

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

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|---|---|-----------------------|
| 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 |) | |

**THE KANSAS CITY BARBEQUE SOCIETY’S SUPPLEMENTAL EXHIBITS AND
DEPOSITION EXCERPTS**

1. Report of Richard Wagner (Wagner000138-151).
2. Email from Jordan Fishman, IT specialist at Park Road (KCBS_004212).
3. Additional Excerpts from the transcript of Mike Peters’s Deposition.
4. Additional Excerpts from the transcript of Mike Richter’s Deposition.
5. Additional Excerpts from the transcript of Arlie Bragg’s Deposition.
6. Additional Excerpts from the transcript of Randall Bowman’s Deposition.
7. Excerpts from the transcript of Susan McClure’s Deposition.

THE KANSAS CITY BARBEQUE SOCIETY’S RESPONSE TO RANDALL BOWMAN AND FIRST CLUB MARKETING LLC’S STATEMENT OF UNDISPUTED FACTS

Randall Bowman and First Club Marketing LLC

1. Randall Bowman (“Bowman”) is owner of a marketing firm called First Club Marketing LLC (“FCM”). (Ex. 4, at 9:18-10:5); (Ex. 3, at 39:6-10).

RESPONSE: Undisputed.

Kansas City Barbeque Society (“KCBS”)

2. KCBS is a 501(c)(3) and 501(c)(4) corporation. Specifically, the KCBS foundation is a 501(c)(3) and the remaining division is a 501(c)(4) corporation. (Ex. 5, at 51:9-12).

RESPONSE: Undisputed.

3. KCBS’ primary purpose is the sanctioning of barbeque competition events. (Ex. 5, at 41:16-21); (Ex. 5, at 42:4-7); (Ex. 7, at 125:23-126:1).

RESPONSE: Undisputed.

4. The KCBS Board of Directors operate under “The Amended and Restated Bylaws of the Kansas City Barbeque Society.” (Ex. 15, at p. 1 at ¶ 20); (Ex. 16) (Amended and Restated Bylaws).

RESPONSE: Undisputed.

5. The KCBS Bylaws allow a KCBS Board Member to be compensated for services that board member provides to the Board in a capacity other than board service. (Ex. 16, at FCM_17497, Section 4.09; FCM_017501, Section 6.10).

RESPONSE: Undisputed.

Bowman’s Board Service to KCBS

6. KCBS is governed by a board of directors. (Ex. 1, at p. 16 ¶ 4).

RESPONSE: Undisputed.

7. Bowman was elected to the KCBS Board of Directors and took his seat in February 2017. (Ex. 4, at 13:17-14:2).

RESPONSE: Undisputed.

8. Bowman served as President of the KCBS Board of Directors for the 2018 year. (Ex. 4, at 31:22-24). Specifically, Bowman served as President of the KCBS Board of Directors from February 2018 through February 2019. (Ex. 8, at ¶ 8).

RESPONSE: Undisputed.

9. Bowman was not paid a salary for his service as President of the KCBS Board of Directors. (Ex. 8, at ¶ 9).

RESPONSE: Undisputed.

Formation of the Agreement

10. From approximately 2008-2017, MMA Creative performed marketing services for KCBS. (Ex. 2, at 22:16-22), (Ex. 2, at 23:24-24:2); (Ex. 4, at 22:8-25).

RESPONSE: Undisputed.

11. After the contract between MMA Creative and KCBS ended, KCBS was without a full service marketing firm in 2018. (Ex. 6, at 17:15-18:12); (Ex. 6, at 91:6-10); Ex. 2, 26:24-27:3).

RESPONSE: Disputed to the extent that it implies KCBS did not have an outside vendor performing marketing services in 2018 after KCBS terminated MMA Creative. In particular, KCBS retained Big Kahuna to perform marketing services for KCBS during 2018. See Bowman Depo. at 35:18-36:1.

12. Bowman took over marketing services for KCBS in 2018. (Ex. 2, at 24:24-25:12); (Ex. 2, at 26:1-5); (Ex. 2, at 26:20-27:2); (Ex. 2, at 45:12-46:13); (Ex. 6, at 91:6-10).

