

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

FIRST CLUB MARKETING LLC;)	
)	
Plaintiff/Counterclaim Defendant;)	
)	
v.)	Case No. 1916-CV32558
)	
KANSAS CITY BARBEQUE SOCIETY)	Division: 11
)	
Defendant/Counterclaim Plaintiff/ Third Party Plaintiff/Counterclaim Defendant;)	
)	
v.)	
)	
RANDALL BOWMAN)	
)	
Third Party Defendant/Counterclaim Plaintiff)	

**FIRST CLUB MARKETING LLC AND RANDALL BOWMAN’S
RESPONSE TO THE KANSAS CITY BARBEQUE SOCIETY’S
STATEMENT OF UNDISPUTED FACTS**

Introduction: Throughout KCBS’ Response to First Club Marketing LLC and Randall Bowman’s Statement of Facts, KCBS answers that facts are **undisputed**, but then provides further argument in conjunction with its response and cites facts that do not dispute the fact asserted. *See Paragraphs 26, 47-49*. Because KCBS has conceded that these facts are undisputed, FCM/Bowman will not provide further responses to these facts. *See Mo. Sup. Ct. R. 74.04(c). See also Cent. Trust & Inv. Co. v. Signalpoint Asset Mgmt., LLC*, 422 S.W.3d 312, 320 (Mo. banc 2014) (“the non-movant must support denials with specific references to discovery, exhibits, or affidavits demonstrating a genuine factual issue for trial ... [f]acts not properly supported under Rule 74.04(c)(2) or (c)(4) are deemed admitted”).

Randall Bowman and First Club Marketing LLC

1. Randall Bowman (“Bowman”) is owner of a marketing firm called First Club Marketing LLC (“FCM”). (Ex. 4, at 9:18-10:5); (Ex. 3, at 39:6-10).

KCBS RESPONSE: Undisputed.

Kansas City Barbeque Society (“KCBS”)

2. KCBS is a 501(c)(3) and 501(c)(4) corporation. Specifically, the KCBS foundation is a 501(c)(3) and the remaining division is a 501(c)(4) corporation. (Ex. 5, at 51:9-12).

KCBS RESPONSE: Undisputed.

3. KCBS’ primary purpose is the sanctioning of barbeque competition events. (Ex. 5, at 41:16-21); (Ex. 5, at 42:4-7); (Ex. 7, at 125:23-126:1).

KCBS RESPONSE: Undisputed.

4. The KCBS Board of Directors operate under “The Amended and Restated Bylaws of the Kansas City Barbeque Society.” (Ex. 15, at p. 1 at ¶ 20); (Ex. 16) (Amended and Restated Bylaws).

KCBS RESPONSE: Undisputed.

5. The KCBS Bylaws allow a KCBS Board Member to be compensated for services that board member provides to the Board in a capacity other than board service. (Ex. 16, at FCM_17497, Section 4.09; FCM_017501, Section 6.10).

KCBS RESPONSE: Undisputed.

Bowman’s Board Service to KCBS

6. KCBS is governed by a board of directors. (Ex. 1, at p. 16 ¶ 4).

KCBS RESPONSE: Undisputed.

7. Bowman was elected to the KCBS Board of Directors and took his seat in February 2017. (Ex. 4, at 13:17-14:2).

KCBS RESPONSE: Undisputed.

8. Bowman served as President of the KCBS Board of Directors for the 2018 year. (Ex. 4, at 31:22-24). Specifically, Bowman served as President of the KCBS Board of Directors from February 2018 through February 2019. (Ex. 8, at ¶ 8).

KCBS RESPONSE: Undisputed.

9. Bowman was not paid a salary for his service as President of the KCBS Board of Directors. (Ex. 8, at ¶ 9).

KCBS RESPONSE: Undisputed.

Formation of the Agreement

10. From approximately 2008-2017, MMA Creative performed marketing services for KCBS. (Ex. 2, at 22:16-22), (Ex. 2, at 23:24-24:2); (Ex. 4, at 22:8-25).

KCBS RESPONSE: Undisputed.

11. After the contract between MMA Creative and KCBS ended, KCBS was without a full service marketing firm in 2018. (Ex. 6, at 17:15-18:12); (Ex. 6, at 91:6-10); Ex. 2, 26:24-27:3).

KCBS RESPONSE: Disputed to the extent that it implies KCBS did not have an outside vendor performing marketing services in 2018 after KCBS terminated MMA Creative. In particular, KCBS retained Big Kahuna to perform marketing services for KCBS during 2018. See Bowman Depo. at 35:18-36:1.

FCM/BOWMAN REPLY: KCBS' response provides nothing to dispute this fact. It is undisputed that there were other companies that performed marketing services for KCBS. It is also undisputed that no company was hired as a full-service marketing vendor between the MMA and FCM contracts. KCBS' response that other companies performed marketing services does not create a dispute of material fact because it is not relevant to the issues in the case nor is it relevant to prove any element of any claim at issue in this case. Because KCBS' response is not relevant to the issues in this case and does not dispute the fact asserted, there is no genuine dispute of material fact.

12. Bowman took over marketing services for KCBS in 2018. (Ex. 2, at 24:24-25:12); (Ex. 2, at 26:1-5); (Ex. 2, at 26:20-27:2); (Ex. 2, at 45:12-46:13); (Ex. 6, at 91:6-10).

