IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:24-CV-402-M-BM

PAMELA LETTS, Plaintiff, v. AVIDIEN TECHNOLOGIES, INC., METTLER-TOLEDO RAININ, LLC, and METTLER-TOLEDO INTERNATIONAL INC., Defendants.	)	**MEMORANDUM AND RECOMMENDATION**

This matter is before the court on plaintiff's motion to remand the matter to state court. [DE-21]. Plaintiff filed supplemental materials [DE-22] and a supplemental brief [DE-23] in support of the motion to remand. Defendants, Avidien Technologies, Inc.[1] ("Avidien"), Mettler-Toledo Rainin, LLC ("MT Rainin"), and Mettler-Toledo International, Inc., ("MT International," and collectively "defendants"), responded in opposition. [DE-27].

This matter is also before the court on the joint motion by defendants to dismiss [DE-8] plaintiff's complaint [DE-1-3]. Defendants move to dismiss plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) and Local Rule 7.1. [DE-8] at 1. Defendants filed a memorandum in support of the joint motion to dismiss. [DE-9]. Plaintiff responded in opposition, including supporting materials. [DE-17]. Defendants filed a reply to the response in opposition. [DE-26].

The time for filing responsive briefs has expired and the pending motions are ripe for adjudication. The motions were referred to the undersigned magistrate judge pursuant to 28

[1] Avidien Technologies, Inc. converted its business form into "Avidien Technologies, LLC" on December 29, 2023. [DE-1-6] at 2.

U.S.C. § 636(b)(1). For the reasons set forth below, it is RECOMMENDED that plaintiff's motion to remand [DE-21] be GRANTED and that defendants' joint motion to dismiss [DE-8] be DENIED AS MOOT.

I. PROCEDURAL BACKGROUND

On or about June 11, 2024,[2] plaintiff commenced an action against defendants in Wake County District Court. [DE-1-3] at 2;[3] *see also Letts v. Avidien Technologies, Inc. et al.*, 24CV018010-910 (N.C. Dist. Ct. 2024). Defendants received plaintiff's complaint and a civil summons on June 14, 2024. [DE-1] at 2. On July 12, 2024, defendants removed the action to this court pursuant to 28 U.S.C. §§ 1441(a) and 1446(b), and Federal Rule of Civil Procedure 6(a). *Id*. Defendants assert this court has diversity jurisdiction over the action pursuant to 28 U.S.C. § 1332. *Id*. Defendants then filed the joint motion to dismiss on July 19, 2024, pursuant to Federal Rule of Civil Procedure 12(b)(6) and Local Rule 7.1. [DE-8] at 1.

Plaintiff filed a motion to remand [DE-21] on August 6, 2024, alleging the removal was required in light of "inaccuracies in [d]efendants' representation of their citizenship and principal places of business" ([DE-21] at 2) and with respect to the amount in controversy, because "the damages sought are not clearly quantified in the [c]omplaint and [the] speculative valuation of parent company, [MT International], does not meet statutory requirements (*id.* at 5).

II. FACTUAL BACKGROUND

Plaintiff's complaint alleges "Breach of Contract, Fraud, Anticipatory Breach of

[2] The undersigned notes that the filing date of plaintiff's complaint is a matter of contention in defendants' motion to dismiss. [DE-8]. The reference here to "June 11, 2024," merely reflects the time stamp visible on plaintiff's complaint [DE-1-3] and does not decide whether this or another date should be used for purposes of calculating the statute of limitations applicable to plaintiff's claims.

[3] All citations to documents using the docket entry number [DE-] provided in the court's docket will specify the page number automatically assigned by the CM/ECF system, rather than the page number, if any, specified in the original document.

Contract, and Implied Covenant of Good Faith and Fair Dealing" by defendants. [DE-1-3] at 2. Plaintiff makes the following factual allegations in support of her complaint:

In September of 2020, Darin Enferadi ("Mr. Enferadi"), a recruiter for defendants, contacted plaintiff regarding employment opportunities with defendant Avidien. *Id.* at 6. Mr. Enferadi allegedly presented "an opportunity . . . to become involved at the inception of Avidien with an expansive career prospect." *Id.* at 9. On October 30, 2020, plaintiff interviewed telephonically with Avidien President and Founder, Richard Cote ("Mr. Cote"), Co-Founder Bryan Gallagher ("Mr. Gallagher"), and Andrew Langlois ("Mr. Langlois"). On November 3, 2020, plaintiff received an e-mail introduction to Mark Steele ("Mr. Steele"), a local advisor to Avidien in North Carolina and subsequently met with him in person on November 10, 2020. *Id.* at 10-11. During that meeting, Mr. Steele communicated to plaintiff an anecdote about his son's experience, who had "foregone a significant sum of money due to unfulfilled assurances of an equity stake in a startup enterprise that was subsequently sold for a considerable sum." *Id.* at 12. Following plaintiff's meeting with Mr. Steele, Mr. Langlois scheduled an in-person meeting between plaintiff and various members of Avidien in Boston, Massachusetts for December 2, 2020. *Id.* at 14.

On December 2, 2020, plaintiff met with Mr. Cote and Mr. Langlois in Boston. *Id.* Mr. Cote allegedly "expressed his desire for [her] to join Avidien," but that Avidien was not "in a financial position to pay [plaintiff] the $150K-$175K salary [she was] accustomed to." *Id.* at 15. Mr. Cote asked if there was "any scenario in which [she] would accept a $90K base salary at Avidien," to which plaintiff asserts that she would agree to the reduced salary amount in exchange for "an equity stake in Avidien." *Id.* at 16. Mr. Cote allegedly responded that "if

[plaintiff could] agree to a $90,000 salary, then [he agrees] to owner equity." *Id*. at 16. Plaintiff recalls that she proposed a 20% stake in ownership, and that Mr. Cote "did not object to [her] comparative 20% offer, nor make a counter-offer [sic] for a lower percentage for owner equity." *Id.* Mr. Cote did, however, note that he needed "to take a look into it, and talk to the lawyers" when asked about the number of shares issued and outstanding. *Id*. Plaintiff asserts an agreement had been made with the defendants on "the essential terms, albeit with some remaining details to be resolved . . . [including] the final allocation of [her] owner equity percentage." *Id*. at 18. By the end of the December 2, 2024 meeting, plaintiff anticipated "receiving approximately 55,000 company shares" in exchange for agreeing to a base salary of "approximately half of her usual compensation" and while defendant reportedly "not[ed] no objection." *Id*.

On December 9, 2020, Mr. Langlois and plaintiff exchanged phone calls regarding the terms of plaintiff's employment, which resulted in an email from Mr. Langlois to "recap . . . the main talking points around compensation and benefits." *Id.* at 62. As relevant, the email states a base salary of $90,000, and, among other terms, the following:

> 6 month check point: As Avidien is in the midst of building an equity/profit sharing program more broadly, this would be layered in at the 6 month check point. [Avidien] would assess earning, market conditions, profit sharing/equity component (layered in at 6 month mark) and restructure compensation in good faith – with assurance that base salary and On Track Earnings won't go down. As you suggested, I'll work to try to provide a bit more definition around the profit sharing/equity component in the next day or two.

Id. at 62.

"[F]eeling uncertain about endorsing the written contract due to the absence of specific details concerning her owner's equity," plaintiff spoke with Mr. Steele for advice. *Id*. at 20. Mr.

Steele allegedly "vouched for [Mr. Cote's] integrity, affirming that [Mr. Cote] was unlikely to engage in any deceptive practices." *Id*. at 21. Plaintiff then accepted the terms of Mr. Langlois email, and received a letter, dated December 17, 2020, setting out the terms of employment. [DE-1-3] at 21-22.

The December 17, 2020 letter (the "letter") was sent by email to plaintiff with the subject line "Offer of Employment." [DE-1-3] at 64-65. The letter "sets out the terms of [plaintiff's] employment" as the "Account Executive." *Id.* at 64. Specifically, as relevant here, the terms include: a base salary of $90,000 and any future adjustments in compensation "will be made by the Company in its sole and absolute discretion"; a variable compensation plan based on sales an "assessment and good faith restructuring of the variable compensation plan based on market conditions, sales performance to-date, company strategy, and the supply chain" at the six month point of employment. *Id.* The agreement also noted additional benefits of a vehicle allowance of $575 per month, connectivity expense of $150 per month and healthcare reimbursement of up to $1,265.89. *Id.* With respect to profit sharing and stock options the document provided the following language:

> Avidien is working to formalize a standard employee stock option plan by the end of H1. As discussed:
>
> - Your vesting period would be backdated to your employment start date
> - The options would include a 1 yr cliff and a 4 year vesting schedule, and an employee-friendly exercise period
> - We can assure you of a fair negotiation commensurate with you joining Avidien as an early employee

Id.

