

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

FIRST CLUB MARKETING LLC,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 1916-CV32558
	)	
KANSAS CITY BARBEQUE SOCIETY	)	Division: 11
	)	
Defendant.	)	

**PLAINTIFF’S ANSWER TO DEFENDANT’S COUNTERCLAIMS**

Plaintiff First Club Marketing, LLC (“FCM”), by and through its attorneys, hereby submits the following Answer in response to the Counterclaims of Defendant Kansas City Barbeque Society (“KCBS”). Plaintiff responds to the enumerated paragraphs of Defendant’s Counterclaims as follows:

**COUNTERCLAIM**

1. Admitted.
2. The allegations state a legal conclusion to which no response is required. To the extent a response is required, FCM denies the allegations contained in Paragraph 2 of KCBS’ Counterclaims.
3. Admitted that First Club Marketing’s principal is Randall Bowman. Admitted that Randall Bowman was the President of the KCBS Board; however, FCM disagrees with, and therefore denies, each and every allegation in Paragraph 3 of KCBS’ Counterclaims that was not specifically admitted herein.
4. Denied.
5. Denied.
6. Denied.
7. Denied.

- 8. Denied.
- 9. Denied.
- 10. Denied.
- 11. Admitted that Section 3 of the Agreement contains language regarding dishonest conduct and the language speaks for itself. FCM denies each and every remaining allegation in Paragraph 11 of KCBS' Counterclaim that is not specifically admitted and denies its conduct violated Section 3.
- 12. Denied.
- 13. Denied.
- 14. Denied.
- 15. Denied.
- 16. Denied.
- 17. Denied.
- 18. Denied.
- 19. Denied.
- 20. Denied.

**COUNT I**  
**BREACH OF CONTRACT**

- 21. FCM hereby re-incorporates its responses to the allegations above.
- 22. Denied.
- 23. Denied.
- 24. Denied.
- 25. Denied.

26. Admitted that Section 9 of the Agreement that Section 9 contains the language quoted in paragraph 26. FCM denies any remaining allegations in Paragraph 26 of KCBS' Counterclaim.

27. Denied.

**COUNT II**  
**TAMPERING WITH COMPUTER DATA**

28. FCM hereby re-incorporates its responses to the allegations above.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

Answering the WHEREFORE clause of the Answer, FCM denies KCBS is entitled to any of the requested relief and denies its actions caused any of the alleged damages in the Counterclaims.

**AFFIRMATIVE DEFENSES**

1. KCBS' Counterclaims fail to state a claim upon which relief can be granted. KCBS' Counterclaims should be dismissed because KCBS cannot establish the requisite elements of a breach of contract claim or tampering with computer data claim.
2. KCBS improperly accessed Randall Bowman and FCM's Google drive after KCBS terminated the Agreement. KCBS was not authorized to access Randall Bowman and FCM's Google drive.
3. KCBS's was the first to materially and substantially breach the Agreement. This breach discharged any obligation of FCM under the Agreement, so KCBS' Counterclaims should be dismissed because of KCBS' prior breach.

4. KCBS' Counterclaims are barred by the doctrines of waiver, laches, estoppel, and abandonment. KCBS' counterclaims allege that FCM's wrongdoing occurred prior to or during the Agreement's formation in January 2019, but KCBS did not terminate the Agreement until November 2019, eleven months later.
5. FCM denies that it has any obligation for any of KCBS' alleged damages, and affirmatively states that any damages allegedly sustained by KCBS were caused by KCBS' own unclean hands.
6. To the extent that KCBS was damaged and entitled to any recovery, which FCM expressly denies, that recovery is entitled to be set-off by the damages KCBS has caused FCM.
7. To the extent that KCBS was damaged, which FCM expressly denies, KCBS has failed to mitigate such damages or injuries, including but not limited to, KCBS' continuance of and participation with the Agreement until November 2019, despite KCBS' allegations that the acts complained of occurred before the Agreement was even executed in January 2019.
8. Any award of damages should be barred or limited to the extent that the relief demanded by KCBS is improper, inappropriate, exceeds the scope of permissible damages and remedies, and/or otherwise is not available under the law upon which the claims rest.
9. KCBS' counterclaims involving the alleged non-compete/nondisclosure agreements with FMC are illegal, void, and unenforceable. RSMo. §§ 416.031, 431.202.
10. FCM states that KCBS has no good faith basis for its claims.
11. KCBS is liable for FCM's costs and attorney fees incurred in defending against KCBS' Counterclaims.
12. KCBS' Counterclaims must be dismissed as any damages alleged were not caused by any wrongful conduct.

13. FCM hereby gives notice that it intends to rely on any additional affirmative defenses that become available or apparent during discovery, and thus reserves the right to amend its Answer to Defendant's Counterclaims to assert such additional defenses.

WHEREFORE, Plaintiff FCM prays that: (1) the Counterclaims against FCM be dismissed in their entirety; (2) FCM recover its costs and attorneys' fees; and (3) this Court award such other and further relief as the Court may deem just and proper.

DATED: March 20, 2020

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*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of March, 2020, a true and correct copy of the foregoing filed with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record for this case.

/s/ Eric L. Dirks  
Eric L. Dirks