

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THOMAS C. GRAY,)
)
Plaintiff/)
Counterclaim Defendant,)

vs.)

Case number 4:16cv01886 PLC

CRST EXPEDITED INC.,)
)
Defendant/)
Crossclaim Defendant/)
Cross-Claimant,)

ALYSSA A. BROWN,)
)
Defendant/)
Crossclaim Defendant,)

ALEJANDRO M. MEDINA,)
)
Defendant/)
Crossclaim Defendant/)
Cross-Claimant,)

JUSTIN W. MADILL,)
)
Defendant/)
Counterclaimant/)
Cross-Claimant/)
Crossclaim Defendant,)

LAS ANIMAS TRANSFER INC.,)
)
Defendant/)
Counterclaimant/)
Cross-Claimant/)
Crossclaim Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff’s motion to dismiss without prejudice [ECF No. 30], a motion to remand filed by Defendants Alejandro M. Medina and CRST Expedited Inc. [ECF No. 41], and on review of the record.

Plaintiff seeks monetary relief from Defendants for personal injuries he allegedly sustained in a car accident. Plaintiff filed this lawsuit against four defendants in the Circuit Court of Warren County on October 18, 2016, Gray v. Medina, Cause No. 16BB-CC00074. On December 1, 2016, Defendant Las Animas Transfer, Inc., removed the lawsuit to this Court on the basis of the Court's diversity jurisdiction.

On January 26, 2017, Plaintiff filed a first amended petition adding a defendant, Alyssa A. Brown, and changing the identification of one of the four originally-named defendants from CRST International Inc. to CRST Expedited Inc. A review of the docket sheet for this case reveals that, as of this date, Defendant Brown has not been served, filed an entry of appearance, or responded to the first amended petition.¹ The Court issued summons for service on Defendant Brown on February 16, 2017, after Plaintiff provided notice of process server and a summons for service on Defendant Brown. The four other Defendants have filed answers to the first amended petition, as well as several crossclaims and two counterclaims.² Plaintiff has filed his response to one of the counterclaims. A Rule 16 conference is scheduled for 10:00 a.m. on March 29, 2017, with the parties' Joint Scheduling Plan due on March 27, 2017.

Recently, Plaintiff filed the pending motion to dismiss the case without prejudice, and Defendants CRST Expedited Inc. and Alejandro M. Medina filed the pending motion to remand.

¹ On February 17, 2017, the Court entered a show cause order pursuant to Federal Rule of Civil Procedure 4(m) directing Plaintiff to show cause why the case should not be dismissed without prejudice for failing timely to serve Defendants CRST Expedited Inc., Alejandro M. Medina, and Justin W. Madill. See Order, filed Feb. 17, 2017 [ECF No. 17]. As of this date, those three Defendants have filed responses to the first amended petition. See Def. Madill's Answer, Counterclaim, and Crossclaims, filed Mar. 2, 2017 [ECF No. 29]; Def. CRST Expedited Inc.'s Answer, filed Mar. 17, 2017 [ECF No. 35]; Def. Medina's Answer, filed Mar. 17, 2017 [ECF No. 36]; and crossclaims filed by Defendants CRST Expedited Inc. and Medina on Mar. 17, 2017 [ECF Nos. 39 and 40].

² See n.1 supra. Additionally, on February 22, 2017, Defendant Las Animas Transfer Inc. filed its answer to the first amended petition [ECF No. 18], as well as a counterclaim against Plaintiff Gray [ECF No. 19], a crossclaim against Defendant Brown [ECF No. 20], and a crossclaim against Defendants CRST Expedited, Inc. and Medina [21].

Movants have filed briefs supporting their motions.³ Defendants Madill and Las Animas Transfer, Inc. responded to Plaintiff's motion to dismiss by stating they consent to Plaintiff's dismissal "on the condition that if the Court grants Plaintiff's Motion, . . . the Court also dismiss[es] Defendants' counterclaims and cross-claims for contribution *without prejudice*" (emphasis in original).⁴ Neither of the two Defendants seeking remand filed a response to Plaintiff's motion to dismiss. No party has filed a response to the pending motion to remand.

The Court previously directed Defendants who were before the Court to file a response to Plaintiff's motion to dismiss by March 21, 2017 at noon, and prohibited the filing of a reply.⁵ Absent a Court order, responses to the pending motion to remand are not due until March 24, 2017, with any reply due within seven days of the service of any response. See Local Rules 7-4.01(B) and 7-4.01(C).

Due to the very recent filing of two Defendants' motion to remand, and the need to obtain the parties' positions on the pending motions,

IT IS HEREBY ORDERED that, no later than noon on March 24, 2017: (1) Plaintiff and each Defendant before the Court at that time (other than Defendants CRST Expedited Inc. and Medina) shall file and serve on the other parties before the Court a response to the motion to remand; and (2) Defendants CRST Expedited Inc. and Medina shall file and serve on the other parties before the Court a response to Plaintiff's motion to dismiss.

IT IS FURTHER ORDERED that, if necessary, no later than 5:00 p.m. on March 28, 2017,

³ See Pl.'s mem., filed Mar. 17, 2017 [ECF No. 33]; Mem. of Defs' CRST Expedited Inc. and Medina, filed Mar. 17, 2017 [ECF No. 42].

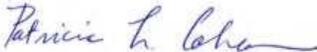
⁴ Joint response to Pl.' mot. dismiss filed by Defs.' Madill and Las Animas Transfer, Inc. on Mar. 20, 2017 [ECF No. 4].

⁵ See Order, filed Mar. 14, 2017 [ECF No. 32].

Plaintiff may file a reply supporting his motion to dismiss, and Defendants CRST Expedited Inc. and Medina may file a reply supporting their motion to remand. Any reply shall be served promptly on the other parties before the Court at the time the reply is filed.

IT IS FINALLY ORDERED that, due to the pending motions and the failure to serve Defendant Brown as of this date, both the March 29, 2017, conference and the March 27, 2017, deadline for the parties' filing of a Joint Scheduling Plan are **VACATED**.

A Rule 16 conference and deadline for the filing of the parties' Joint Scheduling Plan will be re-set, if necessary, after resolution of the pending motions to dismiss and to remand.



PATRICIA L. COHEN
UNITED STATES MAGISTRATE JUDGE

Dated this 22nd day of March, 2017.