RESPONSE: Disputed. KCBS hired an outside vendor to perform marketing services in 2018 after it had terminated MMA Creative. In particular, KCBS retained Big Kahuna to perform marketing services for KCBS during 2018. See Bowman Depo. at 35:18-36:1. Bowman did not “take over” marketing services for KCBS in 2018.

13. Bowman provided marketing services and procured sponsorships for KCBS during this period without any contractual arrangement. (Ex. 2, at 32:12-16).

RESPONSE: Disputed to the extent it implies that Bowman performed marketing services for KCBS without the assistance of KCBS’s contracted-for marketing firm. KCBS retained Big Kahuna to perform marketing services for KCBS during 2018 and Big Kahuna did in fact perform those services. See Bowman Depo. at 35:18-36:1.

14. Bowman was not paid in 2018 for these marketing and sponsorship procurement services. (Ex. 6, at 91:11-13); (Ex. 6, at 91:17-18).

RESPONSE: Disputed to the extent that it implies that Bowman’s company, FCM, was not compensated in 2018. In particular, FCM received \$2,000 per month from KCBS in 2018 for supposedly performing social media services. See ¶ 17 below. Additionally, FCM was paid in 2019 for work Bowman did in 2018, despite his statements that he had been assisting in 2018 as a “favor” to KCBS. See, e.g., Peters Depo. at 47:25-48:5 (testifying the Marketing Agreement was approved because “we already received a year, I – I’ll put it, a year free. And we wanted to make sure that he could recoup his – investment in the company.” (emphasis added)).

15. Bowman did not seek reimbursement for expenses during this period with the exception of reimbursement sought for purchasing dinner for the KCBS Board at the February 2019 Board Meeting. (Ex. 2, at 34:9-19); (Ex. 3, at 44:24-45:19); (Ex. 6, at 40:11-20); (Ex. 6, at 91:14-16); (Ex. 4, at 183:8-18) (purchasing dinner at February 2019 Board Meeting).

RESPONSE: Undisputed.

16. During this period, Bowman’s wife (Amanda Bowman) provided social media services for KCBS. (Ex. 2, at 34:20-35:4); (Ex. 4, at 182:14-20).

RESPONSE: Undisputed.

17. During this period, KCBS paid \$2,000 per month to FCM for social media services. (Ex. 2, at 34:20-35:4).

RESPONSE: Undisputed.

18. In 2018, KCBS representatives asked FCM about the possibility of FCM providing marketing services for KCBS. (Ex. 8, at ¶ 14).

RESPONSE: Disputed to the extent that it implies that Bowman or FCM were disinterested or were reluctant to procure a marketing agreement from KCBS. Instead, Bowman sent overpriced bids from other marketing agencies to the Board, and then afterwards, he sent a bid to the Board for his own marketing agency that, unsurprisingly, was less expensive than the other, inflated bids. Bowman controlled the search to find a new marketing agency, including how information flowed to the Board, and loaded the dice in FCM's favor. Bowman's own marketing expert testified in her deposition that in her 40 years of marketing experience, she had never seen a search process like the one that Bowman used to procure his one-sided contract from a non-profit. See generally McClure Depo. at 64:6-65:18. Additionally, no one else on the Board had any marketing expertise that would have enabled them to know what further information they would need to evaluate the proposals. See, e.g., Peters Depo. at 76:6-9 (testifying that "nobody on that Board of Directors had any marketing expertise other than Mr. Bowman"); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

19. Bowman sent emails with a PowerPoint that included information about his company and several other marketing companies that may be able to provide marketing services for KCBS. (Ex. 3, at 27:7-11); (Ex. 19 (information about FCM)); (Ex. 23) (information about other marketing companies).

RESPONSE: Disputed to the extent that it implies that the "information" about the other marketing companies and the information about FCM was transmitted to the Board all at once, or in a fair, reasonable, and disinterested manner. Instead, Bowman sent overpriced bids from other marketing agencies to the Board, and then afterwards, he sent a bid to the Board for his own marketing agency that, unsurprisingly, was less expensive than the other, inflated bids. Bowman controlled the search to find a new marketing agency, including how information flowed to the Board, and loaded the dice in FCM's favor. Bowman's own marketing expert testified in her deposition that in her 40 years of marketing experience, she had never seen a search process like the one that Bowman used to procure his one-sided contract from a non-profit. See generally McClure Depo. at 64:6-65:18. Additionally, no one else on the Board had any marketing expertise that would have enabled them to know what further information they would need to evaluate the proposals. See, e.g., Peters Depo. at 76:6-9 (testifying that "nobody on that Board of Directors had any marketing expertise other than Mr. Bowman"); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

20. Bowman stated the information was a conversation starter for the KCBS board members.

(Ex. 6, at 78:9-12); (Ex. 4, at 63:13-22); (Ex. 4, at 66:8-13).

RESPONSE: Disputed to the extent that it implies that the “information” about the other marketing companies and the information about FCM was transmitted to the Board all at once, or in a fair, reasonable, and disinterested manner. Instead, Bowman sent overpriced bids from other marketing agencies to the Board, and then afterwards, he sent a bid to the Board for his own marketing agency that, unsurprisingly, was less expensive than the other, inflated bids. That is, Bowman controlled the search to find a new marketing agency, including how information flowed to the Board. Bowman’s own marketing expert testified in her deposition that in her 40 years of marketing experience, she had never seen a search process like the one that Bowman used to procure his one-sided contract from a small non-profit. *See generally* McClure Depo. at 64:6-65:18. Additionally, no one else on the Board had any marketing expertise that would have enabled them to know what further information they would need to evaluate the proposals. *See, e.g.*, Peters Depo. at 76:6-9 (testifying that “nobody on that Board of Directors had any marketing expertise other than Mr. Bowman”); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

21. The information never used the term “request for proposal” or “RFP” to discuss the information from other firms. (Ex. 7, at 177:24-178:2); (Ex. 19); (Ex. 23).

RESPONSE: Disputed to the extent that it implies that the “information” about the other marketing companies and the information about FCM was transmitted to the Board all at once, or in a fair, reasonable, and disinterested manner. Instead, Bowman sent wildly overpriced bids from other marketing agencies to the Board, and then afterwards, he sent a bid to the Board for his own marketing agency that, unsurprisingly, was less expensive than the other, inflated bids. That is, Bowman controlled the search to find a new marketing agency, including how information flowed to the Board. Bowman’s own marketing expert testified in her deposition that in her 40 years of marketing experience, she had never seen a search process like the one that Bowman used to procure his one-sided contract from a small non-profit. *See generally* McClure Depo. at 64:6-65:18. Additionally, no one else on the Board had any marketing expertise that would have enabled them to know how to evaluate the information Bowman sent them. *See, e.g.*, Peters Depo. at 76:6-9 (testifying that “nobody on that Board of Directors had any marketing expertise other than Mr. Bowman”); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

22. Bowman invited any questions anyone had about FCM in his communications when he provided the information on FCM. (Ex. 19, at KCBS_015148).

RESPONSE: Disputed to the extent that it implies that the “information” about the other marketing companies and the information about FCM was transmitted to the Board all at once, or in a fair, reasonable, and disinterested manner. Instead, Bowman sent overpriced bids from other marketing agencies to the Board, and then afterwards, he sent a bid to the Board for his own marketing agency that, unsurprisingly, was less expensive than the other, inflated bids. That is, Bowman controlled the search to find a new marketing agency, including how information flowed to the Board. Bowman’s own marketing expert testified in her deposition that in her 40 years of marketing experience, she had never seen a search process like the one that Bowman used to procure his one-sided contract from a small non-profit. *See generally* McClure Depo. at 64:6-65:18. Additionally, no one else on the Board had any marketing expertise that would have enabled them to know how to evaluate the information Bowman sent them. *See, e.g.,* Peters Depo. at 76:6-9 (testifying that “nobody on that Board of Directors had any marketing expertise other than Mr. Bowman”); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

