IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT

IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

PINTARENA, LLC, a Florida limited )

liability company, )

)

Plaintiff, )

)

vs. ) CASE NO.

)

MONIQUE J. GANDON, an individual, )

)

Defendant )

)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/

# COMPLAINT REVISIONS

Plaintiff, PINTARENA, LLC, a Florida limited liability company (“Pintarena” or “Plaintiff”), by and through undersigned counsel, hereby sues Defendant MONIQUE J. GANDON (“Gandon” or “Defendant”) and, in support thereof, states as follows:

## PARTIES

1. Plaintiff, PINTARENA, LLC, is a Florida limited liability company with its principal place of business located in Miami-Dade County, Florida.
2. Defendant, MONIQUE J. GANDON, is an individual, who is *sui juris*, and who resides in Miami-Dade County, Florida.

## JURISDICTION AND VENUE

1. The amount at issue in this action exceeds the sum of $15,000, exclusive of interest, costs and attorney's fees, and is thus within the jurisdiction of this Court.
2. Venue is proper in this judicial district pursuant to Fla. Stat. § 47.011 because Defendant resides in Miami-Dade County, Florida, and a substantial portion of the conduct that forms the basis of this lawsuit occurred in Miami-Dade County, Florida.

## GENERAL ALLEGATIONS

1. This is a complaint for injunctive relief, for a declaratory judgment, and for damages suffered by Plaintiff as a result of Defendant’s misconduct and tortious actions.
2. This action is the unfortunate result of a substantial and material violation of Plaintiff’s trust on the part of Defendant; which also involves violations of written agreements and violations of Florida statutes.
3. Defendant’s actions constitute (i) material violations of Defendant’s contractual obligations; (ii) breaches of Defendant’s common-law and statutory fiduciary duties owed to Plaintiff; and (iii) serious tortious misconduct against the interests of the Plaintiff.
4. Defendant has engaged in serious forms of misconduct that have caused, and continue to cause, substantial harm to Plaintiff.

### Formation of Plaintiff

1. In 2012, CAROLINA AZCARATE (“Azcarate”) started a clothing/swimwear business operating under the name “PintArena Swimwear.”
2. In early 2014, Azcarate and Defendant decided to formalize structure of the “PintArena Swimwear” business as a Florida limited liability company.
3. On March 27, 2014, Azcarate and Defendant formed Plaintiff, PintArena, LLC. A copy of Articles of Organization for Plaintiff are attached hereto as Exhibit “A.”
4. On March 29, 2014, Azcarate and Defendant executed the *Operating Agreement of PintArena, LLC* (the “Operating Agreement”). A copy of the Operating Agreement is attached hereto as Exhibit “B.”
5. Also on March 29, 2014, Azcarate and Defendant executed the *PintArena, LLC Buy-Sell Agreement* (the “Buy-Sell Agreement”). A copy of the Buy-Sell Agreement is attached hereto as Exhibit “C.”
6. The Operating Agreement and the Buy-Sell Agreement were authorized and formalized by Azcarate and Defendant on March 29, 2014. *See* *Minutes Of Organizational Meeting Of Members Of Pintarena, LLC*, attached hereto as Exhibit “D.”
7. Azcarate and Defendant were the only two members of Plaintiff.
8. Azcarate and Defendant were the only to managers of Plaintiff.
9. Consistent with the original “PintArena Swimwear” business started by Azcarate in 2012, Plaintiff was formed for the principal purpose of designing, manufacturing, and selling women’s clothing, particularly, but not exclusively, women’s swimwear.
10. Plaintiff’s sales were, and remain, conducted primarily through boutique sales and through an online e-commerce website “<http://www.pintarenaswimwear.com>”.

### Defendant's Improper Competition with Plaintiff

1. Defendant has engaged in an ongoing pattern of wrongful competition with Plaintiff.
2. While Defendant was serving as one of the two managing members of the Plaintiff, Defendant elected, without written authorization, to engage in direct competition with the Plaintiff.
3. On April 1, 2015, Defendant formed THE STYLE STANDARD LLC, a Florida limited liability company (hereinafter “Style Standard”).
4. Style Standard’s principal place of business is located in Miami-Dade County, Florida.
5. Defendant is officially listed as one of two managers of Style Standard and Defendant is also listed as its official registered agent.
6. On March 20, 2015, Defendant caused to be registered the internet domain “shopthestylestandard.com” (the “Style Standard Domain”) for the purposes of hosting an eCommerce website for Style Standard.
7. Defendant’s name, address, telephone number, and email address are listed as the official “Registrant,” “Admin Contact,” and “Tech Contact” for the Style Standard Domain. *See* Composite Exhibit “E.”
8. Style Standard is in direct competition with Plaintiff’s business and has clearly been involved in the misappropriation of opportunities away from Plaintiff.
9. Style Standard’s eCommerce website, its Facebook page, and its Instagram account make it manifestly obvious that it sells swimwear, the primary product currently sold by Plaintiff.
10. Moreover, the designs of Style Standard’s swimwear offerings are strikingly similar to those of Plaintiff.
11. Moreover, Style Standard has utilized the same modeling talent as Plaintiff has used to market Plaintiff’s swimwear offerings.
12. On May 5, 2016, Defendant formed PINTARENA SWIMWEAR LLC, a Florida limited liability company (hereinafter “PTR Swimwear”).
13. Defendant is officially listed as the sole manager of PTR Swimwear and Defendant is also listed as its official registered agent.
14. On May 10, 2016, Defendant formed PINTARENA SWIM LLC, a Florida limited liability company (hereinafter “PTR Swim”).
15. Defendant is officially listed as the sole manager of PTR Swim and Defendant is also listed as its official registered agent.
16. By forming PTR Swimwear and PTR Swim, Defendant has taken her efforts to compete with, and directly harm, Plaintiff to a new level.

### Defendant's Violations of Agreements and Violations of Florida Law

1. Defendant’s formation of, and active involvement with, the Style Standard, PTR Swimwear, and PTR Swim, constitutes a material breach of the “Operating Agreement.”
2. Pursuant to Section 6.08 of the Operating Agreement, Defendant was, and remains, prohibited from “participat[ing] in…reciprocal business arrangements that would conflict or compete with the Company’s business….” *See* Operating Agreement at Section 6.08.
3. Defendant is also prohibited from competing with the Plaintiff pursuant to the Buy-Sell Agreement. *See* Buy-Sell Agreement at Article VII.
4. Additionally, Defendant’s misconduct has violated Florida Statute § 605.04091. Specifically, Florida law mandates that, as a manager of an LLC, Defendant owes “fiduciary duties of loyalty and care to the limited liability company and members of the limited liability company.” *Id.*
5. Such duties of loyalty and care expressly include:

* *Accounting to the limited liability company and holding as trustee for it any property, profit, or benefit derived by the manager or member…*
* *From the appropriation of a company opportunity….*
* *Refraining from competing with the company in the conduct of the company’s activities and affairs before the dissolution of the company….*

*Id.*  Florida law further requires that managers of limited liability companies “shall discharge their duties and obligations under this chapter or under the operating agreement and exercise any rights consistently with the obligation of good faith and fair dealing.” *Id*.

### Defendant’s Misappropriation of Plaintiff’s Bank Account Funds

1. In addition to Defendant’s wrongful competition with Plaintiff’s business and the usurpation of the Plaintiff’s business opportunities, Defendant misappropriated the Plaintiff’s bank account funds.
2. On May 10, 2016, Defendant made an improper and unauthorized withdrawal from Plaintiff’s bank account (account ending with 9601) in the amount of $5,318.00.
3. There is, and remains, no authorized or acceptable business purpose for the May 10, 2016 withdrawal by Defendant.
4. On information and belief, Defendant caused such funds to be placed in the hands of a third-party who is not affiliated with Plaintiff’s business.
5. Pursuant to Section 6.08 of the Operating Agreement, Defendant was expressly forbidden from “permit[ting] the Company’s funds to be commingled with the funds of any other person” and was also prohibited from “possess[ing] property or assign rights in specific property for other than a Company purpose.” *See* Operating Agreement at Section 6.08.
6. In addition to violating the Operating Agreement, Defendant’s misappropriation of Plaintiff’s funds represents a very serious tortious act against Plaintiff.

