

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Jimmy D. Settle,

Plaintiff,

vs.

Case No. 13-2308-JTM

Midland Funding, LLC, *et al.*,

Defendants.

MEMORANDUM AND ORDER

Pro se plaintiff Jimmy Settle commenced this action under the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and the Kansas Consumer Protection Act against defendants Midland Funding, LLC, Midland Credit Management, Inc., Ray Sanches, Rachel Doe, Simon Winters, Steve Meadows, Kevin Doe, Mark Doe and Carol Doe (collectively, the “Defendants”) in Wyandotte County, Kansas District Court. The Defendants removed the action to this court on June 24 and filed their Answer on July 5, 2013. (Dkt. 1, 5).

Since the removal, Settle has moved to strike the Defendants’ Answer (Dkt. 6), for summary judgment (Dkt. 7), to strike the Defendants’ response to his summary judgment motion (Dkt. 12), to remand the action to state court (Dkt. 17), and to strike an exhibit from Defendants’ pleadings (Dkt. 20). The Defendants have separately moved for leave to file

an Answer out of time.

Settle's Motion to Remand, which complains that Midland failed to file a corporate disclosure statement, was filed more than 30 days after the removal. Because it does not address subject matter jurisdiction, the motion is untimely and therefore denied. 28 U.S.C. § 1147(c).

Settle's Motion for Summary Judgment and Motion to Strike Defendants' Answer are grounded on the minor delay in the filing of the Answer, which was due on July 1, 2013, and was actually filed on July 5, 2013. Settle has submitted no facts which would support an award of summary judgment against the Defendants on the merits. Essentially, Settle's motion seeks default judgment against the Defendants, even though it is clear from the removal, which occurred before the due date for their Answer, that the Defendants were actively defending the claim. The law strongly prefers the resolution of disputes on the merits, and Settle's motions predicated on a very brief delay and technical errors are hereby denied; the Defendants' Motion to Answer out of Time is granted.

Settle's Motion to Strike Exhibit 1 (a Bill of Sale) attached to the Response to the Motion for Summary Judgment is denied as moot, since the court otherwise finds that the summary judgment motion is prior to discovery and wholly premature. Settle's Motion to Strike Defendants' Response (Dkt. 12) is grounded on a technical defect which may be easily corrected by Defendants' Answer, is denied as without merit.

IT IS ACCORDINGLY ORDERED this 19th day of August, 2013, that the Defendants' Motion to File Out of Time (Dkt. 9) is hereby granted; Plaintiff's Motions to Strike (Dkt. 6, 12, 20), for Summary Judgment (Dkt. 7), and to Remand (Dkt. 17) are hereby denied.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE