

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

STEPHEN J. GILL and PARKER  
DETWEILER,

Plaintiffs,

v.

Civil Action No. 24-1359-RGA-EGT

EVERYDAY DOSE, INC.,

Defendant.

MEMORANDUM ORDER

Defendant filed a partial motion to dismiss. (D.I. 27). The magistrate judge recommended that it be granted in part and denied in part. (D.I. 37). Plaintiffs filed modest objections. (D.I. 53) Defendant responded. (D.I. 59).

Plaintiffs essentially concede the correctness of the magistrate judge's recommendation. (D.I. 53 at 2). What they request is that they be able to file a motion for leave to amend.<sup>1</sup> They have since filed such a motion. (D.I. 67). That motion is currently being briefed.

Defendant filed an answer to the first amended complaint. (D.I. 43). I disagree with Plaintiffs that the filing of the answer, which is premised on the correctness of the magistrate judge's recommendation, makes the motion to dismiss moot.

---

<sup>1</sup> The magistrate judge made no recommendation concerning whether a properly-made motion for leave to amend should be granted. The recommendation was only that the improperly-made request in Plaintiffs' brief be denied "as not adequately before the court." (D.I. 37 at 10).

Considering the above, I fully ADOPT the Report and Recommendation (D.I. 37), I GRANT in part and DENY in part the motion to dismiss (D.I. 27), and I DENY the motion to mark the motion to dismiss as moot (D.I. 48).

IT IS SO ORDERED this 10<sup>th</sup> day of February 2026.

/s/ Richard G. Andrews  
United States District Judge