NO. _______

In the

Supreme Court of The United States

SUSAN ROMANOV

Petitioner,

V.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

SEPARATE APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Volume 1

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SEPARATE APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

(Follows . . . Bound Separately)

Volume One

Volume Two

NOT RECOMMENDED FOR PUBLICATION

No. 24-5997

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SUSAN ROMANOV,
Plaintiff-Appellant,

v.

STATE FARM AUTOMOBILE INSURANCE COMPANY,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE

O R D E R

Filed
April 2, 2026
Kelly Stephens Clerk

Before: MOORE, COLE, and HERMANDORFER, Circuit Judges.

Susan Romanov, a Tennessee litigant proceeding pro se, appeals the district court's judgment following a jury verdict in favor of State Farm Mutual Automobile Insurance Company (State Farm) on her breach-of-contract claim. Romanov also moves this court for reconsideration of its order denying her motion to augment the record on appeal. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. See Fed. R. App. P. 34(a). As set forth below, we deny Romanov's motion for reconsideration and affirm the district court's judgment.

I.

Romanov, then known as Susan Carrichner, filed a pro se complaint against State Farm over its handling of her insurance claim for a stolen truck and trailer. *Carrichner v. State Farm Mut. Auto. Ins.*, No. 3:19-cv-90 (E.D. Tenn.). Romanov's original complaint invoked diversity of citizenship jurisdiction under 28 U.S.C. § 1332, asserting an amount in controversy in excess of $75,000, and included claims for intentional infliction of emotional distress, breach of contract, negligence and bad faith, and violation of the Tennessee Unfair Claims Settlement Practices Act.

Upon Romanov's application, the clerk entered State Farm9s default. Romanov then moved for a default judgment. After an attorney entered an appearance on her behalf, the parties agreed that the clerk9s entry of default should be set aside because Romanov did not properly effectuate service on State Farm. Romanov, through counsel, amended her complaint to assert only a breach-of-contract claim. Romanov's counsel later withdrew, and she proceeded pro se.

Following the expiration of the discovery and dispositive-motion deadlines, Romanov again moved to amend her complaint. A magistrate judge denied Romanov's motion because allowing her to amend her complaint at such a late stage in the litigation would be highly prejudicial to State Farm. Shortly after that ruling and a month before the scheduled trial date, Romanov moved to voluntarily dismiss her case without prejudice. The district court granted her motion but imposed three conditions to offset the prejudice State Farm may suffer resulting from dismissal".

1. Should Plaintiff decide to refile her case, it must be refiled in the Eastern District of Tennessee before this Court, and it must be filed within the time period permitted by law.

2. All previous rulings and entries on the docket for this case must stand, and, if refiled before the Court, the case will be in the same procedural posture as when it was dismissed.

3. If Plaintiff prevails in her refiled suit, she must pay Defendants' expenses, costs, and fees for work performed in the first suit that cannot be used in the second suit.

When Romanov sought clarification of those conditions, the district court responded that, "absent a change in circumstances, [she] would not be permitted to assert new claims against State Farm in any newly filed case in this Court."

Romanov appealed the voluntary-dismissal order. We dismissed her appeal for lack of jurisdiction, concluding that the conditions imposed by the district court did not create sufficient legal prejudice against her to be appealable. *Carrichner v. State Farm Mut. Auto. Ins.*, No. 20-6205, 2022 WL 1194387 (6th Cir.

Feb. 3, 2022).

Returning to the district court, Romanov filed another complaint against State Farm, which she then amended. *Romanov v. State Farm Mut. Auto. Ins.*, No. 3:22-cv-443 (E.D. Tenn.). Romanov asserted claims for breach of contract, negligence and bad faith, violation of the Tennessee Unfair Claims Settlement Practices Act, and fraud and sought $125,000 in compensatory damages and $250,000 in punitive damages. State Farm moved to dismiss Romanov's complaint, as amended, while Romanov moved for relief from the district court's voluntary-dismissal order in her prior case. The district court denied Romanov's motion for relief from the voluntary-dismissal order, concluding that the order's conditions remained in effect. Applying those conditions, the district court granted State Farm9s motion to dismiss in part and dismissed all of Romanov's claims except for her breach-of-contract claim.

