

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

COREY HOWARD,)	
Plaintiff and)	
Counterclaim Defendant)	
)	
vs.)	Cause No. 4:13 CV 2518 CEJ
)	
RJH ENTERPRISES LLC,)	
Defendant and)	
Counterclaimant)	

**DEFENDANT’S SECOND MOTION TO
AMEND ANSWER AND COUNTERCLAIM**

Comes now RJH Enterprises LLC (“RJH”) and moves this Court for leave to file its Amended Answer and Counterclaim pursuant to Rules 16(b)(4) and 15(b)(2), F.R.C.P., and as grounds therefor states as follows:

1. Plaintiff Corey Howard filed his single-count breach of contract Complaint against RJH on December 18, 2013 (Doc. 1). RJH filed its Answer and three-count Counterclaim on January 27, 2014 (Doc. 8).

2. This Court issued its Track 2 Scheduling Order on February 28, 2014 (Doc. 17) and therein set this case for trial on March 2, 2015. The Scheduling Order set a date of March 27, 2014 for amendment of pleadings.

3. The parties are still in the midst of discovery. Discovery does not close until October 14, 2014. Plaintiffs have not yet taken any depositions.

4. On May 30, 2014, RJH filed its first Motion to Amend Answer and Counterclaim (Doc. 25). The Court denied RJH's Motion on August 1, 2014 (Doc. 32).

5. For the reasons stated in RJH's Memorandum in Support of its Second Motion to Amend Answer and Counterclaim, good cause exists for the Court to grant RJH's Instant Motion.

6. RJH seeks to amend its Answer and Counterclaim as follows:

(a) to add an allegation to the Answer (new paragraph 51) identifying the third parties that actually provided the principal marketing activities on behalf of Ryan and RJH and to allege that Corey did not do so;

(b) to specifically use the phrase "constructive fraud" to describe the conduct of Corey and his co-conspirators (§ 52 of the Answer and §§ 8 and 12 of the Counterclaim);

(c) to correct an error in a date (§ 52 of the Answer);

(d) to add a Seventh Defense (§ 58 of the Answer) explaining how and why Corey's damages claims are based on speculation and conjecture; and

(e) to add a new Count II to its Counterclaim (§§ 11 through 14) alleging constructive fraud on the part of Corey separately and apart from the acts of his co-conspirators.

7. For the convenience of the Court, RJH attaches as Exhibit 1 a red-lined version of its Amended Answer and Counterclaim reflecting these proposed amendments.

8. The proposed amendments will not affect any of the dates included in the Court's Scheduling Order, including the deadlines for discovery and dispositive motions or the March 2, 2015 trial setting.

9. The proposed amendments are not made for the purposes of delay, are in good faith, and will cause no prejudice to plaintiff Corey Howard.

WHEREFORE, RJH Enterprises LLC respectfully requests that this Court grant its second motion to file the Amended Answer and Counterclaim, the substance of which is set forth in Exhibit A hereto.

BRYAN CAVE LLP

By /s/ Thomas E. Wack

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Attorneys for Defendant and
Counterclaimant RJH Enterprises LLC

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2014, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Thomas E. Wack
Attorney for Defendant

EXHIBIT 1
TO MOTION
TO AMEND

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

COREY HOWARD,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 4:13 CV 2518 CEJ
)	
RJH ENTERPRISES LLC,)	
)	
Defendant.)	

AMENDED ANSWER AND COUNTERCLAIM

AMENDED ANSWER

Comes now defendant RJH Enterprises LLC and answers the allegations of the Complaint as follows:

1. Admits that this is an action for alleged breach of contract and that the parties signed a document styled "Consulting Agreement." States that the "Consulting Agreement" attached to the Complaint differs from the one in defendant's possession. Except as so admitted, denies the allegations of paragraph 1 of the Complaint.

2. Admitted.

3. States that the "Consulting Agreement" attached to the Complaint differs from the one in defendant's possession. Otherwise admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admits that Corey Howard (“Corey”) is the twin brother of Ryan Howard (“Ryan”). Except as so admitted, denies the allegations of paragraph 7.

8. Admits that Ryan did talk with his brothers about having them involved in his business affairs and helping him to prepare for life after baseball. Denies that Ryan agreed to guarantee Corey “lasting security” and accordingly denies the allegations of paragraph 8.

9. Admits that Ryan, acting on behalf of RJH, and Corey individually executed a document styled “Consulting Agreement” in early January, 2012. States that the “Consulting Agreement” attached to the Complaint differs from the one in defendant’s possession. Except as so admitted and stated, denies the allegations of paragraph 9.

10. States that the terms of the “Consulting Agreement” (whichever it is) speak for themselves, denies Corey’s characterization and choice of “key terms,” and denies paragraph 10 in its entirety.

11. Admits that Ryan did talk with Corey and other family members about potential life-after-baseball business opportunities. Except as so admitted, denies the allegations of paragraph 11.

12. States that Ron Howard and Cheryl Howard, the parents of Ryan and Corey, have exercised dominion and control over the records and accounts of RJH. Further states that Cheryl Howard disbursed to Corey through bi-weekly Bill-Pay automatic payments of \$8,975 from RJH funds and that those payments exceeded the amounts described in the “Consulting Agreement” attached to the Complaint. Except as so admitted, denies the allegations of paragraph 12.

13. States that, due to facts and circumstances described in the First Defense to this Answer, Ryan did desire to terminate payments described in the “Consulting Agreement” and that he asked his legal representative to contact Corey about its termination. Except as so admitted and stated, denies the allegations of paragraph 13.

14. Admits that, on or about July 30, 2012, Ryan’s legal representative e-mailed Exhibit B to Corey. States that the terms of the document styled “Termination Agreement” speak for themselves. Except as so admitted and stated, denies the allegations of paragraph 14.

15. States that the terms of the “Termination Agreement” speak for themselves and accordingly denies paragraph 15 in its entirety.

16. Admitted.

17. Admitted.

18. Denies that Corey performed services under the “Consulting Agreement” and accordingly denies paragraph 18 in its entirety.

19. States that, in or about July or August 2012, Ryan took over financial control of RJH; further states that, although Corey was performing no significant services for RJH, Ryan authorized continued payments to Corey for another year because Corey did not have a job and needed time to transition to one. This was done as an accommodation to his twin brother. Admits the amounts and dates stated in paragraph 19. Except as so admitted, denies the allegations of paragraph 19.

20. Admitted.

21. RJH incorporates its responses to paragraphs 1 through 20 of the Complaint as set forth above.

22. Admits that Corey and RJH executed a “Consulting Agreement.” States that the “Consulting Agreement” attached to the Complaint differs from the one in defendant’s possession.

23. States that Corey performed minimal household chores and accompanied Ryan on appearances. Except as so stated, denies paragraph 23 in its entirety.

24. States that the terms of the “Consulting Agreement” (whichever it is) speak for themselves and accordingly denies paragraph 24 in its entirety.

25. Incorporates its response to paragraph 19 above.

26. Due to facts and circumstances described in the First Defense to this Answer, denies that the “Consulting Agreement” is a valid and binding contract and accordingly denies paragraph 26 in its entirety.

27. States that the terms of the “Consulting Agreement” (whichever it is) speak for themselves and accordingly denies paragraph 27 in its entirety.

28. Denied in its entirety.

29. Admits that RJH has made no further payments to Corey after August 31, 2013, but denies that the “Consulting Agreement” is a valid and binding contract and that RJH is required to make any payments to Corey.

30. Denied in its entirety.

31. Denied in its entirety.

32. States that the terms of the “Consulting Agreement” (whichever it is) speak for themselves and accordingly denies paragraph 32 in its entirety.

33. Denied in its entirety.

34. Denied in its entirety.

35. Denied in its entirety.

FIRST DEFENSE

36. As twin brothers, Corey and Ryan grew up in the same household, played together, and went to the same schools. They were even college roommates. Their close sibling relationship continued into adulthood. Ryan loved Corey and believed Corey loved him. The relationship between them was one of trust and confidence.

37. Ryan was selected by the Philadelphia Phillies in the 2001 Major League Baseball draft. He was called up to the Phillies in 2004, was named National League Rookie of the Year for 2005, and National League Most Valuable Player in 2006, a year in which he hit 58 home runs. He has been selected to compete in three All-Star Games. He is the Phillies starting first baseman, holds several team and league batting records (including the Silver Slugger Award), and is under a long-term contract with the Phillies.

38. Ron Howard is the family patriarch. When he gave orders, directions or suggestions to family members, they were not to be questioned. It was considered wrong to disagree with him. After Ryan reached the big leagues, Ron warned him that unscrupulous people – acting as managers, consultants, advisors, or other professionals – could rob him blind and leave him financially unprepared for life after baseball. Ron Howard told Ryan that he could avoid that possibility by putting his business, personal and

financial affairs in the hands of his family members, who had “valuable skill sets” and whom Ryan could trust. The idea was that the family would take care of business and that this would allow Ryan to focus exclusively on baseball. Ryan accepted his father’s advice. In fact, however, Corey (and the other family members) had no background in professional sports and no business dealings with or on behalf of professional athletes.