23. This information was provided in advance of the voting on the Agreement. (Ex. 6, at 79:20-80:6).

RESPONSE: Disputed to the extent that it implies that the “information” about the other marketing companies and the information about FCM was transmitted to the Board all at once, or in a fair, reasonable, and disinterested manner. Instead, Bowman sent overpriced bids from other marketing agencies to the Board, and then afterwards, he sent a bid to the Board for his own marketing agency that, unsurprisingly, was less expensive than the other, inflated bids. That is, Bowman controlled the search to find a new marketing agency, including how information flowed to the Board. Bowman’s own marketing expert testified in her deposition that in her 40 years of marketing experience, she had never seen a search process like the one that Bowman used to procure his one-sided contract from a small non-profit. *See generally* McClure Depo. at 64:6-65:18. Additionally, no one else on the Board had any marketing expertise that would have enabled them to know how to evaluate the information Bowman sent them. *See, e.g.,* Peters Depo. at 76:6-9 (testifying that “nobody on that Board of Directors had any marketing expertise other than Mr. Bowman”); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

24. The KCBS board members were able to seek out further information concerning other marketing firms. (Ex. 3, 90:17-91:12); (Ex. 6, at 78:13-25); (Ex. 6, 80:7-10).

RESPONSE: Disputed to the extent that it implies that the “information” about the other marketing companies and the information about FCM was transmitted to the Board all at once, or in a fair, reasonable, and disinterested manner. Instead, Bowman sent overpriced bids from other marketing agencies to the Board, and then

afterwards, he sent a bid to the Board for his own marketing agency that, unsurprisingly, was less expensive than the other, inflated bids. That is, Bowman controlled the search to find a new marketing agency, including how information flowed to the Board. Bowman's own marketing expert testified in her deposition that in her 40 years of marketing experience, she had never seen a search process like the one that Bowman used to procure his one-sided contract from a small non-profit. *See generally McClure Depo. at 64:6-65:18*. Additionally, no one else on the Board had any marketing expertise that would have enabled them to know what further information they would need to evaluate the proposals. *See, e.g., Peters Depo. at 76:6-9* (testifying that "nobody on that Board of Directors had any marketing expertise other than Mr. Bowman").

25. The KCBS Board of Directors knew that Bowman was the President of the KCBS Board and principal of FCM at each of the Agreement's votes. (**Ex. 2**, at 136:17-24).

RESPONSE: Undisputed.

26. Past Board Members testified that the compensation provided in the Agreement was reasonable. (**Ex. 2**, 141:20-142:15).

RESPONSE: Undisputed, but these Past Board Members also testified that they had no marketing expertise by which to evaluate various bids and that they were reliant on Bowman to give them all the pertinent information. *See, e.g., Peters Depo. at 76:6-9* (testifying that "nobody on that Board of Directors had any marketing expertise other than Mr. Bowman"); *Bragg Depo. at 31:7-23* (testifying that the Board was reliant on Bowman to provide complete and accurate information).

27. The Board voted to approve the Agreement three times. (**Ex. 6**, at 96:23-24).

RESPONSE: Undisputed.

28. On January 2, 2019, the Agreement was voted on for the first time by the 2018 KCBS Board of Directors (**Ex. 5**, 170:1-6); (**Ex. 6**, at 75:12-14); (**Ex. 12**, at KCBS_014829), and the Agreement was approved unanimously at that meeting. (**Ex. 2**, at 129:17-21); (**Ex. 4**, at 89:10-23); (**Ex. 12**, at KCBS_014829).

RESPONSE: Undisputed.

29. On or around January 2, 2019, FCM and KCBS entered into a contractual agreement ("the Agreement") for FCM to provide marketing services for KCBS. (**Ex. 2**, at 129:17-21).

RESPONSE: Disputed. The January 2, 2019 was not properly called in accordance with KCBS bylaws and was, therefore, ineffectual. That is the reason why the Board held a second meeting to vote in the Marketing Agreement.

30. Representatives from both parties signed the Agreement. Specifically, Carolyn Wells, the KCBS Executive Director, signed on behalf of KCBS, and Randall Bowman signed on behalf of FCM. (Ex. 1).

RESPONSE: Disputed. The January 2, 2019 was not properly called in accordance with KCBS bylaws and was, therefore, ineffectual. That is the reason why the Board held a second meeting to vote in the Marketing Agreement.

31. KCBS admitted in its Amended Counterclaim that the Agreement is a valid and binding contract. (Ex. 17, p. 10, at ¶ 32).

RESPONSE: Disputed. KCBS's ultimate position is that the Agreement was procured by Bowman in breach of his fiduciary duties and was, therefore, void *ab initio*. The allegation cited from KCBS's Amended Counterclaim was pleaded as an alternative theory of relief. Mo. R. Civ. P. 55.10 ("A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds.").

32. KCBS admitted in its Amended Answer that it had a duty to comply with the Agreement. (Ex. 17, p. 3 at ¶ 24).

RESPONSE: Disputed. The allegation cited from KCBS's Amended pleading is merely an acknowledgment that, when pleaded, there had not yet been a judicial ruling that the Agreement was invalid. KCBS's ultimate position is that the Agreement was procured by Bowman in breach of his fiduciary duties and was, therefore, void *ab initio*, which is clear from KCBS's Amended Consolidated Pleading. Cf. Mo. R. Civ. P. 55.10 ("A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds.").

33. On January 15, 2019, the Agreement was voted on and approved a second time by the 2018 Board of Directors with only one vote against the Agreement. (Ex. 2, at 132:4-6); (Ex. 3, at 110:11-111:17); (Ex. 13, at KCBS_013622).

RESPONSE: Undisputed.

34. The 2019 Board of Directors took their seats at the February 15-16, 2019 Board Meeting in Kansas City, Missouri. (Ex. 4, at 31:25-32:5 (new board members are seated in February)); (Ex. 8, at ¶ 10).

RESPONSE: Undisputed.

35. After the 2019 Board of Directors took their seats at this meeting, Bowman's tenure as President of KCBS ended. (Ex. 8, at ¶ 10).

RESPONSE: Undisputed.

36. At the February 15-16th meeting, the 2019 Board of Directors held a lengthy discussion to discuss the Agreement. (Ex. 5, at 92:15-18); (Ex. 18, at 6:30 minute mark).

RESPONSE: Undisputed.

37. During the February 15-16th meeting, the Agreement was voted on for a third time. (Ex. 5, at 85:15-20); (Ex. 14, at KCBS_002407).

RESPONSE: Undisputed.

38. At the February 15-16, 2019 meeting, the Agreement was approved. (Ex. 5, 85:15-20); (Ex. 5, at 170:1-6); (Ex. 14, at KCBS_002407).

39. Bowman abstained from voting. (Ex. 14, at KCBS_002407).

RESPONSE: Undisputed.

40. Bowman did not try to hide his position with FCM and the KCBS Board. (Ex. 2, at 136:25-137:2).

RESPONSE: Undisputed.

41. Bowman completed the Conflict of Interest Disclosure, and he disclosed the existence and purpose of FCM and that his wife Amanda Bowman worked at FCM. (Ex. 10, at KCBS_001562-001564 - Ex. A Conflict of Interest Disclosure Statement).

RESPONSE: Undisputed.

42. The Agreement was voted on by two different KCBS Board of Directors – the 2018 Board and the 2019 Board. (Ex. 4, at 148:9-16) (the Agreement was voted on by two different boards).

RESPONSE: Undisputed.

43. KCBS’ legal counsel was present at two of the Agreement’s votes – on January 15, 2019 and February 16, 2019. (Ex. 2, at 132:15-25); (Ex. 2, at 138:7-11); (Ex. 6, at 99:6-13, 99:22-100:19).

RESPONSE: Undisputed.

44. KCBS’ legal counsel did not express concerns about the Agreement. (Ex. 2, at 150:16-25); (Ex. 5, 170:11-15); (Ex. 6, at 99:6-13, 99:22-100:19).

RESPONSE: Undisputed.

45. Bowman stated that he did not feel it was appropriate for him to bring the Agreement to KCBS’ legal counsel. (Ex. 9, at KCBS_011604).

RESPONSE: Undisputed.

