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**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA**

BARBARA ANNE ULMER
f/k/a BARBARA PERFETTI, an individual,

Plaintiff,

CASE NO.:

v.

LORI JAMES, an individual, and
ALL ROMANCE E-BOOKS, L.L.C.,
a Florida limited liability company

Defendants.

_____/

COMPLAINT

Plaintiff, BARBARA ANNE ULMER f/k/a BARBARA PERFETTI ("**Perfetti**"), sues Defendants, LORI JAMES, ("**James**") and ALL ROMANCE E-BOOKS, LLC is a Florida limited liability company ("**All Romance**" or the "**Company**") (collectively "**Defendants**"), and alleges:

PARTIES AND JURISDICTION

1. This is an action for declaratory judgment and injunctive relief, accounting of the Company's property and profit by denying access to contemporaneous and current financial information related to All Romance), breach of duties (fiduciary, care and loyalty), unjust enrichment, inequitable distribution, dilution, and judicial dissolution of All Romance.

2. The claims asserted herein have a value in excess of \$15,000.00, exclusive of interest, attorneys' fees and costs.

3. All Romance is a Florida limited liability company having its principal place of business in Pinellas County, Florida.

4. Perfetti is an individual residing in Pinellas County, Florida.

5. Perfetti is a Member of All Romance, and an owner of a one-half (50%) interest in All Romance.

6. James is an individual residing in San Diego, California.

7. James is a Member of All Romance and an owner of a one-half (50%) interest in All-Romance.

8. Perfetti and James are the sole Members of All Romance.

9. Venue is proper under Sections 47.011 and 605.0703, Florida Statutes, because the events giving rise to this action center around All Romance, which is a Florida limited liability company with its principal place of business in Pinellas County, Florida. Furthermore, the events giving rise to this action occurred (or the omissions which give rise to this action were supposed to have occurred) in Pinellas County, Florida.

GENERAL ALLEGATIONS

10. Perfetti and James formed All Romance in 2006.

11. On or about June 22, 2006, Perfetti and James entered into the Operating Agreement of All Romance E-Books, LLC ("Operating Agreement"). A copy of the Operating Agreement is attached as "**Exhibit A.**"

12. The Florida Revised Limited Liability Act is applicable to All Romance because, even though it was formed in 2006, the Florida Revised Limited Liability Act is applicable to all Florida limited liability companies after January 1, 2015. See section 605.1108, Florida Statutes.

13. Since its formation, All Romance has only had two Members -- Perfetti and James.

14. In addition to owning a one-half (50%) interest in All Romance, Perfetti was the Chief Financial Officer of All Romance until James declared Perfetti to be a Disabled member and locked Perfetti out from performing the responsibilities of Chief Financial Officer.

15. In addition to owning a one-half (50%) interest in All Romance, James is the Chief Operating Officer of All Romance.

16. Pursuant to the Operating Agreement:

- a. The business and affairs of the Company shall be managed by the Members by unanimous agreement, except in the case of disability and death. See Exhibit A, ¶ 5.
- b. The interest of the members in the Company is not transferable either voluntarily or by operation of law, except as the Members may agree in writing. See id., ¶ 13.
- c. The Members shall contribute equally to the capital of the Company as needed and determined by the Members from time to time. See id., ¶ 7.
- d. The Members are entitled to compensation for management services rendered in an amount to be determined from time to time by the Members. See id., ¶ 10.
- e. The Members are entitled to distributions at the times and in the aggregate amounts as determined by the Members. See id., ¶ 11.

17. The Operating Agreement provides that, if a Member becomes subject to a Disability, as defined (a “Disabled Member”), the other Member shall then have the power and authority to make all decisions affecting the Company without any vote or participation of the Disabled Member. See id., ¶ 15(a).

18. The Operating Agreement defines “disability” as “a mental or physical condition which, in the reasonable opinion of a medical doctor selected by the other Member, can be expected to be **permanent or to be of an indefinite duration** and that renders the affected Member unable to carry out the job responsibilities held by, or the tasks assigned to, her immediately prior to the time the disabling condition was incurred . . .” See id., ¶ 15(a). (emphasis added).

