

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

EDWARD GAETA,

Plaintiff,

v.

MERCER BELANGER, P.C.,

Defendant.

Case No. 4:16-CV-58

OPINION AND ORDER

Plaintiff Edward Gaeta filed a complaint in state court alleging violations of the federal Fair Debt Collection Practices Act. Defendant Mercer Belanger, P.C. (“Mercer”) removed the case.

Mercer filed a motion captioned “Defendant’s Motion to Dismiss Complaint and for Summary Judgment Pursuant to Fed. Civil Rule 12(d).” (DE 11.) In support of this motion, Mercer submitted voluminous documents outside the pleadings. The body of the motion (and the supporting brief) asked the Court to treat it as a motion for summary judgment.

Mr. Gaeta moved to strike the motion on various grounds. Mercer responded (in part) by again asking the Court to treat its motion as a motion for summary judgment, and to consider the documents beyond the pleadings. (DE 16 at 1; DE 21 at 1.)

Pursuant to Rule 12(d), the Court may treat the motion as a motion for summary judgment, and not exclude matters beyond the pleadings. Fed. R. Civ. P. 12(d); *Edgenet, Inc. v. Home Depot USA*, 658 F.3d 662, 664–65 (7th Cir. 2011). The Court accepts Mercer’s request that it do that.

But Mr. Gaeta must have an opportunity to conduct discovery before responding to a motion for summary judgment. Indeed, the motion for summary judgment is premature. The Court requires the parties to wait until after discovery closes, and a settlement conference occurs, before moving for summary judgment.

Accordingly, the Court strikes without prejudice the dispositive motion (DE 11) as premature. Mercer may move for summary judgment later.

Mercer may answer or otherwise respond to the complaint within 21 days of the entry of this order.

Magistrate Judge Martin will conduct a Rule 16(a) pretrial conference and issue a Rule 16(b) scheduling order. Once discovery closes, the Court will hold a scheduling conference, at which time it will set the deadline for filing motions for summary judgment.

SO ORDERED on August 2, 2017.

s/ Joseph S. Van Bokkelen
JOSEPH S. VAN BOKKELEN
UNITED STATES DISTRICT JUDGE