KCBS RESPONSE: Disputed. KCBS hired an outside vendor to perform marketing services in 2018 after it had terminated MMA Creative. In particular, KCBS retained Big Kahuna to perform marketing services for KCBS during 2018. See Bowman Depo. at 35:18-36:1. Bowman did not “take over” marketing services for KCBS in 2018.

FCM/BOWMAN REPLY: See FCM/Bowman’s response to SOF ¶ 11.

13. Bowman provided marketing services and procured sponsorships for KCBS during this period without any contractual arrangement. (Ex. 2, at 32:12-16).

KCBS RESPONSE: Disputed to the extent it implies that Bowman performed marketing services for KCBS without the assistance of KCBS’s contracted-for marketing firm. KCBS retained Big Kahuna to perform marketing services for KCBS during 2018 and Big Kahuna did in fact perform those services. See Bowman Depo. at 35:18-36:1.

FCM/BOWMAN REPLY: See FCM/Bowman’s response to SOF ¶ 11.

14. Bowman was not paid in 2018 for these marketing and sponsorship procurement services. (Ex. 6, at 91:11-13); (Ex. 6, at 91:17-18).

KCBS RESPONSE: Disputed to the extent that it implies that Bowman’s company, FCM, was not compensated in 2018. In particular, FCM received \$2,000 per month from KCBS in 2018 for supposedly performing social media services. See ¶ 17 below. Additionally, FCM was paid in 2019 for work Bowman did in 2018, despite his statements that he had been assisting in 2018 as a “favor” to KCBS. See, e.g., Peters Depo. at 47:25-48:5 (testifying the Marketing Agreement was approved because “we already received a year, I – I’ll put it, a year free. And we wanted to make sure that he could recoup his – investment in the company.” (emphasis added)).

FCM/BOWMAN REPLY: KCBS’ response provides nothing to dispute this fact. It is undisputed that FCM received \$2,000 per month to perform social media services. It is undisputed that Mike Peters provided the above quoted testimony. It is undisputed that the Board wanted to find a way for Bowman to receive pay in 2019, including receive commission on 2019 sponsorships, even when Bowman worked with such sponsors in 2018. KCBS’ response does not create a genuine dispute of material fact because it is not relevant to the issues in the case nor is it relevant to prove any element of any claim at issue in this case.

15. Bowman did not seek reimbursement for expenses during this period with the exception of reimbursement sought for purchasing dinner for the KCBS Board at the February 2019

Board Meeting. (Ex. 2, at 34:9-19); (Ex. 3, at 44:24-45:19); (Ex. 6, at 40:11-20); (Ex. 6, at 91:14-16); (Ex. 4, at 183:8-18) (purchasing dinner at February 2019 Board Meeting).

KCBS RESPONSE: Undisputed.

16. During this period, Bowman's wife (Amanda Bowman) provided social media services for KCBS. (Ex. 2, at 34:20-35:4); (Ex. 4, at 182:14-20).

KCBS RESPONSE: Undisputed.

17. During this period, KCBS paid \$2,000 per month to FCM for social media services. (Ex. 2, at 34:20-35:4).

KCBS RESPONSE: Undisputed.

18. In 2018, KCBS representatives asked FCM about the possibility of FCM providing marketing services for KCBS. (Ex. 8, at ¶ 14).

KCBS RESPONSE: Disputed to the extent that it implies that Bowman or FCM were disinterested or were reluctant to procure a marketing agreement from KCBS. Instead, Bowman sent overpriced bids from other marketing agencies to the Board, and then afterwards, he sent a bid to the Board for his own marketing agency that, unsurprisingly, was less expensive than the other, inflated bids. Bowman controlled the search to find a new marketing agency, including how information flowed to the Board, and loaded the dice in FCM's favor. Bowman's own marketing expert testified in her deposition that in her 40 years of marketing experience, she had never seen a search process like the one that Bowman used to procure his one-sided contract from a non-profit. *See generally* McClure Depo. at 64:6-65:18. Additionally, no one else on the Board had any marketing expertise that would have enabled them to know what further information they would need to evaluate the proposals. *See, e.g.*, Peters Depo. at 76:6-9 (testifying that "nobody on that Board of Directors had any marketing expertise other than Mr. Bowman"); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

FCM/BOWMAN REPLY: KCBS' response provides nothing to dispute this fact; instead, KCBS makes an irrelevant argument that is not related to this statement, nor provides any material to dispute this statement. *See T. by R.T. Satterfield*, 597 S.W.3d 797, 798 (Mo. App. S.D. 2020) ("A 'genuine issue' is a dispute that is real, not merely argumentative, imaginary or frivolous") (citation omitted); *Cent. Trust & Inv. Co.*, 422 S.W.3d at 320 (a party's failure to properly support denials in the statement of uncontroverted facts in accordance with Rule 74.04(c) will result in that statement of fact or facts being admitted); *Executive Bd. of Missouri Baptist Convention v. Windermere Baptist Conference Center*,

Inc., 430 S.W.3d 274, 283 (Mo. App. S.D. 2014) (finding rule 74.04(c)(2) violated where party “failed to just admit or deny each of Respondent’s numbered statements of fact ... [and] responses also “STATE[D]” additional facts beyond those in the paragraphs ...”).

