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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

12 2DIE4KOURT, a California  
13 corporation, KIMSAPRINCESS INC., a  
California corporation, KHLOMONEY  
14 INC., a California corporation,  
KOURTNEY KARDASHIAN, an  
15 individual, KIM KARDASHIAN  
WEST, an individual, and KHLOE  
16 KARDASHIAN, an individual,

17 Plaintiffs,

18 vs.

19 HILLAIR CAPITAL MANAGEMENT  
LLC, a Delaware Limited Liability  
20 Company; HILLAIR CAPITAL  
INVESTMENTS LP, a Cayman Islands  
21 Limited Partnership; and HAVEN  
BEAUTY INC., a Delaware  
22 corporation; NEAL KAUFMAN, an  
individual SEAN MCAVOY, an  
23 individual; and DOES 1 through 10,  
inclusive,

24 Defendants.

Case No. 8:16-CV-001304

**COMPLAINT FOR INJUNCTIVE  
RELIEF FOR:**

- 15 (1) **FEDERAL TRADEMARK  
INFRINGEMENT**  
[15 U.S.C. § 1114];
- 16 (2) **FALSE ASSOCIATION AND  
DESIGNATION OF ORIGIN**  
[15 U.S.C. § 1125(a)];
- 17 (3) **VIOLATION OF THE RIGHT  
OF PUBLICITY UNDER  
CALIFORNIA LAW; AND**
- 18 (4) **CALIFORNIA COMMON  
LAW TRADEMARK  
INFRINGEMENT**

**INTRODUCTION**

1  
2 1. This is an action for injunctive relief under the Lanham Act and under  
3 California law. In the Licensing Agreement, dated May 9, 2012 (the “License  
4 Agreement”), Plaintiffs granted an exclusive five-year license to use their  
5 trademarks, names, likenesses and images for use in connection with the  
6 development and sale of color cosmetic products, *so long as* all such uses were first  
7 approved in writing by the Plaintiffs. When the original licensee encountered  
8 financial difficulties, Defendants took over the License Agreement in October 2014,  
9 and have been operating the business since then under the federally-registered  
10 trademark “Kardashian Beauty” owned by the Plaintiffs.

11 2. When the Defendants breached the License Agreement by failing to  
12 make required payments and other breaches, Plaintiffs gave notice and an  
13 opportunity to cure, as required under the License Agreement. When the Defendants  
14 refused to cure, the Plaintiffs on July 8, 2016, terminated the License Agreement,  
15 effective immediately. Defendants are refusing to comply with the termination  
16 notice and are continuing to use Plaintiffs’ trademarks, names, likenesses and  
17 images without authorization. Accordingly, Plaintiffs bring this action for injunctive  
18 relief to protect their rights in their valuable intellectual property.

**JURISDICTION AND VENUE**

19  
20 3. This is a civil action arising under federal law, the Lanham Act of  
21 1946, 15 U.S.C. §§ 1051, et seq. This Court has original jurisdiction over the federal  
22 claims pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental  
23 jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a), as those  
24 claims are so related to the federal claims that they form part of the same case or  
25 controversy.

26 4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)  
27 because: the entity Defendants “reside” in this judicial district for venue purposes  
28 under 28 U.S.C. § 1391(c); a substantial part of the events or omissions giving rise to

1 the claims occurred in this district; and a substantial part of property that is the  
2 subject of the action is situated in this district.

3 5. The claims in this action are subject to a mandatory JAMS arbitration  
4 clause in a License Agreement, discussed below. However, as also discussed in  
5 further detail below, that License Agreement specifically permits parties to seek  
6 injunctive relief in a court of competent jurisdiction. This action seeks only  
7 injunctive relief; all claims for money damages based on the conduct below will be  
8 sought in a pending JAMS arbitration. To the extent any claims are later determined  
9 not to be arbitrable, or any parties are not subject to the arbitration agreement,  
10 Plaintiffs reserve their right to seek money damages by amending the complaint  
11 herein. To be clear, the filing of this action for injunctive relief only, is not a waiver  
12 of Plaintiffs’ right to arbitrate all money damage claims involving the conduct  
13 alleged herein, and should not be construed to be such a waiver.

14 **PARTIES**

15 6. Plaintiff 2Die4Kourt is a corporation organized and existing under the  
16 laws of the State of California, with its principal place of business located in Los  
17 Angeles County, California. At all relevant times, 2Die4Kourt was and is a “loan-  
18 out” company for Plaintiff Kourtney Kardashian (“Kourtney”), through which  
19 Kourtney provides certain personal services. Kourtney is a citizen of California and  
20 resides in this judicial district. 2Die4Kourt has the right to enforce various rights of  
21 Kourtney, including Kourtney’s rights to publicity and Kourtney’s common law and  
22 federal trademark rights. 2Die4Kourt is also the registrant of several federally  
23 registered trademarks associated with Kourtney.

24 7. Plaintiff Kimsaprincess Inc. is a corporation organized and existing  
25 under the laws of the State of California, with its principal place of business located  
26 in Los Angeles County, California. At all relevant times, Kimsaprincess Inc. was  
27 and is a “loan-out” company for Plaintiff Kim Kardashian West (“Kim”), through  
28 which Kim provides certain personal services. Kim is a citizen of California and

1 resides in this judicial district. Kimsaprincess has the right to enforce various rights  
2 of Kim, including Kim’s rights to publicity and Kim’s common law and federal  
3 trademark rights. Kimsaprincess is also the registrant of several federally registered  
4 trademarks associated with Kim.

5 8. Plaintiff Khlomoney Inc. is a corporation organized and existing under  
6 the laws of the State of California, with its principal place of business located in Los  
7 Angeles County, California. At all relevant times, Khlomoney Inc. was and is a  
8 “loan-out” company for Plaintiff Khloe Kardashian (“Khloe”), through which Khloe  
9 provides certain personal services. Khloe is a citizen of California and resides in this  
10 judicial district. Khlomoney has the right to enforce various rights of Khloe,  
11 including Khloe’s rights to publicity and Khloe’s common law and federal  
12 trademark rights. Khlomoney is also the registrant of several federally registered  
13 trademarks associated with Khloe.

14 9. Except where otherwise noted, “the Kardashians” refers to all  
15 Plaintiffs, and “the Kardashian Corporations” refer to the corporate Plaintiffs,  
16 2Die4Kourt, Kimsaprincess Inc., and Khlomoney Inc.

17 10. Defendant Hillair Capital Management LLC (“HCM”) is a limited  
18 liability company organized and existing under the laws of the State of Delaware.  
19 On information and belief, its principal offices are located in Burlingame,  
20 California. Defendants Neal Kaufman and Sean McAvoy are Managing Members of  
21 HCM.

22 11. Defendant Hillair Capital Investments LP (“HCI”) is a limited  
23 partnership organized and existing under the laws of the Cayman Islands.  
24 On information and belief, its principal offices are located in Burlingame,  
25 California. HCI purports to invest in certain publicly-traded, American and  
26 Canadian small cap companies. HCM purports to be “the investment adviser to  
27 HCI.”

28 12. HCM and HCI are often collectively referred to as “Hillair.”

1           13. Defendant Haven Beauty Inc. (“Haven”) is a corporation organized and  
2 existing under the laws of the State of Delaware. On information and belief, Haven  
3 is wholly owned by one or both of HCM and HCI. Its principal place of business is  
4 located in Lake Forest, California.

5           14. Defendant Neal Kaufman is an individual who, on information and  
6 belief, resides in the State of California. Kaufman is a Managing Member of HCM,  
7 and is a member of the Board of Directors of Haven.

8           15. Defendant Sean McAvoy is an individual who, on information and  
9 belief, resides in the State of California. McAvoy is a Managing Member of HCM,  
10 and is a member of the Board of Directors of Haven.

11           16. On information and belief, each Defendant is, and at all relevant times  
12 herein mentioned was, the agent, servant and/or employee of one or more of the  
13 other Defendants, and in doing the acts herein alleged, acted within the scope and  
14 course of such agency and employment.

15           17. On information and belief, at all relevant times there existed a unity of  
16 interest and ownership between HCM and/or HCI, on the one hand, and Haven, on  
17 the other hand, such that any individuality and separateness of these Defendants  
18 ceased to exist and that Haven is simply the business conduit and alter ego of either  
19 or both HCM and HCI. Adherence to the fiction of the separate existence of Haven,  
20 HCM and HCI would sanction fraud and promote injustice.

21           18. On information and belief, Kaufman and McAvoy are the alter egos of  
22 HCM, HCI and Haven, such that any individuality and separateness of these  
23 Defendants ceased to exist, and that HCM, HCI and Haven are simply the business  
24 conduit and alter ego of either or both Kaufman and McAvoy. Adherence to the  
25 fiction of the separate existence of Haven, HCM and HCI, on the one hand, from  
26 Kaufman and McAvoy, on the other hand, would sanction fraud and promote  
27 injustice.