The letter additionally states that it "is not an employment contract," that "[y]our employment with the Company is at-will," and that "that you may terminate your employment at

any time for any reason." *Id*.

The letter provides that it and an associated confidentiality agreement "constitute the entire agreement between you and the Company regarding the terms and conditions of your employment, and supersedes all negotiations, representations or agreements, whether prior or contemporaneous, written or oral, between you and the Company on this subject." *Id.* at 65.

Plaintiff began working for Avidien on January 3, 2021. *Id.* at 22. Over the next several months, plaintiff engaged in extensive work for defendants and achieved significant success in closing new accounts for Avidien products. *See id.* at 24-28. As late as May 2021, plaintiff received positive feedback from Avidien representatives, including Mr. Langlois conveying to plaintiff during a joint-trip to California that "You are performing great! The entire team at Avidien is thrilled with your contributions." *Id.* at 28. On June 9, 2021, plaintiff experienced an unexpected lockout from her work laptop and was advised by Mr. Langlois later that day that her employment had been terminated. *Id.* at 30. Plaintiff contends that after her termination, defendants failed to remunerate her for the completed and pending sales commissions owed to her. [DE-1] at 1-3. She also alleges that "defendant did [not] follow through on compensating plaintiff for three weeks of unused vacation time, unused company holidays, or continued monthly reimbursement for the $904.39 monthly Bright Health healthcare premium [p]laintiff purchased at [d]efendant's directive due to the absence of a healthcare plan within the company." [DE-1-3] at 31.

In sum, plaintiff claims that:

> [d]efendant breached the contract purposefully, by firing [p]laintiff to evade fulfilling their promise of owner equity. Defendant knowingly made false promises to induce [p]laintiff into accepting lower pay. Defendant withheld [p]laintiff's pay for owed sales commissions, violating employment laws.

> Defendant violated the Implied Covenant of Good Faith and Fair Dealing by failing to fulfill valid contractual obligations with Plaintiff.

[DE-1-3] at 1.

III. MOTION TO REMAND

A. Applicable legal standards for removal and remand

"Federal courts are courts of limited jurisdiction and are empowered to act only in those specific instances authorized by Congress." *Bowman v. White*, 388 F.2d 756, 760 (4th Cir. 1968). The presumption is that a federal court lacks jurisdiction in a particular case unless it is demonstrated that jurisdiction exists. *Lehigh Min. & Mfg. Co. v. Kelly*, 160 U.S. 327, 337 (1895). The burden of establishing subject matter jurisdiction rests on the party invoking jurisdiction, here, defendants. *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982). The filing seeking federal jurisdiction must affirmatively allege the grounds for jurisdiction. *Bowman*, 388 F.2d at 760. If the court determines that it lacks subject matter jurisdiction, it must dismiss the action. Fed. R. Civ. P. 12(h)(3). One basis for subject matter jurisdiction, so-called federal question jurisdiction, is that a claim arises under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331. Diversity jurisdiction exists in "civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between . . . citizens of different states . . . ." 28 U.S.C. § 1332(a).

A defendant or defendants in a state court action may remove a matter to federal court if the district court would have had original jurisdiction had the action been filed there in the first instance. 28 U.S.C. §§ 1441(a), 1446(a). The signed notice of removal must be filed within 30 days of receiving the initial state court pleading and need contain nothing more than "a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and

orders served upon such defendant or defendants in such action." *Id.* at 1446(a); *Strawn v. AT&T Mobility LLC*, 530 F.3d 293, 297 (4th Cir. 2008) (noting that a notice of removal "need only allege federal jurisdiction with a short plain statement—just as federal jurisdiction is pleaded in a complaint"). However, "[t]he removal statutes are to be strictly construed against removal, with any doubt in a particular case to be resolved against removal." *Storr Office Supply v. Radar Business Systems*, 832 F.Supp. 154, 156 (E.D.N.C. 1993). Additionally, "when removal is challenged, the removing party bears the burden of demonstrating that removal jurisdiction is proper." *Strawn*, 530 F.3d at 297.

