21 CONSTRUCTIVE TRUST**

- 22 17. For compensatory damages of not less than \$5,000,000 according to proof at trial, together
23 with interest thereon at the maximum legal rate.
24 18. For a declaration and order of restitution that Defendants hold all sums and other benefits
25 resulting from their unlawful, unfair and/or fraudulent business acts and/or practices, for
26 the benefit of Plaintiff, and are required to return said funds to Plaintiff in an amount
27 according to proof at trial.

28 **ON THE ELEVENTH CAUSE OF ACTION FOR PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF**

19. That an Order to Show Cause be issued directing Defendants to appear at a time and place
to be fixed by the court, to show cause why a preliminary injunction order should not be

1 granted as prayed for herein, including but not limited to enjoining and restraining
2 Defendants from:

- 3
- 4 a. refusing to provide Plaintiff access to the financial books, records and accounts of
- 5 Vampyre;
- 6 b. engaging in acts of self-dealing;
- 7 c. excluding Plaintiff from participation in all business decisions as required by the
- 8 Operating Agreement;
- 9 d. using Plaintiff's personal identity to obtain and then not pay credit lines to fund the
- 10 operations of Vampyre without Plaintiff's prior authorization, knowledge and consent;
- 11 e. failing to fulfill orders placed by customers;
- 12 f. failing to respond to customer complaints;
- 13 g. failing to pay Vampyre's bills with income from product sales;
- 14 h. making additional third parties members of Vampyre without the participation and
- 15 consent of all members;
- 16 i. transferring funds received from sales to unrelated businesses;
- 17 j. breaching the terms of the Operating Agreement;
- 18 k. failing to account for all profits and losses of the business;
- 19 l. using Plaintiff's intellectual property without Plaintiff's authorization or consent;
- 20 m. depriving plaintiff from access to the financial books and records, and business email
- 21 and all software and platforms utilized by Vampyre to transact business.
- 22

23

24 **ON THE TWELFTH CAUSE OF ACTION FOR DECLARATORY RELIEF**

25 1. That a determination be made of the rights and duties of the parties pursuant to the

26 Operating Agreement and Promissory Note, including the amounts owed Plaintiffs pursuant to

27 each of the causes of action alleged herein.

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ON ALL CAUSES OF ACTION

1. For Plaintiff's costs of suit;
2. For Plaintiff's attorneys' fees;
3. For all available pre and post-judgment interest;
4. For such other and further or different relief as the court may deem just and proper.

DATED: February 2, 2024

GARDNER + ASSOCIATES

/s/ Jennifer B. Gardner

Jennifer B. Gardner

Attorney for Plaintiff KAREN HOLTON

EXHIBIT A

**OPERATING AGREEMENT
VAMPYRE COSMETICS LLC**

THIS OPERATING AGREEMENT is made and entered into effective 3-31-2023, by and among: Rachel Boese, Karen Holton, and Lisa Malcolm. (collectively referred to in this agreement as the "Members").

Name. The business of the Company will be conducted under the names Vampyre Cosmetics LLC or such other name upon which the Members may by majority agree.

Term. The term of the Company commences on March 9, 2023 and shall continue perpetually unless sooner terminated as provided in this Agreement.

Names and Addresses of Members. The Members' names and addresses are attached as Schedule 1 to this Agreement.

Admission of Additional Members. No additional members may be added without **unanimous** written consent of the Members.

SECTION 1

ALLOCATION OF PROFITS AND LOSSES; DISTRIBUTIONS

1.1. Profits/Losses. For financial accounting and tax purposes, the Company's net profits or net losses shall be determined on an annual basis and shall be allocated to the Members in proportion to each Member's relative ownership interest in the Company as set forth in Schedule 2 as amended from time to time in accordance with U.S. Department of the Treasury Regulation 1.704-1. All expenses counted against profits must be agreed upon in advance by a majority of the members.

1.2. Distributions. The Members shall determine and distribute available funds quarterly or at more frequent intervals as they see fit. Available funds, as referred to herein, shall mean the net cash of the Company available after appropriate provision for expenses and liabilities, as determined by the Managers. Distributions in liquidation of the Company or in liquidation of a Member's interest shall be made in accordance with the positive capital account balances pursuant to U.S. Department of the Treasury Regulation 1.704.1(b)(2)(ii)(b)(2). To the extent a Member shall have a negative capital account balance, there shall be a qualified income offset, as set forth in U.S. Department of the Treasury Regulation 1.704.1(b)(2)(ii)(d).

SECTION 2

INDEMNIFICATION

The Company shall indemnify any person who was or is a party defendant or is threatened to be made a party defendant, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Company) by reason of the fact that he is or was a Member of the Company, Manager, employee or agent of the Company, or is or was serving at the request of the Company, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if the Members determine that he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Company, and with respect to any criminal action proceeding, has no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of "no lo Contendere" or its equivalent, shall not in itself create a presumption that the person did or did not act in good faith and in a manner which he reasonably believed to be in the best interest of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was lawful

SECTION 3
POWERS AND DUTIES OF MANAGERS

Management of Company.

The Members, within the authority granted by the Act and the terms of this Agreement shall have the complete power and authority to manage and operate the Company and make all decisions affecting its business and affairs. Amendments to this Agreement may be proposed by any Member. A proposed amendment will be adopted and become effective as an amendment only on the written unanimous approval of the Members.

Except as otherwise provided in this Agreement, all decisions and documents relating to the management and operation of the Company shall be made and executed by a Majority of the Members.

Third parties dealing with the Company shall be entitled to rely conclusively upon the power and authority of a Majority in Interest of the Members to manage and operate the business and affairs of the Company.

Decisions by Members. Whenever in this Agreement reference is made to the decision, consent, approval, judgment, or action of the Members, unless otherwise expressly provided in this Agreement, such decision, consent, approval, judgment, or action shall mean unanimous consent of the Members.

Withdrawal by a Member. A Member has no power to withdraw from the Company, except as otherwise provided in **Section 6**.

SECTION 4
SALARIES, REIMBURSEMENT, AND PAYMENT OF EXPENSES

4.1 Organization Expenses. All expenses incurred in connection with organization of the Company will be paid by the Company using a 1st Century Bank account or The Business's credit cards.

4.2 Salary No salary will be paid to a Member for the performance of his or her duties under this Agreement unless the salary has been approved in writing by unanimous consent of the Members and attached to this agreement.

4.3 Legal and Accounting Services. The Company will obtain legal services to the extent reasonably necessary for the conduct of the Company's business. These legal services will not be available to assist in any mediation between members if needed. The Company has retained Ruslan Magidov as accountant and Zahra Sefidan for bookkeeping.

SECTION 5
**BOOKS OF ACCOUNT, ACCOUNTING REPORTS, TAX RETURNS,
FISCAL YEAR, BANKING**

5.1 Method of Accounting. The Company will use the accrual accounting method for financial reporting and tax purposes.

5.2 Fiscal Year; Taxable Year. The fiscal year and the taxable year of the Company is the calendar year.

5.3 Banking. All money received in connection with organization of the Company will be paid to the Company's 1st Century Bank Account.

SECTION 6
TRANSFER OF MEMBERSHIP INTEREST

6.1 Sale or Encumbrance Prohibited. Except as otherwise permitted in this Agreement, no Member may voluntarily or involuntarily transfer, sell, convey, encumber, pledge, assign, or otherwise dispose of (collectively, "Transfer") an interest in the Company without the prior written unanimous consent of the other non-transferring Members determined on a per capita basis.

6.2 Right of First Refusal. Notwithstanding Section 6.1, a Member may transfer all or any part of the Member's interest in the Company (the "Interest") as follows:

The Member desiring to transfer his or her Interest first must provide written notice (the "Notice") to the other Members, specifying the price and terms on which the Member is prepared to sell the Interest (the "Offer").

For a period of 30 days after receipt of the Notice, the Members may acquire all, but not less than all, of the Interest at the price and under the terms specified in the Offer. If the other Members desiring to acquire the Interest cannot agree among themselves on the allocation of the Interest among them, the allocation will be proportional to the Ownership Interests of those Members desiring to acquire.

Closing of the sale of the Interest will occur as stated in the Offer; provided, however, that the closing will not be less than 45 days after expiration of the 30-day notice period.

If the other Members fail or refuse to notify the transferring Member of their desire to acquire all of the Interest proposed to be transferred within the 30-day period following receipt of the Notice, then the Members will be deemed to have waived their right to acquire the Interest on the terms described in the Offer, and the transferring Member may sell and convey the Interest consistent with the Offer to any other person or entity; provided, however, that notwithstanding anything in Section 6.2 to the contrary, should the sale to a third person be at a price or on terms that are more favorable to the purchaser than stated in the Offer, then the transferring Member must reoffer the sale of the Interest to the remaining Members at that other price or other terms; provided, further, that if the sale to a third person is not closed within six months after the expiration of the 30-day period describe above, then the provisions of Section 6.2 will again apply to the Interest proposed to be sold or conveyed.

Notwithstanding the foregoing provisions of Section 6.2, should the sole remaining Member be entitled to and elect to acquire all the Interests of the other Members of the Company in accordance with the provisions of Section 6.2, the acquiring Member may assign the right to acquire the Interests to a spouse, lineal descendants, or an affiliated entity if the assignment is reasonably believed to be necessary to continue the existence of the Company as a limited liability company.

6.3 Substituted Parties. Any transfer in which the Transferee becomes a fully substituted Member is not permitted unless and until:

The transferor and assignee execute and deliver to the Company the documents and instruments of conveyance necessary or appropriate in the opinion of counsel to the Company to effect the transfer and to confirm the agreement of the permitted assignee to be bound by the provisions of this Agreement; and

The transferor furnishes to the Company an opinion of counsel, satisfactory to the Company, that the transfer will not cause the Company to terminate for federal income tax purposes or that any termination is not adverse to the Company or the other Members.

6.4 Death, Incompetency, or Personal Bankruptcy of Members. On the death, adjudicated incompetence, or personal bankruptcy of a Member, unless the Company exercises its rights under Section 8.5, the successor in interest to the Member (whether an estate, bankruptcy trustee, or otherwise) will receive only the economic right to receive distributions whenever made by the Company and the Member's allocable share of taxable income, gain, loss, deduction, and credit (the "Economic Rights") unless and until a majority of the other Members determined on a per capita basis admit the transferee as a fully substituted Member in accordance with the provisions.

Any transfer of Economic Rights will not include any right to participate in management of the Company, including any right to vote, consent to, and will not include any right to information on the Company or its operations or financial condition. Following any transfer of only the Economic Rights of a Member's Interest in the Company, the transferring Member's power and right to vote or consent to any matter submitted to the Members will be eliminated, and the Ownership Interests of the remaining Members, for purposes only of such votes, consents, and participation in management, will be proportionately increased until such time, if any, as the transferee of the Economic Rights becomes a fully substituted Member.

6.5 Death or Incompetency Buy Out. Notwithstanding the foregoing provision of Section 6, the Members covenant and agree that on the death or permanent incapacitation of any Member, the Company, at its option, by providing written notice to the estate of the deceased Member within 30 days of the death or permanent incapacitation of the Member, may purchase, acquire, and redeem the Interest of the *affected* Member in the Company pursuant to the provision of Section 6.5.

Each Member's Ownership Interest in the Company will be determined on the date this Agreement is signed, and will be endorsed on Schedule 2 attached and made a part of this Agreement.

SECTION 7

DISSOLUTION AND WINDING UP OF THE COMPANY

7.1 **Dissolution.** The Company will be dissolved on the happening of any of the following events:

- 7.1.1 Sale, transfer, or other disposition of all or substantially all of the property of the Company;
- 7.1.2 The agreement of all of the Members;
- 7.1.3 By operation of law; or
- 7.1.4 The death, incompetence, expulsion, or bankruptcy of a Member, or the occurrence of any event that terminates the continued membership of a Member in the Company, unless there are then remaining at least the minimum number of Members required by law and all of the remaining Members, within 120 days after the date of the event, elect to continue the business of the Company.

7.2 **Winding Up.** On the dissolution of the Company (if the Company is not continued), the Members must take full account of the Company's assets and liabilities, and the assets will be liquidated as promptly as is consistent with obtaining their fair value, and the proceeds, to the extent sufficient to pay the Company's obligations with respect to the liquidation, will be applied and distributed, after any gain or loss realized in connection with the liquidation has been allocated in accordance with Section 3 of this Agreement, and the Members' Capital Accounts have been adjusted to reflect the allocation and all other transactions through the date of the distribution, in the following order:

- 7.2.1 To payment and discharge of the expenses of liquidation and of all the Company's debts and liabilities to persons or organizations other than Members;
- 7.2.2 To the payment and discharge of any Company debts and liabilities owed to Members; and
- 7.2.3 To Members in the amount of their respective adjusted Capital Account balances on the date of distribution; provided, however, that any then outstanding Default Advances (with interest and costs of collection) first must be repaid from distributions otherwise allocable to the Defaulting Member pursuant to Section 9.2.3.

SECTION 8

GENERAL PROVISIONS

8.1 **Amendments.** Amendments to this Agreement may be proposed by any Member. A proposed amendment will be adopted and become effective as an amendment only on the written unanimous consent of the Members.

8.2 **Governing Law.** This Agreement and the rights and obligations of the parties under it are governed by and interpreted in accordance with the laws of the State of California (without regard to principles of conflicts of law).

8.3 **Entire Agreement; Modification.** This Agreement constitutes the entire understanding and agreement between the Members with respect to the subject matter of this Agreement. No agreements, understandings, restrictions, representations, or warranties exist between or among the members other than those in this Agreement or referred to or provided for in this Agreement. No modification or amendment of any provision of this Agreement will be binding on any Member unless in writing and signed by all the Members.

8.4 **Attorney Fees.** In the event of any suit or action to enforce or interpret any provision of this Agreement (or that is based on this Agreement), the prevailing party is entitled to recover, in addition to other costs, reasonable attorney fees in connection with the suit, action, or arbitration, and in any appeals. The determination of who is the prevailing party and the amount of reasonable attorney fees to be paid to the prevailing party will be decided by the court or courts, including any appellate courts, in which the matter is tried, heard, or decided.

8.5 **Further Effect.** The parties agree to execute other documents reasonably necessary to further effect and evidence the terms of this Agreement, as long as the terms and provisions of the other documents are fully consistent with the terms of this Agreement.

8.6 **Severability.** If any term or provision of this Agreement is held to be void or unenforceable, that term or provision will be severed from this Agreement, the balance of the Agreement will survive, and the balance of this Agreement will be reasonably construed to carry out the intent of the parties as evidenced by the terms of this Agreement.

8.7 **Captions.** The captions used in this Agreement are for the convenience of the parties only and will not be interpreted to enlarge, contract, or alter the terms and provisions of this Agreement.

8.8 **Notices.** All notices required to be given by this Agreement will be in writing and will be effective when immediately when sent by email or, received if mailed, when deposited as certified mail, postage prepaid, directed to the addresses first shown above for each Member or to such other address as a Member may specify by notice given in conformance with these provisions to the other Members.

SECTION 9 OPERATIONS BYLAWS

9.1 **Duties of Members.** Duties may be expanded or retracted at any time so long as members consent to these changes. As of the date of this contract, the primary duties of members are as follows:

Rachel Boese C.E.O

Karen Holton C.O.O.

Lisa Malcolm C.M.O

9.2 **Communication Requirements.** Members have up to 5 business days to review proposed changes to contracts or rules. For normal communications, members should be available to respond and act on simple requests within 1-2 business days. Members are required to notify other members of travel or any other life experiences that could interfere with above mentioned duties as soon as reasonably possible, 2 weeks or more if possible except in case of emergencies.

9.3 **Liabilities and Outsourcing** any 3rd party contractor may be hired by any member only with unanimous consent from all members. Any outside parties will be required to sign releases that state that despite any work they complete for the company all products, images, materials etc are retained as intellectual property by the company. Any new outside parties will also be required to sign NDAs prior to beginning work for the company.

IN WITNESS WHEREOF, the parties to this Agreement execute this Operating Agreement as of the date and year first above written.

MEMBERS:

RACHEL BOESE

Printed/Typed Name



Signature

KAREN HOLTON

Printed/Typed Name



Karen Holton (Mar 31, 2023 13:17 PDT)

Signature

LISA MALCOLM

Printed/Typed Name



Lisa Malcolm (Mar 31, 2023 13:20 PDT)

Signature

Listing of Members - Schedule 1




LIMITED LIABILITY COMPANY OPERATING AGREEMENT FOR VAMPYRE COSMETICS, L.L.C.

LISTING OF MEMBERS

As of the 31st of MARCH, 2023, the following is a list of Members of the Company:

NAME	ADDRESS
RACHEL BOESE	1225 Saint Ferdinand St New Orleans ,LA 70117
KAREN HOLTON	3361 Olsen Dr San Jose, CA 95117
LISA MALCOLM	327 W Dawson Ct Glendora Ca 91741

Authorized by Member(s) to provide Member Listing as of this 31st of MARCH, 2023

RACHEL BOESE	
Printed/Typed Name	Signature
KAREN HOLTON	 Karen Holton (Mar 31, 2023 13:17 PDT)
Printed/Typed Name	Signature
LISA MALCOLM	 Lisa Malcolm (Mar 31, 2023 13:20 PDT)
Printed/Typed Name	Signature

Listing of Ownership - Schedule 2

LIMITED LIABILITY COMPANY OPERATING AGREEMENT FOR VAMPYRE COSMETICS, L.L.C.

