

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CREATIVE RETAIL PACKAGING,
INC., a Texas corporation,

Plaintiff,

vs.

FREEDOM FOODS, a nonprofit
Minnesota corporation doing business
as Kids Against Hunger (a
Trademark of Freedom Foods) and
KIDS AGAINST HUNGER, a
nonprofit Minnesota corporation,

Defendants.

8:16-CV-411

ORDER

This matter is before the Court on the plaintiff's motion ([filing 41](#)) to amend the Court's order of March 24, 2017 ([filing 39](#)). The plaintiff's motion will be denied.

The Court's order ([filing 39](#)) deferred ruling on the plaintiff's motion for default judgment ([filing 33](#)) until May 1, 2017, to give defendant Kids Against Hunger a final opportunity to appear (through counsel) and defend this action. The plaintiff's motion ([filing 41](#)) asks the Court to amend that order to require Kids Against Hunger to file a responsive pleading by May 1, instead of just appearing through counsel.

But the plaintiff seems to misunderstand the effect of the Court's March 24 order. The Court's March 24 order simply deferred ruling on the motion for default judgment for a time—the motion for default judgment remains pending, and Kids Against Hunger is still in default. Should counsel appear for Kids Against Hunger, counsel's first job will be to defend against the motion for default judgment and persuade the Court that Kids Against Hunger's default should be excused.

In other words, the Court declines to set a deadline for Kids Against Hunger to file a responsive pleading because it remains to be determined whether Kids Against Hunger, if it appears, should be permitted to file an untimely responsive pleading in the first place: that is, whether good cause can be shown to set aside Kids Against Hunger's default. See [Grant v. City of Blytheville, Arkansas](#), 841 F.3d 767, 772 (8th Cir. 2016). The Court will make

that determination if and when Kids Against Hunger appears and makes an appropriate motion.¹

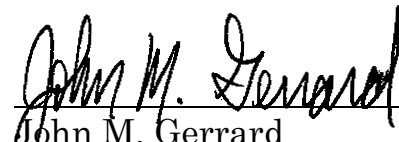
The Court also notes that [filing 40](#) appears to be identical to [filing 42-1](#). The Clerk of the Court will be directed to strike [filing 40](#).

IT IS ORDERED:

1. The plaintiff's motion ([filing 41](#)) to amend is denied.
2. The Clerk of the Court is directed to strike [filing 40](#) as duplicative.

Dated this 7th day of April, 2017.

BY THE COURT:



John M. Gerrard
United States District Judge

¹ The Court notes the plaintiff's evidence suggesting that the representations contained in the letter from Kids Against Hunger's treasurer ([filing 38](#)) are "suspect," and that Kids Against Hunger was not "misled" by plaintiff's counsel. *See*, [filing 41 at 6](#); [filing 42-1](#). To be clear: the Court has no reason to believe that plaintiff's counsel was misleading in any way. The Court's previous order was based simply on the possibility that Kids Against Hunger's officer was confused. *See* [filing 39](#). Whether that representation is honest or disingenuous is a matter that will be addressed only when it becomes necessary.