

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ERAGEN BIOSCIENCES, INC.,
a Delaware corporation,

Plaintiff,

v.

NUCLEIC ACIDS LICENSING, LLC,
a Florida limited liability company and
STEVEN BENNER, an individual,

Defendants.

ORDER

06-C-305-C

The deadline for filing dispositive motions in this case passed on January 3, 2007. Before that date, defendant Benner filed two motions for summary judgment: his joint motion with defendant Nucleic Acids Licensing, LLC filed December 13, 2006, and his own motion, filed January 3, 2007. Although both were timely, this court's procedures limit parties to one summary judgment motion each, unless they first obtain the court's permission to do otherwise. Because defendant Benner did not have leave to file his second motion, it was struck in an order dated January 9, 2007.

Now before the court is defendant Benner's motion for leave to re-file his second

motion for summary judgment. Although the motion is now untimely, it is not grossly so, and the legal questions it raises appear to be ones that are more amenable to resolution on paper than in court. Plaintiff has had plenty of notice that defendant Benner considers himself an improper party to this lawsuit and will not be prejudiced by briefing the motion, so long as the briefing schedule is adjusted to account for the delay caused by defendant Benner's procedural missteps.

Therefore, for reasons of pure practicality, I will grant defendant Benner's motion for leave to file his second motion for summary judgment. Briefing will proceed as follows: plaintiff's response will be due February 1, 2007, and defendant Benner's reply will be due February 11, 2007. With trial scheduled for April 16, 2007, the calendar is getting tight and there will be no room for extensions or other adjustments to this schedule. The parties should not expect a decision on defendant Benner's motion until shortly before trial.

ORDER

IT IS ORDERED that defendant Steven Benner's motion for leave to file his second

motion for summary judgment is GRANTED.

Entered this 12th day of January, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge