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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

MICHAEL SPERFSLAGE,)
)
 Plaintiff,)
 vs.)
)
 KIRKWOOD COMMUNITY)
 COLLEGE and BARRY DIETSCH,)
)
 Defendants.)

No. 13cv140 EJM
ORDER

This matter is before the court on two resisted actions by Plaintiff, (1) Notice of Voluntary Dismissal of Count V, and (2) Motion to Remand, both filed December 19, 2013. Notice of Voluntary Dismissal of Count V upheld. Motion to Remand granted.

On November 15, 2013, Plaintiff filed a five-count Petition in state court with Count V under federal law. On December 16, 2013, Defendants removed the case to this court. On December 18, 2013, Defendants moved to dismiss the complaint with prejudice under Fed.R.Civ.Pro. 12(b). On December 19, 2013, Plaintiff filed his Notice of Voluntary Dismissal of Count V and Motion to Remand. On December 31, 2013, Defendants moved to strike the Notice, and resisted the motion to remand.

Federal Rule of Civil Procedure Rule 15(a)(1) provides in part "Amending as a Matter of Course: A party may amend its pleading once as a matter of course within: ...(B) if the pleading is one to which a responsive pleading is required, 21


days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b).” On December 18, 2013, Defendants served their motion to dismiss under Rule 12(b), and their Answer on December 23, 2013. Plaintiff’s Notice of Voluntary Dismissal of Count V, which was filed on December 19, 2013, one day after Defendants’ Rule 12(b) motion and before Defendants’ Answer, is therefore effective under Rule 15(a)(1)(B). In re Cessna Distributorship Antitrust Litigation, 532 F.2d 64, 21 Fed.R.Serv. 2d 1061 (8th Cir. 1976.) See also Rule 41(a)(1)(A.) Since Plaintiff’s amendment eliminates federal jurisdiction, the motion to remand shall be granted.

It is therefore

ORDERED

Motion to Strike Notice of Voluntary Dismissal of Count V denied. Motion to Remand granted. All other motions are denied as moot.

February 3, 2014.



Edward J. McManus, Judge
UNITED STATES DISTRICT COURT