

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAWRENCE MOORE,

Plaintiff,

File No. 1:13-CV-128

v.

HON. ROBERT HOLMES BELL

CAPITAL ONE SERVICE, LLC,

Defendant.

**ORDER APPROVING AND ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

On February 26, 2013, United States Magistrate Judge Joseph G. Scoville issued a report and recommendation ("R&R") recommending that the motion to dismiss filed by Defendant Capital One Bank (USA), N.A. (named Capital One Service LLC in the complaint) (Dkt. No. 4) be granted, and that Plaintiff Lawrence Moore's complaint be dismissed for failure to state a claim on which relief can be granted. (Dkt. No. 7, R&R.) Plaintiff filed a motion to remand on February 26, 2013 (Dkt. No. 8), and objections to the R&R on March 5, 2013 (Dkt. No. 10).

This Court is required to make a *de novo* determination of those portions of the R&R to which specific objection has been made, and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). "[A] general objection to a magistrate's report, which fails to specify the issues of

contention, does not satisfy the requirement that an objection be filed. The objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious.” *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995).

Plaintiff’s motion to remand and his objections to the R&R are both based on his contention that this case was not properly removed from state court because Defendant did not file an answer to the complaint within 28 days.

Plaintiff served Defendant by certified mail to its credit collections department in Salt Lake City, Utah. If a defendant is served by registered mail, the Michigan Court rules require the defendant to serve and file an answer “or take other action permitted by law or these rules” within 28 days after service. Mich. Ct. Rule 2.108(A)(2). Filing a notice of removal is an action permitted by law. 28 U.S.C. § 1441(a). A notice of removal is required to be filed within 30 days after the defendant’s receipt of the complaint. 28 U.S.C. § 1446(b)(1). Defendant accepted service of Plaintiff’s complaint on January 8, 2013, and removed the action to this Court on February 5, 2013, 28 days after service. By removing the action within 28 days, Defendant responded to Plaintiff’s complaint in a timely fashion under Michigan rules and also filed a timely notice of removal under federal law. A defendant who did not answer the complaint prior to removal is required to file its answer or present other defenses within 7 days after the notice of removal is filed. Fed. R. Civ. P. 81(c)(2)(C). Defendant met this deadline by filing its motion to dismiss on February 12, 2013, 7 days after the case was removed. Because Defendant filed a motion to dismiss

within the time for filing a responsive pleading, neither Plaintiff's motion to remand nor his objections to the R&R has merit. Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion to remand (Dkt. No. 8) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's objections to the R&R (Dkt. No. 10) are **OVERRULED**.

IT IS FURTHER ORDERED that the February 26, 2013, R&R (Dkt. No. 7) is **APPROVED** and **ADOPTED** as the opinion of the Court. The motion to dismiss filed by Defendant Capital One Bank (USA), N.A. (Dkt. No. 4) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's complaint is **DISMISSED**.

Dated: March 18, 2013

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE