

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**DEBORAH BAKER**

**PLAINTIFF**

vs.

**NO. 4:11CV000015 JMM**

**THE PNC FINANCIAL SERVICES GROUP, INC.**

**DEFENDANT**

**THE PNC BANK CORP AND  
AFFILIATES LONG TERM DISABILITY PLAN**

**COUNTER-  
PLAINTIFF**

**V.**

**DEBORAH BAKER**

**COUNTER-  
DEFENDANT**

**ORDER**

Pending are Plaintiff's motion to alter Judgment, docket #65, and the motions of Defendant PNC Financial Services Group, Inc. to dismiss Plaintiff's second amended complaint, docket # 58 and to quash, docket # 67. Also pending is Plaintiff's motion to amend her answer to the Counterclaim, or in the alternative, to strike the counterclaim and for the entry of a scheduling order. (Docket # 56).

On February 1, 2012, the Court entered an order dismissing The PNC Bank Corp and Affiliates Long Term Disability Plan ("Plan") based upon Plaintiff's failure to serve the Plan within the original 120 days allowed by the Federal Rules of Civil Procedure or the additional sixty (60) days allowed by the Court. The Court's Order was silent as to whether the dismissal was with or without prejudice. The Order is hereby amended to state that the dismissal of the Plan was WITHOUT PREJUDICE.

PNC Financial Services Group, Inc. argues that the Plaintiff's Second Amended

Complaint should be dismissed for failure to serve it within the deadline set by Fed. R. Civ. P. 4(m). Plaintiff states that until her motion to correct misnomer, correcting the name of the Defendant, was ruled upon, any attempt at service would have been improper as any summons issued would have misnamed the Defendant. The Court finds that Plaintiff has stated good cause to excuse her failure to serve the Defendant within the original time allowed by the Rules. Plaintiff effectuated service on the Defendant on February 12, 2012. The Court hereby extends the time in which to serve this Defendant, *nunc pro tunc*, to February 12, 2012.

In light of these rulings, Plaintiff's motion for leave to file an amended answer to the counterclaim is GRANTED; Plaintiff's motion to strike the counterclaim is MOOT; Plaintiff's motion for a scheduling order is GRANTED. The Court will issue an ERISA scheduling Order by separate Order. If Plaintiff believes she is entitled to a jury trial on any part of her claims or the counterclaims filed, Plaintiff may file a separate motion outlining her arguments and supporting authority.

Accordingly, Plaintiff's motion to alter Judgment, docket #65, is GRANTED. Defendant PNC Financial Services Group, Inc.'s motions to dismiss Plaintiff's second amended complaint and to quash, docket #'s 58 and 67 are DENIED. Plaintiff's motion to amend, or in the alternative to strike and for a scheduling order, docket # 56, is GRANTED IN PART AND DENIED IN PART as set forth herein.

IT IS SO ORDERED this 20<sup>th</sup> day of March, 2012.

  
James M. Moody  
United States District Judge