

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 07-21221 CIV ALTONAGA/Turnoff

RENEE BLASZKOWSKI, *et al.*,
individually and on behalf of
others similarly situated,

Plaintiffs/Class Representatives,
vs.

MARS INC., *et al.*

Defendants.

**PLAINTIFFS' RESPONSE TO DEFENDANTS'
MOTION FOR EXTENSION OF TIME TO FILE
CONSOLIDATED REPLY IN SUPPORT OF MOTION TO DISMISS
THE THIRD AMENDED COMPLAINT**

Plaintiffs, Renee Blaszkowski *et al.*, respectfully request this Court to deny the Defendants' Motion for Extension of Time to file their Reply in Support of their Motion to Dismiss and state as follows:

1. At the January 25, 2008 hearing, this Court granted the Plaintiffs' Motion to amend their complaint. At the hearing, the Court indicated that the Defendants were aware of the arguments that would be made in opposition to the Motion to Dismiss the Third Amended Complaint, ruling as follows:

...I dare say because you have prepared the motions and you've researched the law, [the defendants] can fairly anticipate what the response will be as to each of the counts in the pleading.

And I appreciate this table giving me the comparison between the two. I think what's going to happen now, you're all going to go back and you're all going to do a cut and paste and take out portions of the motion to dismiss and it will be not quite as lengthy.

We're still going to have, I think, the second half of it which challenges each count under 12(b)(6) and, perhaps, something additional as to those matters that

go beyond dropping defendants because of jurisdictional issues, the defendant class and so forth.

So, I will grant the motion for leave to amend.

I was sitting here and as I was listening to the arguments, I was thinking should I require the plaintiffs to give the defendants the benefit of what opposition they would have to all of these arguments that you've stated as to each count, but I'm not sure that accomplishes much because, as I said before, I think you, lawyers for the defendants, have anticipated already what will be coming in opposition to the 12(b)(6) arguments.

Therefore, the Third Amended Complaint is deemed filed as of today. I will expect the motion to dismiss it to be filed within the time permitted by the rules and I will not give greater time because, as I say, what will happen is you'll sit back and take this draft which has been revised twice and revise it yet a third time by deleting most of the first section which dealt with challenges to personal jurisdiction and, perhaps, add a section or two with regard to the new adjustments made in the pleading.

Hearing Transcript of January 25, 2008 hearing pp. 20-21.

2. The Defendants nevertheless asked for additional time because they allegedly needed to confer and circulate a draft. The Court granted that request.

3. Contrary to the Court's expectations, as expressed in the excerpt above, the Motion that the Defendants' ultimately filed was longer, not shorter. In fact, it was 243 total pages with 126 pages as to the Motion (with one jurisdictional Defendant). [DE 336]. The previous Second Consolidated Motion to Dismiss was 152 total pages with 122 pages as to the Motion (with seven (7) jurisdictional Defendants arguing personal jurisdiction). [DE 279].

4. The Defendants rearranged it, added new issues that had nothing to do with the amendment and that could have been addressed initially. For example, the Defendants added a section as to the injunctive relief count, urging dismissal for the first time based upon the First Amendment. [DE 336 pp. 53-55]. They also added entirely new sections regarding the Food and Drug Act in two substantial sections of the Motion. [DE 336 pp. 5-7, 41-45]. The Defendants also

added and deleted a substantial amount of case law on issues that had not been impacted by the amended pleading.

5. The Plaintiffs have far fewer resources than the Defendants and the Defendants know that. Given the Defendants' vast resources, the work on a reply is limited to what has already been set forth in the Motion and the Response. While the Defendants need to confer to consolidate the reply, it is quite clear that the additional time that they request is not used solely for conferring as they have represented to the Court.

5. The Plaintiffs have been prejudiced by the Defendants' request because the Defendants use the additional time for other purposes, which put a great strain on the Plaintiffs to research and review the case law as to the additional issues, analyze rebuttal case law and to draft a Response to a substantially revised Motion.

6. The Defendants have filed a number of motions in the past on very short notice when *they* want to do so. For example, the Defendants filed a Motion for Reconsideration relating to personal jurisdiction discovery just *three* days after the order was entered allowing jurisdictional discovery and the undersigned was required to respond *even though a notice of unavailability had been filed*. [DE 192, 243, 244, 245]. In another example, the Defendants filed a memorandum in opposition to personal jurisdiction discovery within three days. [DE 266].

7. Given that the Defendants have been aware of the arguments raised in the motion to dismiss and that they have researched the legal issues to bring their Motion in the first place,¹ as the Court noted, they are surely aware of the arguments that the Plaintiffs raise in the Response to their Motion. Moreover, the Plaintiffs do not want to be further prejudiced by

¹ The substantive counts have been unchanged for months.

allowing the Defendants additional time that the Plaintiffs did not have to file their Response to continue to expand their arguments exponentially (and perhaps create new ones again).

8. The Plaintiffs respectfully request this Court to deny the Defendants' Motion for Enlargement. Given the Defendants resources and the fact that the Plaintiffs have prepared responses and replies on short notice with far fewer resources, it is only fair and equitable that the Defendants be required to comply with the Court's directive that no extensions will be allowed.²

Dated: March 7, 2008
Miami, FL

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² As for the statements made in the Motion about the Defendants' attempt to confer with the undersigned. The undersigned has been out of the office relating to depositions in another pending matter, which did not conclude Wednesday until well after the close of business. The undersigned was in deposition early yesterday and planned to get back to the Defendants at the lunch break yesterday, which would have been within 24 hours of the first time that the undersigned became aware of the Defendants' request for an extension. Given that the Defendants invariably take several days or more to provide their position as to a motion to be filed by the Plaintiffs, this did not appear unreasonable. However, despite the fact that the Defendants were told that the undersigned was out of the office in a deposition, the Defendants continued to call, *knowing* that the undersigned was working out of the office. It appears to the undersigned that much ado was made over nothing.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of the Court via CM/ECF on this 7th day of March, 2008. We also certify that the foregoing was served on all counsel or parties of record on the attached Service List either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Filing.

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