

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 AND RANDALL BOWMAN’S
RESPONSE TO KANSAS CITY BARBEQUE SOCIETY’S
AMENDED ANSWER, CLAIMS, AND COUNTERCLAIMS**

First Club Marketing LLC (“FCM”) and Randall Bowman (“Bowman”), by and through their attorneys, hereby submit the following response to Kansas City Barbeque Society (“KCBS”)’s KCBS” Amended Answer, Claims, and Counterclaims against FCM. FCM and Bowman respond to the enumerated paragraphs of KCBS’ Amended Answer, Claims, and Counterclaims against FCM as follows:

KCBS’ CLAIMS AGAINST BOWMAN AND COUNTERCLAIMS AGAINST FCM

1. Admitted.
2. Admitted that the KCBS Board approved the Marketing Agreement at a special meeting on January 15, 2019. The remaining allegations state a legal conclusion to which no response is required. To the extent a response is required, FCM and Bowman deny any remaining allegations in Paragraph 2 of KCBS’ Amended Answer, Claims, and

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 and Bowman deny each and every allegation in Paragraph 3 of KCBS' Amended Answer, Claims, and Counterclaims against FCM 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 and Bowman deny each and every remaining allegation in Paragraph 11 of KCBS' Amended Answer, Claims, and Counterclaims against FCM not specifically admitted and further deny their conduct violated Section 3.
12. Denied.
13. Denied.
14. Admitted that Randall Bowman signed confidentiality agreements in February 2018 and February 2019. FCM and Bowman deny each and every remaining allegation in Paragraph 14 of KCBS' Amended Answer, Claims, and Counterclaims.
15. Denied.
16. Admitted that the respective sections of the Confidentiality Agreements contain this language. FCM and Bowman deny each and every remaining allegation in Paragraph 16 of

KCBS' Amended Answer, Claims, and Counterclaims.

17. Admitted that the respective section of the Marketing Agreement contains this language.

FCM and Bowman deny each and every remaining allegation in Paragraph 17 of KCBS' Amended Answer, Claims, and Counterclaims.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Admitted.

23. Denied.

24. The documents produced are written documents that speak for themselves, and FCM and Bowman deny any further characterizations of those documents. To the extent a response is required, FCM and Bowman deny any remaining allegations in Paragraph 24 of KCBS' Amended Answer, Claims, and Counterclaims.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. The Marketing Agreement and Confidentiality Agreements are written documents that speak for themselves, and FCM and Bowman deny any further characterizations of those documents. To the extent a response is required, FCM and Bowman deny any remaining allegations in Paragraph 29 of KCBS' Amended Answer, Claims, and Counterclaims.

30. Denied.

COUNT I
BREACH OF CONTRACT
Against Bowman and FCM

31. FCM and Bowman hereby re-incorporate their responses to the allegations above.

32. Denied.

33. Denied.

34. Denied.

35. The Marketing Agreement is a written document that speaks for itself, and FCM and Bowman deny any further characterizations of that document. To the extent a response is required, FCM and Bowman deny any remaining allegations in Paragraph 35 of KCBS' Amended Answer, Claims, and Counterclaims.

36. Denied.

37. Denied.

38. Admitted that Section 9 of the Agreement contains the language quoted in Paragraph 26.

FCM and Bowman deny any remaining allegations in Paragraph 38 of KCBS' Amended Answer, Claims, and Counterclaims against FCM.

39. Denied.

COUNT II
BREACH OF FIDUCIARY DUTY
Against Bowman

40. Plaintiffs hereby re-incorporate their responses to the allegations above.

41. Admitted.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

COUNT III
TAMPERING WITH COMPUTER DATA
Against Bowman and FCM

49. Bowman and FCM hereby re-incorporate their responses to the allegations above.

50. Admitted that Section 569.095.1(3) of the Missouri Revised Statute contains the language quoted in Paragraph 50. FCM and Bowman deny any remaining allegations in Paragraph 50 of KCBS' Amended Answer, Claims, and Counterclaims.

51. The allegations state a legal conclusion to which no response is required. To the extent a response is required, FCM and Bowman deny the allegations contained in Paragraph 51 of KCBS' Amended Answer, Claims, and Counterclaims against FCM.

52. The allegations state a legal conclusion to which no response is required. To the extent a response is required, FCM and Bowman deny the allegations contained in Paragraph 52 of KCBS' Amended Answer, Claims, and Counterclaims against FCM.

53. Admitted that the Marketing Agreement was terminated on November 1, 2019. Bowman and FCM deny the termination was for cause and all remaining allegations contained in Paragraph 53 of KCBS' Amended Answer, Claims, and Counterclaims against FCM.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

Answering the WHEREFORE clause of the Answer, FCM and Bowman deny that KCBS

is entitled to any of the requested relief and deny their actions caused any of the alleged damages in KCBS' Amended Answer, Claims, and Counterclaims.