In determining the propriety of a petition for removal, a court will generally restrict itself to "the plaintiff's pleading." *Griffin v. Ford Consumer Fin. Co.*, 812 F. Supp. 614, 616 (W.D.N.C. 1993) (citing *American Fire and Casualty Co. v. Finn*, 341 U.S. 6, 14, 71 S.Ct. 534, 540, 95 L.Ed. 702 (1950). The Supreme Court has noted that "as 'masters of their complaint' plaintiffs are free to purposely omit information that would allow a defendant to allege the amount in controversy with pinpoint precision." *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 94, 126 S.Ct. 606, 163 L.Ed.2d 415 (2005). When a pleading fails to specify the damages sought, "federal courts have determined the amount of controversy by considering all evidence bearing on the issue." *Lawson v. Tyco Elecs. Corp.*, 286 F. Supp. 2d 639, 641 (M.D.N.C. 2003). When a plaintiff contests a defendant's allegation with respect to the amount in controversy, "§ 1446(c)(2)(B) instructs: '[R]emoval . . . is proper on the basis of an amount in controversy asserted' by the defendant 'if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds' the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 88, 135 S. Ct. 547, 553–54, 190 L. Ed. 2d 495

(2014) (alterations in original) (citing 28 U.S.C. § 1446(c)(2)(B)).[4]

B. Analysis

In the notice of removal, defendants represent that plaintiff is a citizen of North Carolina, while (i) Avidien is a foreign corporation incorporated under the laws of the Commonwealth of Massachusetts and with its principal place of business in Massachusetts; (ii) MT Rainin is a foreign corporation incorporated under the laws of the State of Delaware, with its principal place of business in California; and (iii) MT International is a multinational corporation headquartered in Switzerland, incorporated in and under the laws of the State of Delaware, with its principal place of business in Ohio. [DE-1] at 2-3. Defendants cite *Griffin v. Ford Consumer Fin. Co.*, 812 F. Supp. 614, 616 (W.D.N.C. 1993), for the principle that amount in controversy may be derived from the "reasonable inferences drawn from [p]laintiff's [c]omplaint." *Id.* at 4. Defendants contend that the amount in controversy exceeds $75,000.00 based on plaintiff's allegations that MT International "was approximately a $4 billion dollar company" when it acquired Avidien, and that plaintiff seeks damages based on her alleged entitlement to 20% or 55,000 shares in Avidien. [DE-1] at 4.

Plaintiff argues that this case should be remanded to state court because "diversity jurisdiction is improper due to inaccuracies in [d]efendants' representation of their citizenship

[4] While *Dart Cherokee Basin Operating Co., LLC*, 574 U.S. 81, was decided in the context of the removal requirements of the Class Action Fairness Act of 2005, numerous courts in this circuit, including this one, have applied the preponderance of the evidence standard to removals alleging jurisdiction under 28 U.S. Code § 1332(a). *See L. Offs. of Michele A. Ledo, PLLC v. BellSouth Advert. & Publ'g Corp.*, No. 5:07-CV-236-BO, 2008 WL 11429808, at *2 (E.D.N.C. Mar. 27, 2008) ("Defendants must prove the amount-in-controversy requirement by a preponderance of the evidence."); *Mortg. Guar. Ins. Corp. v. Rivera*, No. 319CV00169FDWDCK, 2019 WL 2273754, at *3 (W.D.N.C. May 28, 2019) ("If the plaintiff's complaint does not allege a specific amount of damages, 'the removing defendant must prove by a preponderance of the evidence that the amount in controversy exceeds [$75,000].'") (alterations in original) (quotations omitted); *Meletiou v. Fleetpride, Inc.*, No. 322CV00666FDWDSC, 2023 WL 2468994, at *2 (W.D.N.C. Mar. 10, 2023) ("The party asserting subject matter jurisdiction based on diversity must prove the amount in controversy requirement by a preponderance of the evidence.").

and principal places of business." [DE-21] at 3. Plaintiff also contends that the requisite amount in controversy has not been established because "the damages sought are not clearly quantified in the [c]omplaint and [the] speculative valuation of parent company, [MT International], does not meet statutory requirements. *Id.* at 4-5.