39. On information and belief, RJH was formed after the end of Ryan’s 2006 MVP season. RJH was intended to be a vehicle that would promote Ryan’s name and run his promotional activities. It was intended to grow, not to be a means for family members to become wealthy. Ryan has contributed more than \$8 million to RJH over the years. Corey and other family members have made no financial contributions to RJH.

40. Pursuant to his father’s advice, Ryan chose family members instead of professionals to handle his personal affairs and to operate RJH. His father Ron acted as “Business Manager,” his mother Cheryl as “Chief Financial Officer,” his brother Chris as “General Counsel,” his sister Roni (Karen Cowley) as Executive Director of the Ryan Howard Family Foundation, and Corey as his Personal Assistant. All were paid with RJH funds through an automatic “Bill Pay” system set up by Cheryl Howard. Over the years Ryan signed business documents submitted to him by family members without carefully reviewing them. He did so with the understanding that they were acting as his representatives and in his best interests.

41. From and after 2006, Ryan and RJH made significant gifts to family members. A 2007 BMW was given to Cheryl. Ron and Cheryl received a 2011 Mercedes GL550 Truck. A 2007 Aston Martin was given to Ron as well. Corey’s close relationship

with Ryan continued after Ryan became a success in Major League Baseball. Ryan shared his home in Philadelphia with Corey on a rent-free basis. Ryan bought Corey expensive Armani suits and other designer clothes, provided him a free phone, and allowed him generally to share in his lifestyle. As hereafter described, Ryan allowed Corey to obtain significant monies from RJH.

42. In or about early January 2012, Ryan served as best man to a friend of his being married in Mexico. Like Ryan, Corey and other family members were invited on a Caribbean cruise that would end at the wedding site. While Ryan was getting dressed for the wedding, Corey came to Ryan's room.

43. Corey then presented Ryan with a series of agreements between RJH and family members and asked him to sign them. They included a "Consulting Agreement" with Corey as well as similar agreements with Chris and Roni. Corey told Ryan that these agreements were in his best interest. Trusting Corey as he always had, Ryan signed those documents without carefully reviewing them. Ryan was not given a copy of the "Consulting Agreement" after he signed it.

44. Despite his title as "Co-Manager Director of RJH Enterprises, Marketing and Personal Support Services," Corey procured no marketing agreements or other commercial deals for Ryan or RJH after his execution of the "Consulting Agreement" and made no serious efforts to do so.

45. According to the "Consulting Agreement" attached to the Complaint, Corey would be compensated for his services at the rate of \$92 per hour. At least \$275,561.48 in RJH funds were disbursed to Corey in 2012 and 2013 alone. Corey kept no time records

and provided no corroboration that he worked any number of hours. In fact, he performed no significant services.

46. Ryan's family members have been paid at least the following amounts by RJH. Until August 2012, all payments were based on Cheryl's authorization:

<u>Family Member</u>	<u>Period</u>	<u>Amount</u>
Ron Howard	7/30/07-5/15/12	\$1,314,097.47
Cheryl Howard	3/20/07-5/6/13	\$373,000.00
Corey	8/19/08-5/15/13	\$610,586.85
Chris Howard	6/24/08-12/28/12	\$235,300.00
Roni Cowley	1/16/09-12/31/12	<u>\$262,353.06</u>
		\$2,795,337.38

47. Ryan did not know the amounts of these payments until he took over RJH financials in July 2012. Neither Corey nor any other family member disclosed to him the amounts they were taking out of RJH.

48. By late 2011, Ryan had become concerned with whether Corey and his other family members were really working to protect his financial interests or were attempting to enrich themselves at his expense. Ryan told his father he wanted to take over his own affairs and have his family just be family. Ron Howard replied that, if Ryan wanted him to walk away from Ryan's business affairs, Ron should receive \$5 million himself and Cheryl should receive another \$5 million.

49. When Ryan told his mother that he was thinking of separating his family from his financial affairs, she told him he couldn't do that because RJH had entered into long-term contracts with his siblings that were intended to "protect" him. At this point in July 2012, Ryan called Chris who acknowledged the agreements. Only after this conversation were the agreements, including the "Consulting Agreement" with Corey, eventually forwarded on to Ryan.

50. In the summer of 2012, Ryan found that Ron, Cheryl, and Chris claimed to be members of RJH, even though they had not invested in it and even though he had not agreed to that. When Ryan inquired, he was told they had done that to "protect" him (presumably in the event of third-party litigation). Then, when Ryan took over financial control of RJH, his parents failed to turn over its books and records, as he had requested. Recently Ryan inquired of his mother about financial matters, but Cheryl told him she didn't want to answer such questions because she was still trying to get over "the separation." In September, 2012, Ryan saw a TV show titled "Broke" describing the financial plight of certain star athletes who had entrusted their business affairs to their family.

51. The principal marketing and promotional activities on behalf of Ryan and RJH during the relevant period were undertaken by third parties – Casey Close and representatives of Creative Artists Agency ("CAA"). Corey and the other family members provided little to this process, other than to conceal matters from Ryan. In fact, some potential sponsors chose not to do business with Ryan and RJH because they found the family members so difficult to deal with.

52. The “Consulting Agreement” was—fraudulently procured through constructive fraud, as evidenced by: (a) its shocking lack of consideration and one-sided terms, (b) the undue influence exercised upon Ryan and RJH by Corey and other family members, (c) the non-disclosure of Corey’s intent to reap millions of dollars in “compensation” through the year ~~2025~~2026 without performing any significant services, (d) the drafting of the Agreement by brother Chris, acting as “General Counsel” and allegedly acting in the best interests of Ryan and RJH, (e) the circumstances in which the “Consulting Agreement” was submitted to Ryan for signature, (f) the simultaneous submission of similar agreements with other family members, (g) the foul play involved in substituting different terms in the “Consulting Agreement” after it had been executed, and (h) establishing and maintaining RJH without disclosing to the sole investor and contributor that there were other members or who they were.

SECOND DEFENSE

~~52.~~53. The “Consulting Agreement” attached to the Complaint is unenforceable because it is too vague and indefinite to support the obligation alleged. The “Termination for Cause” and “Grounds for ‘Cause’ Termination” provisions upon which Corey relies for his claim are based on a relationship between “Employer” and “Employee.” While Corey maintains he is the “Employee” entitled to enforce those provisions, the “Consulting Agreement” does not support that interpretation. The very next paragraph styled “Relationship of Parties” states that Corey “is an independent contractor with respect to RJH, and not an employee of RJH.” The only “employees” identified in the “Consulting Agreement” are Corey’s own employees, mentioned in paragraph 10.

THIRD DEFENSE

~~53.~~54. Even if the “Consulting Agreement” were a valid contract, RJH has satisfied any obligations owed to Corey. The “Consulting Agreement” does not entitle Corey to automatic payments or any amount through 2026. Corey is entitled to be compensated only for “specific hours” worked, and he has been paid for all hours he allegedly worked.

FOURTH DEFENSE

~~54.~~55. Corey breached the covenant of good faith and fair dealing incorporated by law into the “Consulting Agreement” by virtue of his acts and omissions described in the First Defense.

FIFTH DEFENSE

~~55.~~56. The “Consulting Agreement” is invalid and unenforceable for lack of consideration and mutuality of obligation. It does not describe or mention any services to be performed by Corey. The “Consulting Agreement” effectively allows Corey to unilaterally determine whether he will provide any services for RJH or no services at all.

SIXTH DEFENSE

~~56.~~57. The “Consulting Agreement” is invalid and unenforceable for failure of consideration. If Corey was required to perform any services pursuant to the “Consulting Agreement,” he failed to do so.

SEVENTH DEFENSE

58. Corey’s alleged damages are based upon speculation and conjecture and are thus not legally sustainable because they rest upon the following false and unwarranted assumptions: (a) that Ryan would continue to play major league baseball and that his

“brand” would continue to be marketable through the year 2026, when he would be 46 years old, (b) that he would have work to perform for RJH on a full-time basis throughout those future years, (c) that he would work on a full-time basis for RJH, even though he had not done so in the past, and (d) that his projected stream of future payments could be added together without discounting to a lump-sum present value..

WHEREFORE, having fully answered, defendant RJH Enterprises LLC prays that the Complaint be dismissed and that plaintiff go hence with his costs.

AMENDED COUNTERCLAIM

Comes now defendant, RJH Enterprises LLC (“RJH”) and counterclaims against plaintiff Corey Howard (“Corey”) as follows:

1. RJH Enterprises is a limited liability company organized and existing under Missouri law. Its member, Ryan J. Howard (“Ryan”), is a citizen and resident of the State of Florida.
2. Corey is a citizen and resident of the State of Georgia.
3. The amount in controversy exclusive of interest and costs exceeds \$75,000.
4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332 and principles of pendent jurisdiction.

COUNT ONE

5. RJH re-states and incorporates by reference herein all the allegations set forth in paragraphs 36 through ~~51~~52, inclusive, of its Answer (i.e. the allegations of the First Defense).

