IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ARENA FOOTBALL ONE, LLC, a Louisiana limited liability company,	)	
Plaintiff,	)	
v.	)	Case No: 10-CV-118-GKF-TLW
ARENA2 OF ARKANSAS, LLC, an Arkansas limited liability company,	)	
Defendant.	)	

ANSWER AND COUNTERCLAIM

ANSWER

COMES NOW, Defendant, Arena2 of Arkansas, LLC ("Defendant") and for its answer to the Complaint of Plaintiff, Arena Football One, LLC ("Plaintiff"), alleges and states as follows:

1. The allegations of paragraph 1 of the Complaint are admitted.

2. With regard to the allegations of paragraph 2 of the Complaint, Defendant admits that it is an Arkansas limited liability company, with its principal place of business in North Little Rock, Arkansas.

3. The allegations of paragraph 3 of the Complaint are admitted.

4. The allegations of paragraph 4 of the Complaint are admitted.

5. With regard to the allegations of paragraph 5 of the Complaint, Defendant admits that it executed certain documents drafted by Plaintiff, but Plaintiff has failed to provide copies of such documents to Defendant. Consequently, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 5 of the Complaint. As set forth more fully in Defendant's Counterclaim herein, if a contract was formed

between the parties, the contract should be rescinded and the parties should be restored to the status quo. Defendant reserves the right to amend or supplement its Answer and Counterclaim following receipt of copies of the documents executed by Defendant.

6. The allegations of paragraph 6 of the Complaint are admitted.

7. Defendant incorporates its answers to the allegations from above as if fully set forth herein.

8. With regard to the allegations of paragraph 8 of the Complaint, Defendant admits that it executed in Tulsa County on or around September 29, 2009 certain documents drafted by Plaintiff, but Plaintiff has failed to provide copies of such documents to Defendant. Consequently, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 8 of the Complaint. As set forth more fully in Defendant's Counterclaim herein, if a contract was formed between the parties, the contract should be rescinded and the parties should be restored to the status quo. Defendant reserves the right to amend or supplement its Answer and Counterclaim following receipt of copies of the documents executed by Defendant.

9. With regard to the allegations of paragraph 9 of the Complaint, Plaintiff has failed to provide copies of documents executed by Defendant. Consequently, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 9 of the Complaint. Defendant reserves the right to amend or supplement its Answer and Counterclaim following receipt of copies of the documents executed by Defendant.

10. With regard to the allegations of paragraph 10 of the Complaint, Plaintiff has failed to provide copies of documents executed by Defendant. Consequently, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of

paragraph 10 of the Complaint. As set forth more fully in Defendant's Counterclaim herein, if a contract was formed between the parties, the contract should be rescinded and the parties should be restored to the status quo. Defendant reserves the right to amend or supplement its Answer and Counterclaim following receipt of copies of the documents executed by Defendant.

11. The allegations of paragraph 11 of the Complaint are denied.

12. Defendant incorporates its answers to the allegations from above as if fully set forth herein.

13. With regard to the allegations of paragraph 13 of the Complaint, Plaintiff has failed to provide copies of documents executed by Defendant. Consequently, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 13 of the Complaint. Defendant reserves the right to amend or supplement its Answer and Counterclaim following receipt of copies of the documents executed by Defendant.

14. The allegations of paragraph 14 of the Complaint are admitted.

15. The allegations of paragraph 15 of the Complaint are admitted.

16. With regard to the allegations of paragraph 16 of the Complaint, Defendant denies that Plaintiff is entitled to the requested declaration.

AFFIRMATIVE DEFENSES

As and for its affirmative defenses herein, Defendant alleges as follows:

17. Plaintiff was the first party to materially breach the alleged contract.

18. Mutual mistake or, in the alternative, unilateral mistake.

19. Fraud in the inducement/misrepresentation.

20. Failure of consideration.

21. No mutual consent; no meeting of the minds.

22. Unjust enrichment.

23. Defendant reserves the right to amend or supplement its Answer and Counterclaim following receipt of copies of the documents executed by Defendant.

WHEREFORE, Defendant, Arena2 of Arkansas, LLC, having fully answered, denies that Plaintiff is entitled to any of the relief requested in the Complaint and prays that judgment be entered in favor of Defendant on Plaintiff's causes of action and that Plaintiff take nothing by way of its Complaint, and that Defendant be awarded its costs, including reasonable attorneys' fees, incurred in this action, and that judgment be entered in favor of Defendant for the relief requested in Defendant's Counterclaim herein.