Romanov then moved to dismiss her case for lack of subject-matter jurisdiction, arguing that the amount in controversy no longer exceeded $75,000 due to the district court's rulings limiting her damages. The district court denied her motion. Romanov moved to amend her complaint to reduce the damages sought. The district court denied that motion as well. Romanov filed an appeal, which we dismissed for lack of jurisdiction. *Romanov v. State Farm Mut. Auto. Ins.*, No. 23-5868, 2023 WL 10555168 (6th Cir. Dec. 5, 2023).

Romanov's breach-of-contract claim against State Farm proceeded to trial. The jury returned a verdict in favor of State Farm, and the district court entered judgment in accordance with that verdict. Romanov filed a motion for a new trial, which the district court denied. This timely appeal followed.

II.

A. <u>Motion for Reconsideration</u>

After filing this appeal, Romanov moved the district court as well as this court to correct and supplement the pretrial and trial transcripts. Romanov also filed a petition for a writ of mandamus, asking this court to order the district court to correct and supplement the transcripts. The district court denied Romanov's transcript motion; we also denied her transcript motion along with her mandamus petition. *Romanov v. State Farm Mut. Auto. Ins.*, Nos. 24-5997/25-5123 (6th Cir. June 3, 2025). Romanov then moved this court to augment the record on appeal. We denied her motion. *Romanov v. State Farm Mut. Auto. Ins.*, No. 24-5997, 2026 U.S. App. LEXIS 472 (6th Cir. Jan. 7, 2026).

Romanov now moves for reconsideration of this court's order denying her motion to augment the record. She continues to argue that relevant portions of the pretrial and trial proceedings have been omitted from the transcripts. If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly. Fed. R. App. P. 10(e)(1). As we pointed out, the district court already settled this issue against Romanov and acted within its discretion in doing so. Because Romanov has failed to show that this court overlooked or misapprehended any point of law or fact in denying her motion to augment the record, see Fed. R. App. P. 40(b)(1)(A), we deny her motion for reconsideration.

B. Subject-Matter Jurisdiction

Romanov challenges the district court's exercise of subject-matter jurisdiction over her case. We review her jurisdictional challenge de novo. *Hale v. Morgan Stanley Smith Barney LLC*, 982 F.3d 996, 997 (6th Cir. 2020).

Romanov argues that the district court lacked subject-matter jurisdiction over the case at the time of trial because the amount in controversy did not exceed $75,000. Under 28 U.S.C. § 1332, district courts have original jurisdiction of all 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)(1). The amount in controversy for federal diversity jurisdiction purposes is determined as of the time the action is commenced. *Worthams v. Atlanta Life Ins.*, 533 F.2d 994, 997 (6th Cir. 1976). Generally, the amount claimed by the plaintiff in the complaint rules, as long as claimed in good faith . . . . *Charvat v. GVN Mich., Inc.*, 561 F.3d 623, 628 (6th Cir. 2009).

In her initial complaint against State Farm, Romanov alleged that the parties were citizens of different states and that the amount in controversy exceeded $75,000. When Romanov refiled her case against State Farm, she again alleged in her complaint that the amount in controversy exceeded $75,000, seeking $125,000 in compensatory damages and $250,000 in punitive damages. The district court therefore had subject-matter jurisdiction when Romanov commenced both actions.

Romanov argues that the district court9s subsequent rulings4specifically its ruling dismissing her claim for punitive damages reduced the amount in controversy to an amount below $75,000. But [e]vents occurring subsequent to the institution of suit which reduce the amount recoverable below the statutory limit do not oust jurisdiction. *St. Paul Mercury Indem. Co. v. Red Cab Co.,* 303 U.S. 283, 289-90 (1938); see *Klepper v. First Am. Bank,* 916 F.2d 337, 340 (6th Cir. 1990). Neither the district court's rulings nor Romanov's attempt to amend her complaint to allege an amount in controversy below $75,000 even if allowed affected the district court's jurisdiction. See *Grant Cnty. Deposit Bank v. McCampbell,* 194 F.2d 469, 472 (6th Cir. 1952) (Nor does a reduction of the amount claimed below the required jurisdictional amount defeat jurisdiction previously acquired.). Contrary to Romanov9s arguments, the district court retained subject-matter jurisdiction over her case from its commencement through trial.