46. Bowman did not vote at any of the Agreement’s three votes. (Ex. 6, at 92:23-93:5).

RESPONSE: Undisputed.

47. Every 2018 board member who testified stated that the Agreement was in the best interest of KCBS. (Ex. 2, at 52:18-25); (Ex. 3, at 49:6-10); (Ex. 3, at 50:6-10) (Ex. 6, at 96:1-8).

RESPONSE: Undisputed, but these Past Board Members also testified that they had no marketing expertise and were reliant on Bowman to give them all the pertinent information. See, e.g., Peters Depo. at 76:6-9 (testifying that “nobody on that Board of Directors had any marketing expertise other than Mr. Bowman”); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

48. 2018 board members stated they considered KCBS' prior marketing contracts in evaluating the Agreement. (Ex. 2, at 123:25-124:10); (Ex. 6, at 93:6-20).

RESPONSE: Undisputed, but these Past Board Members also testified that they had no marketing expertise and were reliant on Bowman to give them all the pertinent information. See, e.g., Peters Depo. at 76:6-9 (testifying that "nobody on that Board of Directors had any marketing expertise other than Mr. Bowman"); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

49. 2018 board members stated it would have been difficult for another marketing agency to get up to speed after the MMA Creative contract termination (Ex. 3, at 97:20-98:8); (Ex. 3, at 100:6-10), and they considered Bowman's familiarity with KCBS when voting on the Agreement. (Ex. 6, at 95: 19-25).

RESPONSE: Undisputed, but these Past Board Members also testified that they had no marketing expertise and were reliant on Bowman to give them all the pertinent information. See, e.g., Peters Depo. at 76:6-9 (testifying that "nobody on that Board of Directors had any marketing expertise other than Mr. Bowman"); Bragg Depo. at 31:7-23 (testifying that the Board was reliant on Bowman to provide complete and accurate information).

50. At the conclusion of the February 15-16, 2019 Board meeting, Bowman handed Candy Weaver, the 2019 incoming board president, his attorneys' card at the conclusion of that meeting. (Ex. 11, at KCBS_011545).

RESPONSE: Undisputed.

51. Bowman resigned from the KCBS Board of Directors on February 16, 2019. (Ex. 5, at 79:4-80:13).

RESPONSE: Undisputed.

52. Around the time Bowman resigned from the KCBS Board of Directors, KCBS's IT vendor helped to migrate all of Bowman's KCBS emails to his FCM email account. (Ex. 4, at 108:8-112:17); (Ex. 8, ¶ 26).

RESPONSE: Undisputed.

53. This migration included communications with current and potential sponsors as part of FCM's work for KCBS as well as KCBS board communications. (Ex. 8, at ¶ 26).

RESPONSE: Undisputed.

54. Bowman did not use these emails for any purpose other than KCBS business. (Ex. 4, 110:13-21).

RESPONSE: Disputed. According to Bowman's own summary judgment papers, at least one of the reasons why he retained these emails was to use them *against* KCBS in litigation.

55. All witnesses who testified about the Non-Compete provision's meaning testified that the Non-Compete was intended to prevent FCM from sanctioning food competitions. (Ex. 2, at 121:5-9); (Ex. 3, at 96:10-21); (Ex. 6, at 89:3-21); (Ex. 4, at 89:24-90:15), and was not intended to keep FCM from performing other marketing activities, including hiring talent for other marketing programs. (Ex. 2, at 120:25-121:12); (Ex. 6, at 89:7-10).

RESPONSE: Undisputed.

56. Due to growing unrest concerning the Agreement, Bowman anticipated litigation concerning the Agreement. (Ex. 4, at 110:13-21); (Ex. 4, 122:1-8).

RESPONSE: Undisputed.

57. In early February 2019, Bowman hired an attorney. (Ex. 4, at 125:1-8).

RESPONSE: Undisputed.

The Performance of the Agreement.

58. FCM performed under the Agreement by, among other things, procuring sponsorships, responding to and creating posts on social media on KCBS' behalf and providing marketing services to KCBS during the life of the Agreement. (Ex. 8, at ¶ 20).

RESPONSE: Undisputed.