KCBS’ response is disputed only to the extent KCBS mischaracterizes Sue McClure, Mike Peters, and Arlie Bragg’s testimony. Sue McClure’s report demonstrates that her expert opinion surrounded the reasonableness of the Agreement’s terms, which she determined were fair and reasonable. *See* Ex. 26, at McClure_000063 (“The agreement is fair and reasonable to both firms.”). To the extent KCBS asserts her testimony to show that the KCBS contracting process was different from Ms. McClure’s experience, this does not create a dispute of material fact because Ms. McClure’s testimony does not contradict any of the facts asserted in FCM’s SOF ¶¶ 18-24. Further, there is no record evidence that KCBS had an RFP process or requirement, nor is there evidence that KCBS ever performed an RFP process for any marketing contract before. Therefore, there is not a dispute as to the testimony of Sue McClure.

Mike Peters and Arlie Bragg’s testimony does not contradict anything stated in paragraphs 18-24, 26, and 47-49; therefore, there is no dispute of material fact. FCM/Bowman disagree with the characterizations, but because they are irrelevant and because KCBS’s response does not dispute FCM/Bowman’s facts, FCM/Bowman will not contest these characterizations.

19. Bowman sent emails with a PowerPoint that included information about his company and several other marketing companies that may be able to provide marketing services for KCBS. (Ex. 3, at 27:7-11); (Ex. 19 (information about FCM); (Ex. 23) (information about other marketing companies).

KCBS RESPONSE: Disputed to the extent that it implies that the “information” about the other marketing companies and the information about FCM was transmitted to the Board all at once, or in a fair, reasonable, and disinterested manner. Instead, Bowman sent overpriced bids from other marketing agencies to the Board, and then afterwards, he sent a bid to the Board for his own marketing agency that, unsurprisingly, was less expensive than the other, inflated bids. Bowman controlled the search to find a new marketing agency, including how information flowed to the Board, and loaded the dice in FCM’s favor. Bowman’s own marketing expert testified in her deposition that in her 40 years of marketing experience, she had never seen a search process like the one that Bowman used to procure his one-sided contract from a non-profit. *See generally* McClure Depo. at 64:6-65:18. Additionally, no one else on the Board had any marketing expertise that would have enabled them to know what further information they would need to evaluate the proposals. *See, e.g.*, Peters Depo. at 76:6-9 (testifying that “nobody on that Board of Directors had any marketing expertise other than Mr. Bowman”); Bragg Depo. at 31:7-23 (testifying

that the Board was reliant on Bowman to provide complete and accurate information).

FCM/BOWMAN REPLY: *See FCM/Bowman's Response to ¶ 18.*

20. Bowman stated the information was a conversation starter for the KCBS board members.

(Ex. 6, at 78:9-12); (Ex. 4, at 63:13-22); (Ex. 4, at 66:8-13).

KCBS RESPONSE: Disputed to the extent that it implies that the “information” about the other marketing companies and the information about FCM was transmitted to the Board all at once, or in a fair, reasonable, and disinterested manner. Instead, Bowman sent overpriced bids from other marketing agencies to the Board, and then afterwards, he sent a bid to the Board for his own marketing agency that, unsurprisingly, was less expensive than the other, inflated bids. That is, Bowman controlled the search to find a new marketing agency, including how information flowed to the Board. Bowman’s own marketing expert testified in her deposition that in her 40 years of marketing experience, she had never seen a search process like the one that Bowman used to procure his one-sided contract from a small non-profit. *See generally McClure Depo. at 64:6-65:18.* Additionally, no one else on the Board had any marketing expertise that would have enabled them to know what further information they would need to evaluate the proposals. *See, e.g., Peters Depo. at 76:6-9* (testifying that “nobody on that Board of Directors had any marketing expertise other than Mr. Bowman”); *Bragg Depo. at 31:7-23* (testifying that the Board was reliant on Bowman to provide complete and accurate information).

FCM/BOWMAN REPLY: *See FCM/Bowman's Response to ¶ 18.*

21. The information never used the term “request for proposal” or “RFP” to discuss the information from other firms. (Ex. 7, at 177:24-178:2); (Ex. 19); (Ex. 23).

KCBS RESPONSE: Disputed to the extent that it implies that the “information” about the other marketing companies and the information about FCM was transmitted to the Board all at once, or in a fair, reasonable, and disinterested manner. Instead, Bowman sent wildly overpriced bids from other marketing agencies to the Board, and then afterwards, he sent a bid to the Board for his own marketing agency that, unsurprisingly, was less expensive than the other, inflated bids. That is, Bowman controlled the search to find a new marketing agency, including how information flowed to the Board. Bowman’s own marketing expert testified in her deposition that in her 40 years of marketing experience, she had never seen a search process like the one that Bowman used to procure his one-sided contract from a small non-profit. *See generally McClure Depo. at 64:6-65:18.* Additionally, no one else on the Board had any marketing expertise that would have enabled them to know how to evaluate the information Bowman sent them. *See, e.g., Peters Depo. at 76:6-9* (testifying that “nobody on that Board of Directors had any marketing expertise other

than Mr. Bowman”); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

FCM/BOWMAN REPLY: *See FCM/Bowman’s Response to ¶ 18.*

22. Bowman invited any questions anyone had about FCM in his communications when he provided the information on FCM. (Ex. 19, at KCBS_015148).