### Defendant’s Vandalism of Plaintiff's Online Presence

1. Defendant wrongfully usurped control over Plaintiff’s social media presence on, *inter alia*, Instagram.
2. Defendant has refused to turn over control of such social media accounts to Plaintiff, despite repeated demands to do so.
3. Defendant has also vandalized and defaced Plaintiff’s social media accounts, including Plaintiff’s Instagram page, by deleting content without authorization with a malicious intent to damage Plaintiff’s business.

### Expulsion of Defendant and Cease and Desist Notice to Defendant

1. Plaintiff notified Defendant on May 12, 2016 that Plaintiff had become aware of Defendant’s misconduct.
2. Plaintiff’s May 12, 2016 notice to Defendant also informed her that she had been formally expelled as a manager of Plaintiff effective immediately as a result of her misconduct.
3. Defendant persisted with her flagrant misconduct, including the wrongful retention of Plaintiff’s property, despite having been notified that such conduct was highly damaging to Plaintiff.
4. Plaintiff send Defendant a formal “Demand Letter and Notice of Cease and Desist” on May 23, 2016 (the “Demand Letter”). A copy of the Demand Letter is attached hereto as Exhibit “F.”
5. Notwithstanding Plaintiff’s efforts, Defendant has persistently refused to remedy or cease her misconduct and continues to damage Plaintiff’s business.
6. Plaintiff has been forced to retain the services of the undersigned attorney and has obligated itself to pay a reasonable attorneys’ fee for such services. Plaintiff hereby gives notice of its intention to seek to recover its reasonable attorneys’ fees and costs from Defendant pursuant to applicable agreements and pursuant to application law.
7. All conditions precedent to the filing of this action have either occurred, been waived, or have been excused.

## COUNT I - BREACH OF OPERATING AGREEMENT

1. Plaintiff incorporates each and every allegation set forth in Paragraphs 1 through 55, *supra*, as if fully set forth herein.
2. This is an action for breach of the Operating Agreement involving an amount at issue that exceeds Fifteen Thousand Dollars ($15,000.00), exclusive of interest, costs, and attorneys' fees.
3. The Operating Agreement is a valid and binding express contract signed by Defendant.
4. As set forth in more detail above, Defendant has violated the terms of the Operating Agreement.
5. Defendant was notified of her failure to comply with the Operating Agreement and has refused to cure her violations.
6. Defendant’s violations of the Operating Agreement and refusal to cure said violations constitute a material breach of the Operating Agreement.
7. As a result of the material breaches of the Operating Agreement, Plaintiff has sustained general and special damages. Such special damages include loss of business opportunities and the losses and expenses incurred, and to be incurred, by being forced to resort to litigation to force Defendant to comply with her obligations.
8. All conditions precedent to the institution of this action and to obtain the relief sought herein have been performed, have occurred, and/or have been waived or otherwise excused.
9. Plaintiff is obligated to pay its attorneys’ a reasonable fee for their services and is also obligated to pay costs and other expenses related to this dispute. Plaintiff hereby gives notice to Defendant of its intention to seek to recover its reasonable fees and costs from Defendant pursuant to applicable agreements and applicable law.

WHEREFORE, Plaintiff demands general and special damages from Defendant; plus interest, attorneys’ fees, and costs; demands that specific performance of the Operating Agreement be ordered; and asks that the Court grant such other or further relief as the Court deems just or proper.

## COUNT II - BREACH OF THE BUY-SELL AGREEMENT

1. Plaintiff incorporates each and every allegation set forth in Paragraphs 1 through 55, *supra*, as if fully set forth herein.
2. This is an action for breach of the Buy-Sell Agreement involving an amount at issue that exceeds Fifteen Thousand Dollars ($15,000.00), exclusive of interest, costs, and attorneys' fees.
3. The Buy-Sell Agreement is a valid and binding express contract signed by Defendant.
4. As set forth in more detail above, Defendant has violated the terms of the Buy-Sell Agreement by, *inter alia*, directly competing with Plaintiff’s business both before and after Defendant was expelled as a manager in May 2016.
5. Defendant was notified of her failure to comply with the Buy-Sell Agreement and has refused to cure her violations.
6. Defendant’s violations of the Buy-Sell Agreement and refusal to cure said violations constitute a material breach of the Buy-Sell Agreement.
7. As a result of the material breaches of the Buy-Sell Agreement, Plaintiff has sustained general and special damages. Such special damages include loss of business opportunities and the losses and expenses incurred, and to be incurred, by being forced to resort to litigation to force Defendant to comply with her obligations.
8. All conditions precedent to the institution of this action and to obtain the relief sought herein have been performed, have occurred, and/or have been waived or otherwise excused.
9. Plaintiff is obligated to pay its attorneys’ a reasonable fee for their services and is also obligated to pay costs and other expenses related to this dispute. Plaintiff hereby gives notice to Defendant of its intention to seek to recover its reasonable fees and costs from Defendant pursuant to applicable agreements and applicable law.

