

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF MASON**

JOS. SANDERS, INC, d/b/a Sanders Meats,  
a Michigan corporation,

Case No. 2020 - 347 -CB  
Hon. Susan Kasley Sniegowski

Plaintiff/Counter-Defendant,

v.

ALEC SANDERS, an individual,  
COREY SANDERS, an individual,  
jointly and severally,

**PLAINTIFF'S FIRST  
AMENDED COMPLAINT**

Defendants/Counter-Plaintiffs,

and

ALEC SANDERS, an individual,  
COREY SANDERS, an individual,

Third Party Plaintiffs,

v.

DEREK SANDERS, an individual  
CARLTON SANDERS, an individual, and  
DAVID SANDERS, an individual,

Third Party Defendants.

THE ABOVE IS A TRUE COPY

JAN 13 2021

51st Circuit Court

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## **PLAINTIFF'S FIRST AMENDED COMPLAINT**

Plaintiff/Counter-Defendant, Jos. Sanders, Inc. (“Plaintiff” or “the Company”), by and through its attorneys, Rossman, P.C., and for its First Amended Complaint against Defendants/Counter-Plaintiffs Alec Sanders and Corey Sanders (collectively referred to as, “Defendants”), states as follows:

### **PARTIES, JURISDICTION, AND VENUE**

1. This case arises out of the various conversions, extortions, embezzlements, slanders and artifices perpetrated by Defendants Alec and Corey Sanders against their family business. Demand has been made upon them to immediately refrain from such unlawful conduct and return stolen monies and trade secrets, but they have failed to comply thus necessitating the instant litigation. At all times, the Defendants acted in bad faith and with malicious intent, as the documentary record shows, and, thus, in addition to treble damages, Defendants are liable for exemplary damages.

2. Plaintiff Jos. Sanders, Inc. (hereinafter referred to as, “Plaintiff” or “the Company”), is a Michigan corporation with its principal offices in Mason County, Michigan and which otherwise conducts business in Mason County, Michigan.

3. Defendant Alec Sanders is an individual who is domiciled in Mason County, Michigan.

4. Defendant Corey Sanders is an individual who is domiciled in Mason County, Michigan.

5. The wrongful conduct and the transactions described herein occurred, and continue to occur, primarily in Mason County, Michigan.

6. The amount in controversy is in excess of \$25,000.00, exclusive of interest, attorney fees, and costs.

7. Jurisdiction and venue are properly laid in this Court.

### **FACTUAL BACKGROUND**

8. The Company is a family owned and operated business founded in 1925 and was incorporated under Michigan law on June 27, 1960. The Company has continued to serve the meat processing industry for decades.

9. While the Company was named after its founder, Joseph Sanders, the Company eventually began to use the tradename, Sanders Meats, and as its own brand – Sanders. In fact, in October 2017, the Company registered its trademark for “Sanders” with the U.S. Patent and Trademark Office.

10. At all relevant times herein, the Company’s Board Members consisted of David Sanders (President), Derek Sanders (Treasurer), Carlton Sanders (Secretary and second Vice President); and Alec Sanders (First Vice President), all of whom held and hold certain fiduciary duties to the Company, prohibiting, among other things, the misappropriation and embezzlement of company assets.

11. Defendant Corey Sanders was an employee of the Company, and though he never held any membership interest therein nor any position on the Company’s board of directors, he too owed various fiduciary duties and other obligations to the Company.

12. In his position on the Board of Directors for the Company, Alec had access to the Company’s financial documents and records, digital data and accounts, as well as other proprietary and confidential documents belonging to the Company – such as Company recipes for its various meat products, which are integral to the Company’s business.

13. In addition to the meat processing and butchering services that the Company offers, a large portion of the Company's revenue comes from the sales of the various meat products the Company offers.

14. The Company's recipes for its various meat products were developed throughout the years by the founder of the Company, its members and/or employees on behalf of the Company. In essence, these secret family recipes serve as the foundation of the business.

15. Throughout the years, the Company continued to develop and enhance these signature recipes, as well as continuing to develop entirely new recipes, allowing it to expand its product line to include many additional meat products and goods for the Company to sell to its customers (including direct consumer sales and wholesale clients).

16. The development of these recipes required significant efforts on behalf of the Company and its personnel. Developing recipes required several tests and trials (and, in turn, time), utilizing different spicing and ingredient combinations, cooking and preparing techniques, etc., in order to create signature flavors.

17. Given the nature of its business as a meat processing facility, in accordance with federal regulations, the Food Safety and Inspection Service (FSIS) arm of the U.S. Department of Agriculture ("USDA") is mandated to conduct ongoing, continuous inspections of the Company.

18. USDA inspection program personnel determine product compliance, which may call for consulting the Company's documents, including its "formulas" or recipes, to ensure, among other things, use of approved ingredients pursuant to applicable regulations and/or directive.

19. The Company maintains its various recipes in hardcopy format ("the Recipe Book"), which allows it to provide the recipes for its products to the USDA inspectors upon

request, in a file cabinet accessible only to the following five individuals: Carlton Sanders, David Sanders, Derek Sanders, and Defendants Alec and Corey Sanders. During inspections, access was also given to the USDA inspector(s).

20. Moreover, the building where the sales office is located remained locked outside of business hours, and only Carlton Sanders, David Sanders, Derek Sanders, and Defendants had keys to the building.

21. The Recipe Book contains approximately 100 recipes, including the Company's secret jerky recipes, as well as recipes for other meats, such as the Sanders Original Hams that the Company is well and widely known for, and others that Plaintiff prepares and then sells to its customers. Indeed, it is the popularity of these products that largely drives the Company's popularity and continued success.

22. Due to the proprietary nature of the recipes, and the time and effort that went into generating each of its recipe therein, the Sanders family – including Defendants - expressly and/or impliedly understood that the Company's product recipes would be kept strictly confidential.

23. Additionally, Defendant Alec Sanders opened a Capital One Business credit card in the name of the Company, listing himself as the primary owner and therefore having exclusive control thereof, which he subsequently used for personal expenses.

24. Between May and August 2020, and unbeknownst to the Company, Defendants Alec Sanders and Corey Sanders caused certain checks in the sum of \$90,000 each to be issued to themselves, in violation of not only the Company's corporate governance but in violation of various civil and criminal statutes prohibiting embezzlement and misappropriation of property.

25. In fact, Defendants acted in concert in issuing said checks whereby Defendant Alec would sign the checks that were made payable to Defendant Corey, while Defendant Corey signed

the checks that were payable to Defendant Alec. It is also believed that these Defendants communicated through interstate wires in furtherance of this scheme to misappropriate funds, which fact will be investigated through discovery in this matter.

26. In fact, under Article 5, Section 3 of the Company By-Laws, only an officer or agent of the Company that is authorized by its board of directors may issue checks on behalf of the Company. Neither Defendant Alec Sanders, nor Corey Sanders, were ever authorized to do so.

27. A meeting of the Company's Board of Directors was held on August 19, 2020.

28. Although not a member of the Board, due to his familial relationship and his significant employment position with the Company, Defendant Corey Sanders was invited to attend the Board of Directors Meeting on August 19, 2020.

29. During the August Board Meeting, the parties discussed, among other things, the fact that Defendant Corey would not be made a shareholder of the Company, adherence to the Company's bylaws, and that checks written to employees as an "advance" of their salary would not be allowed unless otherwise approved by the Board. Any equipment purchases made on behalf of the Company would also require Board approval.

30. Following this, however, on November 4, 2020, Defendants Alec Sanders and Corey Sanders caused to be issued checks from the Company's bank account payable to each other and in the amounts of \$121,150 each. These checks were issued without the knowledge of the Company's board members, and in violation of the Company's corporate governance and various civil and criminal statutes.

31. Defendants are liable for treble damages as to all Company property misappropriated, and demand is hereby reiterated for the immediate return thereof, as previous demands have been ignored.

32. On November 16, 2020, and unbeknownst to the Company or its board members, Defendant Alec Sanders, who, on information and belief was acting in concert with Defendant Corey Sanders, incorporated Sanders Meat Company.

33. On information and belief, Defendants intend to operate this competing enterprise at a location eight miles down the road from Plaintiff. Therefore, Defendants are intending to service the same geographic area as Plaintiff.

34. On November 19, 2020, Defendant Alec Sanders purported to resign from the Company, whereafter, on November 23, 2020, Defendant Corey Sanders likewise issued written correspondence to the Company stating that he would be resigning his position therein.

35. Prior to Defendants' purported resignations, however, and unbeknownst to Plaintiff or its remaining members, Defendants, while acting in concert, unlawfully took possession of Plaintiff's jerky recipes from its Recipe Book, which maintained the sole copies of many of Plaintiff's proprietary recipes.

36. In fact, the entire file of the Company's jerky recipes was taken from the filing cabinet in that sales office that only the Company's shareholders and the Defendants had access to.

37. Furthermore, Company information that would have been accessible to Defendants through their affiliation with the Company, were moved around, and appeared to have been gone through and copied.

38. On information and belief, Defendants wrongfully acquired these trade secrets in order to use same in the development of their new venture – which would directly compete with Plaintiff's business. Furthermore, on information and belief, Defendants intend to make consumers believe that Plaintiff and their competing company are affiliated.

39. Following the Defendants departure from the Company, Plaintiff discovered its sales data, including cash and credit card data and records, which was stored separately from the Company's recipes, was also missing from the filing cabinet that only Carlton Sanders, David Sanders, Derek Sanders and Defendants had access to.

40. Moreover, within the written correspondence he provided to the Company, Defendant Alec Sanders, who maintained the Company's tax records and filing documents, acknowledged possession of tax records and other documents belonging to the Company, demanding compensation in exchange for their return.

41. Defendants, either in their individual capacities or through an entity owned by Defendant,<sup>1</sup> entered into a purchase agreement to purchase the property located at 3815 W U.S. 10 in Amber Township, Michigan – also located in Mason County (“Highway 10 Property”).

42. Furthermore, in early December 2020, Defendants, through counsel, sought to obtain zoning approval (or a determination from the Zoning Administrator) from Mason County for Defendants, through an affiliated company, to operate a retail meat market and processing facility – offering the same meat processing services and retail sales / wholesale distribution of the same type of meat products offered by the Company - at the Highway 10 Property.

43. On January 4, 2021, Defendant Alec Sanders submitted articles of incorporation with LARA for the creation of a new entity, Great Lakes Smokehouse Meat Company.

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<sup>1</sup> Defendant Alec Sanders recently filed articles of organization and articles of incorporation with the Michigan Department of Licensing and Regulatory Affairs (LARA), for the creation of the following entities: Highway 10 Investments, LLC, Sanders Meat Company, and Great Lakes Smokehouse Meat Company. The articles for each were filed by LARA on August 21, 2020, November 16, 2020, and January 11, 2021, respectively.



44. On information and belief, the due diligence period granted in the purchase agreement of the Highway 10 Property expired January 10, 2021, and the sale of the Highway 10 Property has now closed.

45. Defendants are preparing to operate a competing company, less than 10 miles from the Company's location, to provide services identical to those offered by the Company, and to sell meat products created using the Company's proprietary information and trade secrets.

46. While secretly obtaining Company funds through artifice and deceit, on information and belief, Defendants Alec Sanders and Corey Sanders at all times acted in concert with one another to form a business to directly compete with the Company, and while utilizing the Company's proprietary information that Defendant Alec Sanders had access to in his role on the Company's board and infringing upon the intellectual property of the Company.

47. At all times, the Defendants acted in concert with one another to accomplish the unlawful ends set forth herein, and, in doing so, employed interstate mails and wires to communicate their criminal intentions and the various predicate acts which culminated in the misappropriation of cash assets, trade secrets, books and records and various other property, intellectual and otherwise, of the Company.

48. In furtherance of the Defendants' scheme and conspiracy to defraud the Company, misappropriate its assets and otherwise damage the reputation and standing of the Company and its principals in the community, they have sought to extort the Company and its principals, threatened slander and defamation, and sought to directly compete with the same or similar name to sow confusion in the marketplace.

## COUNT I

### COMMON LAW CONVERSION

49. Plaintiff realleges and restates all allegations as set forth in this Complaint.

50. Defendants Alec Sanders and Corey Sanders acted willfully and wrongly asserted dominion over Company funds, and which were taken in denial of the Company's rights thereto.

51. Defendants Alec Sanders and Corey Sanders knowingly converted the funds belonging to the Company, through the unauthorized administration of checks to themselves and each other, of which Defendants had access to by virtue of their employment with the Company, thereby utilizing the funds for their own benefit.

52. Defendant Alec Sanders knowingly converted Company funds for his own use and benefit by paying personal and unauthorized expenses with the Company's Capital One Credit Card.

53. Furthermore, Defendants Alec Sanders and Corey Sanders knowingly converted the Company's jerky recipes, and other confidential and proprietary information belonging to the Company, for their own use and benefit in starting a business in direct competition to the Company.