KCBS RESPONSE: Disputed to the extent that it implies that the “information” about the other marketing companies and the information about FCM was transmitted to the Board all at once, or in a fair, reasonable, and disinterested manner. Instead, Bowman sent overpriced bids from other marketing agencies to the Board, and then afterwards, he sent a bid to the Board for his own marketing agency that, unsurprisingly, was less expensive than the other, inflated bids. That is, Bowman controlled the search to find a new marketing agency, including how information flowed to the Board. Bowman’s own marketing expert testified in her deposition that in her 40 years of marketing experience, she had never seen a search process like the one that Bowman used to procure his one-sided contract from a small non-profit. *See generally McClure Depo. at 64:6-65:18.* Additionally, no one else on the Board had any marketing expertise that would have enabled them to know how to evaluate the information Bowman sent them. *See, e.g., Peters Depo. at 76:6-9* (testifying that “nobody on that Board of Directors had any marketing expertise other than Mr. Bowman”); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

FCM/BOWMAN REPLY: *See FCM/Bowman’s Response to ¶ 18.*

23. This information was provided in advance of the voting on the Agreement. (Ex. 6, at 79:20-80:6).

KCBS RESPONSE: Disputed to the extent that it implies that the “information” about the other marketing companies and the information about FCM was transmitted to the Board all at once, or in a fair, reasonable, and disinterested manner. Instead, Bowman sent overpriced bids from other marketing agencies to the Board, and then afterwards, he sent a bid to the Board for his own marketing agency that, unsurprisingly, was less expensive than the other, inflated bids. That is, Bowman controlled the search to find a new marketing agency, including how information flowed to the Board. Bowman’s own marketing expert testified in her deposition that in her 40 years of marketing experience, she had never seen a search process like the one that Bowman used to procure his one-sided contract from a small non-profit. *See generally McClure Depo. at 64:6-65:18.* Additionally, no one else on the Board had any marketing expertise that would have enabled them to know how to evaluate the information Bowman sent them. *See, e.g., Peters Depo. at 76:6-9* (testifying that “nobody on that Board of Directors had any marketing expertise other than Mr.

Bowman”); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

FCM/BOWMAN REPLY: *See FCM/Bowman’s Response to ¶ 18.*

24. The KCBS board members were able to seek out further information concerning other marketing firms. (Ex. 3, 90:17-91:12); (Ex. 6, at 78:13-25); (Ex. 6, 80:7-10).

KCBS RESPONSE: Disputed to the extent that it implies that the “information” about the other marketing companies and the information about FCM was transmitted to the Board all at once, or in a fair, reasonable, and disinterested manner. Instead, Bowman sent overpriced bids from other marketing agencies to the Board, and then afterwards, he sent a bid to the Board for his own marketing agency that, unsurprisingly, was less expensive than the other, inflated bids. That is, Bowman controlled the search to find a new marketing agency, including how information flowed to the Board. Bowman’s own marketing expert testified in her deposition that in her 40 years of marketing experience, she had never seen a search process like the one that Bowman used to procure his one-sided contract from a small non-profit. *See generally McClure Depo. at 64:6-65:18.* Additionally, no one else on the Board had any marketing expertise that would have enabled them to know what further information they would need to evaluate the proposals. *See, e.g., Peters Depo. at 76:6-9* (testifying that “nobody on that Board of Directors had any marketing expertise other than Mr. Bowman”).

FCM/BOWMAN REPLY: *See FCM/Bowman’s Response to ¶ 18.*

25. The KCBS Board of Directors knew that Bowman was the President of the KCBS Board and principal of FCM at each of the Agreement’s votes. (Ex. 2, at 136:17-24).

KCBS RESPONSE: Undisputed.

26. Past Board Members testified that the compensation provided in the Agreement was reasonable. (Ex. 2, 141:20-142:15).

KCBS RESPONSE: Undisputed, but these Past Board Members also testified that they had no marketing expertise by which to evaluate various bids and that they were reliant on Bowman to give them all the pertinent information. *See, e.g., Peters Depo. at 76:6-9* (testifying that “nobody on that Board of Directors had any marketing expertise other than Mr. Bowman”); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

27. The Board voted to approve the Agreement three times. (Ex. 6, at 96:23-24).

KCBS RESPONSE: Undisputed.

28. On January 2, 2019, the Agreement was voted on for the first time by the 2018 KCBS Board of Directors (Ex. 5, 170:1-6); (Ex. 6, at 75:12-14); (Ex. 12, at KCBS_014829), and the Agreement was approved unanimously at that meeting. (Ex. 2, at 129:17-21); (Ex. 4, at 89:10-23); (Ex. 12, at KCBS_014829).

KCBS RESPONSE: Undisputed.

29. On or around January 2, 2019, FCM and KCBS entered into a contractual agreement (“the Agreement”) for FCM to provide marketing services for KCBS. (Ex. 2, at 129:17-21).

KCBS RESPONSE: Disputed. The January 2, 2019 was not properly called in accordance with KCBS bylaws and was, therefore, ineffectual. That is the reason why the Board held a second meeting to vote in the Marketing Agreement.

FCM/BOWMAN REPLY: KCBS’ response does not contradict the facts stated in paragraph 29. It is undisputed that both parties signed the Agreement on January 2, 2019. Therefore, KCBS’ response does not create a genuine issue of material fact. Further, KCBS does not cite any evidence in support of its denial; therefore, this fact is deemed admitted. *See Cent. Trust & Inv. Co.*, 422 S.W.3d at 320 (a denial that does not include supporting evidence will result in that statement of fact being admitted).