COUNTERCLAIM

For its Counterclaim against Plaintiff, Arena Football One, LLC ("Plaintiff"), Defendant, Arena2 of Arkansas, LLC ("Defendant"), alleges and states as follows:

1. In August 2009, representatives of Plaintiff began discussions with Defendant about the formation of a new arena football league (the "League") and Defendant's interest in operating an arena football league team in Arkansas.

2. Plaintiff represented to Defendant that the League would consist of two tiers of membership – D1 and D2.

3. Plaintiff represented to Defendant that there would be many differences between D1 and D2, so that the cost of operating a second tier D2 team would be substantially less than the cost of operating a first tier D1 team.

4. Plaintiff represented to Defendant that there would be as many as eighteen D2 teams playing in the League in the 2010 season.

5. Plaintiff represented to Defendant that there would be a minimum of seven D2 teams playing in the League in the 2010 season.

6. Plaintiff represented to Defendant that the League was to be organized as a limited liability company (Arena Football One, L.L.C. or Plaintiff), which would be owned by those entities that operated teams in the League.

7. Plaintiff represented to Defendant that control and governance of the League would be shared equally between the group of D2 members and the group of D1 members.

8. In September 2009, Defendant completed and submitted to Plaintiff an application in which Defendant expressly stated that it was applying for membership in the second tier of the League – D2.

9. Defendant informed Plaintiff that Defendant was only interested in operating a second tier D2 team and that the second tier must have a minimum of seven D2 teams.

10. Plaintiff was aware the Defendant was only interested in operating a D2 team and would only participate in the League if there were two tiers in the League with a minimum of seven teams in the second tier (D2).

11. Defendant agreed to purchase a membership in the second tier of the League, which would have made Defendant a member of Arena Football One, L.L.C. (Plaintiff).

12. Defendant paid $5,000.00 as part of its purchase of a membership in the second tier of the League – D2.

13. As part of Defendant's purchase of a membership in the second tier of the League, Defendant delivered to Plaintiff a letter of credit in the amount of $100,000.00 issued by One Banc.

14. Defendant justifiably relied on the representations made by Plaintiff when it purchased its membership in the League based on the belief that it would be a member of the second tier of the League (D2) and that the second tier of the League would be comprised of a minimum of seven teams.

15. Defendant would not have purchased its membership in the League if it knew that there would not be two tiers of membership in the League with a minimum of seven teams in the second tier.

16. Defendant would not have paid $5,000.00 as part of its purchase of a membership in the second tier of the League if it knew that there would not be two tiers of membership in the League with a minimum of seven teams in the second tier.

17. Defendant would not have delivered to Plaintiff a letter of credit in the amount of $100,000.00 if it knew that there would not be two tiers of membership in the League with a minimum of seven teams in the second tier.

18. Plaintiff knew that Defendant believed it was purchasing a membership in the second tier of the League (D2) and that there would be a minimum of seven teams in the second tier.

19. At the time when Defendant purchased its membership in the second tier of the League, Plaintiff represented that there were seven members committed to operating D2 teams in the League and Plaintiff represented that several other teams were likely to join the League as D2 members.

20. Plaintiff and Defendant and the other members of the League agreed that if less than seven D2 teams were in the League, Defendant would not be required to operate a team in the League.

21. After Defendant purchased a membership in the second tier of the League, Defendant learned that there were only five D2 teams in the League.

22. On or about November 10, 2009, Defendant notified Plaintiff that due to the fact that there would be only five D2 teams in the League instead of the minimum seven as agreed, Defendant would not operate a team in the League.

FIRST CAUSE OF ACTION
RESCISSION

23. Defendant incorporates the allegations from above as if fully set forth herein.

24. When Defendant purchased its membership from Plaintiff, both Plaintiff and Defendant believed that there would be two tiers of membership (D1 and D2) in the League.

25. When Defendant purchased its membership from Plaintiff, both Plaintiff and Defendant believed that the second tier (D2) of the League would have a minimum of seven teams.

26. When Defendant purchased its membership from Plaintiff, both Plaintiff and Defendant believed that Defendant would be operating a second tier (D2) team in the League.