Defendants filed a response in opposition, echoing many of the arguments from its notice of removal, but additionally noting in its discussion of the amount in controversy that plaintiff claims "alleged withheld commissions, unused vacation time, unused company holidays, and monthly healthcare premium reimbursement" and arguing that these categories further raise the amount in controversy above the statutory minimum. [DE-27] at 4.

1. Citizenship

As an initial matter, plaintiff contends that defendants misrepresented themselves to be "foreign entities" although they were in actuality based in the United States. [DE-22] at 6. Defendants counter that a "foreign entity is one located outside of North Carolina." [DE-27] at 3, n. 8.

The undersigned notes that numerous courts have used the term "foreign entities" to refer to citizens of foreign states. *See, e.g.*, *Universal Licensing Corp. v. Paola del Lungo S.p.A.*, 293 F.3d 579, 581 (2d Cir. 2002) ("[D]iversity is lacking within the meaning of these sections where the only parties are *foreign entities*, or where on one side there are citizens and aliens and on the opposite side there are only aliens.") (emphasis added); *Iraola & CIA, S.A. v. Kimberly-Clark Corp.*, 232 F.3d 854, 860 (11th Cir. 2000) ("It is a standard rule that federal courts do not have diversity jurisdiction over cases where there are *foreign entities* on both sides of the action, without the presence of citizens of a state on both sides.") (emphasis added); *Jet Midwest Int'l*

Co., Ltd v. Jet Midwest Grp., LLC, 932 F.3d 1102, 1105 (8th Cir. 2019) ("While our circuit has not addressed the citizenship of a Hong Kong limited company, we adopt the approach employed by the Seventh Circuit for considering the citizenship of *foreign entities*.") (emphasis added).

However, the citizenship of the various defendant entities is clearly established otherwise in both parties' pleadings (*see* [DE-1] at 2-3; [DE-1-3] at 3-5). The undersigned does not find that any ambiguity created by the term "foreign entity" materially impacts the court's diversity jurisdiction analysis.

Plaintiff also argues that defendants' "substantial business operations in North Carolina significantly impact the diversity analysis." [DE-23] at 2. Specifically, plaintiff contends that defendants' use of "existing offices in North Carolina, leveraging business infrastructure and market presence initially established by [p]laintiffs sales efforts" should impact the diversity jurisdiction analysis. *Id.* at 2. Plaintiff cites MT Rainin's filing with the North Carolina Secretary of State to "confirm the subsidiary's active engagement in North Carolina." *Id.*

As no defendant is incorporated in North Carolina, defendants' business activities in North Carolina would only be relevant to the diversity jurisdiction analysis to the extent that they indicate that North Carolina has become a defendant's principal place of business. The Supreme Court has explained that the principal place of business is "the place where the corporation maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination, *i.e.*, the 'nerve center.'" *Hertz Corp. v. Friend*, 559 U.S. 77, 93, 130 S. Ct. 1181, 1192, 175 L. Ed. 2d 1029 (2010). Nothing in plaintiff's allegations or otherwise suggests that any of the defendants have their principal place of business in North

Carolina. *See generally* [DE-1-3]. Additionally, with respect to plaintiff's contention that "[d]efendants availed themselves to personal jurisdiction in Wake County, NC" ([DE-21] at 4; [DE-23] at 2), the court notes that personal jurisdiction and subject matter jurisdiction are distinct legal concepts. Personal jurisdiction over a party does not necessarily make such a party a citizen of the relevant jurisdiction for purposes of diversity jurisdiction. *See Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240, 2 L. Ed. 2d 1283 (1958) (discussing purposeful availment in the context of personal not subject matter jurisdiction).

Additionally, MT Rainin's Annual Reports for the years 2020-2024, filed with the North Carolina Secretary of State, which are attached to plaintiff's motion, consistently provide Oakland, California as the company's principal office. *See* [DE-22-2].

Plaintiff cites "*Truong v. Mead Johnson & Company, LLC* (2016) and *Saadeh v. Farouki* (2011)" as examples of a court's "willingness to remand cases back to state courts even under circumstances of established diversity when substantial local activities and interests are involved." [DE-23] at 2. Plaintiff cites both of these cases and *Oxbow Carbon & Minerals LLC v. Union Pacific Railroad Company* (2013) in support of her position that "[w]hen citizenship isn't sufficiently proved, even when a corporation is acquired by a foreign entity, the case gets remanded back to state court." [DE-21] at 4.

