

was either 69 days late or 116 days late, depending on whether the clock for a 12(b)(6) Motion began running when I lifted Judge Brody's stay in mid-December or when the Amended Complaint was filed in late October. In either case, the Motion to Dismiss was clearly late. On this basis, Plaintiffs moves to strike Defendants' Motion.

When a party fails to answer or otherwise plead within 21 days of service of the complaint, the court has discretion to allow or bar an untimely response in the absence of a motion for default judgment. *Kampf v. Heinecke*, No. CIV. A. 94-6452, 1995 WL 262526, at *1 (E.D. Pa. Apr. 28, 1995); *see also McGehean v. AF & L Ins. Co.*, No. CIV.A. 09-CV-01792-T, 2009 WL 3172763, at *1 (E.D. Pa. Oct. 2, 2009) (same). Exercising this discretion, I find that the extreme and unexplained tardiness of Defendants' Motion weighs heavily in favor of granting Plaintiffs' Motion to Strike. Defendants shall file an answer to Plaintiffs' Amended Complaint within 14 days. Pursuant to Rule 12, Defendants' remain free to assert the defenses advanced in their 12(b)(6) motion at the appropriate time later in the case. An Order follows.

/s/ Gerald Austin McHugh
United States District Judge