AFFIRMATIVE DEFENSES

1. KCBS' Claims against Bowman and Counterclaims against FCM fail to state a claim upon which relief can be granted. KCBS' Counterclaims against FCM should be dismissed because KCBS cannot establish the requisite elements of a breach of contract claim or a tampering with computer data claim. KCBS' Claims against Bowman should be dismissed because KCBS cannot establish the requisite elements of a breach of fiduciary duty claim or a tampering with computer data claim.
2. Bowman is immune from civil liability for any alleged wrongdoing while serving on the KCBS Board of Directors pursuant to Missouri Revised Statute § 537.117 and 42 U.S.C. § 14501 *et seq.*
3. While Bowman denies that he breached any fiduciary duty, even if Bowman committed any breach of fiduciary duty, Bowman acted in good faith and is protected by the business judgment rule.
4. KCBS improperly accessed Bowman and FCM's Google drive after KCBS terminated the Agreement. KCBS was not authorized to access Bowman and FCM's Google drive.
5. KCBS's was the first to materially and substantially breach the Agreement. This breach discharged any obligation of FCM and Bowman under the Agreement, so KCBS' Claims and Counterclaims should be dismissed because of KCBS' prior breach.
6. KCBS' Claims against Bowman and Counterclaims against FCM are barred by the doctrines of waiver, laches, estoppel, and abandonment. KCBS' Claims against Bowman and Counterclaims against FCM allege that FCM and Bowman's wrongdoing occurred

prior to or during the Agreement's formation in January 2019, but KCBS fully approved the contract, voted to reaffirm the contract after questions of whether Bowman and/or FCM had a potential conflict of interest, engaged counsel to ensure the contract was properly entered into and fully understood the situation. Moreover, KCBS did not terminate the Agreement until November 2019, eleven months later.

7. KCBS's Claims against Bowman and Counterclaims against FCM are barred by the doctrine of assumption of risk because KCBS was aware of any alleged conflict but proceeded with the contract nonetheless.
8. FCM and Bowman deny that they have any obligation for any of KCBS' alleged damages, and affirmatively state that any damages allegedly sustained by KCBS were caused by KCBS' own unclean hands.
9. To the extent that KCBS was damaged and entitled to any recovery, which FCM and Bowman expressly deny, that recovery is entitled to be set-off by the damages KCBS has caused FCM and Bowman.
10. To the extent that KCBS was damaged, which FCM and Bowman expressly deny, 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.
11. 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.
12. KCBS' Claims against Bowman and Counterclaims against FCM involving the alleged non-compete/nondisclosure agreements with FCM and Bowman are illegal, void, and

unenforceable. RSMo. §§ 416.031, 431.202.

13. FCM and Bowman state that KCBS has no good faith basis for its claims.
14. KCBS is liable for FCM and Bowman's costs and attorney fees incurred in defending against KCBS' Claims against Bowman and Counterclaims against FCM.
15. KCBS' Claims against Bowman and Counterclaims against FCM must be dismissed as any damages alleged were not caused by any wrongful conduct.
16. Randall Bowman and FCM were under a duty to preserve based on anticipation of litigation.
17. KCBS waived any right to preservation of emails because KCBS failed to treat such emails as confidential, including but not limited to failing to monitor the deletion or destruction of such emails.
18. FCM and Bowman hereby give notice that they intend to rely on any additional affirmative defenses that become available or apparent during discovery, and thus reserve the right to amend their Answer and Reply to KCBS' Claims against Bowman and Counterclaims against FCM to assert such additional defenses.

BOWMAN'S COUNTERCLAIM AGAINST KCBS

COUNT I
Indemnification
Against KCBS

19. Bowman hereby re-incorporates his responses to the allegations above.
20. The KCBS Board of Directors operate under "The Amended and Restated Bylaws of the Kansas City Barbeque Society."
21. Under the KCBS Bylaws, Article XV Indemnification of Officers and Directors Against Liabilities and Expenses in Action states:

The Corporation shall indemnify and protect any Director, officer, employee or agent of the Corporation, or any person who serves at the request of the Corporation as a Director, officer, employee, Member, manager, or agent of another corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise, to the fullest extent permitted by the laws of the State of Missouri, including all costs of providing legal defense.

When the Corporation chooses to purchase and maintain insurance on behalf of an individual who is or was a Director, officer, employee, or agent of the corporation, or who, while a Director, officer, employee, or agent of the corporation is or was serving at the request of the corporation as a Director, officer, employee, or agent, whether or not the corporation would have power to indemnify the person against the same liability under section 355.461 or 355.476, including provided a legal defense and all cost.

22. In determining whether to accept the responsibility to serve as President of the KCBS Board of Directors, Bowman relied on the terms and provisions of the KCBS Bylaws, including the indemnity provision in Article XV.
23. Bowman served as President of the KCBS Board from February 9, 2018 to February 8, 2019.
24. Bowman resigned from the KCBS Board on February 16, 2019.
25. As a result of KCBS' breach of contract, Bowman has engaged in substantial litigation and has incurred, and will continue to incur, significant monetary expenses as a result of this litigation.
26. Bowman is entitled to be indemnified for all legal expenses and costs incurred in this action pursuant to Article XV of the KCBS Amended and Restated Bylaws.
27. Bowman is entitled to be indemnified for all legal expenses and costs incurred in prosecuting and defending this action pursuant to RSMo. §§ 355.476 and 355.471.
28. To date, KCBS has not indemnified Bowman or FCM for any costs or expenses of this suit.

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

DATED: November 25, 2020

Respectfully Submitted,

WILLIAMS DIRKS DAMERON, LLC

/s/ Eric L. Dirks

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*Attorneys for First Club Marketing LLC and
Randall Bowman*

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of November, 2020, 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