

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

FIRST CLUB MARKETING LLC;)	
RANDALL BOWMAN)	
)	
PLAINTIFF/COUNTERCLAIM)	
DEFENDANTS,)	
)	
v.)	Case No. 1916-CV32558
)	
KANSAS CITY BARBEQUE SOCIETY,)	
)	
DEFENDANT/COUNTERCLAIM)	
PLAINTIFF.)	

**ANSWER, CLAIMS, AND COUNTERCLAIMS OF
KANSAS CITY BARBEQUE SOCIETY**

The Kansas City Barbecue Society (“KCBS”) states the following in response to First Club Marketing, LLC’s (“FCM”) Petition:

PARTIES, JURISDICTION, AND VENUE

1. KCBS is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 1 of the Petition and therefore denies the same.
2. Admitted.
3. Admitted.
4. Admitted.

THE AGREEMENT

5. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 5 of the Petition.

6. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 6 of the Petition.

7. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 7 of the Petition.

8. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 8 of the Petition.

9. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 9 of the Petition.

10. Denied.

NON-COMPETE PROVISION

11. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 11 of the Petition.

12. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 12 of the Petition.

13. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 13 of the Petition.

14. The letter is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 14 of the Petition.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. The letter is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 21 of the Petition.

COUNT I
BREACH OF CONTRACT

22. KCBS here incorporates its responses to each preceding Paragraph of the Petition.

23. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 23 of the Petition.

24. KCBS admits that it had a duty to comply with the Agreement. KCBS denies the remaining allegations in Paragraph 24 of the Petition.

25. Denied.

26. Denied.

27. Denied.

COUNT II
DECLARATORY RELIEF

28. KCBS here incorporates its responses to each preceding Paragraph of the Petition.

29. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 29 of the Petition.

30. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 30 of the Petition.

31. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 31 of the Petition.

32. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 32 of the Petition.

33. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 33 of the Petition.

34. The Agreement is a written document that speaks for itself, and KCBS denies any further characterizations of that document. KCBS denies any remaining allegations in Paragraph 34 of the Petition.

35. Admitted.

36. Denied.

37. Denied.

- 38. Denied.
- 39. Denied.
- 40. Admitted.
- 41. Denied.
- 42. Denied.

GENERAL DENIAL

KCBS denies each and every allegation in FCM’s Petition, including headings, subparts, and prayers for relief, except those specifically admitted.

AFFIRMATIVE DEFENSES

1. To the extent that FCM is entitled to any recovery, which KCBS expressly denies, that recovery must be set-off by the damages FCM has caused KCBS.

2. KCBS 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 assert such additional defenses.

WHEREFORE, KCBS prays that: (1) FCM take nothing by reason of its Petition; (2) the Petition against KCBS be dismissed in its entirety; (3) KCBS recover its costs; and, (4) this Court award such other and further relief as the Court may deem just and proper.

CLAIMS AGAINST BOWMAN AND COUNTERCLAIMS AGAINST FCM

1. In a contract dated January 2, 2019 (the “Agreement”), FCM agreed to provide marketing services for KCBS.

2. At a special meeting on January 15, 2019, the KCBS Board (the “Board”) approved the Agreement. Before this meeting, the Agreement had no legal effect.

3. FCM's principal is Defendant Randall Bowman. Up to and including January 15, 2019, Bowman was also a director and the President of the Board.

4. Consequently, up to and including January 15, 2019, Bowman owed KCBS fiduciary duties and was subject to KCBS's bylaws.

5. Contrary to Bowman's representations to the Board, the monthly retainer and commission rates for sponsorships in the Agreement significantly exceeded industry standards. This resulted in above-market compensation to FCM in exchange for the services provided to KCBS under the Agreement.

6. Bowman's misrepresentations were fraudulent and a breach of his fiduciary duties to KCBS.

7. Also contrary to Bowman's representations, KCBS's outside counsel did not review the Agreement before the Board approved it.

8. Bowman's misrepresentations were fraudulent and a breach of his fiduciary duties to KCBS.

9. In violation of KCBS's bylaws, FCM received compensation under the Agreement for work that Bowman performed, as president of KCBS, in 2018—before the Board had approved the Agreement.

10. Specifically, FCM billed KCBS, and was paid by KCBS, for at least 13 sponsorships obtained before the Board approved the Agreement.

11. Under Section 3 of the Agreement, engaging in dishonest conduct in connection with the Agreement, as determined by KCBS in good faith, constitutes cause for termination.

12. Based on the facts alleged in the preceding Paragraphs of this Counterclaim, on November 1, 2019, KCBS terminated the Agreement for cause due to Bowman and FCM's dishonest conduct.

13. The Agreement contains requirements relating to non-disclosure, non-competition, and ownership of work product that survive KCBS's termination of the Agreement.

14. Additionally, Bowman continues to be personally bound by the Director Confidentiality Agreement ("DCA") he signed with KCBS.

15. Pursuant to the Agreement and DCA, all work product that FCM or Bowman created on KCBS's behalf, and any of KCBS's confidential information that FCM or Bowman had access to, remains the property of KCBS.

16. Despite KCBS's demands that Bowman and FCM return KCBS's work product and confidential information, Bowman and FCM have refused to return such work product and confidential information.

17. Indeed, Bowman has continued to use KCBS's confidential and proprietary information in violation of the Agreement.

18. Specifically, Bowman, his wife Amanda Bowman, and FCM improperly accessed KCBS's Google Drive after KCBS terminated the Agreement, and Bowman has continued, again in violation of the Agreement, to conduct business with KCBS sponsors and for FCM filming projects that are unconnected to KCBS.

19. The solicitations that FCM sent out using the contact information it obtained through the Bowman's improper and unauthorized access to KCBS's Google Drive did not comply with the CAN-SPAM Act.

20. Bowman and FCM's actions have caused, and continue to cause, KCBS damage.

COUNT I
BREACH OF CONTRACT
Against KCBS

- 21. KCBS here re-alleges each preceding Paragraph of the Counterclaim.
- 22. The Agreement is a valid and binding contract.
- 23. KCBS has complied with its obligations under the Agreement.
- 24. As set forth above, FCM has breached its obligations under the Agreement. In particular, FCM has engaged in dishonest conduct under the Agreement; violated the non-disclosure and non-competition provisions of the Agreement; and improperly accessed KCBS's Google Drive.

25. FCM is liable for breach of contract damages under the Agreement in the amount of \$1,000,000.

26. Additionally, Section 9 of the Agreement provides that

“[FCM] will indemnify, hold harmless and defend KCBS and its affiliates, and their respective officers, directors, employees, agents and advisors, from and against, and will reimburse those indemnified parties with respect to, any and all claims, demands, causes of action, proceedings, losses, damages, debts, expenses, liabilities, fines, penalties, deficiencies, judgments or costs, including reasonable attorney fees, court costs, amounts paid in settlement and costs and expenses of investigations, at any time and from time to time asserted against or incurred by any of those indemnified parties arising out of, in connection with, resulting from or by reason of (a) any breach of this Agreement by [FCM], or (b) any negligent or willful act or omission of [FCM] in connection with this Agreement or the performance of the services contemplated by this Agreement. KCBS will have the right to set off against all sums payable to Agency under this Agreement, any and all sums payable to KCBS under this section.”

27. KCBS is entitled to indemnity under Section 9 of the Agreement for the Bowman and FCM's actions.

COUNT II
BREACH OF FIDUCIARY DUTY
Against Bowman

28. KCBS here re-alleges each preceding Paragraph of the Petition.

29. Bowman, as a director and as the President of KCBS, owed KCBS fiduciary duties.

30. Bowman falsely and fraudulently represented to the Board that the monthly retainer and commission rates for sponsorships in the Agreement did not significantly exceed industry standards; falsely and fraudulently represented to the Board that KCBS's outside counsel had reviewed the Agreement before the Board approved it; and Bowman, in breach of KCBS's bylaws, worked on FCM's behalf before the Agreement between KCBS and FCM had been approved.

31. Because Bowman and FCM received compensation at well-above standard industry rates, the Agreement constituted an excess benefit transaction under IRS regulations governing non-profit corporations, and KCBS is therefore entitled to have those funds restored.

32. Bowman's actions, which lead to the Board approving the Agreement under false pretenses, constituted a breach of fiduciary duty.

33. Bowman's breach of fiduciary duty damaged KCBS in the amount of not less than \$1,000,000.

COUNT III
TAMPERING WITH COMPUTER DATA
Against Bowman and FCM

34. KCBS here re-alleges each preceding Paragraph of the Counterclaim.

35. On November 1, 2019, KCBS terminated the Agreement for cause due to Bowman and FCM's dishonest conduct.

36. As of that date, Bowman and FCM lost any right to access KCBS's Google Drive.

37. Nonetheless, after November 1, 2019, Bowman accessed KCBS's Google Drive and intentionally examined information about KCBS's contacts. Since then, Bowman and FCM have used that contact information for their own purposes and against KCBS's best interests.

38. Bowman and FCM's offense of tampering with computer data has caused KCBS damage.

WHEREFORE, Counterclaimant The Kansas City Barbecue Society prays for judgment against Bowman and FCM in the amount of \$1,000,000, indemnity under Section 9 of the Agreement in an amount to be determined at trial, for prejudgment interest, for costs and reasonable attorney fees, and for such other relief as this Court deems just and proper.

Respectfully submitted April 13, 2020.

BRYAN CAVE LEIGHTON PAISNER LLP

By: /s/ Logan M. Rutherford

W. Perry Brandt MO Bar# 28292

Logan M. Rutherford MO Bar# 65151

1200 Main Street Suite 3800

Kansas City, Missouri 64105

Telephone: (816) 374-3200

Facsimile: (816) 374-3300

perry.brandt@bcplaw.com

logan.rutherford@bcplaw.com

ATTORNEYS FOR THE KANSAS CITY BARBECUE
SOCIETY

CERTIFICATE OF SERVICE

On April 13, 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