19. The Operating Agreement provides that “[i]f the Disability ceases to the point that the Disabled Member is able to and does return to active participation in the Company for at least 90 days, including participating in major marketing events and representing the Company in interviews, conferences and other occasional functions, then such former Disabled Member shall again be entitled to an equal vote in all Company matters.” See id., ¶ 15(a).

20. The Operating Agreement also provides that “[i]f the Disabled Member is unable to continue the business, the Company may be dissolved at any time upon election by her or her legal representative.” See id., ¶ 15(a).

21. On October 27, 2014, Dominick Addario, M.D. (“Dr. Addario”) examined Perfetti in order to evaluate her capacity to carry out her duties.

22. Dr. Addario is a medical professional located in California.

23. James selected Dr. Addario and has had a long standing relationship.

24. On November 26, 2014, Dr. Addario sent e-mail correspondence to Perfetti and James, which stated:

As you are both aware I performed a fitness for duty medical exam of Barabara [sic] Perfetti, findings are that she has a medical disability that prevent her from working as chief financial officer. I recommended certain treatment and testing for her and suggest reevaluation in 3 to 6 months at which time she may once again be

fit to carry out her duties. I will send a letter in this regard which you should both receive by next week.

25. The November 26, 2014 email from Dr. Addario is attached as **"Exhibit B."**

26. Dr. Addario's email did not state that Perfetti is subject to disabling condition expected to be "permanent" or "of an indefinite duration."

27. Based on Dr. Addario's email and his oral report to James, James informed Perfetti that she was a "Disabled Member" under the Operating Agreement.

28. James made this determination before a written report was even issued by Dr. Addario.

29. James made this determination, even though Dr. Addario's findings did not satisfy the definition of "disability" under the Operating Agreement.

30. On or around November 27, 2014, James unilaterally assumed the power and authority and began making all decisions affecting All Romance. James excluded Perfetti from any further involvement in All Romance.

31. On or around November 27, 2014, James also unilaterally decided to begin paying herself a salary. In the past, while the Members of All Romance has made distributions, neither Member had ever drawn a salary from All Romance.

32. Dr. Addario eventually provided a "Fitness for Duty Examination" in which Dr. Addario stated that "[Perfetti] is not able to carry out her duties as Chief Financial Officer for All Romance EBooks, LLC as a consequence of a medical condition." Dr. Addario further stated that he "anticipated . . . that [Perfetti], within reasonable medical probability, may be able to return to work within three to six months of the evaluation, depending upon response to treatment and outcome." The Fitness for Duty Examination is attached as **"Exhibit C."**

33. Again, notably, the Fitness for Duty Examination did not state that Perfetti is subject to disabling condition expected to be “permanent” or “of an indefinite duration.”

34. Despite the fact that the Fitness for Duty Examination did not support a determination of disability under the Operating Agreement, James continued to identify Perfetti as a “Disabled Member” and wrongfully excluded Perfetti from any involvement in All Romance.

35. James also took it upon herself to communicate to the employees of All Romance and professionals working with All Romance that Perfetti no longer working and directed these persons to report directly to James.

36. James unilaterally promoted herself within the Company, assuming the role and listing herself as Chief Executive Officer.

37. James’ unilateral decision to begin paying herself a significant salary without the approval or authorization of Perfetti violates the terms of the Operating Agreement and deprives Perfetti of corresponding compensation or distributions.

38. Perfetti has (a) objected to James’ classification of Perfetti as a disabled member, (b) objected to being locked out from the operations of All Romance, (c) demanded that James make business decisions related to All Romance with Perfetti’s agreement and approval as required by the Operating Agreement, and (d) demanded that James provide contemporaneous and current financial information.

39. Perfetti asked to return to work and was told no.

40. Perfetti asked to be included in meetings and was again told no and told to “stop being a distraction.”

41. James has refused Perfetti's objections and demands and informed Perfetti that, if she did not like what James was doing, that Perfetti should go and get a lawyer.