30. Representatives from both parties signed the Agreement. Specifically, Carolyn Wells, the KCBS Executive Director, signed on behalf of KCBS, and Randall Bowman signed on behalf of FCM. (Ex. 1).

KCBS RESPONSE: Disputed. The January 2, 2019 was not properly called in accordance with KCBS bylaws and was, therefore, ineffectual. That is the reason why the Board held a second meeting to vote in the Marketing Agreement.

FCM/BOWMAN REPLY: *See Response to ¶ 29.*

31. KCBS admitted in its Amended Counterclaim that the Agreement is a valid and binding contract. (Ex. 17, p. 10, at ¶ 32).

KCBS RESPONSE: Disputed. KCBS's ultimate position is that the Agreement was procured by Bowman in breach of his fiduciary duties and was, therefore, void *ab initio*. The allegation cited from KCBS's Amended Counterclaim was pleaded as an alternative theory of relief. Mo. R. Civ. P. 55.10 ("A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds.").

FCM/BOWMAN REPLY: KCBS does not provide anything to dispute the fact asserted in paragraph 31. It is undisputed that KCBS' Amended Counterclaim contains this language. Further, KCBS does not cite any evidence in support of its denial; therefore, this fact is deemed admitted. *See Cent. Trust & Inv. Co.*, 422 S.W.3d at 320 (a denial that does not include supporting evidence will result in that statement of fact being admitted).

32. KCBS admitted in its Amended Answer that it had a duty to comply with the Agreement. (Ex. 17, p. 3 at ¶ 24).

KCBS RESPONSE: Disputed. The allegation cited from KCBS's Amended pleading is merely an acknowledgment that, when pleaded, there had not yet been a judicial ruling that the Agreement was invalid. KCBS's ultimate position is that the Agreement was procured by Bowman in breach of his fiduciary duties and was, therefore, void *ab initio*, which is clear from KCBS's Amended Consolidated Pleading. Cf. Mo. R. Civ. P. 55.10 ("A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds.").

FCM/BOWMAN REPLY: KCBS does not provide anything to dispute the fact asserted in paragraph 32. It is undisputed that KCBS' Answer contains this language. Further, KCBS does not cite any evidence in support of its denial; therefore, this fact is deemed admitted. *See Cent. Trust & Inv. Co.*, 422 S.W.3d at 320 (a denial that does not include supporting evidence will result in that statement of fact being admitted).

33. On January 15, 2019, the Agreement was voted on and approved a second time by the 2018 Board of Directors with only one vote against the Agreement. (Ex. 2, at 132:4-6); (Ex. 3, at 110:11-111:17); (Ex. 13, at KCBS_013622).

KCBS RESPONSE: Undisputed.

34. The 2019 Board of Directors took their seats at the February 15-16, 2019 Board Meeting in Kansas City, Missouri. (Ex. 4, at 31:25-32:5 (new board members are seated in February)); (Ex. 8, at ¶ 10).

KCBS RESPONSE: Undisputed.

35. After the 2019 Board of Directors took their seats at this meeting, Bowman's tenure as President of KCBS ended. (Ex. 8, at ¶ 10).

KCBS RESPONSE: Undisputed.

36. At the February 15-16th meeting, the 2019 Board of Directors held a lengthy discussion to discuss the Agreement. (Ex. 5, at 92:15-18); (Ex. 18, at 6:30 minute mark).

KCBS RESPONSE: Undisputed.

37. During the February 15-16th meeting, the Agreement was voted on for a third time. (Ex. 5, at 85:15-20); (Ex. 14, at KCBS_002407).

KCBS RESPONSE: Undisputed.

38. At the February 15-16, 2019 meeting, the Agreement was approved. (Ex. 5, 85:15-20); (Ex. 5, at 170:1-6); (Ex. 14, at KCBS_002407).

39. Bowman abstained from voting. (Ex. 14, at KCBS_002407).

KCBS RESPONSE: Undisputed.

40. Bowman did not try to hide his position with FCM and the KCBS Board. (Ex. 2, at 136:25-137:2).

KCBS RESPONSE: Undisputed.

41. Bowman completed the Conflict of Interest Disclosure, and he disclosed the existence and purpose of FCM and that his wife Amanda Bowman worked at FCM. (Ex. 10, at KCBS_001562-001564 - Ex. A Conflict of Interest Disclosure Statement).

KCBS RESPONSE: Undisputed.

42. The Agreement was voted on by two different KCBS Board of Directors – the 2018 Board and the 2019 Board. (Ex. 4, at 148:9-16) (the Agreement was voted on by two different boards).

KCBS RESPONSE: Undisputed.

43. KCBS’ legal counsel was present at two of the Agreement’s votes – on January 15, 2019 and February 16, 2019. (Ex. 2, at 132:15-25); (Ex. 2, at 138:7-11); (Ex. 6, at 99:6-13, 99:22-100:19).

KCBS RESPONSE: Undisputed.

44. KCBS’ legal counsel did not express concerns about the Agreement. (Ex. 2, at 150:16-25); (Ex. 5, 170:11-15); (Ex. 6, at 99:6-13, 99:22-100:19).

KCBS RESPONSE: Undisputed.

45. Bowman stated that he did not feel it was appropriate for him to bring the Agreement to KCBS’ legal counsel. (Ex. 9, at KCBS_011604).