6. Corey engaged in a conspiracy with Ron Howard, Cheryl Howard, and Chris Howard to defraud RJH through the conduct described above. (Roni Cowley did not participate in the conspiracy).

7. The overt acts described in the First Defense were committed in furtherance of the conspiracy and through the unlawful means therein described.

8. The conspiracy proximately caused RJH to suffer damages, including, without limitation, the value of all payments made from RJH to and on behalf of the family members including but not limited to those allegedly made pursuant to the “Consulting Agreement” with Corey and the written agreements with family members, all of which were ~~fraudulently induced or fraudulently procured~~ through constructive fraud.

9. By virtue of his participation in the conspiracy, Corey is jointly and severally liable for the damages suffered by RJH that were caused by him and the other co-conspirators.

10. Corey’s actions were willful, wanton, and malicious. An award of punitive damages is appropriate to punish him and to deter him and others from like conduct in the future.

COUNT TWO

11. RJH re-states and incorporates by reference herein all the allegations set forth in paragraphs 36 through 52, inclusive, of its Answer.

12. Corey procured the “Consulting Agreement” from RJH and Ryan by means of constructive fraud as evidenced by the following: (a) the confidential relationship between Corey and Ryan as twin brothers; (b) the undue influence Corey exercised upon

Ryan based upon that confidential relationship; (c) the casual, non-business circumstances in which Corey obtained Ryan's signature; (d) Corey's misrepresentation that the terms of the "Consulting Agreement" were in Ryan's best interest; (e) the shocking lack of consideration and one-sided terms of the "Consulting Agreement"; (f) Corey's failure to disclose that the period of the "Consulting Agreement" ran through 2026; (g) Corey's use of Chris, the "General Counsel" of RJH, to draft the one-sided agreement in his own favor; (h) his failure to disclose that the "Consulting Agreement" could only be terminated for "cause," as narrowly described therein.

13. Because the "Consulting Agreement" was fraudulently procured, RJH is entitled to its rescission, including restitution of the \$610,586.85 Corey received from RJH as a result of obtaining that agreement.

14. Corey's actions were willful, wanton, and malicious. An award of punitive damages is appropriate to punish him and to deter him and others from like conduct in the future.

COUNT THREE

15. RJH re-states and incorporates by reference herein all the allegations set forth in paragraphs 36 through 51, 52, inclusive, of its Answer (i.e. the allegations of the First Defense).

12, 16. RJH states that the "Consulting Agreement" attached as Exhibit A to the Complaint is invalid and unenforceable for the reasons set forth in paragraphs 36 through 56 of its Answer (i.e. the allegations of the First through Sixth Defenses).

~~13.17.~~ Since 2008, Corey has been enriched by the receipt of benefits from RJH – specifically, the many payments he received from RJH accounts.

~~14.18.~~ Corey’s enrichment was at the expense of RJH.

~~15.19.~~ It would be unjust and inequitable to allow Corey to retain those benefits because he did not perform or render any significant services for RJH during the period in which he received them.

~~16.20.~~ RJH is entitled to restitution from Corey of the monies he received from RJH and by which he was unjustly enriched.

COUNT THREEFOUR

~~17.21.~~ This counterclaim is asserted in the alternative and only in the event the “Consulting Agreement” is deemed to be valid and enforceable.

~~18.22.~~ Paragraph 12 of the “Consulting Agreement” attached to the Complaint states:

“[Corey] agrees to indemnify and hold harmless RJH from all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against RJH that results from the acts or omissions of [Corey]. . .”

~~19.23.~~ Pursuant to paragraph 12 of the “Consulting Agreement,” RJH is entitled to be indemnified for the payment of its fees, including attorneys’ fees, and costs incurred in the defense of this litigation because those fees and costs result from Corey’s acts in filing and prosecuting this case.

WHEREFORE, defendant RJH Enterprises LLC seeks actual and punitive damages from Corey Howard pursuant to Count I of this Counterclaim ~~as well as~~ restitution,

rescission, and indemnification from him pursuant to Counts III, III, and IV of this Counterclaim, all in amounts to be determined at trial.

BRYAN CAVE LLP

By /s/ Thomas E. Wack

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer and Counterclaim was delivered via the Court's CM/ECF system this 27th ____ day of January _____, 2014, to ~~Christopher L. Schneiders~~ Tyler Hudson, Attorney for Plaintiff, Wagstaff & Cartmell L.L.P., 4740 Grade Avenue, Suite 300, Kansas City, MO 64112 and by electronic mail to ~~eschneiders@wellp.com-64112.~~

/s/ Thomas E. Wack