28

1 19. Plaintiffs are ignorant of the true names and capacities of Defendants  
2 DOES 1 through 10 and therefore sues these Defendants by such fictitious names.  
3 Plaintiffs will amend this complaint to allege these Defendants’ true names and  
4 capacities when ascertained. Each of these Defendants is responsible and liable in  
5 some manner for the events alleged herein and the damages caused thereby.

6 **BACKGROUND FACTS**

7 **The Kardashians.**

8 20. Kourtney, Kim and Khloe Kardashians are sisters who are best known  
9 for their television series, *Keeping Up With The Kardashians*, which has been  
10 running on the E! Network since 2007. In addition to their television series, they  
11 also endorse various commercial products, such as clothing, jewelry, accessories,  
12 fragrances, and cosmetics. In connection with some of these endorsements, they  
13 license the use of their names, images and likenesses to be used in connection with  
14 the products. As a general matter, Kourtney, Kim, and Khloe enter into endorsement  
15 deals through their respective “loan out” corporations, *i.e.*, Plaintiffs 2Die4Kourt  
16 (Kourtney), Kimsaprincess (Kim), and Khlomoney (Khloe).

17 **The Licensing Agreement Dated May 9, 2012.**

18 21. In 2012, the Kardashians agreed to license their trademarks, names,  
19 likenesses, images, and related intellectual property to Boldface Licensing +  
20 Branding, Inc. (“Boldface”) for use in the development, marketing and sale of color  
21 cosmetics. Effective May 9, 2012, Kourtney, Kim, and Khloe, through their  
22 respective loan out corporations, entered into the License Agreement with the  
23 Licensee, Boldface. The key provisions of the License Agreement are summarized  
24 in the next several paragraphs.

25 22. License of Kardashian Image—In the Agreement, the Kardashians  
26 grant to the Licensee the exclusive right and license during the Term to use the  
27 “Kardashian Image” for the sole purpose of developing, manufacturing, and selling  
28 the Products. (¶ 3(A), p. 5.) The Kardashians are entitled to approve and disapprove

1 any uses of the Kardashian Image. (¶ 7, p. 21.) The “Kardashian Image” is defined  
2 broadly to include not just photographs of the individual Kardashians, but also their  
3 names and trademarks. Specifically, “Kardashian Image” is defined as “the  
4 trademark ‘Kardashian’ and each Kardashian's name, fame, nickname, initials,  
5 autograph, voice, video, film portrayals or performances, photograph (including,  
6 without limitation, the Beauty Shots (as defined in Section 4.A below) likeness and  
7 image or facsimile image, and any other likeness of, or means of endorsement by,  
8 each Kardashian used in connection with the advertising, promotion and sale of  
9 goods, products or services.” (¶ 1.A.)

10       23. Termination—The Kardashians have the right to terminate the License  
11 Agreement immediately upon written notice to Licensee if: (a) Licensee fails to  
12 make timely payments and payments not received within 10 business days after  
13 written notice (¶ 11(B), p. 25); and (b) Licensee breaches any other material term  
14 and fails to cure within 30 days after written notice (¶ 11(C), p. 25).  
15 Upon termination by the Kardashians, the Licensee shall accelerate and immediately  
16 pay to the Kardashians any unpaid Guaranteed Minimum Royalty (GMR) Payments  
17 and any Royalty Payments that are due or would be due (¶ 11(G), p. 25.)

18       24. No Right to Use Image upon Expiration or Termination. Paragraph 13  
19 of the License Agreement states:

20               Licensee acknowledges and agrees that upon and after the  
21               expiration or earlier termination of this Agreement, it shall  
22               not be entitled to, and shall not, make use of or deal with  
23               any of the rights granted by the [Kardashians] herein  
24               including right to use the Kardashian Image, or any print  
25               advertisements, other advertising or promotional or other  
26               materials (or any parts or portions thereof) that contain the  
27               Kardashian Image, in any manner whatsoever .... (¶ 13,  
28               p. 27.)

1           25.    Survival of Obligations Following Termination. Paragraph 28 of the  
2 License Agreement provides that: “Notwithstanding termination or expiration of this  
3 Agreement, for any reason whatsoever, the conditions and provisions of this  
4 Agreement contained in Sections 3.B, 5.C-E, 11.F, 12.F, 13, 14.C-D, 15, and 18-31  
5 shall continue and survive.” (§ 28, p. 37.)

6           26.    Dispute Resolution and Governing Law. Paragraph 27.A provides that  
7 the Agreement “shall be governed by and construed in accordance with the laws of  
8 the State of California applicable to agreement made and to be performed in such  
9 state.” The Paragraph also provides for a mandatory JAMS arbitration clause:  
10 “All claims, disputes and other matters arising out of or relating to this Agreement  
11 shall be submitted to, and determined by, binding arbitration in accordance with  
12 Judicial Arbitration and Mediation Services (JAMS) ...”

13           27.    Availability of Injunctive Relief in Court. Paragraph 27.A provides that  
14 the arbitration clause should not be understood to preclude injunctive relief in a  
15 court: “Notwithstanding the foregoing, nothing herein shall restrict or limit a Party  
16 from seeking or obtaining injunctive relief as provided herein.” Paragraph 27.B  
17 expands on this:

18                   The Parties hereto recognize that a breach of any of the  
19                   covenants and agreements contained herein regarding the  
20                   licensing or use of the Kardashian Image will cause  
21                   irreparable harm and that monetary damages alone will not  
22                   be sufficient to cure any resultant harm to the injured  
23                   Party. Therefore, the Parties agree that in the event of any  
24                   actual or threatened breach by the Licensors, on the one  
25                   hand, or by Licensee, on the other hand, during the Term  
26                   hereof or after the termination or expiration of the term  
27                   hereof, of any of the covenants and agreements contained  
28                   herein relating to the licensing or use of the Kardashian

1 Image, the other shall be entitled, in addition to such other  
2 rights and remedies which may be available to such party  
3 or parties at law or in equity, to injunctive relief, without  
4 being required to give any notice, to show actual damages,  
5 or to post any bond or other security, against any such  
6 actual or threatened breach. (¶ 27.A, p. 36.)

7 **The “Kardashian Beauty” Trademark.**

8 28. In connection with the License Agreement, the name “Kardashian  
9 Beauty” was registered in or about May 2013 to the Kardashian Corporations in the  
10 United States Patent & Trademark Office, Reg. No. 4909148 in the following  
11 classes: IC 003. US 001 004 006 050 051 052. G & S: Cosmetics, cosmetic  
12 preparations, eye shadow, eye liner, foundation, face powders, blush, facial  
13 highlighter, mascara, false eyelashes, body powders, lipstick, lip gloss, cosmetic  
14 palettes, namely, compacts containing make-up, and body makeup.

15 29. The Kardashians have also obtained registrations in the name of the  
16 Kardashian Corporations for the use of the mark “Kardashian Beauty” in other  
17 classes as well.

18 **Hillair Takes Over the License Agreement.**

19 30. When Boldface ran into financial problems, Hillair agreed in June 2013  
20 to loan \$1 million to Boldface in the form of secured convertible debt, and made an  
21 additional loan of \$550,000 two months later.

22 31. In March 2014, with Boldface’s back to the wall and no ability to  
23 negotiate, Hillair forced Boldface to covert Hillair’s debt into preferred equity, and  
24 made an additional \$1 million loan. A few months later, Hillair tied the noose even  
25 tighter when it loaned an additional approximately \$1.65 million to Boldface.

26 32. It was clear by the summer of 2014 that Boldface was financially  
27 underwater. As a secured creditor of Boldface, Hillair therefore filed suit against  
28 Boldface in Los Angeles County Superior Court. Hillair obtained an order from the

1 Court appointing a receiver, and authorizing the receiver to sell the assets of  
2 Boldface, the most notable of which was the License Agreement.

3 33. In the receivership proceeding, Hillair presented the winning bid and in  
4 October 2014 was awarded the assets of Boldface, including the License  
5 Agreement. Hillair assigned the License Agreement to “Newco Beauty Company,  
6 Inc.,” a Delaware shell company wholly owned by Hillair. Newco Beauty then  
7 changed its name to Haven Beauty, Inc., the Defendant in this case.

8 **The Kardashians Send Notices of Breaches Under the License Agreement.**

9 34. As of February 2016, Hillair and Haven had not paid the Kardashians  
10 any royalties. In addition, after acknowledging their obligation under the License  
11 Agreement to pay legal fees and costs incurred by the Kardashians pursuant to  
12 indemnification provisions, Hillair and Haven reneged and refused to pay those  
13 amounts due and owing to the Kardashians.

14 35. On February 26, 2016, the Kardashians’ counsel sent to Hillair a letter  
15 giving notice of certain breaches under the License Agreement and providing an  
16 opportunity to cure as required thereunder (the “February Breach Letter”).  
17 Specifically, the February Breach Letter demands payment of the royalties and legal  
18 fees incurred by the Kardashians from various legal actions relating to products sold  
19 under the License Agreement, and demanded that Hillair stop its unauthorized use  
20 of the Kardashian Images.

21 36. On April 1, 2016, the Kardashians’ counsel gave further notice to  
22 Hillair’s counsel of additional breaches under the License Agreement and provided  
23 an opportunity to cure.

24 37. Paragraph 27(A) of the License Agreement requires that before any  
25 arbitration concerning the License Agreement is commenced, the parties must  
26 attempt “to settle the matter through good faith negotiations within 30 days of the  
27 date from which such claim, dispute or other matter arose.” (§ 27(A), p. 36.)  
28 Notwithstanding this clear requirement, less than 30 days after the Kardashians sent

1 their February Breach Letter, Hillair without warning on March 21, 2016 filed a  
2 complaint in the Los Angeles County Superior Court against the Kardashians,  
3 naming only HCI and HCM as plaintiffs (“the Superior Court Action”). Hillair  
4 strategically chose not to name Haven as a plaintiff in the Superior Court Action in  
5 the hopes of avoiding the JAMS arbitration clause in the License Agreement

6 38. After the filing of the complaint in the Superior Court Action, the  
7 Kardashians instituted a JAMS arbitration against Haven and Hillair regarding the  
8 parties’ issues on April 11, 2016. As noted below, the Superior Court later  
9 compelled Hillair to arbitrate all of its claims in the Superior Court Action in the  
10 JAMS arbitration (i.e., Hillair’s strategic attempt to avoid arbitration by not naming  
11 Haven did not work).

12 **The Kardashians Repeatedly Attempt to Resolve the Parties’ Issues**

13 39. In connection with the filing of the Superior Court Action, Hillair and  
14 its agents made various disparaging remarks regarding the Kardashians.  
15 Nevertheless, the Kardashians, through their general counsel, Todd Wilson, and  
16 their manager, Kris Jenner, attempted to reach out several times to Defendants  
17 McAvoy and Kaufman to discuss a resolution of the parties’ issues such that the  
18 Kardashian Beauty brand would not be destroyed by litigation. When they finally  
19 spoke, Mr. Wilson and Ms. Jenner understood that an agreement had been reached  
20 to place all litigation on hold while a resolution was discussed. Soon thereafter,  
21 Defendants made new demands that must be met before any further discussions  
22 could take place. Even after Mr. Wilson agreed to meet many of the demands, the  
23 individual Defendants withdrew from any discussions.

24 **The State Court Grants the Kardashians’ Motion to Compel Arbitration.**

25 40. On May 11, 2016, after Defendants refused to discuss a resolution, the  
26 Kardashians filed their response to the complaint in the Superior Court Action,  
27 which consisted of a motion to compel arbitration and to stay the action pending the  
28 arbitration.

1           41.     On June 24, 2016, the Superior Court, the Hon. Richard L. Fruin, Jr.  
2 presiding, granted the Kardashians’ motion to compel arbitration and stayed the case  
3 in its entirety. All claims in the Superior Court Action have now been compelled to  
4 a JAMS arbitration.

5                   **Haven and Hillair Ask for the Kardashians’ Consent for a New Line of**  
6                   **Kardashian Beauty Cosmetics Products And the Kardashians Refuse Consent**

7           42.     Paragraph 7 of the License Agreement requires that the Licensee obtain  
8 the Kardashians’ approval before using any of the Kardashian Images:

9                   Prior Approval. The Licensors shall be entitled to approve,  
10 as well as disapprove, of any images, live action footage  
11 or other uses of the Kardashian Image that would in the  
12 Licensors' or Kardashians’ sole judgment impair the value  
13 and marketability of the Kardashian Image or subject the  
14 Kardashians to public ridicule or scorn. Additionally,  
15 Licensee agrees that no use of the Kardashian Image or  
16 any item used in connection therewith, and any other  
17 means of endorsement by the Kardashians will be made  
18 hereunder without the written approval of Licensors prior  
19 to any public release. The Licensors shall provide  
20 Licensee specific grounds for any disapproval within  
21 seven (7) business days of the Licensors' receipt of an  
22 intended use of the Kardashian Image. Any items or  
23 matters submitted to the Licensors for their approval  
24 which are not disapproved within seven (7) business days  
25 after the Licensors' receipt thereof shall be deemed  
26 approved hereunder. The Licensors' approvals pursuant to  
27 this Agreement shall not be withheld unreasonably and  
28 Licensors shall cooperate with Licensee in connection

1 with the approval of any items or matters hereunder. (¶ 7,  
2 p. 21.)

3 43. On May 12, 2016, the day after the motion to compel arbitration was  
4 filed, Mr. Wilson got an email from Jeanene Morgan, Haven’s CFO, asking about  
5 addresses for the Kardashians to send new product samples for the Kardashians’  
6 approval.

7 44. Mr. Wilson was obviously surprised by the email given that Defendants  
8 McAvoy and Kaufman had refused to even have a conversation about the future of  
9 the brand. Indeed, Haven and Hillair had not sent new product samples to the  
10 Kardashians to approve in a very long time. Mr. Wilson responded as follows: “I  
11 must say that we are puzzled by this as Sean and Neal made very clear earlier this  
12 week that they were no longer interested in even discussing further development of  
13 the brand. We reached out to them several times to discuss options for the brand  
14 and they refused to talk and their litigator – who is also your/Haven’s litigator – has  
15 been making public statements calling the Kardashians liars. We can only interpret  
16 your request as part of some litigation strategy.” Mr. Wilson continued that Haven  
17 was “free to send samples” of the products, *but* that the “the K[ardashians]s *will not*  
18 *approve anything, or consider approving anything until Haven/Hillair is no longer*  
19 *in breach of its obligations under the contract.*” (emphasis added.)

20 45. Haven then sent the product samples to the Kardashians, with forms  
21 expressly seeking the Kardashians’ approval of the products. With the approval  
22 forms, Haven explained that it had “developed” new lines of Kardashian Beauty  
23 Products called “Summer Squad” and “Fierce.”

24 46. On May 27, 2016, Mr. Wilson emailed Ms. Morgan explaining that the  
25 Kardashians were *not approving* any of these new products: “I want to acknowledge  
26 that I received the deliveries per your email below. Under the circumstances, I need  
27 to reiterate that due to the uncured breaches of Hillair and Haven detailed in our  
28 prior emails and letters, my clients are not required to provide any services, which

1 includes reviewing products for approval/disapproval. As such, please keep in mind  
2 that their ‘silence’ is not and should not be deemed approval or consent.”

3 47. The reason Haven sent the products to the Kardashians for approval is  
4 because obtaining the Kardashians’ approval under paragraph 7 of the License  
5 Agreement, is an *express condition of Defendants’ license* to use of the  
6 Kardashians’ trademarks and images.

7 48. Notwithstanding this condition of the License Agreement, Haven  
8 ignored the Kardashians’ disapproval and planned to go forward with their “Fierce”  
9 and “Summer Squad” lines, despite the Kardashians’ express disapproval. However,  
10 at no time, did Haven or any other Defendant tell the Kardashians that they were  
11 ignoring the Kardashians’ disapproval or advise them that they were planning to go  
12 forward with the “Fierce” and “Summer Squad” lines after Mr. Wilson’s email of  
13 May 27, 2016.

14 49. On information and belief, Defendants Hillair, Kaufman, and McAvoy  
15 expressly or impliedly directed Haven’s officers, including but not limited to Ms.  
16 Morgan, to ignore Mr. Wilson’s disapproval on behalf of the Kardashians. As such,  
17 Hillair, Kaufman, and McAvoy are all a moving, active and conscious force behind  
18 the trademark infringement and right to publicity violations discussed below.

19 **The Kardashians Terminate the License Agreement.**

20 50. On June 22, 2016, the Kardashians made one final effort to seek Hillair  
21 and Haven’s compliance with the License Agreement. Pursuant to paragraph 11 of  
22 the Agreement, the Kardashians gave notice of their intent to terminate the License  
23 Agreement in ten (10) business days unless Hillair and Haven cured their breaches  
24 by paying all amounts due to the Kardashians under the License Agreement.

25 51. In particular, the Kardashians sought payment of all outstanding legal  
26 fees and costs pursuant to the indemnity obligations under the License Agreement.  
27 The Kardashians also sought payment of all royalties due to the Kardashians under  
28 the License Agreement. In fact, on the second point, and in a show of good faith, the

1 Kardashians recognized that the parties had a dispute over whether any “Guaranteed  
2 Minimum Royalties” were due under the License Agreement, and only demanded  
3 that actual earned royalties be paid.

4 52. Ten business days from June 22, 2016 was July 7, 2016, i.e., over two  
5 weeks later. Notwithstanding the ample time given, Defendants did not reach out to  
6 the Kardashians to discuss the breaches discussed in the breach notice.

7 53. Rather, on July 7, 2016, just before 6:00 p.m. PDT, Defendants’  
8 litigation counsel sent a letter saying that Defendants would not cure their breaches.  
9 On the issue of payment of royalties, Defendants’ litigation counsel made it very  
10 clear that Defendants would *never* pay royalties under the License Agreement,  
11 unless the Kardashians first compensated them for supposed damages they claim  
12 they are owed in the now-stayed Superior Court Action.

13 54. The specific “material breaches” Defendants referenced were the  
14 Kardashians’ supposed failures to provide marketing support for the Kardashian  
15 Beauty line. In this regard, Defendants are willfully ignoring the fact that the  
16 License Agreement expressly states that providing such support is dependent on  
17 Defendants paying the Kardashians all royalties. In particular, paragraph 5.C  
18 provides that any obligation of the Kardashians to provide such services is expressly  
19 subject to the requirement that all payments to the Kardashians “are current and up  
20 to date and Licensee is not otherwise in material breach of any provisions of this  
21 Agreement.” Thus, Defendants’ contention that the failure of the Kardashians to  
22 provide marketing support excuses their payment obligation is contrary to the  
23 express terms of the License Agreement.

24 55. On July 8, 2016, at 12:08 a.m. PDT, the Kardashians sent a notice  
25 terminating the License Agreement, effective immediately. The Kardashians  
26 demanded, among other things, that, pursuant to paragraph 13 of the License  
27 Agreement, Defendants stop using the Kardashian Image (i.e., all images and  
28 trademarks of the Kardashians, all uses of the Kardashian name, etc.) immediately.



1 in the License Agreement gives Defendants such a valuable right (particularly  
2 without the Kardashians’ express approval, which was *never* sought and *never*  
3 obtained).

4 **FIRST CLAIM FOR RELIEF**

5 **(Federal Trademark Infringement – 15 U.S.C. § 1114)**

6 59. Plaintiffs repeat and reallege all prior allegations of the Complaint.

7 60. The Kardashian Corporations are the owner of the standard character  
8 mark, KARDASHIAN BEAUTY, USPTO Reg. No. 4909148 (“the Kardashian  
9 Beauty Mark”). The Kardashian Beauty Mark was registered on the Principal  
10 Register on March 1, 2016, in the following classes: IC 003. US 001 004 006 050  
11 051 052. G & S: Cosmetics, cosmetic preparations, eye shadow, eye liner,  
12 foundation, face powders, blush, facial highlighter, mascara, false eyelashes, body  
13 powders, lipstick, lip gloss, cosmetic palettes, namely, compacts containing make-  
14 up, and body makeup.

15 61. Plaintiff 2Die4Kourt is the owner of the standard character mark,  
16 KOURTNEY KARDASHIAN, USPTO Reg. No. 4516081 (“the Kourtney Mark”).  
17 The Kourtney Mark was registered on the Principal Register on April 15, 2014 in  
18 the following classes: IC 035. US 100 101 102. G & S: Advertising services,  
19 namely, promoting the brands, goods and services of others; endorsement services,  
20 namely, promoting the goods and services of others.

21 62. Plaintiff Kimsaprincess, Inc., is the owner of the standard character  
22 mark, KIM KARDASHIAN, USPTO Reg. No. 3919997 (“the Kim Mark”). The  
23 Kim Mark was registered on the Principal Register on February 15, 2011 in the  
24 following classes: IC 003. US 001 004 006 050 051 052. G & S: Cosmetics.

25 63. Plaintiff Khlomoney, Inc., is the owner of the mark, KHLOE  
26 KARDASHIAN, USPTO Reg. No. 4516080 (“the Khloe Mark”). The Khloe Mark  
27 was registered on the Principal Register on April 15, 2014 in the following classes:  
28 IC 035. US 100 101 102. G & S: Advertising services, namely, promoting the

1 brands, goods and services of others; endorsement services, namely, promoting the  
2 goods and services of others.

3 64. Collectively, the Kardashian Beauty Mark, the Kourtney Mark, the  
4 Kim Mark, and the Khloe Mark are referred to collectively as the “Registered  
5 Marks”

6 65. Defendants have used, and continue to use the Registered Marks in  
7 commerce in connection with the sale, offering for sale, distribution and advertising  
8 of Defendants’ goods and services, along with the goods and services of persons  
9 associated with Defendants. This use is not authorized by Plaintiffs.

10 66. Defendants use of the Registered Marks is likely to cause confusion, or  
11 to cause mistake or to deceive consumers as to the affiliation, association,  
12 connection, endorsement, or sponsorship of Plaintiffs with Defendants.

13 67. Defendants used the Registered Marks with prior knowledge of  
14 Plaintiffs’ rights therein, and with the intent to capitalize on and trade on the  
15 established goodwill of Plaintiffs. Defendants’ use of the Registered Marks was in  
16 bad faith and with knowledge (or reckless disregard of the fact) that such use would  
17 cause confusion, mistake and deception.