KCBS RESPONSE: Undisputed.

46. Bowman did not vote at any of the Agreement’s three votes. (Ex. 6, at 92:23-93:5).

KCBS RESPONSE: Undisputed.

47. Every 2018 board member who testified stated that the Agreement was in the best interest of KCBS. (Ex. 2, at 52:18-25); (Ex. 3, at 49:6-10); (Ex. 3, at 50:6-10) (Ex. 6, at 96:1-8).

KCBS RESPONSE: Undisputed, but these Past Board Members also testified that they had no marketing expertise and were reliant on Bowman to give them all the pertinent information. See, e.g., Peters Depo. at 76:6-9 (testifying that “nobody on that Board of Directors had any marketing expertise other than Mr. Bowman”); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

48. 2018 board members stated they considered KCBS' prior marketing contracts in evaluating the Agreement. (Ex. 2, at 123:25-124:10); (Ex. 6, at 93:6-20).

KCBS RESPONSE: Undisputed, but these Past Board Members also testified that they had no marketing expertise and were reliant on Bowman to give them all the pertinent information. See, e.g., Peters Depo. at 76:6-9 (testifying that "nobody on that Board of Directors had any marketing expertise other than Mr. Bowman"); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

49. 2018 board members stated it would have been difficult for another marketing agency to get up to speed after the MMA Creative contract termination (Ex. 3, at 97:20-98:8); (Ex. 3, at 100:6-10), and they considered Bowman's familiarity with KCBS when voting on the Agreement. (Ex. 6, at 95: 19-25).

KCBS RESPONSE: Undisputed, but these Past Board Members also testified that they had no marketing expertise and were reliant on Bowman to give them all the pertinent information. See, e.g., Peters Depo. at 76:6-9 (testifying that "nobody on that Board of Directors had any marketing expertise other than Mr. Bowman"); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

50. At the conclusion of the February 15-16, 2019 Board meeting, Bowman handed Candy Weaver, the 2019 incoming board president, his attorneys' card at the conclusion of that meeting. (Ex. 11, at KCBS_011545).

KCBS RESPONSE: Undisputed.

51. Bowman resigned from the KCBS Board of Directors on February 16, 2019. (Ex. 5, at 79:4-80:13).

KCBS RESPONSE: Undisputed.

52. Around the time Bowman resigned from the KCBS Board of Directors, KCBS's IT vendor helped to migrate all of Bowman's KCBS emails to his FCM email account. (Ex. 4, at 108:8-112:17); (Ex. 8, ¶ 26).

KCBS RESPONSE: Undisputed.

53. This migration included communications with current and potential sponsors as part of FCM's work for KCBS as well as KCBS board communications. (Ex. 8, at ¶ 26).

KCBS RESPONSE: Undisputed.

54. Bowman did not use these emails for any purpose other than KCBS business. (Ex. 4, 110:13-21).

KCBS RESPONSE: Disputed. According to Bowman's own summary judgment papers, at least one of the reasons why he retained these emails was to use them against KCBS in litigation.

FCM/BOWMAN REPLY: KCBS' response does not provide any record evidence to dispute this fact; therefore, this fact is admitted. *See Cent. Trust & Inv. Co.*, 422 S.W.3d at 320 (failure to properly support denials of statements of fact with evidence will result in the statements of fact being admitted). The record is clear that Bowman kept emails because he anticipated litigation, and therefore, had a duty to preserve the emails. KCBS mischaracterizes the record evidence - nowhere in the record, or in Bowman's summary judgment papers, does Bowman state that he kept the emails to use them against KCBS in litigation. FCM's Brief reflects the record evidence which shows that Bowman retained the emails as part of his duty to preserve when he anticipated litigation, and this anticipation occurred at latest, when he resigned from the Board in February 2019. *See Ex. 4, Deposition of Randall Bowman*, at 110:13-21.

55. All witnesses who testified about the Non-Compete provision's meaning testified that the Non-Compete was intended to prevent FCM from sanctioning food competitions. (Ex. 2, at 121:5-9); (Ex. 3, at 96:10-21); (Ex. 6, at 89:3-21); (Ex. 4, at 89:24-90:15), and was not intended to keep FCM from performing other marketing activities, including hiring talent for other marketing programs. (Ex. 2, at 120:25-121:12); (Ex. 6, at 89:7-10).

KCBS RESPONSE: Undisputed.

56. Due to growing unrest concerning the Agreement, Bowman anticipated litigation concerning the Agreement. (Ex. 4, at 110:13-21); (Ex. 4, 122:1-8).

KCBS RESPONSE: Undisputed.

57. In early February 2019, Bowman hired an attorney. (Ex. 4, at 125:1-8).

KCBS RESPONSE: Undisputed.

The Performance of the Agreement.

58. FCM performed under the Agreement by, among other things, procuring sponsorships, responding to and creating posts on social media on KCBS' behalf and providing marketing services to KCBS during the life of the Agreement. (Ex. 8, at ¶ 20).

KCBS RESPONSE: Undisputed.

59. KCBS performed under the Agreement, in part, by paying some, but not all invoices submitted by FCM for services performed. (Ex. 8, at ¶ 21).

KCBS RESPONSE: Undisputed.

60. Under the Agreement, FCM submitted invoices to KCBS for services performed and sponsorships secured. (Ex. 8, at ¶ 19).

