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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Western Alliance Bank,
Plaintiff,
vs.
Richard Jefferson,
Defendant.

2:14-cv-0761 JWS
ORDER AND OPINION
[Re: Motions at dockets 210, 218]

Richard Jefferson,
Counter-claimant,
vs.
Western Alliance Bank,
Counter-defendant.

Richard Jefferson,
Third-party plaintiff,
vs.
Theodore Kritza & Michelle Lee Kritza,
Third-party defendants.

1 **I. MOTIONS PRESENTED**

2 At docket 210 third-party defendants Theodore Kritza and Michelle Lee Kritza
3 (collectively, “Kritza”) filed a motion pursuant to LRCiv 7.2 and 56.1 for leave to file a
4 supplemental statement of facts in support of his motion for partial summary judgment.
5 His present motion was filed contemporaneously with his reply in support of his partial
6 summary judgment motion at docket 212. At docket 218 defendant, counter-claimant,
7 and third-party plaintiff Richard Jefferson (“Jefferson”) filed an opposition to Kritza’s
8 motion as well as two cross-motions: one to strike certain portions of Kritza’s reply and
9 another, in the alternative, for leave to file a surresponse and controverting statement of
10 facts. At docket 219 Kritza filed a reply in support of his motion and an opposition to
11 Jefferson’s motions. Jefferson filed replies in support of his motions at dockets 223 and
12 224. Oral argument was not requested and would not assist the court.

13 **II. BACKGROUND**

14 After Kritza filed his partial summary judgment motion at docket 127, the court
15 ruled at docket 183 that Jefferson’s damages disclosure did not comply with Rule
16 26(a)(1) and ordered him to supplement the disclosure to bring it into compliance with
17 the rule. Jefferson supplemented his disclosure on August 14, 2015.¹ Kritza filed his
18 present motion to supplement the statement of facts he filed in support of his partial
19 summary judgment motion with facts from Jefferson’s August 14 disclosure.

20 **III. DISCUSSION**

21 “[N]either the Federal nor the Local Rules of Civil Procedure permit the filing of a
22 supplemental statement of facts.”² Nevertheless, this case presents an exceptional
23 situation. The district court is obligated to administer the Civil Rules with an eye toward
24 securing the just, speedy, and inexpensive resolution of every action.³ “The Rules of
25

26 ¹Doc. 210-1 at 2-6.

27 ²*Moore v. Computer Associates Int’l, Inc.*, 653 F. Supp. 2d 955, 961 (D. Ariz. 2009).

28 ³Fed. R. Civ. P. 1.

1 Civil Procedure were adopted in an effort to put an end to the sporting theory of justice”⁴
2 and instead to “provide for full and fair hearings on the merits”⁵ when justice so
3 requires. To allow Jefferson to violate these rules with his deficient damages disclosure
4 and then benefit from that violation would be unjust and contrary to the spirit of the
5 rules. Further, Jefferson will not be prejudiced if Krtiza is allowed to supplement his
6 statement of facts because there will be no unfair surprise—the source of the new facts
7 is Jefferson himself—and Jefferson will have the opportunity to file a surresponse.

8 IV. CONCLUSION

9 Based on the preceding discussion, Krtiza’s motion at docket 210 is **GRANTED**;
10 Jefferson’s motion to strike at docket 218 is **DENIED**; and Jefferson’s motion for leave
11 to file a surresponse and controverting statement of facts at docket 218 is **GRANTED**.
12 Krtiza shall file his proposed supplemental statement of facts within two days. The
13 court will entertain a surresponse from Jefferson filed within seven days of Krtiza’s
14 filing, provided that any supplementary controverting statement of facts may not exceed
15 3 pages and the related memorandum may not exceed 3 pages (excluding the pages
16 containing the case heading).

17 DATED this 30th day of September, 2015.

18
19 _____
20 /s/

21 JOHN W. SEDWICK
22 UNITED STATES DISTRICT JUDGE

23 _____
24 ⁴*Cent. Distributors, Inc. v. M. E. T., Inc.*, 403 F.2d 943, 946 (5th Cir. 1968). See also
25 Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29
26 REP. A.B.A. 395, 404-05 (1906), reprinted in 35 F.R.D. 273, 281 (1964) (stating that the
27 sporting theory of justice “leads counsel to forget that they are officers of the court and to deal
with the rules of law and procedure exactly as the professional football coach with the rules of
the sport. It leads to exertion to ‘get error into the record’ rather than to dispose of the
controversy finally and upon its merits.”).

28 ⁵*Middle Atl. Utilities Co. v. S. M. W. Dev. Corp.*, 392 F.2d 380, 386 (2d Cir. 1968).