The court has been unable to locate any case under the name of "*Truong v. Mead Johnson & Company, LLC*." To the extent plaintiff's reference to *Oxbow Carbon & Minerals LLC v. Union Pacific Railroad Company* (2013) was intended to refer to *Oxbow Carbon & Mins. LLC v. Union Pac. R. Co.*, 926 F. Supp. 2d 36, 39 (D.D.C. 2013), that case was brought under the Sherman Act and does not discuss diversity jurisdiction or remand to state court. To

the extent that plaintiff was attempting to reference *Saadeh v. Farouki*, 107 F.3d 52 (D.C. Cir. 1997), with her remaining reference, that case provides that a "change in citizenship and possible change in domicile could not cure a defect in complete diversity if one existed at the time [the plaintiff] filed his complaint" and that 28 U.S.C. § 1332 does not confer "diversity jurisdiction over a lawsuit between an alien on one side, and an alien and a citizen on the other side, regardless of the residence status of the aliens." *Id.* at 56-57, 61. Neither of these scenarios is applicable here. Specifically, there are no allegations that there are aliens on both sides of the current case.

It is noted that in courts across the nation, an apparent increased use of artificial intelligence technologies has given rise to citations to non-existent cases or legal citations that do not stand for the proposition cited by parties blindly relying on such technologies. *See, e.g.*, *Transamerica Life Ins. Co. v. Williams*, No. CV-24-00379-PHX-ROS, 2024 WL 4108005, at *2 (D. Ariz. Sept. 6, 2024) ("Defendant Williams' filings are replete with citations to nonexistent caselaw and legal authorities that do not correspond to her claims, suggesting that Defendant Williams may be using AI, such as ChatGPT, to draft her briefs, which is impermissible when fictitious legal authorities are cited."); *Lee v. Delta Air Lines, Inc.*, No. 20CV01705WFKLGD, 2024 WL 1230263, at *3 (E.D.N.Y. Mar. 22, 2024) ("[T]he Court maintains serious concern that at least one of Plaintiff's cited cases is non-existent and may have been a hallucinated product of generative artificial intelligence"). As another court has noted, "[q]uite obviously, many harms flow from such deception—including wasting the opposing party's time and money, the [c]ourt's time and resources, and reputational harms to the legal system (to name a few)." *Morgan v. Cmty. Against Violence*, No. 23-CV-353-WPJ/JMR, 2023 WL 6976510, at *8

(D.N.M. Oct. 23, 2023); *see also Dukuray v. Experian Info. Sols.*, No. 23 CIV. 9043 (AT) (GS), 2024 WL 3812259, at *11 (S.D.N.Y. July 26, 2024) ("An attempt to persuade a court or oppose an adversary by relying on 'non-existent precedent generated by ChatGPT' is an 'abuse of the adversary system.'") (quoting *Park v. Kim*, 91 F.4th 610, 615 (2d Cir. 2024)), *report and recommendation adopted*, No. 23 CIV. 9043 (AT), 2024 WL 3936347 (S.D.N.Y. Aug. 26, 2024).

The undersigned further notes when an attorney or unrepresented party files a document with the court, he or she certifies, *inter alia*, that "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances[,]" the document's "legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed. R. Civ. P. 11(b)(2). "Although courts [may] 'make some allowances for [a] *pro se* [p]laintiff's failure to cite to proper legal authority,' courts do not make allowances for a [p]laintiff who cites to fake, nonexistent, misleading authorities." *Morgan*, 2023 WL 6976510, at *7 (quoting *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013)).

In light of plaintiff's *pro se* status and possible lack of familiarity with the risks connected with certain legal tools, the undersigned styles this cautionary guidance as a warning, as opposed to a sanction. However, the instant forbearance exhausts the undersigned's leniency in this regard. Should the filings of either party include citations to nonexistent cases in the future, it may result in "sanctions such as the pleading being stricken, filing restrictions imposed, or the case being dismissed." *See Morgan*, 2023 WL 6976510, at *8.

Accordingly, defendants have met their burden of demonstrating diversity of citizenship,

and the undersigned is not persuaded by any of the plaintiff's remand arguments to the contrary.

2. Amount in controversy

As noted above, when the amount in controversy is in dispute, the court determines "'by the preponderance of the evidence, whether the amount in controversy exceeds' the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC*, 574 U.S. at 88 (citing 28 U.S.C. § 1446(c)(2)(B)). The undersigned does not find that defendants have demonstrated the requisite amount in controversy for federal jurisdiction by the preponderance of the evidence.

