

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-80752-Civ-MARRA/JOHNSON

SUNTECK TRANSPORT CO.,  
INC., a Florida corporation,

Plaintiff,

vs.

NOLAN TRANSPORTATION GROUP,  
INC., a Georgia corporation, and  
KEVIN NOLAN, an individual, and  
JON GLASS, an individual,

Defendants.

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**ORDER AND OPINION**

THIS CAUSE is before the Court upon Defendant Nolan Transportation Group, Inc. and Defendant Kevin Nolan's Motion to Dismiss [DE 4] and Plaintiff's Motion for Leave to Amend [DE 9]. The Court has carefully considered the motions and is otherwise fully advised in the premises.


Plaintiff filed its Verified Complaint against Defendants Nolan Transportation Group, Inc. ("Nolan Transportation") and Kevin Nolan ("Mr. Nolan") in Florida state circuit court, Palm Beach County, on or about May 19, 2011. Plaintiff then filed its Amended Verified Complaint on June 14, 2011 as of right pursuant to Fla. R. Civ. P. 1.190(a), for the purpose of adding Defendant Jon Gloss ("Mr. Gloss") to the action. Service on Mr. Gloss was effected on June 24, 2011. Defendants Nolan Transportation and Mr. Nolan removed this matter on June 29, 2011. Defendants Nolan Transportation and Mr. Nolan then filed their Motion to Dismiss on July 6, 2011.

Plaintiff states that “[r]ather than filing a legal memorandum in opposition to the motion to dismiss, Plaintiff believes it can more efficiently address the alleged pleading defects by filing an amended complaint.” DE 9 at ¶ 6. In its Rule 7.1(a)(3) Certification, Plaintiff states that counsel for the Moving Defendants “has indicated that he is unable to obtain his clients’ approval or is unwilling to consent on their behalf.” DE 9 at 4. Moving Defendants have not responded to the Motion for Leave to Amend and the time period for doing so has past. Accordingly, it is hereby

ORDERED AND ADJUDGED that Plaintiff’s Motion for Leave to Amend [DE 9] is GRANTED. *Foman v. Davis*, 371 U.S. 178, 182 (1962); Federal Rule of Civil Procedure 15(a). Pursuant to the Administrative Procedures, Southern District of Florida, Plaintiff shall separately electronically file its Second Amended Verified Complaint, which is deemed filed as of the date of this Order. As Plaintiff’s Amended Verified Complaint will be replaced by a Second Amended Verified Complaint, it is further

ORDERED AND ADJUDGED that Defendant Nolan Transportation Group, Inc. and Defendant Kevin Nolan’s Motion to Dismiss [DE 4] is DENIED AS MOOT. This denial is without prejudice to movants reasserting the grounds raised in the motion if they deem it appropriate as to the Second Amended Verified Complaint.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 15<sup>th</sup> day of August, 2011.

  
KENNETH A. MARRA  
United States District Judge

copies to:  
All counsel of record