18 68. As a result of Defendants’ conduct, Plaintiffs have suffered and will  
19 continue to suffer irreparable harm unless Defendants’ conduct is enjoined and  
20 restrained by this Court.

21 69. Defendants’ misconduct is such that this is an “exceptional” case  
22 within the meaning of the Lanham Act.

23 **SECOND CLAIM FOR RELIEF**

24 **(False Association or Endorsement – 15 U.S.C. § 1125(a))**

25 70. Plaintiffs repeat and reallege all prior allegations of the Complaint.

26 71. The Kardashians’ are world-famous personalities. The Kardashians’  
27 names and likenesses are famously associated with Plaintiffs and conjure up the  
28 Kardashians’ identities and persona in the minds of the public. The Kardashians’

1 names and likenesses are famously associated with Plaintiffs and are distinctiveness  
2 and are used as trademarks by Plaintiffs.

3 72. Defendants have used, and continue to use, the Kardashians’ names,  
4 likenesses, identities, and persona in commerce in order to confuse the public into  
5 believing that Plaintiffs sponsor, endorse and are associated with the Plaintiffs. In  
6 fact, Plaintiffs do not sponsor or endorse Defendants, and they are not associated  
7 with Defendants.

8 73. As a result of Defendants’ unauthorized use of the Kardashians’ names,  
9 likenesses, identities, and persona in commerce, the public is mistakenly confused  
10 that Plaintiffs sponsor, endorse and are associated with Defendants.

11 74. Defendants used the Kardashians’ names, likenesses, identities, and  
12 persona in commerce with prior knowledge of Plaintiffs’ rights therein, and with the  
13 intent to capitalize on and trade on the established goodwill of Plaintiffs. Defendants  
14 use of the Kardashians’ names, likenesses, identities, and persona in commerce was  
15 in bad faith and with knowledge (or reckless disregard of the fact) that such use  
16 would cause confusion, mistake and deception.

17 75. As a result of Defendants’ conduct, Plaintiffs have suffered and will  
18 continue to suffer irreparable harm unless Defendants’ conduct is enjoined and  
19 restrained by this Court.

20 76. Defendants’ misconduct is such that this is an “exceptional” case  
21 within the meaning of the Lanham Act.

22 **THIRD CLAIM FOR RELIEF**

23 **(Violation of the Right to Publicity Under California Law)**

24 77. Plaintiffs repeat and reallege all prior allegations of the Complaint.

25 78. The Kardashians’ names, likenesses, identities, and persona are widely  
26 known and closely associated with Plaintiffs. Defendants’ unauthorized use of the  
27 Kardashians’ names, likenesses, identities, and persona invokes the Kardashians in  
28 the minds of the public. The unauthorized use of the Kardashians’ names,

1 likenesses, identities, and persona are protected by California common law and by  
2 California Civil Code § 3344.

3 79. As a result of Defendants’ intentional and unauthorized use of the  
4 Kardashians’ names, likenesses, identities, and persona in commerce in its  
5 advertising, sales, and offers to sell, Plaintiffs have suffered and will continue to  
6 suffer irreparable harm unless Defendants’ conduct is enjoined and restrained by  
7 this Court.

8 **FOURTH CLAIM FOR RELIEF**

9 **(California Common Law Trademark Infringement)**

10 80. Plaintiffs repeat and reallege all prior allegations of the Complaint.

11 81. The Kardashians’ are world-famous personalities. The Kardashians’  
12 names and likenesses are famously associated with Plaintiffs and conjure up the  
13 Kardashians’ identities and persona in the minds of the public.

14 82. Defendants have used, and continue to use, the Kardashians’ names,  
15 likenesses, identities, and persona in commerce in order to confuse the public into  
16 believing that Plaintiffs sponsor, endorse and are associated with the Kardashians. In  
17 fact, Plaintiffs do not sponsor or endorse Defendants, and they are not associated  
18 with Defendants.

19 83. As a result of Defendants’ unauthorized use of the Kardashians’ names,  
20 likenesses, identities, and persona in commerce, the public is mistakenly confused  
21 that Plaintiffs sponsor, endorse and are associated with Defendants.

22 84. Defendants used the Kardashians’ names, likenesses, identities, and  
23 persona in commerce with prior knowledge of Plaintiffs’ rights therein, and with the  
24 intent to capitalize on and trade on the established goodwill of Plaintiffs. Defendants  
25 use of the Kardashians’ names, likenesses, identities, and persona in commerce was  
26 in bad faith and with knowledge (or reckless disregard of the fact) that such use  
27 would cause confusion, mistake and deception.

28