42. James, as a fellow member of All Romance, owes duties to Perfetti, including, but not limited to fiduciary duties, duties of care, and duties of loyalty.

43. James has breached these duties which she owes to Perfetti by:

- a. Wrongfully declaring Perfetti a disabled member;
- b. Locking Perfetti out of the business operations of All Romance;
- c. Refusing to provide contemporaneous and current financial information;
- d. Engaging in self-dealing by making excessive compensation and/or distributions to herself;
- e. Conducting business matters to the oppression and exclusion of Perfetti, so that it is not practicable for All Romance to continue; and
- f. Refusing to take the necessary action to dissolve All Romance and distribute to Perfetti one-half of the value.

44. Perfetti has had to retain the undersigned law firm as her counsel in order to assert these claims and protect her rights as a member of All Romance and is obligated to pay the undersigned law firm a fee for services provided.

45. All conditions precedent to bringing this cause of action have occurred, been performed, or have been waived.

46. To the extent that James claims that additional notice or demand may be required under the Florida Revised Limited Liability Company Act, Perfetti asserts that such demand would be futile and the additional time associated with making such additional notice or demand would result in irreparable harm to Perfetti.

COUNT I – DECLARATORY AND INJUNCTIVE RELIEF

47. Perfetti restates the allegations contained in Paragraphs 1 through 46.

48. This is a direct action pursuant to Section 605.0801, Florida Statutes, against James for a declaratory judgment and for injunctive relief.

49. Perfetti has directly suffered actual and threatened injuries, personally, which are not solely the result of injury suffered or threatened to be suffered by All Romance.

50. This Court has jurisdiction over this claim pursuant to Chapter 86, Florida Statutes.

51. Under the Operating Agreement, if a Member becomes subject to a Disability, as defined (a “Disabled Member”), the other Member shall thereupon have the power and authority to make all decisions affecting the Company without any vote or participation of the Disabled Member. Exhibit A, ¶ 15(a).

52. The Operating Agreement defines “disability” as “a mental or physical condition which, in the reasonable opinion of a medical doctor selected by the other Member, can be expected to be permanent or to be of an indefinite duration.” See id., ¶ 15) (emphasis added).

53. No medical professional has opined that Perfetti is subject to a disability, or a mental or physical condition, that is expected to be permanent or to be of an indefinite duration.

54. Under the Operating Agreement, Perfetti was not, and is not, a Disabled Member.

55. Although Perfetti was not, and is not, a Disabled Member, James unilaterally determined that Perfetti was a “Disabled Member.”

56. Relying upon this determination, James improperly began making all decisions affecting All Romance and making unauthorized compensation and/or distributions to herself without Perfetti’s approval, agreement, vote, or participation.

57. Perfetti disagreed with James’ determination that she is a Disabled Member.

58. Before she received the Fitness for Duty Examination, James indicated that she intended to declare Perfetti a Disabled Member. When asked to wait to make such a determination in order to see if the Fitness for Duty Examination supported that determination, James indicated that she would not honor Perfetti's request and that if Perfetti objected, then she should go and get a lawyer.

59. James then proceeded to re-route Perfetti's emails in order to preclude her from receiving or sending official communications on behalf of All Romance.

60. A *bona fide*, actual, present, and adverse/antagonistic controversy exists between Perfetti and James as to whether Perfetti is a Disabled Member.

61. The facts concerning this controversy are already ascertained or are readily ascertainable.

62. Perfetti is not seeking advice or an advisory opinion from this Court, but rather is seeking for the Court to render a legal opinion as to the legal effect under the Operating Agreement from an ascertained or ascertainable set of facts.

63. The Court's interpretation as to whether Perfetti is a Disabled Member affects whether Perfetti is entitled to her position as Chief Financial Officer of All Romance and to her voting and participation rights and privileges as a Member of All Romance.