54. Defendants Alec Sanders and Corey Sanders obtained said funds and documents belonging to the Company, without the Company's consent, and which they were not entitled to.

55. As a result of Defendants' conversion and/or embezzlement of the Company funds, Plaintiff is entitled to damages, plus all costs, interest and attorney fees.

WHEREFORE, as to Count I, Plaintiff respectfully requests the Court enter a judgment in Plaintiff's favor and against Defendants, jointly and severally, in an amount to be determined, plus reasonable attorney fees, costs, and interest.

## COUNT II

### STATUTORY CONVERSION MCL 600.2919a

56. Plaintiff realleges and restates all allegations as set forth in this Complaint.

57. Defendants Alec Sanders and Corey Sanders concealed, embezzled or converted Plaintiff's property and funds to their own use in violation of MCL 600.2919a.

58. Defendants Alec Sanders and Corey Sanders knowingly converted the Company funds by issuing several check payments to themselves and/or to each other, without authority to do so, and without disclosing same to the Company in order to keep the funds for their own benefit and use.

59. Defendant Alec Sanders knowingly converted Company funds for his own use and benefit by paying personal and unauthorized expenses with the Company's Capital One Credit Card.

60. Moreover, Defendants Alec Sanders and Corey Sanders knowingly converted the Company's jerky recipes, and documents and other proprietary information belonging to the Company, for their own use, in connection with their establishment of a competing enterprise.

61. Pursuant to MCL 600.2919a, Plaintiff is entitled to recover three times the amount of actual damages sustained, plus costs and reasonable attorney fees.

WHEREFORE, as to Count II, Plaintiff respectfully requests the Court enter a judgment in Plaintiff's favor and against Defendants, jointly and severally, in the amount of \$1,266,900.00, plus reasonable attorney fees, costs, and interest.

### COUNT III

#### CIVIL CONSPIRACY

62. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

63. Defendants Alec Sanders and Corey Sanders illegally, maliciously, and wrongfully conspired with one another with the intent to and for the illegal purpose of converting the Company's property for their own use and benefit.

64. Defendants Alec Sanders and Corey Sanders conspired to embezzle the Company's funds to enrich themselves, while converting the Company's proprietary information for use in their competing company which they incorporated in secret and without the Company's knowledge.

65. As a result of the conspiracy and Defendant Alec Sanders and Corey Sanders' illegal, wrongful, or tortious acts, Plaintiff sustained significant damages.

66. Defendants Alec Sanders and Corey Sanders are liable to Plaintiff for all of its injuries and resulting damages.

WHEREFORE, as to Count III, Plaintiff respectfully requests the Court enter a judgment in Plaintiff's favor and against Defendants, jointly and severally, in an amount to be determined, plus reasonable attorney fees, costs, and interest.

### COUNT IV

#### MISAPPROPRIATION OF TRADE SECRETS UNDER MCL 445.1901 *et seq.*

67. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

68. Plaintiff has trade secrets in the meat processing industry, including, among other things, Plaintiff's Recipe Book and the recipes contained therein.

69. Plaintiff's Recipe Book has independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.

70. The recipes contained in the Recipe Book include those that were created when the Company was founded and have continuously been refined and expanded to include updated and new recipes for various products, which were created by, or on behalf of, Plaintiff.

71. Plaintiff has expended considerable time, effort, and money into creating the secret recipes in the Company's jerky recipes and its Recipe Book overall as, at a minimum, several weeks of preparation and different testing techniques are required for the development of a single recipe.

72. At all times, Plaintiff expended reasonable efforts under the circumstances to maintain the secrecy of the formular and recipes contained within the Recipe Book.

73. The Recipe Book was kept secure in a file cabinet accessible only to five people and the USDA inspector, within the sales office of the building which also had restricted access, and which never left unsupervised except for outside of business hours when the building remained locked. The recipes were never taken out of the office, except to make them available for inspection to government authorities, such as USDA.

74. Defendant Corey Sanders and Defendant Alec Sanders willfully and maliciously misappropriated Plaintiff's trade secrets by using, disclosing, and unlawfully taking possession of the physical copy of the jerky recipes, and otherwise copying the recipes within the Company's Recipe Book without Plaintiff's implied or express consent.

75. Upon information and belief, Defendants are using the Company's recipes in their new business venture, which they created in secret while owing fiduciary duties to the Company.

76. Defendant Corey Sanders and Defendant Alec Sanders acquired the Company's recipes under circumstances giving rise to a duty to maintain their secrecy because Defendant Alec Sanders was previously an officer of the company and both Defendants knew that those recipes were confidential and proprietary information, carefully guarded so that competitors would not obtain them.

WHEREFORE, as to Count IV, and all Counts pled herein, and in subsequent amendments, Plaintiff respectfully requests the Court enter a judgment in Plaintiff's favor and against Defendants, jointly and severally, in an amount to be determined, plus reasonable attorney fees, costs, and interest.

#### COUNT V

##### **TRADEMARK INFRINGEMENT UNDER MCL 429.31 *et seq.***

77. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

78. Plaintiff has a valid trademark and is the owner of all rights, title, and interest in the trademark "Sanders" which has an effective registration date of October 10, 2017.

79. Plaintiff has continuously used its trademark in commerce since at least 1960.

80. Plaintiff has a protectable interest in its trademark, which, due to its association with the Company, has acquired a secondary meaning for purposes of trademark protection.

81. Defendant Alec Sander and Defendant Corey Sanders have, without Plaintiff's consent used and continue to use Plaintiff's trademark in commerce, or counterfeits, copies, reproductions, or colorable imitations of it in connection with Defendants' competing enterprise.

82. Defendants' actions constitute infringement under MCL 429.42.

83. Defendants' use of the trademark is deliberate, willful, and wanton.

84. Defendants' use of the trademark or counterfeits, copies, reproductions, or colorable imitations of it has been and continues to be done with the intent to cause confusion in the marketplace, to deceive consumers concerning the source or sponsorship of Defendants' goods and services.

85. Plaintiff has been and continues to be injured, including irreparable injury to Plaintiff, by Defendants' use of the trademark.

WHEREFORE, as to Count V, and all Counts pled herein, and in subsequent amendments, Plaintiff respectfully requests the Court enter a judgment in Plaintiff's favor and against Defendants, jointly and severally, in an amount to be determined, plus reasonable attorney fees, costs, and interest.

## **COUNT VI**

### **TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT, 41 U.S.C. § 1114.**

86. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

87. Plaintiff is the owner of all rights, title, and interest in the trademark "Sanders" ("Trademark"), which was registered with the U.S. Patent and Trademark Office, with an effective registration date of October 10, 2017. Plaintiff has continuously used the Trademark in connection with its meat packing business since at least 1960.

88. Defendant Alec Sanders and Defendant Corey Sanders have, without Plaintiff's consent used and continue to use in commerce the Trademark or counterfeits, copies, reproductions, or colorable imitations of it in connection with Defendants' competing enterprise.

89. Defendants' actions constitute infringement under 15 U.S.C. § 1114.

90. Defendants' use of the Trademark is deliberate, willful, and wanton.

91. Defendants' use of the Trademark or counterfeits, copies, reproductions, or colorable imitations of it has been and continues to be done with the intent to cause confusion and mistake and to deceive consumers concerning the source or sponsorship of Defendants' goods and services.

92. Defendants' use of the Trademark in their new business will cause confusion among consumers in the marketplace as Plaintiff has used the Trademark in its business.

93. Plaintiff has been and continues to be injured, including irreparable injury to Plaintiff, including, *inter alia*, loss of goodwill, business customers, and financial revenue, by Defendants' use of the Trademark.

94. The Lanham Act permits the recovery of treble damages and, in exceptional cases, attorney fees for infringement of a federally registered mark. 15 USC 1117.

WHEREFORE, as to Count VI, and all Counts pled herein, and in subsequent amendments, Plaintiff respectfully requests the Court enter a judgment in Plaintiff's favor and against Defendants, jointly and severally, in an amount to be determined, plus reasonable attorney fees, costs, and interest.

## **COUNT VII**

### **TRADEMARK INFRINGEMENT / UNFAIR COMPETITION UNDER THE LANHAM ACT, 41 U.S.C. § 1125(a)(1)(A).**

95. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

96. Plaintiff has used its Trademark in commerce to designate its goods and meat processing, butchering, and distribution services the Company provides, since the Company was founded in 1925, and continuously since at least 1960.



97. Defendant Alec Sander and Defendant Corey Sanders have, without Plaintiff's consent used and continue to use in commerce the Trademark or counterfeits, copies, reproductions, or colorable imitations of it in connection with Defendants' competing enterprise.

