

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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**CAROLYN WHEATLEY,**

**Plaintiff,**

**v.**

**No. 2:09-cv-2325-cgc**

**LUCKY 7 & FUEL, INC., and  
MAZEN ABDALLAH, individually,**

**Defendants.**

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**ORDER GRANTING MOTION FOR LEAVE TO FILE  
FIRST AMENDED COMPLAINT**

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Before the Court is Plaintiff Carolyn Wheatley’s Motion for Leave to File First Amended Complaint. (D.E. #20). Plaintiff requests to amend her Complaint solely to name an additional corporate defendant as 6224 Macon, Inc. (“Macon, Inc.”). For the reasons set forth herein, Plaintiff’s motion is GRANTED.

**I. Introduction**

On May 26, 2009, Plaintiff filed her Complaint alleging failure to pay overtime wages in violation of the Fair Labor Standards Act (“FLSA”) and common law unjust enrichment against Defendants Lucky 7 Fuel, Inc. (“Lucky 7”) and Mazen Abdallah (“Abdallah”). Pl.’s Compl. ¶¶ 13(1)-(2). The Court entered a Rule 16(b) Scheduling Order that established the deadline for filing motions to amend pleadings as October 27, 2009. At the case management conference, Plaintiff was informed that her “true corporate employer” is Macon, Inc. Pl.’s Memo. in Support of Mot. for Leave to File First Am. Compl. at 1. Plaintiff inquired “[s]oon after the conference” as to whether

the parties could agree to an amendment to the Complaint add the name of this corporate defendant, but Defendants did not consent to such an agreement. Id. Accordingly, Plaintiff filed the instant motion to add Macon, Inc. as a corporate defendant on January 11, 2010.

Pursuant to the Local Rules, Defendants' response to Plaintiff's motion was initially due fifteen days after service of the motion—on January 26, 2010. L.R. 7.2(a)(2). The Court, however, granted Defendants an extension until March 12, 2010 to file the requisite response. To date, no response has been filed.

## **II. Analysis**

Initially, the Court notes that Local Rule 7.2(a) provides that “[f]ailure to respond timely to any motion . . . may be deemed good grounds for granting the motion.” In this case, despite the Court's allowance of a substantial extension to respond to Plaintiff's motion, Defendants did not file a response by March 12, 2010 as ordered by the Court. Thus, this failure alone provides adequate grounds for the Court to grant Plaintiff's motion.

Furthermore, the Court finds that Plaintiff's motion is well-taken on its merits. Under Rule 15 of the Federal Rules of Civil Procedure, the Court “should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a). However, such leave should not be granted in cases of “undue delay, undue prejudice to the opposing party, bad faith, dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, or futility.” Foman v. Davis, 371 U.S. 178, 182 (1962).

With respect to motions for leave to amend filed after a deadline set forth in a scheduling order, courts have varied in their approach, the Sixth Circuit has set forth specific requirements. Leary v. Daeschner, 349 F.3d 888, 908 (6th Cir. 2003). Once the Scheduling Order's deadline for

motions to amend passes, a plaintiff must show good cause under Rule 16(b) of the Federal Rules of Civil Procedure for failure earlier to seek leave to amend and the district court must evaluate prejudice to the non-moving party. Id. Only after the proposed amendments surpass these threshold questions under Rule 16(b) may the Court consider whether amendment is proper under Rule 15(a). Id.

In the instant case, the Court finds that Plaintiff has exhibited good cause to amend the Complaint after the deadline set forth in the Scheduling Order. Plaintiff has stated that she was not aware of this corporate defendant until after the case management conference, and Plaintiff asserts that she attempted to remedy this soon after the conference—first by requesting that Defendants consent to the amendment, and then by filing the instant motion. Further, Plaintiff requests only a minor amendment to bring claims another defendant, and Plaintiff does not request any additional changes to the Complaint. Thus, the Court finds that the good cause requirement under Rule 16(b) is satisfied.

Likewise, the Court does not find that any undue delay, undue prejudice, bad faith, dilatory motive, repeated failure to cure deficiencies, or futility of amendment exists in this case. See Foman v. Davis, 371 U.S. 178, 182 (1962). Thus, under Rule 15(a), the Court finds that leave to amend should be freely granted.

### **III. Conclusion**

For the reasons set forth herein, Plaintiff's Motion for Leave to File First Amended Complaint is GRANTED. Plaintiff is ORDERED to file the First Amended Complaint with the Court within ten days of the filing of this Order.

**IT IS SO ORDERED** this 21st day of March, 2010.

s/ Charmiane G. Claxton  
CHARMIANE G. CLAXTON  
UNITED STATES MAGISTRATE JUDGE