Plaintiff did not specify an amount of damages in her complaint, and plaintiff's filings include no allegations with respect to the equity value of Avidien. *See generally* [DE-1-3]. Defendants have not provided a logical basis to support a reasonable inference that because MT International's alleged value is four billion dollars, any entity it purchases must be worth approximately $375,000.00 or more.[5] Similarly, while plaintiff's filings indicate that her monthly healthcare premium reimbursement was approximately $904.39 (*see* [DE-1-3] at 31) and her unused vacation time was worth approximately, $5,192.31 (*id.*),[6] there is no information from which to reasonably infer the monetary value of her "alleged withheld commissions . . . [and] unused company holidays." *See* [DE-27] at 4. Moreover, "courts [including this one] have repeatedly ruled that a demand for punitive damages, without more, is insufficient to establish that the amount in controversy exceeds $75,000." *Matt v. Fifth Third Bank, Inc.*, No. 5:18-CV-101-BR, 2018 WL 3846310, at *3 (E.D.N.C. Aug. 13, 2018).

[5] If Avidien were worth $375,000.00, plaintiff's alleged 20% stake would be worth $75,000.00. The undersigned notes that when combined with plaintiff's "alleged withheld commissions, unused vacation time, [and] unused company holidays" ([DE-27] at 4), an equity value for Avidien of slightly less than $375,000.00 would likely also support the requisite amount in controversy for federal jurisdiction, but there is equally no evidence supporting any such amount.

[6] In light of plaintiff's alleged salary of $90,000.00, the undersigned calculates, for purposes of the instant memorandum and recommendation only, the value of her three alleged weeks of vacation time (*see* [DE-1-3] at 31) to be approximately $5,192.31.

Defendants have not pointed to evidence that the amount in controversy in this case exceeds $75,000.00. While plaintiff has similarly not pointed to any evidence indicating that the amount in controversy is $75,000.00 or less, defendants here bears the evidentiary burden. *Cf. Scott v. Cricket Commc'ns, LLC*, 865 F.3d 189, 196, n. 5 (4th Cir. 2017) (noting that even "[w]hen only one party submits evidence, we accept it as uncontroverted but must still test whether the responsible party has met its burden."). Accordingly, the undersigned finds that defendants have not met their burden of demonstrating the court's jurisdiction over this case.

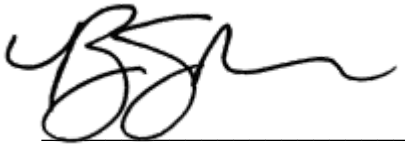
IV. CONCLUSION

For the reasons stated above, the undersigned RECOMMENDS that plaintiff's motion to remand [DE-21] be GRANTED. Additionally, in light of the above recommendation, the undersigned RECOMMENDS that defendants' motion to dismiss [DE-8] be DENIED AS MOOT.

IT IS DIRECTED that a copy of this Memorandum and Recommendation be served on the respective parties or, if represented, their counsel. Each party shall have until **December 30, 2024**, to file written objections to the Memorandum and Recommendation. The presiding district judge must conduct his own review (that is, make a *de novo* determination) of those portions of the Memorandum and Recommendation to which objection is properly made and may accept, reject, or modify the determinations in the Memorandum and Recommendation; receive further evidence; or return the matter to the magistrate judge with instructions. *See, e.g.*, 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); Local Civ. R. 1.1 (permitting modification of deadlines specified in local rules), 72.4(b), E.D.N.C. Any response to objections shall be filed within **14 days** of the filing of the objections.

If a party does not file written objections to the Memorandum and Recommendation by the foregoing deadline, the party will be giving up the right to review of the Memorandum and Recommendation by the presiding district judge as described above, and the presiding district judge may enter an order or judgment based on the Memorandum and Recommendation without such review. In addition, the party's failure to file written objections by the foregoing deadline will bar the party from appealing to the Court of Appeals from an order or judgment of the presiding district judge based on the Memorandum and Recommendation. ***See Wright v. Collins*****, 766 F.2d 841, 846-47 (4th Cir. 1985).**

Submitted, this 16th day of December, 2024.



Brian S. Meyers
United States Magistrate Judge