The Members' initial Ownership in the company is stated to be.

NAME	% OWNERSHIP
RACHEL BOESE (Member)	37.5%
KAREN HOLTON (Member)	37.5%
LISA MALCOLM (Member)	25%

SIGNED AND AGREED this 31st of MARCH, 2023

RACHEL BOESE

Printed/Typed Name

KAREN HOLTON


Printed/Typed Name

Lisa Malcolm

Printed/Typed Name

Rachel D Boese,

Signature 
Karen Holton (Mar 31, 2023 13:17 PDT)


Karen Holton (Mar 31, 2023 13:17 PDT)

Signature
Lisa Malcolm
Lisa Malcolm (Mar 31, 2023 13:20 PDT)

Signature

EXHIBIT B

Unsecured Promissory Note
(Installment Payments)

Borrower: Vampyre Cosmetics LLC
Lender: Karen Holton

I. Promise to Pay

Borrower agrees to pay Lender the total amount of \$150,497.28 on an initial \$75,497.28 loan, together with interest payable on the unpaid principal at the rate of 13% per annum over 13 years. Payment will be delivered to Lender electronically via ACH or invoice payment with credit card.

II. Repayment

The amount owed under this Promissory Note will be repaid in equal monthly installments of \$964.73. The first payment will be due on June 9th 2023 and the last on May 9th 2036. All payments shall be applied first to interest and the balance to principal.

III. Late Payment Fees

If Borrower defaults in payment by more than 5 days of the date set forth herein, then Borrower shall pay an additional late fee in the amount of \$25 at the time payment is made.

IV. Additional Costs

In case of default in the payment of any principal or interest of this Promissory Note, Borrower will pay to Lender such further amount as will be sufficient to cover the cost and expenses of collection, including, without limitation, reasonable attorney's fees, expenses, and disbursements. These costs will be added to the outstanding principal and will become immediately due.

V. Transfer of the Promissory Note

Borrower hereby waives any notice of the transfer of this Note by Lender or by any subsequent holder of this Note, agrees to remain bound by the terms of this Note subsequent to any transfer, and agrees that the terms of this Note may be fully enforced by any subsequent holder of this Note.

VI. Amendment; Modification; Waiver

No amendment, modification or waiver of any provision of this Promissory Note or consent to departure therefrom shall be effective unless by written agreement signed by both Borrower and Lender.

VII. Successors

The terms and conditions of this Promissory Note shall inure to the benefit of and be binding jointly and severally upon the successors, assigns, heirs, survivors and personal representatives of Borrower and shall inure to the benefit of any holder, its

legal representatives, successors and assigns.

VIII. Breach of Promissory Note

No breach of any provision of this Promissory Note shall be deemed waived unless it is waived in writing. No course of dealing and no delay on the part of Lender in exercising any right will operate as a waiver thereof or otherwise prejudice Lender's rights, powers, or remedies. No right, power, or remedy conferred by this Promissory Note upon Lender will be exclusive of any other rights, power, or remedy referred to in this Note, or now or hereafter available at law, in equity, by statute, or otherwise.

IX. Governing Law

The validity, construction and performance of this Promissory Note will be governed by the laws of California, excluding that body of law pertaining to conflicts of law. Borrower hereby waives presentment, notice of non-payment, notice of dishonor, protest, demand and diligence. The parties hereby indicate by their signatures below that they have read and agree with the terms and conditions of this agreement in its entirety.

Borrower Electronic Signature Rachel D Boere /date 11/15/22

Vampyre Cosmetics LLC **Karen Holton**

Lender Electronic Signature _____ date 11/15/22

Karen Holton

Signature: 
Karen Holton (Mar 31, 2023 12:10 PDT)

Email: karen@vampyrecosmetics.com







Unsecured Promissory Note Karen Holton to Vampyre Cosmetics

Final Audit Report

2023-03-31

Created:	2023-03-31
By:	Rachel Boese (racheldboese@gmail.com)
Status:	Signed
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"Unsecured Promissory Note Karen Holton to Vampyre Cosmetics" History

-  Document created by Rachel Boese (racheldboese@gmail.com)
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