

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

RHEA DRUGSTORE, INC.,
Individually and on behalf
of all others similarly situated

PLAINTIFF

v.

No. 4:15-cv-54-DPM

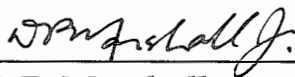
PRODIGY DIABETES CARE, LLC

DEFENDANT

ORDER

Yesterday, the Court got the attached letters from counsel. Requests for relief should be made by motion on the docket. Construing the letter from Prodigy's lawyer as a motion to extend, the Court denies the request without prejudice. Prodigy may be in default. *No 4 & 4-1*; FED. R. CIV. P. 12(a). But that issue, too, needs fleshing out on a briefed motion.

So Ordered.



D.P. Marshall Jr.
United States District Judge

24 February 2015



Lawrence A. Baratta, Jr. PARTNER

*Admitted in NC and GA, USPTO Registered

lbaratta@worldpatents.com

February 23, 2015

VIA U.S. MAIL and EMAIL: dpmchambers@ared.uscourts.gov

Judge D. P. Marshall Jr.
600 West Capitol Avenue, Room B149
Little Rock, AR 72201
501-604-5410
Courtroom B155

Re: RHEA DRUGSTORE, INC. v. PRODIGY DIABETES CARE, LLC
Case No.: 4:15CV54-DPM

Dear Judge Marshall,

We have just been retained by Prodigy Diabetes Care, LLC in the above-referenced case, and are in the process of obtaining local counsel. In the interim, we are writing to ask for an extension of time to answer or otherwise respond to the Plaintiff's Complaint up to and including Friday, March 20, 2015. We need this additional time to review the Complaint and associated allegations and to obtain local counsel. We have asked Plaintiff's counsel for consent, but have not heard back from them.

Very Truly Yours,

Lawrence A. Baratta, Jr.

cc:

James Allen Carney, Jr., John Charles Williams, and Joseph Henry Bates, III
Carney Bates & Pulliam, PLLC
11311 Arcade Drive, Suite 200
Little Rock, AR 72212
501-312-8500
Fax: 501-312-8505
Email: acarney@cbplaw.com
Email: jwilliams@cbplaw.com
Email: hbates@cbplaw.com
Via email only

CARNEY ▼ BATES ▼ PULLIAM

Carney Bates & Pulliam PLLC

February 23, 2014

VIA EMAIL

Judge D. P. Marshall Jr.
600 West Capitol Avenue, Room B149
Little Rock, AR 72201

Re: *Rhea Drugstore, Inc. v. Prodigy Diabetes Care, LLC*
No. 4:15-cv-54-DPM

Dear Judge Marshall:

We are in receipt of a letter to the Court dated today, February 23, 2015, from Lawrence A. Baratta, Jr., counsel for Defendant in this matter, seeking an extension to answer or otherwise respond to Plaintiff's Complaint. After receiving the letter, we retrieved from email spam a message in which Mr. Baratta requested Plaintiff's consent to an extension to answer the Complaint. We had not previously seen this message, which arrived in spam on February 20, 2015, at 4:06 p.m.

Plaintiff respectfully objects to Defendant's request for an extension by letter. Defendant is in default, as Defendant was required to answer or respond by February 17, 2015. *See* R. 4, Affidavit of Service (attached). Accordingly, no extension would be proper. Moreover, to the extent Defendant seeks relief from this Court, it should seek such relief by motion after a reasonable attempt to meet and confer with Plaintiff's counsel.

Sincerely,



Allen Carney

Attachment

cc:

Lawrence A. Baratta, Jr. (via email)
Christopher L. Bernard (via email)

www.CBPLaw.com

11311 Arcade Drive, Suite 200, Little Rock, AR 72212
p. 501-312-8500 f. 501-312-8505 tf. 888-551-9944

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

**RHEA DRUGSTORE, INC.,
individually and on behalf of
all others similarly situated,**

PLAINTIFF

v.

CASE NO. 4:15-cv-00054-DPM

PRODIGY DIABETES CARE, LLC,

DEFENDANT

JURY TRIAL DEMANDED

AFFIDAVIT OF SERVICE

**STATE OF ARKANSAS)
) ss.
COUNTY OF PULASKI)**

Before the undersigned notary public, duly qualified and acting in and for this county and state, appeared John C. Williams, to me well known to be the affiant herein, who stated the following under oath:

1. My name is John C. Williams. I am counsel for Plaintiff in this matter.
2. On or about January 23, 2015, copies of the Complaint and Summons herein were sent via certified mail, return receipt requested, to the registered agent for service for the defendant herein.
3. The defendant accepted service of the complaint in this matter on January 27, 2015, as evidenced by the United States Postal Service Domestic Return Receipt, a copy of which is attached hereto as Exhibit 1.

4. The foregoing statements are true and correct to the best of my knowledge, information and belief.

In witness whereof, I hereunto set my hand this 3rd day of February, 2015.

/s/ John C. Williams
CARNEY BATES & PULLIAM, PLLC
11311 Arcade Drive, Suite 200
Little Rock, AR 72212
(501) 312-8500 · Telephone
(501) 312-8505 · Facsimile
jwilliams@cbplaw.com

SUBSCRIBED AND SWORN to before me, a Notary Public duly qualified and acting in the county and state aforesaid, this 3rd day of February, 2015.



JEANNE C. GRAY, NOTARY PUBLIC

MY COMMISSION EXPIRES:

11-6-2022
(SEAL)

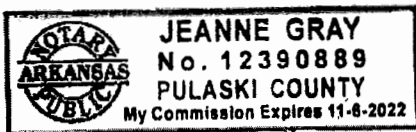


EXHIBIT 1

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X <i>Estrella Lara</i></p>	
<p>1. Article Addressed to:</p> <p>Andrew S. O'Hara 2701-A Hutchinson McDonald Rd. Charlotte, NC 28269-4276</p>	<p>B. Received by (Printed Name)</p> <p><i>Estrella Lara</i></p>	<p>C. Date of Delivery</p> <p><i>1/27/15</i></p>
<p>2. Article Number (Transfer from service label)</p>	<p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
	<p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p>	
<p>7005 1820 0001 4126 4542</p>		
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p>		