

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

<b>FIRST CLUB MARKETING LLC,</b>	)	
	)	
<b>PLAINTIFF,</b>	)	
<b>v.</b>	)	<b>Case No. 1916-CV32558</b>
	)	
<b>KANSAS CITY BARBEQUE SOCIETY,</b>	)	
	)	
<b>DEFENDANT.</b>	)	

**JOINT MOTION TO TRANSFER AND CONSOLIDATE**

Plaintiff First Club Marketing LLC (“FCM”) and Defendant Kansas City Barbeque Society (“KCBS”) jointly move the Court to transfer the case styled *Kansas City Barbeque Society v. Randall Bowman*, Case No. 2016-CV06412, from Division 13 to Division 11 of this Court and to consolidate it with this action pursuant to Missouri Rule of Civil Procedure 66.01(b) and Local Rule 6.8.

In further support of this Motion, the parties state the following:

1. On or around December 3, 2019, FCM filed this action against KCBS and, on February 19, 2020, KCBS Answered and filed Counterclaims against FCM.
2. On or around February 19, 2020, KCBS filed Case No. 2016-CV06412 against Randall Bowman.
3. Randall Bowman is the principal of FCM and formerly the President of KCBS. The parties’ respective claims in the two cases all revolve around a marketing agreement between FCM and KCBS, the parties’ performances under the agreement, and the parties’ actions taken after termination of the agreement.
4. It is therefore undisputed that the parties’ claims in the two actions arise out of the same transaction and involve common issues of law and fact. Indeed, the only reason that KCBS filed its claims against Randall Bowman in a separate lawsuit is because Bowman is not

currently a party in this case, and the Rules and jurisprudence relating to third-party practice did not allow KCBS to plead claims against Bowman in its responsive pleading here. *Health Care Foundation of Greater Kansas City v. HM Acquisition, LLC*, 507 S.W.3d 646, 658 (Mo. Ct. App. 2017).

5. Nonetheless, Missouri Rule of Civil Procedure 66.01(b) gives this Court discretion to consolidate cases involving a common question of law or fact:

“When civil actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the civil actions; it may order all the civil actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.”

*See also Belden v. Chicago Title Ins. Co.*, 958 S.W.2d 54, 57 (Mo. App. 1997) (“In cases involving a common question of law or fact, the court may exercise its discretion by consolidating the actions. It is appropriate to consolidate so as to avoid piecemeal litigation when it is *reasonably* possible.” (emphasis in original)).

6. This Court’s local rules govern the procedure for transfer and consolidation. “Cases may be transferred between judges by agreement of the judges.” L.R. 6.8.2. When two cases arise out of the “same transaction” or the “same acts of negligence,”

“the circuit judge handling the lowest numbered case upon motion shall request the judge or judges having the later filed case or cases to transfer the same to the division of such requesting judge so that said judge shall dispose of all preliminary motions and try, hear and determine all issues presented in the case.”

L.R. 6.8.3. After the case is transferred, the judge before whom the two cases are pending “may consolidate the cases for trial if, in his judgment, consolidation is authorized by the Missouri Rules of Civil Procedure.” L.R. 6.8.4.

7. The purpose of transfer and consolidation is to avoid piecemeal litigation “where *reasonably* possible.” *Belden*, 958 S.W.2d at 57. Here, given the “overwhelming overlap” of

factual and legal issues, transfer and consolidation are appropriate. *See Owens v. ContiGroup Companies, Inc.*, 344 S.W.3d 717, 725 (Mo. App. 2011).

8. The parties have agreed that, should this Motion be granted, KCBS will file a new, consolidated pleading that will contain its Answer, Counterclaims against FCM, and Claims against Bowman within 10 days of the Order granting Transfer and Consolidation. The parties have further agreed that FCM and Bowman will then have 30 days to file a new, consolidated responsive pleading against KCBS.<sup>1</sup>

WHEREFORE, the Parties respectfully request that the Court enter an Order to transfer the case styled *Kansas City Barbeque Society v. Randall Bowman*, No. 2016- 06412 (Cir. Ct. of Jackson Cnty., Mo., Kansas City, Div. 13) to Division 11 of this Court and to consolidate it with this action, and for such other and further relief as the Court deems just.

Respectfully submitted April 2, 2020.

**BRYAN CAVE LLP**

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<sup>1</sup> If the Court does not grant this Motion, the parties have agreed that Bowman may file his responsive pleading in *Kansas City Barbeque Society v. Randall Bowman*, No. 2016- 06412 (Cir. Ct. of Jackson Cnty., Mo., Kansas City, Div. 13) within 10 days of this Court's Order denying this Motion.

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ATTORNEYS FOR FIRST CLUB MARKETING LLC

**CERTIFICATE OF SERVICE**

On April 2, 2020, I electronically filed the foregoing with the clerk of the court using the electronic filing system, which will send notice of filing to all counsel of record.

/s/ Logan M. Rutherford

Attorney for The Kansas City Barbecue Society