

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

JARED ALLEN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 15-3317
	)	
OLEG KUPCHENKO and	)	
US BEST TRUCKING, LLC,	)	
	)	
Defendant.	)	

**OPINION**

TOM SCHANZLE-HASKINS, U.S. Magistrate Judge:

Pending before the Court is Defendants Oleg Kupchenko and US Best Trucking, LLC's (US Best) Answer in Part and Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(6) (d/e 53) (Motion).

The parties consented to have this matter proceed before this Court.

Consent to the Exercise of Jurisdiction by a United States Magistrate Judge and Reference Order entered May 12, 2017 (d/e 50).

Plaintiff Jared Allen alleges a claim for spoliation of evidence in Count III of the First Amended Complaint (d/e 52). Allen alleges that the owner of US Best and his wife destroyed documents during the pendency of the case that US Best had an obligation to preserve. Defendants' Motion asks this Court to dismiss Count III. Defendants assert that Plaintiff cannot

prevail on Count III because Plaintiff received the relevant information in the destroyed documents from other sources. Motion, at 11, Count III ¶ 3; see Memorandum of Law in Support of Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(6) [54], at 3-5. Defendant relies on matters outside the pleading to make this assertion. If the Court does not exclude this information, then the Court must treat the Motion as a motion for summary judgment. Fed. R. Civ. P. 12(d).

The Court determines that the information should not be excluded. This case was ready for trial when Allen added the spoliation claim in Count III. The parties have already collected the relevant information regarding the alleged destruction of documents. The parties, therefore, are ready to address whether Count III can be resolved by dispositive motion. The Court treats the Motion as a motion for partial summary judgment on Count III of the First Amended Complaint.

In this circumstance, the Court must give all parties a reasonable opportunity to present all the material that is pertinent to the Motion to Dismiss. Fed. R. Civ. P. 12(d).

THEREFORE, this Court directs Plaintiff to file by June 30, 2017 a revised motion for partial summary judgment on Count III of the First Amended Complaint that complies with all the requirements of Local Rule

7.1(D)(1) regarding summary judgment motions and includes all the material that Defendants believe is pertinent. Allen shall respond 21 days after service of the revised motion in a manner that complies with Local Rule 7.1(D)(2) and includes all the material that Allen believes is pertinent. Allen may reply in accordance with Local Rule 7.1(D)(3). Upon completion of the revised briefing, the Court will resolve the issue.

ENTER: June 14, 2017

**s/ Tom Schanzle-Haskins**  
UNITED STATES MAGISTRATE JUDGE