WHEREFORE, Plaintiff demands general and special damages from Defendant; plus interest, attorneys’ fees, and costs; demands that specific performance of the Buy-Sell Agreement be ordered to prohibit Defendant from competing with Plaintiff’s business; and asks that the Court grant such other or further relief as the Court deems just or proper.

## COUNT III - BREACH OF STATUTORY DUTIES OF LOYALTY AND CARE

1. Plaintiff realleges paragraphs 1 through 55 above as though fully set forth herein.
2. This is an action against Defendant for breach of statutory duties of loyalty and care owed Plaintiff pursuant to Florida Statutes Chapter 605.
3. Defendant has derived improper benefit from, *inter alia*, Defendant’s wrongful competition with Plaintiff’s business and Defendant’s wrongful misappropriation of business opportunities from Plaintiff.
4. Defendant’s activities constitute willful and/or intentional misconduct, and Defendant failed to discharge her duties and obligations under Chapter 605 with the express obligation of good faith and fair dealing.
5. As a result, Plaintiff has been damaged.
6. All conditions precedent to the institution of this action and to obtain the relief sought herein have been performed, have occurred, and/or have been waived or otherwise excused.
7. Plaintiff is obligated to pay its attorneys’ a reasonable fee for their services and is also obligated to pay costs and other expenses related to this dispute. Plaintiff hereby gives notice to Defendant of its intention to seek to recover its reasonable fees and costs from Defendant pursuant to applicable agreements and applicable law.
8. Plaintiff reserves the right to amend this claim to seek punitive damages before trial.

WHEREFORE, Plaintiff demands general and special damages from Defendant; plus interest, attorneys’ fees, and costs; asks that the Court impose a constructive trust in favor of Plaintiff on any and all money, assets, or interests acquired by Defendant as a result of Defendant’s breach of her statutory duties; compel Defendant to disgorge all money, assets, or interests acquired as a result of her breach of his statutory duties; and asks that the Court grant such other or further relief as the Court deems just or proper.

## COUNT IV - COMMON LAW BREACH OF FIDUCIARY DUTY

1. Plaintiff realleges paragraphs 1 through 55 above as though fully set forth herein.
2. This is an action against Defendant for breach of common law fiduciary duties owed to Plaintiff.
3. Defendant owed fiduciary duties to Plaintiff arising from, *inter alia*, Defendant’s position as Manager of Plaintiff.
4. Defendant has violated her fiduciary duties owed to Plaintiff through Defendant’s wrongful competition with Plaintiff’s business and Defendant’s wrongful misappropriation of business opportunities from Plaintiff.
5. Defendant’s breaches of her fiduciary duties owed to Plaintiff proximately and/or directly caused Plaintiff to sustain substantial damages.
6. All conditions precedent to the institution of this action and to obtain the relief sought herein have been performed, have occurred, and/or have been waived or otherwise excused.
7. Plaintiff is obligated to pay its attorneys’ a reasonable fee for their services and is also obligated to pay costs and other expenses related to this dispute. Plaintiff hereby gives notice to Defendant of its intention to seek to recover its reasonable fees and costs from Defendant pursuant to applicable agreements and applicable law.
8. Plaintiff reserves the right to amend this claim to seek punitive damages before trial.

