

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JERRY BERG,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 12-1123-KHV-KGG
)	
JON L. FROBISH, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**REPORT AND RECOMMENDATION ON
DEFENDANTS' MOTION FOR LEGAL FEES**

Defendants' "Motion for Legal Fees" (Doc. 374) has been referred by the District Court to the Magistrate Judge for Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has reviewed the parties' submissions and **RECOMMENDED** that the District Court **DENY** Defendants' motion.

The facts and background of this case have been summarized and dissected numerous times including, most recently, in the District Court's Memorandum and Order granting Defendants' motion for summary judgment on Plaintiff's Fair Debt Collection Practice Act claim and remanding the case back to state court. (Doc. 372, at 3-6.) Those facts are incorporated herein by reference.

Defendants now request the Court enter an Order for attorneys fees, arguing

that “Plaintiff’s claims are textbook examples of bad faith and harassment.” (Doc. 374, at 2.) They have, however, presented no evidence to support an award of fees claim nor have they established that the claim was brought in bad faith.

Further, upon granting the underlying Motion for Summary Judgment (Doc. 351), the case was remanded because of a lack of federal court jurisdiction on Plaintiff’s remaining claims. Federal court jurisdiction was invoked by Defendants who had the case removed from Sedgwick County District Court. (Doc. 1.) The facts and law which resulted in dismissal of the federal cause of action, and the removal to state court, were equally apparent when Defendant removed this case to federal court. A significant portion of attorney time and legal fees were incurred as a result of that removal and subsequent remand.

Finally, the bulk of Plaintiff’s claims remain pending in Sedgwick County District Court following the remand by the Federal District Court (Doc. 372). Fees claims should be resolved by the Sedgwick County District Court upon the ultimate disposition the entire case.

IT IS THEREFORE RECOMMENDED to the District Court that Defendants’ Motion for Legal Fees (Doc. 374) be **DENIED**.

Pursuant to 28 U.S.C. §636(b)(1) and Fed. R. Civ. P. 72, the parties shall have fourteen (14) days after service of a copy of these proposed findings and

recommendations to serve and file with the U.S. District Judge assigned to the case, written objections to the findings of fact, conclusions of law, or recommendations of the undersigned Magistrate Judge. The failure to file such written, specific objections within the fourteen-day period will bar appellate review of the proposed findings of fact, conclusions of law, and the recommended disposition.

IT IS SO RECOMMENDED.

Dated this 4th day of September, 2014, at Wichita, Kansas.

S/ KENNETH G. GALE
HON. KENNETH G. GALE
U.S. MAGISTRATE JUDGE