

**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. )

**RESPONSE AND OBJECTION TO DEFENDANT'S MOTION  
TO FILE AMENDED PLEADING**

COMES NOW, Plaintiff, Arena Football One, LLC ("Plaintiff") and for its Response and Objection to Defendant's Motion to File Amended Pleading (Dkt. # 22) would state as follows:

**INTRODUCTION**

Defendant filed its Answer and Counterclaim on April 23, 2010, and its First Amended Counterclaim on June 4, 2010. Defendant filed its Motion for Leave to File Amended Pleading on July 16, 2010. Defendant's basis for the relief requested is that it may discover some documentation which will assist Defendant in admitting or denying some of the allegations set forth in Plaintiff's Complaint. (See Dkt. # 22 ¶ 11.) Additionally, Defendant alleges that an amendment is necessary to allow Defendant to plead all applicable defenses and claims arising out of the transaction between Plaintiff and Defendant. *Id.* Essentially, Defendant has asked this Court for a blank check to allow it to amend its pleadings in any manner Defendant sees fit, including adding any defenses, claims or additional parties. Defendant's request is improper as it

does not comply with applicable federal rules, including Fed. R. Civ. P. 7(b). Accordingly, Defendant's Motion should be denied.

### ARGUMENT AND AUTHORITY

Defendant's Motion is filed pursuant to Fed. R. Civ. P. 15(a)(2), which requires leave of court to amend a pleading. Defendants' Motion is subject to Fed. R. Civ. P. 7(b), which requires a party seeking a court order to state with specificity the grounds for seeking such order and the relief sought. *Calderon v. Kansas Dep't of Soc. and Rehab. Services*, 181 F.3d 1180, 1185 (10<sup>th</sup> Cir. 1999). It is well established by federal jurisprudence that when seeking to amend under Rule 15, a party should submit a copy of the proposed amendment with the motion to amend:

A motion to amend under Rule 15(A), as is true of motions generally, is subject to the requirements of Rule 7(b), and must set forth with particularity the relief or order requested and the grounds supporting the application. In order to satisfy these prerequisites a copy of the amendment should be submitted with the motion so that the court and the adverse party know the precise nature of the pleading changes being proposed.

6 Charles Alen Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure*, § 1485 (3d ed. 2010) (citations omitted).

In the instant matter Defendant has wholly failed to comply with the requirements of Rule 7(b) and the general practice as set forth in Wright and Miller's *Federal Practice and Procedure*. Defendant's Motion to Amend simply asks the Court to grant Defendant leave to amend its pleadings at some undetermined time and in some yet to be determined manner. Defendant fails to identify the specific relief sought and does not identify the form or nature of the proposed amendment to its pleadings. Further, Defendant fails to attach to its Motion to Amend a copy of the proposed amended pleading. Accordingly, it is impossible for Plaintiff and for this Court to determine the precise nature of the changes being proposed.

Prior to Defendant filing this Motion, counsel for Plaintiff specifically informed Defendant's counsel that Plaintiff could not determine whether or not Plaintiff would consent to the filing of an amended pleading until Plaintiff had an opportunity to review the proposed amended pleading. Defendant's failure to furnish Plaintiff with a copy of a proposed amended pleading (or even any details of the specific nature of any proposed amendment) precluded Plaintiff from giving its consent.

In fact, it appears from Defendant's Motion that, not only has Defendant not yet drafted the amended pleading, Defendant does not even know at this time what will be included in any such amended pleading. Defendant complains that it does not yet have all the "applicable documents." Defendant's situation is no different from the parties in most cases in which initial disclosures have not yet been made and discovery has not yet been undertaken. There is always the possibility that additional information and documents will be obtained that might entitle a party to be granted leave to amend its pleadings. It is not proper for parties to seek "pre-approval" for some amorphous amended pleading they may file in the future.

Defendant has filed its Motion prematurely. When Defendant has determined with particularity what it desires to amend, then Defendant can file a motion to amend providing specific details of the proposed amended pleading (preferably by attaching a copy) and explaining to the Court why the amended pleading could not have been filed earlier.

**WHEREFORE, PREMISES CONSIDERED,** Arena Football One, LLC, respectfully requests that this Court deny Defendant's Motion to File Amended Pleading, grant Plaintiff its attorney fees and costs in responding to this motion and grant any additional relief this Court deems just and equitable.

Respectfully Submitted,

s/ Thomas L. Vogt

Thomas L. Vogt, OBA 10995

Adam J. Strange, OBA 20347

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**Attorneys for Plaintiff**

**CERTIFICATE OF SERVICE**

I hereby certify on the 21<sup>st</sup> day of July, 2010, I electronically transmitted the foregoing document to the Clerk of Court using the ECF system for filling and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Patrick D. O'Connor

John R. Rooney, Jr.

Michael E. Esmond

Moyers, Martin, Santee & Imel, LLP

Attorneys for Defendant

s/ Thomas L. Vogt

Thomas L. Vogt