KCBS RESPONSE: Undisputed.

KCBS' Termination of the Agreement

61. On April 24, 2019, Bowman sent an email to the KCBS Board of Directors and carbon copied his attorney at the time on that email stating that he was worried FCM would be taken advantage of without representation. (Ex. 9, at KCBS_011603).

KCBS RESPONSE: Undisputed.

62. During April 2019, the KCBS Board of Directors held discussions concerning the termination of the Agreement. (Ex. 5, at 109:14-18).

KCBS RESPONSE: Undisputed.

63. In April of 2019, the 2019 Board addressed whether to terminate the Agreement and whether to send related communications to KCBS' legal counsel (discussing whether to

“terminate the contract either without cause and pay the termination fee or with cause and prepare for litigation”) (Ex. 11, at KCBS_011547-11549).

KCBS RESPONSE: Undisputed.

64. Despite these discussions in April, the Agreement was not terminated until November. (Ex. 5, at 109:14-22).

KCBS RESPONSE: Undisputed.

65. One board member expressed concern that the 2019 KCBS Board of Directors planned to “concoct” reasons to terminate the FCM contract (Ex. 3, at 124:14-24), (Ex. 24), and that the termination of the Agreement would likely result in litigation because such termination would be wrongful. (Ex. 3, at 124:24-125:18), (Ex. 24).

KCBS RESPONSE: Undisputed.

66. On November 1, 2019, eleven months into FCM’s three-year contract, KCBS terminated the Agreement with cause. (Ex. 5, at 36:3-10) (terminated on November 1, 2019), (Ex. 5, at 127:22-128:3).

KCBS RESPONSE: Undisputed.

67. Prior to termination of the Agreement, KCBS never sent a written warning pursuant to Section (3)(b)(iii) or (iv) of the Agreement to Bowman or FCM. (Ex. 1, at KCBS_000396, ¶ (3)(b)(iii),(iv) (requiring KCBS to provide thirty days written warning before terminating for cause); (Ex. 8, at ¶ 23).

KCBS RESPONSE: Undisputed.

68. KCBS noted the Agreement as a potential excess benefit transaction on its 2019 990 Form. (Ex. 7, at 183:17-184:7).

KCBS RESPONSE: Undisputed.

69. FCM and KCBS operated several shared Google folders. (Ex. 4, at 173:11-174:6).

KCBS RESPONSE: Undisputed.

70. The folders included documents created and shared by both FCM and KCBS. (Ex. 4, at 173:11-174:6).

KCBS RESPONSE: Undisputed.

71. FCM was the owner of some of the Google folders and KCBS was the owner of others. (Ex. 4, at 173:11-174:6).

KCBS RESPONSE: Undisputed.

72. Sometimes, KCBS would copy a document or spreadsheet created by FCM and place it into a Google drive which it owned. (Ex. 8, at ¶ 32).

73. KCBS had access to FCM's shared drives and FCM had access to KCBS's shared drives. (Ex. 8, at ¶ 30).

KCBS RESPONSE: Undisputed.

74. There were files on a Google drive that KCBS used that were owned by Randall Bowman and Amanda Bowman. (Ex. 5, at 178:17-179:2); (Ex. 8, at ¶ 32).

KCBS RESPONSE: Undisputed.

75. Neither Bowman or FCM used any KCBS list on the shared Google drive for FCM's purpose, (Ex. 4, at 174:17-175:12), and Bowman did not look at the Google drive after the Agreement was terminated on November 1st, 2019. (Ex. 4, at 173:11-6).

KCBS RESPONSE: Disputed. See Email from Jordan Fishman, IT specialist at Park Road (KCBS_004212).

FCM/BOWMAN REPLY: KCBS' response does not provide any record evidence to dispute this fact - the email KCBS refers to does not dispute paragraph 75. The author of the email does not know if any Google Drive materials were used or not, nor does the author of the email know if Bowman accessed the Google Drive after November 1, 2019. In fact, his email expressly states that the R Bowman@kcbs.us email address' last login

was on October 22, 2019 and last access the Drive Logs was on July 3, 2019. Because KCBS' response does not dispute the fact asserted, there is no genuine dispute of material fact.

76. Bowman did not use any emails that were retained on Bowman's computer from his time on the KCBS Board of Directors or from his time as the marketing services vendor for KCBS (Ex. 8, ¶ 38).

KCBS RESPONSE: Disputed. According to Bowman's own summary judgment papers, at least one of the reasons why he retained these emails was to use them against KCBS in litigation.

FCM/BOWMAN REPLY: *See Response to ¶ 54.*

77. To date, KCBS owes payment to FCM, but has not paid FCM. (Ex. 4, at 149:7-150:3); (Ex. 8, at ¶ 21). KCBS' Corporate Representative testified that KCBS is not aware of the amount of money owed to FCM. (Ex. 5, at 214:2-7).

DISPUTED: Disputed. KCBS's ultimate position is that the Agreement was procured by Bowman in breach of his fiduciary duties to KCBS and was, therefore, void ab initio and no payment is due to FCM.

FCM/BOWMAN REPLY: KCBS does not provide anything to dispute the fact asserted in paragraph 77. It is undisputed that there are outstanding, unpaid invoices owed to FCM. Further, KCBS does not cite any evidence in support of its denial; therefore, this fact is deemed admitted. *See Cent. Trust & Inv. Co.*, 422 S.W.3d at 320 (a denial that does not include supporting evidence will result in that statement of fact being admitted). Finally, KCBS' argument in its denial, without evidence in support, is insufficient to create a genuine dispute of material fact. *See Executive Bd. of Missouri Baptist Convention*, 430 S.W.3d at 283 (finding rule 74.04(c)(2) violated party does not provide evidence in support of its denial and relies only on argument).

78. Specifically, the following amounts remain unpaid:

- a. Cabo Wabo Commission in the amount of \$13,000.00 due on October 7, 2019 (Ex. 8, at ¶ 22(a)).
- b. National Turkey Federation Commission in the amount of \$5,250 due on October 7, 2019. (Ex. 8, at ¶ 22(b)).
- c. October Monthly Retainer for Services in the amount of \$13,000 due on November 19, 2019. (Ex. 8, at ¶ 22(c)).

- d. October Expenses in the amount of \$425.39 due on November 19, 2019. (Ex. 8, at ¶ 22(d)).
- e. Renewals for twenty-four months after termination per the Agreement. (Ex. 1, at KCBS_000395, at ¶ (2)(h)). (Ex. 8, at ¶ 22(e)).
- f. 2019 Bonus per the Agreement. (Ex. 1, at KCBS_000396, at ¶ (2)(f)). (Ex. 8, at ¶ 22(f)).
- g. An amount equal to three months of services (\$39,000) per the Agreement's termination without cause provision. (Ex. 1, at KCBS_000397, at ¶ 4); (Ex. 8, at ¶ 22(g)).

DISPUTED: Disputed. KCBS's ultimate position is that the Agreement was procured by Bowman in breach of his fiduciary duties and was, therefore, void *ab initio* and no payment is due to FCM.

FCM/BOWMAN REPLY: *See Response to ¶ 77.*

79. FCM assisted Ace Hardware in an event focused on selling grills. (Ex. 4, at 172:6-15); (Ex. 8, at ¶ 35).

KCBS RESPONSE: Undisputed.

80. Prior to the Agreement, FCM had previously provided marketing services to Ace Hardware as a client. (Ex. 8, at ¶ 33).

KCBS RESPONSE: Undisputed.

81. Specifically, Ace Hardware assisted in placing barbeque cooks, or "pitmasters," at Ace Hardware stores to demonstrate cooking meats on Ace grills to sell Ace products. (Ex. 4, at 172:6-15).

KCBS RESPONSE: Undisputed.

82. Selling Ace products is not the purpose of KCBS. (Ex. 5, at 41:16-21); (Ex. 5, at 42:4-7); (Ex. 6, at 88:16-22); (Ex. 7, at 125:23-126:1).

KCBS RESPONSE: Undisputed.

83. The date of this event was after the date the Agreement was terminated. (Ex. 8, at ¶ 36).

KCBS RESPONSE: Undisputed.

84. The Ace event was not a competition food event, and FCM has not sanctioned any food competitions since November 1, 2019 when the Agreement was terminated. (Ex. 8, at ¶¶ 36, 37).

KCBS RESPONSE: Undisputed.

85. As part of my duties as President in 2018, I worked with the 2018 Board of Directors to negotiate contracts on behalf of KCBS, including Heath Hall, Carolyn Wells, and Mike Peters' contracts. As President, I did not vote on the contracts for FCM, Heath Hall, Carolyn Wells, or Heading South LLC (Mike Peters' company). (Ex. 8, at ¶ 39). The 2018 Board approved contracts for each of these individuals, and we did so in good faith, using our best judgment, and what was in the best interest of KCBS. (Ex. 8, at ¶ 40).

KCBS RESPONSE: Disputed because this is an excerpt from Bowman's affidavit rather than a statement of alleged fact.

FCM/BOWMAN REPLY: KCBS does not provide any record evidence to dispute the fact asserted in paragraph 85. The facts in paragraph 85 are undisputed, and therefore, admitted. *See Cent. Trust & Inv. Co.*, 422 S.W.3d at 320 (a denial that does not include supporting evidence will result in that statement of fact being admitted).

Further, Missouri Supreme Court Rule 74.04(c) allows a party to support its statement of uncontroverted material facts with "specific references to the pleadings, discovery, exhibits, or *affidavits* that demonstrate a lack of a genuine issue as to the facts." (emphasis added). Rule 74.04(e) requires that an affidavit be "made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Mr. Bowman's affidavit meets the requirements of Rule 74.04(e). Accordingly, KCBS' response to this fact does not create a genuine issue of material fact.

DATED: April 6, 2021

Respectfully Submitted,

WILLIAMS DIRKS DAMERON, LLC

/s/ Eric L. Dirks
Eric L. Dirks, MO Bar No. 54921
Michael Williams, MO Bar No. 47538
Courtney Stout, MO Bar No. 70375
1100 Main Street, Suite 2600
Kansas City, MO 64105
dirks@williamsdirks.com
mwilliams@williamsdirks.com
cstout@williamsdirks.com
Tel: (816) 945-7110
Fax: (816) 945-7118

*Attorneys for First Club Marketing LLC and
Randall Bowman*

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of April 2021, a true and correct copy of the foregoing filed with the Clerk of the Court using the electronic filing system, which will send notice of electronic filing to all counsel of record for this case.

/s/ Eric L. Dirks
Eric L. Dirks