59. KCBS performed under the Agreement, in part, by paying some, but not all invoices submitted by FCM for services performed. (Ex. 8, at ¶ 21).

RESPONSE: Undisputed.

60. Under the Agreement, FCM submitted invoices to KCBS for services performed and sponsorships secured. (Ex. 8, at ¶ 19).

RESPONSE: Undisputed.

KCBS' Termination of the Agreement

61. On April 24, 2019, Bowman sent an email to the KCBS Board of Directors and carbon copied his attorney at the time on that email stating that he was worried FCM would be taken advantage of without representation. (Ex. 9, at KCBS_011603).

RESPONSE: Undisputed.

62. During April 2019, the KCBS Board of Directors held discussions concerning the termination of the Agreement. (Ex. 5, at 109:14-18).

RESPONSE: Undisputed.

63. In April of 2019, the 2019 Board addressed whether to terminate the Agreement and whether to send related communications to KCBS' legal counsel (discussing whether to "terminate the contract either without cause and pay the termination fee or with cause and prepare for litigation") (Ex. 11, at KCBS_011547-11549).

RESPONSE: Undisputed.

64. Despite these discussions in April, the Agreement was not terminated until November. (Ex. 5, at 109:14-22).

RESPONSE: Undisputed.

65. One board member expressed concern that the 2019 KCBS Board of Directors planned to “concoct” reasons to terminate the FCM contract (**Ex. 3**, at 124:14-24), (**Ex. 24**), and that the termination of the Agreement would likely result in litigation because such termination would be wrongful. (**Ex. 3**, at 124:24-125:18), (**Ex. 24**).

RESPONSE: Undisputed.

66. On November 1, 2019, eleven months into FCM’s three-year contract, KCBS terminated the Agreement with cause. (**Ex. 5**, at 36:3-10) (terminated on November 1, 2019), (**Ex. 5**, at 127:22-128:3).

RESPONSE: Undisputed.

67. Prior to termination of the Agreement, KCBS never sent a written warning pursuant to Section (3)(b)(iii) or (iv) of the Agreement to Bowman or FCM. (**Ex. 1**, at KCBS_000396, ¶ (3)(b)(iii),(iv) (requiring KCBS to provide thirty days written warning before terminating for cause); (**Ex. 8**, at ¶ 23).

RESPONSE: Undisputed.

68. KCBS noted the Agreement as a potential excess benefit transaction on its 2019 990 Form. (**Ex. 7**, at 183:17-184:7).

RESPONSE: Undisputed.

69. FCM and KCBS operated several shared Google folders. (**Ex. 4**, at 173:11-174:6).

RESPONSE: Undisputed.

70. The folders included documents created and shared by both FCM and KCBS. (**Ex. 4**, at 173:11-174:6).

RESPONSE: Undisputed.

71. FCM was the owner of some of the Google folders and KCBS was the owner of others. (Ex. 4, at 173:11-174:6).

RESPONSE: Undisputed.

72. Sometimes, KCBS would copy a document or spreadsheet created by FCM and place it into a Google drive which it owned. (Ex. 8, at ¶ 32).

73. KCBS had access to FCM's shared drives and FCM had access to KCBS's shared drives. (Ex. 8, at ¶ 30).

RESPONSE: Undisputed.

74. There were files on a Google drive that KCBS used that were owned by Randall Bowman and Amanda Bowman. (Ex. 5, at 178:17-179:2); (Ex. 8, at ¶ 32).

RESPONSE: Undisputed.

75. Neither Bowman or FCM used any KCBS list on the shared Google drive for FCM's purpose, (Ex. 4, at 174:17-175:12), and Bowman did not look at the Google drive after the Agreement was terminated on November 1st, 2019. (Ex. 4, at 173:11-6).

RESPONSE: Disputed. See Email from Jordan Fishman, IT specialist at Park Road (KCBS_004212).

76. Bowman did not use any emails that were retained on Bowman's computer from his time on the KCBS Board of Directors or from his time as the marketing services vendor for KCBS (Ex. 8, ¶ 38).