64. If James continues to believe that Perfetti is a "Disabled Member" and continues to make all decisions affecting All Romance and make unauthorized payments of compensation and distributions to herself without Perfetti's approval, agreement, vote, or participation, Perfetti will suffer irreparable injury as to her voting and participation rights and privileges as a Member and Chief Financial Officer of All Romance.

65. As to the equitable and injunctive remedy which Perfetti is seeking herein, Perfetti has no other adequate remedy at law, the threatened injury to Perfetti outweighs any threatened harm that the injunction may cause James, a substantial likelihood of success exists, and the injunction, if issued, will not be contrary to the interest of the public generally.

WHEREFORE, Perfetti seeks: (a) a declaration from the Court that she is not a "Disabled Member" under the Operating Agreement; (b) temporary and permanent injunctive relief requiring that James cease from making all decisions affecting All Romance and making unauthorized payments of compensation and distributions to herself without Perfetti's approval, agreement, vote, or participation, and (c) for such other and further relief as the Court may deem proper.

COUNT II - ACCOUNTING

66. Perfetti restates the allegations contained in Paragraphs 1 through 46.

67. This is a direct action pursuant to Section 605.0801, Florida Statutes, against James for an accounting of profits of All Romance, based upon James' refusal to provide Perfetti access to contemporaneous and current financial information related to All Romance.

68. Perfetti has directly suffered actual and threatened injuries, personally, which are not solely the result of injury suffered or threatened to be suffered by All Romance.

69. Perfetti has requested access to contemporaneous and current financial information related to All Romance.

70. As a Member, Perfetti is entitled to access to contemporaneous and current financial information in order to make an accurate, complete accounting of all property, profit, or benefit derived by the operation of All Romance.

71. James has refused to provide an accounting of All Romance to which Perfetti is entitled as a Member.

72. Perfetti has been damaged and continues to be damaged by James' failure to provide access to contemporaneous and current financial information related to All Romance in order to make an accurate, complete accounting of all property, profit, or benefit derived by the operation of All Romance.

WHEREFORE, Perfetti demands judgment ordering James to provide a full accounting, under the supervision of this Court, of all dealings and transactions involving All Romance and for damages, interest and attorneys' fees against James and for such other and further relief as the Court may deem proper.

COUNT III – BREACH OF DUTIES

73. Perfetti restates those allegations contained in Paragraphs 1 through 46.

74. This is a direct action pursuant to Section 605.0801, Florida Statutes, against James for breach of her fiduciary duties of care and loyalty.

75. Perfetti has directly suffered actual and threatened injuries, personally, which are not solely the result of injury suffered or threatened to be suffered by All Romance.

76. James, as a fellow member of All Romance, owes duties to Perfetti, including, but not limited to fiduciary duties, duties of care, and duties of loyalty. See Section 605.04091, Florida Statutes.

77. James breached her duties owed to Perfetti by engaging in grossly negligent or reckless conduct, and/or willful or intentional misconduct.

78. James breached her duties owed to Perfetti by failing to account to All Romance and hold as trustee for All Romance property, profits, and/or benefits derived by James from James' use of All Romance's property.

79. James has further breached these duties which she owes to Perfetti by:

- a. Wrongfully declaring Perfetti a disabled member;
- b. Locking Perfetti out of the business operations of All Romance;
- c. Refusing to provide Perfetti access to contemporaneous and current financial information related to All Romance;
- d. Engaging in self-dealing by making excessive compensation and/or distributions to herself;
- e. Conducting business matters to the oppression and exclusion of Perfetti, so that it is not practicable for All Romance to continue; and
- f. Refusing to take the necessary action to dissolve All Romance and distribute to Perfetti one-half of the value.

80. James is liable for all damage to property or persons resulting from James' grossly negligent, reckless, willful and/or intentional misconduct.

WHEREFORE, Perfetti demands judgment for damages, interest and attorneys' fees against James based on James' breach of the duties owed to Perfetti, and for such other and further relief as the Court may deem proper.