Romanov also argues that 28 U.S.C. § 1447(c) required dismissal: If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. But § 1447(c) applies to cases removed from state court. Romanov originally filed both cases in the district court.

C. Voluntary-Dismissal Order

Romanov challenges the conditions imposed by the district court on the voluntary dismissal of her prior case against State Farm. We review those conditions for abuse of discretion. See *Duffy v. Ford Motor Co.*, 218 F.3d 623, 629 (6th Cir. 2000).

The district court issued its dismissal order pursuant to Federal Rule of Civil Procedure 41(a)(2), which provides that an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. Fed. R. Civ. P. 41(a)(2). A Rule 41(a)(2) dismissal may be conditioned on whatever terms the district court deems necessary to offset the prejudice the defendant may suffer from a dismissal without prejudice. *Bridgeport Music, Inc. v. Universal-MCA Music Publ'g, Inc.*, 583 F.3d 948, 954 (6th Cir. 2009). To offset the prejudice State Farm may suffer resulting from dismissal, the district court imposed the following conditions on Romanov's voluntary dismissal: (1) if she chose to refile her case, she must do so in the same court within the time period permitted by law; (2) the refiled case would be in the same procedural posture as when it was dismissed, with all prior rulings continuing to stand; and (3) she would be required to pay State Farm's unnecessary expenses, costs, and fees for work performed in the first suit that cannot be used in the second suit if she prevailed in the refiled case.

Romanov argues that the district court abused its discretion in imposing the conditions because she was not given notice of those conditions and an opportunity to negotiate them. In a case involving a similar condition that all prior rulings would apply to a refiled case, we held that the district court should have given the [plaintiffs] notice and an opportunity to withdraw their motion [for voluntary dismissal] before imposing the law-of-the-case condition. *Duffy*, 218 F.3d at 634.

State Farm contends that Romanov had notice of the conditions because it proposed those conditions in response to her motion for voluntary dismissal. Romanov is correct that the district court entered the voluntary-dismissal order before her time for filing a reply had expired. But after the district court entered that order, Romanov did not move to withdraw her motion to voluntarily dismiss her case or to alter or amend the voluntary-dismissal order and did not otherwise object to the conditions imposed by the district court. She instead filed a motion for clarification of those conditions. When the district court issued its clarification, Romanov filed an appeal rather than a motion for relief from the voluntary-dismissal order.

Further, even if the district court abused its discretion in failing to give Romanov notice of the conditions and an opportunity to withdraw her motion for voluntary dismissal, that error was harmless. See Fed. R. Civ. P. 61 (At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.). If Romanov had withdrawn her motion, then she would have proceeded to trial on her breach-of-contract claim. That ultimately happened in her refiled case.

Romanov also argues that, in enforcing the law-of-the-case condition and refusing to allow her to bring additional claims in the refiled case, the district court failed to follow Tennessee law. According to Romanov, a voluntary dismissal under Tennessee law places the parties in their original positions prior to the filing of the suit. *Himmelfarb v. Allain*, 380 S.W.3d 35, 40 (Tenn. 2012). In a diversity case like this one, state law governs substantive issues [but] federal law governs procedural issues. *Greer v. Strange Honey Farm, LLC*, 114 F.4th 605, 613 (6th Cir. 2024). Federal procedural law specifically allows a district court to condition a voluntary dismissal on terms that the court considers proper. Fed. R. Civ. P. 41(a)(2). And we previously rejected Romanov's argument that the law-of-the-case condition legally prejudiced her. See *Carrichner*, 2022 WL 1194387, at *2.