WHEREFORE, Plaintiff demands general and special damages from Defendant; plus interest, attorneys’ fees, and costs; asks that the Court impose a constructive trust in favor of Plaintiff on any and all money, assets, or interests acquired by Defendant as a result of Defendant’s breach of her statutory duties; compel Defendant to disgorge all money, assets, or interests acquired as a result of her breach of his statutory duties; and asks that the Court grant such other or further relief as the Court deems just or proper.

## COUNT V - CIVIL THEFT

1. Plaintiff realleges paragraphs 1 through 55 above as though fully set forth herein.
2. Defendant through has violated Florida Statute 772.11.
3. Defendant knowingly obtained $5,318.00 from Plaintiff’s bank account with the intent to permanently deprive Plaintiff of its right to the money or its right to benefit from the money.
4. As a direct and foreseeable result of Defendant’s theft, Plaintiff has suffered damages.
5. Pursuant to Fla. Stat. 772.11, Plaintiff is entitled to recover from Defendant its reasonable attorneys' fees and costs.
6. Plaintiff has demanded Defendant return the stolen funds, but Defendant has elected to retain such funds.
7. In addition, Plaintiff is entitled to recover from Defendant an amount equal to three times Plaintiff’s actual damages pursuant to Fla. Stat. 772.11.
8. All conditions precedent to the institution of this action and to obtain the relief sought herein have been performed, have occurred, and/or have been waived or otherwise excused.
9. Plaintiff is obligated to pay its attorneys’ a reasonable fee for their services and is also obligated to pay costs and other expenses related to this dispute. Plaintiff hereby gives notice to Defendant of its intention to seek to recover its reasonable fees and costs from Defendant pursuant to applicable agreements and applicable law.

WHEREFORE, Plaintiff demands judgment against Defendant for general damages and consequential damages; for statutory treble damages; for attorneys’ fees and costs; and asks that the Court grant such other or further relief as the Court deems just or proper.

## COUNT VI - INJUNCTIVE RELIEF

1. Plaintiff realleges paragraphs 1 through 55 above as though fully set forth herein.
2. This is an action for preliminary and permanent injunctive relief against Defendant.
3. As set-forth herein and in Plaintiff’s Motion for Preliminary Injunction, Plaintiffs have demonstrated a substantial likelihood of success on the merits of their claims for breach of the operating agreement and buy-sell agreement, violation of the statutory duty of loyalty and care, violation of the common law fiduciary duty, and for civil theft and are entitled to an order from this Court declaring that Defendant cease and desist from engaging in competitive business activities, cease and desist from continuing to use the “Pintarena” name, cease and desist from contacting Plaintiff’s customers and vendors, cease and desist from misappropriating Plaintiff’s assets, and return all misappropriated assets, including but not limited to all social media accounts and monies wrongfully taken.
4. The threatened injury to Plaintiff clearly outweigh any harm that may befall on Defendant by reason of the injunction, which simply maintains the *status quo*. Such injunctive relief is consonant with and will not disserve the public interest.
5. Absent injunctive relief, Plaintiff will suffer irreparable harm and permanent impairment of the economic value of its trademark and commercial valuable rights and will suffer continuing damages including loss of goodwill, loss of profits and the permanent and complete destruction of its business. These harms are not readily measurable or fully compensable in monetary damages. Thus, Plaintiff has no adequate remedy at law.
6. Accordingly, preliminary injunctive relief is warranted to maintain the *status quo* and to prevent irreparable harm to Plaintiff pending a full hearing on the merits of Plaintiff’s request for declaratory relief.

**DEMAND FOR JURY TRIAL**

Plaintiff, PINTARENA, LLC, hereby demands a trial by jury on all matters properly triable by jury under the laws of the United States and the State of Florida.

Dated: June 8, 2016 Respectfully submitted,

**Hirzel Dreyfuss & Dempsey, PLLC**

*Counsel for Plaintiff*

Brickell Bay Club

2333 Brickell Avenue, Suite A-1

Miami, Florida 33129

Telephone: (305) 615-1617

Telecopier: (305) 615-1585

By: /s/ Leon F. Hirzel\_\_\_\_\_\_\_\_\_\_\_\_

LEON F. HIRZEL

Florida Bar No. 85966

leon.hirzel@hirzeldreyfuss.com

PATRICK G. DEMPSEY

Florida Bar No. 27676

dempsey@pgdlawfirm.com