RESPONSE: Disputed. According to Bowman's own summary judgment papers, at least one of the reasons why he retained these emails was to use them against KCBS in litigation.

77. To date, KCBS owes payment to FCM, but has not paid FCM. (Ex. 4, at 149:7-150:3); (Ex. 8, at ¶ 21). KCBS' Corporate Representative testified that KCBS is not aware of the amount of money owed to FCM. (Ex. 5, at 214:2-7).

DISPUTED: Disputed. KCBS's ultimate position is that the Agreement was procured by Bowman in breach of his fiduciary duties to KCBS and was, therefore, void *ab initio* and no payment is due to FCM.

78. Specifically, the following amounts remain unpaid:

- a. Cabo Wabo Commission in the amount of \$13,000.00 due on October 7, 2019 (**Ex. 8**, at ¶ 22(a)).
- b. National Turkey Federation Commission in the amount of \$5,250 due on October 7, 2019. (**Ex. 8**, at ¶ 22(b)).
- c. October Monthly Retainer for Services in the amount of \$13,000 due on November 19, 2019. (**Ex. 8**, at ¶ 22(c)).
- d. October Expenses in the amount of \$425.39 due on November 19, 2019. (**Ex. 8**, at ¶ 22(d)).
- e. Renewals for twenty-four months after termination per the Agreement. (**Ex. 1**, at KCBS_000395, at ¶ (2)(h)). (**Ex. 8**, at ¶ 22(e)).
- f. 2019 Bonus per the Agreement. (**Ex. 1**, at KCBS_000396, at ¶ (2)(f)). (**Ex. 8**, at ¶ 22(f)).
- g. An amount equal to three months of services (\$39,000) per the Agreement's termination without cause provision. (**Ex. 1**, at KCBS_000397, at ¶ 4); (**Ex. 8**, at ¶ 22(g)).

DISPUTED: Disputed. KCBS's ultimate position is that the Agreement was procured by Bowman in breach of his fiduciary duties and was, therefore, void *ab initio* and no payment is due to FCM.

79. FCM assisted Ace Hardware in an event focused on selling grills. (**Ex. 4**, at 172:6-15); (**Ex. 8**, at ¶ 35).

RESPONSE: Undisputed.

80. Prior to the Agreement, FCM had previously provided marketing services to Ace Hardware as a client. (**Ex. 8**, at ¶ 33).

RESPONSE: Undisputed.

81. Specifically, Ace Hardware assisted in placing barbeque cooks, or “pitmasters,” at Ace Hardware stores to demonstrate cooking meats on Ace grills to sell Ace products. (Ex. 4, at 172:6-15).

RESPONSE: Undisputed.

82. Selling Ace products is not the purpose of KCBS. (Ex. 5, at 41:16-21); (Ex. 5, at 42:4-7); (Ex. 6, at 88:16-22); (Ex. 7, at 125:23-126:1).

RESPONSE: Undisputed.

83. The date of this event was after the date the Agreement was terminated. (Ex. 8, at ¶ 36).

RESPONSE: Undisputed.

84. The Ace event was not a competition food event, and FCM has not sanctioned any food competitions since November 1, 2019 when the Agreement was terminated. (Ex. 8, at ¶¶ 36, 37).

RESPONSE: Undisputed.

85. As part of my duties as President in 2018, I worked with the 2018 Board of Directors to negotiate contracts on behalf of KCBS, including Heath Hall, Carolyn Wells, and Mike Peters’ contracts. As President, I did not vote on the contracts for FCM, Heath Hall, Carolyn Wells, or Heading South LLC (Mike Peters’ company). (Ex. 8, at ¶ 39). The 2018 Board approved contracts for each of these individuals, and we did so in good faith, using our best judgment, and what was in the best interest of KCBS. (Ex. 8, at ¶ 40).

RESPONSE: Disputed because this is an excerpt from Bowman’s affidavit rather than a statement of alleged fact.

Respectfully submitted March 8, 2021.

BRYAN CAVE 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

ATTORNEY FOR THE KANSAS CITY BARBEQUE
SOCIETY

CERTIFICATE OF SERVICE

On March 8, 2021, 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 Barbeque
Society