COUNT IV – INEQUITABLE DISTRIBUTION

81. Perfetti restates those allegations contained in Paragraphs 1 through 46.

82. This is a direct action pursuant to Section 605.0801, Florida Statutes, against James for specific performance for inequitable distribution.

83. Perfetti has directly suffered actual and threatened injuries, personally, which are not solely the result of injury suffered or threatened to be suffered by All Romance.

84. James has wrongfully paid compensation and made distributions to herself, in excess of her percentage interest in the Company, without the approval and agreement of Perfetti, and in violation of James' fiduciary duties and the Operating Agreement.

85. James is presently in control of compensation and distributions from All Romance that are not rightfully hers.

86. Perfetti is entitled to an equal share of compensation and distributions from All Romance.

WHEREFORE, Perfetti requests that this Court enter a judgment (a) directing James to return to All Romance the value of the compensation and distributions wrongfully paid to James, or (b) in the alternative, directing James to pay to Perfetti an equal value of compensation and distributions. Perfetti also requests entry of a judgment for interest and attorneys' fees against James, and for such other and further relief as the Court may deem proper, including the relief requested in Count VI, which seeks dilution of James' ownership interest.

COUNT V – DILUTION

87. Perfetti restates the allegations contained in paragraphs 1 through 46.

88. James has wrongfully paid compensation and made distributions to herself, in excess of her percentage interest in the Company, without the approval and agreement of Perfetti, and in violation of James' duties to Perfetti and the Operating Agreement.

89. James is presently in control of compensation and distributions from All Romance that are not rightfully hers.

90. Perfetti is entitled to either (a) have such compensation and/or distribution returned to All Romance, or (b) receive an equal share of compensation and distributions from All Romance.

91. In the event that James refuses to return such compensation and/or distribution to All Romance, Perfetti is entitled to have the ownership interest of James diluted.

WHEREFORE, Perfetti requests that this Court enter judgment against James and All Romance (a) reforming the Operating Agreement; (b) reducing James' proportionate ownership interest to an amount less than 50% in proportion to the amount of her inequitable distributions; (c) increasing Perfetti's proportionate ownership interest in an amount to the aforementioned reduction; (d) awarding Perfetti her attorneys' fees against James; and (e) for such other and further relief as this Court may deem proper.

COUNT VI – DISSOLUTION

92. Perfetti restates the allegations contained in Paragraphs I through 46.

93. The Operating Agreement requires the unanimous agreement of its Members, Perfetti and James, to manage the business and affairs of All Romance, pay compensation, and make distributions to Members. See Exhibit A, ¶¶ 5, 10, and 11.

94. James has intentionally, illegally, and fraudulently paid compensation and made distributions to herself without the agreement of Perfetti in violation of the Operating Agreement.

95. James has wrongfully excluded Perfetti from any involvement in All Romance and makes all decisions affecting All Romance without any vote or participation of Perfetti.

96. The interest of the members in the Company is not transferable either voluntarily or by operation of law, except as the Members may agree in writing. See id., ¶ 13.

97. Even if it is determined that Perfetti is a Disabled Member, which Perfetti disputes, the Operating Agreement also provides that “[i]f the Disabled Member is unable to continue the business, the Company may be dissolved at any time upon election by her or her legal representative.” See id., ¶ 15(a).

98. Due to James’ wrongful actions, the plain language of the Operating Agreement, and the provisions of the Florida Revised Limited Liability Company Act, a judicial dissolution of a limited liability company is appropriate because: (1) it is not reasonably practicable to carry on All Romance’s business in conformity with its Operating Agreement; and (2) the Members are deadlocked in the management of All Romance’s affairs, the Members are unable to break the deadlock, and irreparable injury to All Romance is threatened and being suffered.

99. Accordingly, Perfetti requests that the Court order the dissolution of all Romance and direct the winding up of affairs and distribution of All Romance’s property.

WHEREFORE, Perfetti demands judgment dissolving All Romance and assessing the costs of this action, interest, and attorneys’ fees against James and for such other and further relief as the Court may deem proper.

Dated: March 2, 2015

/s/ Eric S. Adams
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