D. Pretrial Rulings

Romanov challenges various rulings (or non-rulings) made by the district court leading up to trial. We review the district court's scheduling and evidentiary decisions for abuse of discretion. See *Burley v. Gagacki*, 834 F.3d 606, 617 (6th Cir. 2016); *Marcilis v. Township of Redford*, 693 F.3d 589, 597 (6th Cir. 2012).

As an initial matter, Romanov argues that the district court unreasonably scheduled the pretrial conference to be held one week before trial, leaving her insufficient time to finish her trial preparation and subpoena witnesses. The district court had reset the trial date multiple times from an initial date of November 13, 2023, to an ultimate date of July 1, 2024 including continuances at Romanov's request. The district court set the July 1, 2024, trial date in March, giving Romanov ample time to prepare.

Romanov moved for an evidentiary hearing as to State Farm's alleged fraud on the court. In response to Romanov's motion for a default judgment in her first case, State Farm asserted that it had not been properly served and would not have been aware of the case but "for a random review of federal court files." Romanov argued that she learned that these representations by State Farm were untrue when she later received a copy of her claims file. The district court denied Romanov's motion for an evidentiary hearing, pointing out that the parties resolved the service issue in her first case by agreement. And Romanov conceded that there were no service issues in the refiled case. The district court therefore acted within its discretion in denying Romanov's motion for an evidentiary hearing.

Romanov argues that the district court's decision granting State Farm's motions in limine prevented her from establishing her breach-of-contract claim. State Farm moved to bar Romanov from referencing her dismissed claims and attorney fees and from attacking its counsel. The district court granted State Farm's motions in limine, finding that there was no probative value in dredging up dismissed claims and inapplicable attorneys-fee provisions, see Fed. R. Evid. 401, and noting that Romanov had agreed not to verbally insult counsel. Romanov has failed to show that the district court abused its discretion in granting State Farm's motions in limine.

Romanov also complains about the district court's decision to reserve ruling on State Farm9s motion to exclude correspondence and other documents, asserting that the district court's failure to provide clarity as to the admissibility of this evidence prejudiced her. Given that State Farm's motion did not specify the documents to which it took issue, the district court acted within its discretion to reserve ruling and instead address specific objections at trial.

According to Romanov, the district court failed to consider her pro se status during the pretrial conference. But the lenient treatment generally accorded to pro se litigants has limits. *Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996). District judges have no obligation to act as counsel or paralegal to pro se litigants. *Pliler v. Ford*, 542 U.S. 225, 231 (2004).

Romanov mentions, without elaboration, other rulings and non-rulings by the district court during the pretrial conference. Romanov has forfeited appellate review of these issues because her appellate brief merely adverts to them in a perfunctory manner, unaccompanied by some effort at developed argumentation. *McPherson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997) (quoting *Citizens Awareness Network, Inc. v. U.S. Nuclear Regul. Comm'n*, 59 F.3d 284, 293-94 (1st Cir. 1995)); see *Geboy v. Brigano*, 489 F.3d 752, 767 (6th Cir. 2007) (citing this standard in a pro se appeal).

Less than a week before trial, Romanov moved the district court for a more definitive statement as to its pretrial rulings. The district court addressed Romanov's concerns on the first day of trial before bringing the jury into the courtroom. Romanov has failed to show that the district court abused its discretion with respect to her motion for a more definitive statement.

Romanov contends that the district court ignored or distorted the issues raised in her motions, citing her "amended expedited" motion to continue trial. In that motion, filed a few days before trial, Romanov raised her pro se status, the district court's decision to reserve ruling on some motions in limine, State Farm's alleged "fraud on the court", and her inadequate time to prepare for trial. The district court denied Romanov's motion, concluding that she had failed to establish good cause to continue the trial date. On appeal, Romanov has failed to explain how the district court ignored or distorted her arguments and therefore has failed to show any abuse of discretion in denying her motion.