27. Defendant's belief that there would be two tiers of membership in the League was not caused by the neglect of a legal duty on the part of Defendant.

28. Defendant's belief that there would be a minimum of seven teams in the second tier (D2) of the League was not caused by the neglect of a legal duty on the part of Defendant.

29. Defendant's belief that Defendant would be operating a second tier (D2) team in the League was not caused by the neglect of a legal duty on the part of Defendant.

30. The existence of two tiers of membership in the League was material to Plaintiff's agreement to purchase a membership in the League.

31. The existence of a minimum of seven teams in the second tier (D2) of the League was material to Plaintiff's agreement to purchase a membership in the League.

32. The fact that Defendant would be operating a second tier (D2) team in the League was material to Plaintiff's agreement to purchase a membership in the League.

33. Defendant's purchase of its membership from Plaintiff and all related contracts should be rescinded because there was a mutual mistake as to a material part of the agreement.

34. Alternatively, Plaintiff was aware that Defendant believed there would be two tiers of membership – D1 and D2 – that there would be a minimum of seven teams in the second tier (D2) and that Defendant was only interested in operating a D2 team.

35. Plaintiff failed to correct Defendant's belief that there would be two tiers of membership – D1 and D2 -- that there would be a minimum of seven teams in the second tier (D2) and that Defendant would be operating a D2 team.

36. Due to Plaintiff's unfair conduct, Defendant's purchase of its membership from Plaintiff and all related contracts should be rescinded on the ground of unilateral mistake.

37. Alternatively, Plaintiff's representation that there would be two tiers of membership in the League – D1 and D2 – that there would be a minimum of seven teams in the second tier (D2) and that Defendant would be operating a second tier D2 team was false.

38. Defendant's purchase of its membership from Plaintiff and all related contracts should be rescinded because Defendant was induced to purchase its membership in the League by reliance on a representation made by Plaintiff that was false.

39. Alternatively, because the League did not have a second tier with at least seven teams in the second tier (D2) of the League the consideration for Defendant's purchase of a

membership in the League, which was originally existing and good, became worthless or ceased to exist or was extinguished, partially or entirely.

40. Defendant's purchase of its membership from Plaintiff and all related contracts should be rescinded because the consideration for Defendant's purchase of its membership in the League failed in a material respect.

41. Alternatively, both Plaintiff and Defendant were mistaken in their belief that there would be two tiers of membership in the League, that there would be at least seven teams in the second tier (D2) and that Defendant would operate a team in the second tier (D2) of the League.

42. Defendant's purchase of its membership in the League and all related contracts should be rescinded because there was no mutual consent or no meeting of the minds.

SECOND CAUSE OF ACTION
BREACH OF AGREEMENT

43. Defendant incorporates the allegations from above as if fully set forth herein.

44. By suing Defendant for its failure to operate a team in the League, Plaintiff has breached the parties' agreement that Defendant would not be required to operate a team if less than seven D2 teams were in the League.

45. Defendant has suffered damages as a result of Plaintiff's breach of the agreement.

THIRD CAUSE OF ACTION
INDEMNIFICATION

46. Defendant incorporates the allegations from above as if fully set forth herein.

47. Defendant has been made a party to this suit by reason of the fact that it was a member of Arena Football One, L.L.C.

48. Pursuant to the Articles of Organization of Arena Football One, L.L.C., Plaintiff is obligated to indemnify Defendant against liability for the claims asserted in this suit.

49. Defendant reserves the right to amend or supplement its Counterclaim following receipt from Plaintiff of copies of the documents executed by Defendant.

WHEREFORE, Defendant, Arena2 of Arkansas, LLC, prays for judgment in its favor and against Plaintiff rescinding the purchase of its membership in the League and all related contracts between the parties, ordering the return of the $5,000.00 paid to Plaintiff by Defendant, and further ordering that all letters of credit issued in favor of Plaintiff be canceled and returned to Defendant, and granting such other relief as the Court deems just and equitable.

Respectfully submitted,

MOYERS, MARTIN, SANTEE & IMEL, LLP

By: /s/ Michael E. Esmond

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Certificate of Service

I hereby certify that on April 23, 2010, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants (names only are sufficient):

Thomas L. Vogt
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/s/ Michael E. Esmond
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