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.	)	

DEFENDANT'S FIRST AMENDED COUNTERCLAIM

For its First Amended 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 a commissioner would be elected to manage the League and that in matters requiring a vote of members, the group of D2 members would have a number of votes equal to 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.

FOURTH CAUSE OF ACTION
VIOLATION OF THE OKLAHOMA UNIFORM SECURITIES ACT OF 2004

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

50. The membership in the League sold to Defendant by Plaintiff was a security as defined by the Oklahoma Uniform Securities Act of 2004, 71 O.S. §§ 1-101, *et seq*.

51. Plaintiff's sale of or offer to sell a membership in the League to Defendant or Defendant's purchase of or offer to purchase the same from Plaintiff was made in the state of Oklahoma.

52. The representations made by Plaintiff to Defendant that there would be two tiers of membership (D1 and D2) in the League were untrue statements of a material fact.

53. The representations made by Plaintiff to Defendant that the second tier (D2) of the League would have a minimum of seven teams were untrue statements of a material fact.

54. The representations made by Plaintiff to Defendant that if less than seven D2 teams were in the League, Defendant would not be required to operate a team in the League were untrue statements of a material fact.

55. The Plaintiff's sale of a membership in the League to Defendant was made by means of at least one untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading.

56. Defendant did not know that Plaintiff's statements were untrue.

57. Defendant's membership in the League has been terminated.

58. If Defendant's membership in the League has not previously been terminated, Defendant hereby tenders Defendant's membership in the League to Plaintiff.

59. Defendant is entitled to recover the consideration paid for the security, and interest at the legal rate of interest per year from the date of the purchase, less the amount of any

income received on the security, plus costs, and reasonable attorneys' fees determined by the court, or actual damages as provided in the Oklahoma Uniform Securities Act of 2004.

60. Defendant reserves the right to amend or supplement its Counterclaim following receipt from Plaintiff of copies of the documents executed by Defendant, and other appropriate discovery. Defendant also reserves the right to file a third-party petition against individuals who may be liable to Defendant for, among other things, failure to register as agents or broker-dealers in connection with the offering of an interest in the League for sale to Defendant if facts revealed in discovery support such a claim.

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, ordering that all letters of credit issued in favor of Plaintiff be canceled and returned to Defendant, awarding Defendant the costs of this action, including a reasonable attorneys' fee, 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 June 4, 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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