E. <u>Motion for New Trial</u>

Romanov challenges the district court's denial of her motion for a new trial. We review the denial of a new-trial motion for abuse of discretion. See *Harden v. Hillman,* 993 F.3d 465, 475 (6th Cir. 2021). A district court may grant a motion for a new trial on all or some of the issues . . . after a jury trial, for any reason for which "a new trial has heretofore been granted in an action at law in federal court". Fed. R. Civ. P. 59(a)(1). "A new trial is warranted when a jury has reached a seriously erroneous result as evidenced by: (1) the verdict being against the weight of the evidence; (2) the damages being excessive; or (3) the trial being unfair to the moving party in some fashion, i.e., the proceedings being influenced by prejudice or bias." *Balsley v. LFP, Inc.*, 691 F.3d 747, 761 (6th Cir. 2012) (citation modified). As the district court pointed out, the first two grounds were inapplicable because Romanov did not argue that the jury's verdict in favor of State Farm was against the weight of the evidence and because the jury did not award any damages, leaving only whether the trial was unfair.

Forfeiture: Romanov asks this court to "consider all of the facts and arguments within her motion for a new trial [DOC 205] and her reply to State Farm9s response [DOC 208]". But "a party is not allowed to incorporate by reference into its appellate brief the documents and pleadings filed in the district court". *Thomas M. Cooley Law Sch. v. Am. Bar Ass'n,* 459 F.3d 705, 710 (6th Cir. 2006); see *Northland Ins. Co. v. Stewart Title Guar. Co.*, 327 F.3d 448, 452-53 (6th Cir. 2003).

We will address the specific arguments that Romanov raises in her appellate brief. She has otherwise forfeited appellate review of the district court's denial of her motion for a new trial. See *Thomas M. Cooley Law Sch.*, 459 F.3d at 710.

Voir Dire: Romanov argues that the district court failed to dismiss jurors who were current or past customers of State Farm, asserting that those jurors "had an inferred bias in favor of State Farm." But when asked, none of the prospective jurors who had policies with State Farm indicated that there was anything that "would impact [their] judgment about this case" or that they had a "particularly good or particularly bad experience with State Farm." Romanov also contends that the district court rejected her for-cause challenge to a juror who had worked in the insurance industry and that the juror became the foreperson of the jury, "most likely due to his knowledge being in the business of insurance." That juror stated that he had done some work in information technology for a small independent insurance agency. Romanov challenged the juror for cause, stating that she liked the juror but felt "like he might have some bias" because "he was associated some with insurance." The district court overruled Romanov's challenge because it "didn't hear any basis for believing that [the juror] could not be fair." Although she received and used peremptory challenges, Romanov did not use her challenges to strike that juror. In any event, Romanov has failed to show that any juror deliberately concealed information or was actually biased so as to warrant a new trial. See *Zerka v. Green*, 49 F.3d 1181, 1186 (6th Cir. 1995).

Jury Instructions: Romanov challenges the district court9s jury instructions, apparently arguing that the district court should have instructed the jury that she could still recover damages even though the insured truck had been repossessed. When asked at trial if she had any objections to the proposed jury instructions, Romanov stated that she did not. And she acknowledged in her motion for a new trial that "the parties had pre-approved" the jury instructions.

We therefore review for plain error. See Fed. R. Civ. P. 51(d)(2). Although Romanov contends that the district court omitted an instruction that correctly stated the law, she does not provide any proposed language that the district court should have given to the jury. Romanov has therefore failed to satisfy her burden to demonstrate plain error.

Accommodation of Disability: During trial, Romanov contends, the district court required her to hide her disability from the jury. But during voir dire, the district court explained that Romanov had "an issue with her foot" and that she had been granted permission to remain seated. Romanov also argues that the district court refused to accommodate her disability, citing issues with the courtroom technology. During trial, the district court explained to Romanov that it was "not responsible for displaying [her] documents" and that she had been advised to test the system before trial started. The district court nonetheless asked State Farm's counsel to assist Romanov with displaying exhibits. In any event, the district court had no obligation to act as Romanov's counsel or otherwise assist her in presenting her case. See *Ford*, 542 U.S. at 231.

