

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**GENE GRAHAM**

**PLAINTIFF**

**v.**

**No. 4:12-cv-644-DPM**

**TAX GROUP CENTER, INC.  
and TONY GAGLIARDO**

**DEFENDANTS**

**ORDER**

Graham's motion to dismiss TGC's counterclaim, *No 21*, is denied. Graham is correct: the Court's Final Scheduling Order required parties to ask leave to amend a pleading by 2 December 2013; the Order did not grant permission to make amendments until that date. A compulsory counterclaim, as this one is, must be part of a pleading. FED. R. CIV. P. 13(a). TGC has explained why the counterclaim was so late in coming, *No 24*; and the Federal Rules encourage amendment of pleadings to join the issues. FED. R. CIV. P. 15(a)(2). No prejudice appears—discovery is open for three months. The Court construes TGC's counterclaim as a motion for permission to amend its answer and belatedly assert the compulsory counterclaim alleging fraud by Graham. The Clerk shall amend the docket sheet. Motion, *No 20*, granted. TGC's amended answer including the counterclaim is due by 14 January 2014.

So Ordered.

*D.P. Marshall Jr.*  
D.P. Marshall Jr.  
United States District Judge

7 January 2014