

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MELISA GONZALEZ, for herself and for a)	
class of similarly situated persons,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 06-2163-KHV
)	
IN ZONE BRANDS, INC., et al.,)	
)	
Defendants.)	

ORDER

This matter comes before the court upon plaintiff’s Amended Motion for Leave to Amend the Complaint (Doc. 17). Plaintiff’s Amended Motion for Leave to Amend seeks to amend the complaint to include: (1) “joinder” of new plaintiffs, (2) addition of two defendants and deletion of several others, and (3) addition of a “small number of additional factual assertions underlying the existing causes of action.”¹

Fed. R. Civ. P. 15 controls the procedure for amending the pleadings. Rule 15(a) states, in pertinent part that:

“[a] party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party’s pleading only by leave of court or by written consent of the adverse party[.]”²

¹ See Amended Motion to Amend Complaint (Doc. 17), at p. 1.

²Fed. R. Civ. P. 15(a).

Plaintiff filed her complaint on April 27, 2006³ and filed her Amended Complaint on May 24, 2006.⁴ Plaintiff filed her Motion for Leave to Amend the Complaint on August 24, 2006 (Doc. 15) and filed her Amended Motion for Leave to Amend the Complaint on September 8, 2006 (Doc. 17).

Plaintiff filed a Notice of Voluntary Dismissal against Cadbury Schweppes Americas Beverage, Inc., on August 30, 2006. (Doc. 16), which is reflected in plaintiff's proposed Second Amended Complaint.⁵ However, plaintiff's Voluntary Dismissals against Talking Rain Beverage (Doc. 18), and In-Zone Brands, Inc., (Doc. 19), both filed on September 15, 2006, are not reflected in plaintiff's proposed Second Amended Complaint.⁶ Further, Plaintiff's Amended Motion states, "[o]ut of an abundance of caution, plaintiff reserves the right to retain all defendants with whom settlement is not consummated. In such event, the Second Amended Complaint will include the allegations contained in the original Amended Complaint as supplemented by the proposed Second Amended Complaint."⁷

Rather than allowing plaintiff to "reserve the right to retain all defendants," the court finds that providing plaintiff with an additional seven (7) days from the date of this order to choose which defendants to name articulating the claims against each in her Second Amended Complaint constitutes a better course of action.

³ See Complaint (Doc. 1).

⁴ See Amended Complaint (Doc. 2).

⁵ See Amended Motion for Leave to Amend Complaint (Doc. 17).

⁶ *Id.*

⁷ *Id.*

Accordingly,

IT IS THEREFORE ORDERED that plaintiff's Amended Motion for Leave to Amend the Complaint (Doc. 17) shall be granted.

IT IS FURTHER ORDERED that plaintiff's Motion for Leave to Amend the Complaint (Doc. 15) shall be denied as moot.

IT IS FURTHER ORDERED that plaintiff file her Second Amended Complaint in seven (7) days to include all defendants plaintiff wishes to name.

IT IS SO ORDERED.

Dated this 19th day of September, 2006, at Topeka, Kansas.

s/ K. Gary Sebelius
K. Gary Sebelius
U. S. Magistrate Judge