Judicial Bias: Romanov contends that the district court's rulings and openly evident display of bias against her in front of the jury prejudiced her at trial. But Romanov has forfeited this issue by failing to provide any developed argument in support of it and merely referencing her motion for a new trial. See *Thomas M. Cooley Law Sch.*, 459 F.3d at 710; *McPherson*, 125 F.3d at 995-96. In any event, the district court's rulings are proper grounds for appeal, not a bias or partiality challenge, *Liteky v. United States*, 510 U.S. 540, 555 (1994), and this order addresses Romanov's challenges to the district court's various rulings. As for the district court's conduct before the jury, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. Id.

F. <u>Due Process</u>

Romanov asserts, without elaboration, that the district court violated her rights to procedural and substantive due process. Romanov has forfeited her due process claim by failing to provide any argument in support of it. See *McPherson,* 125 F.3d at 995-96 (It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to . . . put flesh on its bones. (quoting Citizens Awareness Network, Inc., 59 F.3d at 293-94)).

G. Cumulative Error

Finally, Romanov asks us to consider this appeal under the cumulative-error doctrine. Under that doctrine, "we consider the 'combined effect' of multiple trial errors to determine whether they are unfairly prejudicial." *Beck v. Haik*, 377 F.3d 624, 644 (6th Cir. 2004) (quoting United States v. Parker, 997 F.2d 219, 222 (6th Cir. 1993)). But this doctrine applies only if we identify errors to cumulate. See *United States v. Sypher*, 684 F.3d 622, 628 (6th Cir. 2012). Because we have not identified any trial errors, the cumulative-error doctrine does not apply.

III.

For these reasons, we **DENY** Romanov's motion for reconsideration and **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT
/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

No. 24-5997

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SUSAN ROMANOV,
Plaintiff-Appellant,

Filed
Jan 7, 2026
Kelly Stephens Clerk

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Defendant-Appellee.

ORDER

Before: MOORE, COLE, and HERMANDORFER, Circuit Judges.

Susan Romanov, proceeding pro se, appeals the district court's judgment following a jury verdict in favor of State Farm Mutual Automobile Insurance Company on her breach-of-contract claim. For a second time, Romanov moves this court to augment the record on appeal.

In support of her motion to augment the record, Romanov contends that relevant portions of the pretrial and trial proceedings have been omitted from the transcripts. Romanov has provided, under penalty of perjury, the statements allegedly omitted from the transcripts.

Under Federal Rule of Appellate Procedure 10(e)(1), "[i]f any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly." Fed. R. App. P. 10(e)(1). This rule requires the district court to "consider and settle the dispute." *United States v. Brika*, 416 F.3d 514, 530 (6th Cir. 2005). Under Rule 10(e)(2), "[i]f anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded" "by the court of appeals." Fed. R. App. P. 10(e)(2).

Before the district court, Romanov moved to correct the pretrial and trial transcripts under Rule 10(e). The district court rejected Romanov's motion as "generally unsupported by any evidence" and "conclusory." R. 223, PageID 3319. Three days after she moved in the district court, but before the district court ruled on the motion, Romanov moved in this court to correct the final pretrial conference and trial transcripts. We denied the motion. We explained that Rule 10(e)(2)(C) "applies only when the parties show that some concrete material should have been but was not included in the record on appeal and can provide it for our review. "*Romanov v. State Farm Mut. Auto. Ins. Co.*, No. 24-5997, DN 24 at 2 (6th Cir. June 3, 2025)." Romanov's motion instead fell "squarely within the scope of Rule 10(e)(1)" because it "contend[ed] that the transcripts do not accurately reflect what happened in the district court and must be corrected." *Id.* We thus lacked "authority to resolve her request." *Id.*

The same is true with respect to Romanov's current motion. Romanov essentially contests "whether the record truly discloses what occurred in the district court," an argument that "must be submitted to and settled by that court." Fed. R. App. P. 10(e)(1). That has already happened—the district court settled the issue against Romanov. And to the extent that Romanov argues that the district court erred in denying her motion, we discern no "abuse [of] discretion" on the part of the district court. *Eyerman v. Mary Kay Cosms., Inc.*, 967 F.2d 213, 216 (6th Cir. 1992).

