

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

KENNETH M. KENT,)	
)	
Plaintiff,)	
)	No. 13-4156-CV-C-FJG
vs.)	
)	
CHARTER COMMUNICATIONS, LLC, et al.,)	
)	
Defendants.)	

ORDER

Pending before the Court is Defendants’ Motion to Vacate the Court’s December 26, 2013 and August 21, 2014 Orders finding Plaintiff’s Claim is Sufficiently Plead and Subject to a Ten-Year Statute of Limitations (Doc. No. 63). This case was remanded to state court on August 21, 2014. See Doc. No. 61. After the case had been remanded, defendants filed the present motion, requesting the Court vacate its previous orders finding that a 10-year statute of limitations could apply under the facts alleged by plaintiff, arguing that the Court should have considered its subject matter jurisdiction before making merits determinations in the underlying suit.

The Court will deny defendants’ request. One reason why the Court considered which statute of limitations applied is because defendants had alleged fraudulent joinder. If the statute of limitations precluded a lawsuit against the in-state defendants, those defendants would have been found to have been fraudulently joined and the case would therefore have been removable. Thus, it was necessary for the Court to consider the statute of limitations in making its subject matter jurisdiction determination. Furthermore,

the Court's denial of a motion to dismiss based on the statute of limitations is not a final decision on the merits. As the Court made perfectly clear in its Orders, the statute of limitations issues raised by defendants may be more appropriate for summary judgment. See Orders, Doc. Nos. 33 at p. 6, 61 at p. 9. Defendants' motion to vacate (Doc. No. 63) is **DENIED**.

IT IS SO ORDERED.

Dated: October 16, 2014
Kansas City, Missouri

/s/ Fernando J. Gaitan, Jr.
Fernando J. Gaitan, Jr.
United States District Judge