

**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.)	

**AMENDED¹ 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.

¹ This Amended Pleading contains additional allegations against Bowman and First Club Marketing, LLC. Bowman and First Club Marketing, LLC’s counsel has consented to the filing of this amended pleading pursuant to Rule 55.33(a).

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 “Marketing 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 Marketing Agreement. Before this meeting, the Marketing 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 Marketing Agreement significantly exceeded industry standards. This resulted in above-market compensation to FCM in exchange for the services provided to KCBS under the Marketing 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 Marketing 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 Marketing Agreement.

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

11. Under Section 3 of the Marketing Agreement, engaging in dishonest conduct in connection with the Marketing 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 Marketing Agreement for cause due to Bowman and FCM's dishonest conduct.

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

14. Additionally, in February 2018, and again in February 2019, Bowman signed confidentiality agreements with KCBS (the "Confidentiality Agreements").

15. Pursuant to the Confidentiality Agreements and the Marketing Agreement, 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. In particular, both Confidentiality Agreements provide that
"all information and know how, whether tangible or intangible, and whether or not in writing, of a private, secret, or confidential nature concerning [KCBS's] business or affairs provided or made available to [Bowman] by or on behalf of [KCBS] . . . is and shall be the exclusive property of [KCBS]

"[Bowman] acknowledges and agrees that the Confidential Information is of great value to [KCBS] and that the restrictions and agreements contained in this Agreement are necessary to protect the interests of [KCBS].

"[Bowman] agrees that all files, letters, memoranda, reports, records, data, disks, electronic storage media, or other written, photographic, electronic or tangible material

containing Confidential Information (collectively, 'Records'), whether created by the [Bowman] or others, shall be the exclusive property of [KCBS] to be used by [Bowman] only in the performance of [Bowman's] duties for [KCBS]. All such Records or copies thereof in [Bowman's] custody or possession shall be promptly delivered to [KCBS] (a) upon any request by [KCBS], and (b) in any event, upon the expiration of [Bowman's] service on the Board. After any such delivery, [Bowman] shall not retain any such Records or copies thereof or any other tangible property of [KCBS] and, upon reasonable request from [KCBS], shall certify in writing to [KCBS] as to the same."

17. Similarly, the Marketing Agreement provides that

"All work product resulting or derived from, or made in the course of performance of the services provided by [FCM] under this Agreement, including any invention (whether or not patentable), research results, software program, written material, report (and data in that report) (collectively, 'Work Product'), will be considered 'work for hire' and, unless already in the public domain, all right, title, ownership and interest in items of Work Product will be vested exclusively in KCBS."

18. 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.

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

20. Bowman, his wife Amanda Bowman, and FCM improperly accessed KCBS's Google Drive after KCBS terminated the Marketing Agreement, and Bowman has continued,

again in violation of the Marketing Agreement, to conduct business with KCBS sponsors and for FCM filming projects that are unconnected to KCBS.

21. 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.

22. On October 22, 2020, Bowman and FCM produced over 30,000 pages of documents in response to KCBS's document requests.

23. Included in these documents were numerous² attorney-client privileged communications between KCBS and its attorneys during the time that Bowman served on the KCBS Board.

24. Additionally, included in Bowman and FCM's production were numerous communications between KCBS and its sponsors.

25. In many of these communications, neither Bowman's personal nor his FCM email address was being used, so it is unknown at this time exactly how KCBS emails are still in Bowman's possession, custody, and control.

26. Bowman never enjoyed an attorney-client relationship with KCBS's attorneys. That relationship, and thus the privilege associated with it, was solely KCBS's. Nonetheless, Bowman retained KCBS's attorney-client privileged communications after he was no longer affiliated with KCBS.

27. Bowman's taking and retention of these confidential communications, including those with KCBS's attorneys and sponsors, could not have been done to serve KCBS's interests.

² Because the production was made so recently, KCBS has not had an opportunity to review each document as of this date. It is thus unclear how many attorney-client privileged communications are in Bowman/FCM's production.

28. Rather, Bowman could only have taken and retained KCBS's confidential information to serve his own ends, even as he was purporting to act as KCBS's fiduciary due to his position as a director and Board President at KCBS.

29. The Confidentiality Agreements and the Marketing Agreement are each clear: All information pertaining to KCBS's business and affairs was and remains the property of KCBS, and therefore must ultimately be returned to KCBS.

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

COUNT I
BREACH OF CONTRACT
Against Bowman and FCM

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

32. The Agreement is a valid and binding contract.

33. KCBS has complied with its obligations under the Agreement.

34. 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.

35. The Marketing Agreement and Confidentiality Agreements state that non-public KCBS information is the exclusive property of KCBS.

36. In addition to attorney-client privileged communications between KCBS and its attorneys regarding the Marketing Agreement, Bowman took and retained communications between himself—while purporting to be acting solely on behalf of KCBS—and current or potential sponsors of KCBS.

37. FCM is liable for breach of contract damages under the Confidentiality Agreements and Marketing Agreement in the amount of \$1,000,000.

38. Additionally, Section 9 of the Marketing 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.”

39. 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

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

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

42. 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.

43. 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.

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

45. Additionally, Bowman improperly retained, after he was no longer affiliated with KCBS in any way, attorney-client privileged communications between KCBS and its attorneys, as well as his communications—while he was purporting to be acting solely on behalf of KCBS—with current or potential sponsors of KCBS.

46. Bowman's taking and retention of these confidential communications could not have been done to serve KCBS's interests. Rather, Bowman could only have taken and retained KCBS's confidential information to serve his own ends, even as he was purporting to act as KCBS's fiduciary due to his position as a director and Board President at KCBS.

47. In particular, Bowman retained these confidential communications for later, personal use to KCBS's detriment.

48. 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

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

50. Section 569.095.1(3) of the Missouri Revised Statutes makes it a crime to, inter alia, “[d]isclose[] or take[] data, programs, or supporting documentation, residing or existing internal or external to a computer, computer system, or computer network” if he does so

“knowingly and without authorization or without reasonable grounds to believe he has such authorization.”

51. Missouri Revised Statute § 537.525.1 grants a private right of action to “the owner or lessee of the computer system, computer network, computer program, computer service or data” that has been compromised under § 569.095.

52. Where the computer tampering has been done “for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the value of which is seven hundred fifty dollars or more,” it is a class E felony.

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

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

55. 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.

56. Additionally, Bowman improperly, and in violation of the Marketing Agreement and the Confidentiality Agreements, took and retained attorney-client privileged communications between KCBS and its attorneys, as well as his communications—while he was purporting to be acting solely on behalf of KCBS—with current or potential sponsors of KCBS.

57. Bowman took these actions for his own benefit, hoping to profit off of relationships he made or furthered while a director and President of KCBS’s Board.

58. 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 Marketing 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 November 2, 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@bclplaw.com

logan.rutherford@bclplaw.com

ATTORNEYS FOR THE KANSAS CITY BARBECUE
SOCIETY

CERTIFICATE OF SERVICE

On November 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