98. Defendants' actions constitute infringement under 15 U.S.C. § 1125(a)(1)(A).

99. Defendants' use of the Trademark is deliberate, willful, and wanton.

100. Defendants' use of the Trademark or counterfeits, copies, reproductions, or colorable imitations of it has been and continues to be done with the intent to cause confusion and mistake and to deceive consumers concerning the source or sponsorship of Defendants' goods and services.

101. Defendants' use of the Trademark in their new business will cause confusion among customers and in the marketplace as Plaintiff has used the Trademark in its business.

102. Plaintiff has been and continues to be injured, including irreparable injury to Plaintiff, including, *inter alia*, loss of goodwill, business customers, and financial revenue, by Defendants' use of the Trademark.

WHEREFORE, as to Count VII, and all Counts pled herein, and in subsequent amendments, Plaintiff respectfully requests the Court enter a judgment in Plaintiff's favor and against Defendants, jointly and severally, in an amount to be determined, plus reasonable attorney fees, costs, and interest.

### **COUNT VIII**

#### **TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION UNDER MICHIGAN COMMON LAW**

103. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

104. Michigan law authorizes separate, parallel state-law claims for common law trademark infringement and unfair competition.

105. Plaintiff has a protectable Trademark for both its registered trademark, “Sanders”, and for “Sanders Meats” which it has used in commerce and has become well recognized as.

106. Defendant Corey Sanders and Defendant Alec Sanders have adopted a name that is confusingly similar to Plaintiff’s business name.

107. Defendants registered their new business as Sanders Meat Company.

108. This similarity will result in a likelihood of confusion among consumers who are using ordinary care.

109. Deception is the natural and probable result of Defendants’ acts.

110. Defendants registered their new business in Mason County, thus competing with Plaintiff in the same geographic area.

111. Defendants will also engage in product competition as they have unlawfully taken possession a book of Plaintiff’s jerky recipes and Defendants registered their new business with an assumed name of Sanders Jerky Company.

112. Plaintiff has been injured as a result of Defendants’ actions.

WHEREFORE, as to Count VIII, and all Counts pled herein, and in subsequent amendments, Plaintiff respectfully requests the Court enter a judgment in Plaintiff’s favor and against Defendants, jointly and severally, in an amount to be determined, plus reasonable attorney fees, costs, and interest.

#### **COUNT IX**

#### **UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER MICHIGAN CONSUMER PROTECTION ACT, MCL 445.901 et seq.**

113. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

114. Defendants are engaged in “trade or commerce” within the meaning of MCL 445.902(1)(g).

115. Plaintiff is a “person” within the meaning of MCL 445.902(1)(d).

116. Plaintiff is a person who has suffered a loss within the meaning of MCL 445.911(2).

117. Defendants registered their new business as the Sanders Meat Company.

118. Defendants have engaged in unfair, unconscionable, and deceptive methods, acts, and practices in the conduct of their trade by, *inter alia*, using Plaintiff’s Trademark in registering their new business.

119. Defendants action causes a probability of confusion or misunderstanding as to the source, sponsorship, or approval of goods or services in violation of MCL 445.903(1)(a) and (b).

WHEREFORE, as to Count IX, and all Counts pled herein, and in subsequent amendments, Plaintiff respectfully requests the Court enter a judgment in Plaintiff’s favor and against Defendants, jointly and severally, in an amount to be determined, plus reasonable attorney fees, costs, and interest.

## **COUNT X**

### **BREACH OF FIDUCIARY DUTIES**

120. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

121. As a fiduciary, Defendants owed a duty of, among other things, loyalty, care, fair dealing, candor and prompt disclosure of material facts, and to act in good faith toward Plaintiff.

122. Defendants breached their fiduciary duties to Plaintiff by engaging in the unlawful schemes and enterprises set forth herein.

123. Furthermore, Defendants, in spite of their fiduciary duties, unlawfully converted Company funds in order to finance their competing business venture and have converted the Company’s confidential and proprietary information, including, *inter alia*, Company recipes, for their own use.

124. As a direct and proximate result of Defendants breaches of their fiduciary duties, Plaintiff has incurred significant damages.

125. Defendants' conduct set forth herein was wanton, willful, and malicious and Plaintiff is therefore entitled to exemplary damages.

WHEREFORE, as to Count X, and all Counts pled herein, and in subsequent amendments, Plaintiff respectfully requests the Court enter a judgment in Plaintiff's favor and against Defendants, jointly and severally, in an amount to be determined, plus reasonable attorney fees, costs, and interest.

Respectfully submitted,

**ROSSMAN, P.C.**  
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