Accordingly, we **DENY** Romanov's motion to augment the record.

ENTERED BY ORDER OF THE COURT
/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

No. 24-5997/25-5123
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SUSAN ROMANOV,
Plaintiff-Appellant,
v.
STATE FARM AUTOMOBILE INSURANCE COMPANY,
Defendant-Appellee.

In re: SUSAN ROMANOV,
Petitioner (No. 25-5123).

Filed
June 3, 2025
Kelly Stephens Clerk

ORDER

Before: GIBBONS, BUSH, and DAVIS, Circuit Judges.

In Case No. 24-5997, Plaintiff Susan Romanov appeals the district court's judgment after a jury returned a verdict in favor of Defendant State Farm Mutual Automobile Insurance Company in Romanov's action for breach of contract. Romanov moves to correct and supplement the transcripts of her trial and final pretrial conference and to extend the time to file her brief. In Case No. 25-5123, Romanov separately petitions for a writ of mandamus, requesting that we order the district court to correct the transcripts and supplement the record.

appellate record by accident); *Abu-Joudeh v. Schneider*, 954 F.3d 842, 848 (6th Cir. 2020) (stating that Rule 10(e)(2) "does not allow parties to introduce new evidence in the court of appeals" (cleaned up)). Romanov contends that the transcripts do not accurately reflect what happened in the district court and must be corrected to include statements that she cannot identify; we accordingly lack authority to resolve her request in the first instance. Fed. R. App. P. 10(e)(1); *Curtis*, 488 F. App'x at 957; Miles, 250 F. App'x at 741.

Romanov's mandamus petition, in which she raises the same contentions and takes issue with the district court's denial of her motion to supplement the record, also cannot succeed. Mandamus relief "is a 'drastic and extraordinary' remedy." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004) (quoting Ex parte Fahey, 332 U.S. 258, 259–60 (1947)). It can be granted only if, among other conditions, "the party seeking issuance of the writ . . . ha[s] no other adequate means to attain the relief [s]he desires." Id. at 380 (quoting *Fahey*, 332 U.S. at 260). That limitation is "designed to ensure that the writ will not be used as a substitute for the regular appeals process." Id. at 380–81. Here, Romanov could have appealed the denial of her motion to supplement. That she did not does not change that she had an adequate alternative remedy to obtain the remedies she requests. *Cf. Rimmer v. Holder*, 700 F.3d 246, 262 (6th Cir. 2012) ("Adequacy [of alternative remedies] does not depend on a party's ability to prevail on the merits.").

Accordingly, the petition for a writ of mandamus in Case No. 25-5123, as amended, is DENIED. The motion to extend the deadline to file appellant's brief and supplement the record in Case No. 24-5997 is GRANTED IN PART and DENIED IN PART. The request to supplement the record is **DENIED**, but the request to extend is GRANTED. The clerk shall reset the briefing schedule following entry of this order.

ENTERED BY ORDER OF THE COURT
/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

Filed
August 17, 2024
ECF DOC 208 Ex. 2

SUSAN ROMANOV
(fka: Susan Carrichner),
Plaintiff,

v. No. 3:22-cv-00443-TRM-DCP
JURY DEMANDED

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY
Defendant.

EXHIBIT B

REPLY DECLARATION OF VLADIMIR ROMANOV

Comes now, Vladimir Romanov under penalty of perjury and hereby swears that the following is true and correct and declares:

1. I am over the age of'18 and of sound mind and capable of making this declaration.

2. I have personal first-hand knowledge of the statements made herein having been present in the courtroom during the Pre-Trial Conference on June 24, 2024 and both days of trial on July I, 2024 and July 3, 2024.

3. On July 1, 2024, during jury selection, the judge would not dismiss any customers of State Farm for bias and kept stating to each juror, seemingly as a

directive, that they did not have a conflict rather than expressed initially as a question. Thereafter, juror agreed either vocally or with an appearance of agreeing with the judge [who none wanted to disobey].

4. I was present at all times to observe when the Judge held side bars during the trial.

5. I was able to observe those sidebars but clearly hear the conversations being held at the counsel cable where my wife was sitting in the courtroom wherein the Judge, my wife, and counsel for State Farm and the court reporter participated.

6. During the sidebar on July 1, 2024 at my wife's counsel table, 1 heard my wife state "bias" as the reason she was challenging juror #2 specifically stating that he was in the insurance business like State Fann. The judge denied my wife's challenge to remove juror #2 for bias with an explanation that he liked the juror and thought he would be a good one. My wife argued that she liked the attitude of the juror as well but that he still had a conflict. My wife also mentioned the issue with the many State Farm customers still in the jury pool that were not dismissed for bias by the judge during his questioning of the first approximately half of potential jurors. The judge denied removal of juror #2 for bias.

7. There were many potential jurors in the courtroom to replace juror #2; and there were a large number of total potential jurors [maybe 50 in number] in the courtroom when the vast majority of the first approximately 30 potential jurors were the first to be questioned. It was openly surprisingly apparent to

everyone in the courtroom [including the potential jurors] that so many of the potential jurors were State Farm customers and only one that I can recall stated that they were unhappy with the outcome of a claim they had filed.

8. At the end of the first day of trial, after the judge changed the start time for July 3, 2024 to be 8:00am, I heard the court clerk announce specifically that the courtroom would not be unlocked and open until 8:00am and not any sooner.

9. On July 3, 2024, my wife and 1 arrived shortly before 8:00am and I was surprised to see the courtroom open and others inside already and swiftly left to go repark our car.

10. 1 arrived back in the courtroom for the second time at approximately 8:03am and observed a male security guard struggling to help my wife climb up the steps to the witness box. The judge was not in the courtroom yet and the trial had not started.

11. 1 was shocked to hear the judge admonish my wife for the court starting a few minutes late on the record.

12. This Court admonished my wife in front of the jury on multiple times while she was seated in the witness box testifying including visual scowls and aggressive voice tones. I observed the faces and confusion of the jurors when this happened. The impression was the Judge's openly expressed distaste for my wife and the jury trying to understand the reason.

13. The judge's distaste for my wife trying to

argue motions before the court [out of the presence of the jury] was just as evident. During the Pre-Trial Conference, the judge openly expressed distaste for my wife on multiple occasions.

14. Shortly after the jury was dismissed to deliberate, my wife confronted the judge with the fact that "repossession of the truck" and her not still having possession of the truck was not relevant to her breach of contract claim and that the leasing company was not owed any deficiency balance. The judge did not tell the jury that.

FURTHER THE DECLARANT SAITH NOT
This the 17th day of August 2024.

/s/ Vladimir Romanov
1874 Country Meadows Dr.; Sevierville, TN 37862
865-919-7765

CERTIFICATE OF SERVICE

I hereby certify that this REPLY DECLARATION of VLADIMIR ROMANOV as Exhibit B was served upon Defendant State Farm Mutual Automobile Insurance Company [NAIC CoCode:25178] via the Court's Electronic filing System [ECF] on this the 17th day of August 2024. Specifically to Kay Griffin Evans PLLC Attorneys for the Defendant Corey A. Williams and Matthew J. Evans, 900 S. Gary Street, Suite 1810, Knoxville, TN 37902.

By: /s/ Susan Romanov
Susan Romanov, pro se

[This original filed document had **'red text'** which has been **'bolded'** herein to comply with this Court's Rule 33.1(a) and to identify the ("...") missing colloquies.]

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SUSAN ROMANOV
Plaintiff - Appellant
No. 24-5997

RECEIVED
7/16/25
Kelly Stephens Clerk

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
Defendant - Appellee

STATEMENTS TO AUGMENT THE RECORD ON APPEAL

COMES Plaintiff Appellant, Susan Romanov, pro se, pursuant to F.R.C.P. 10 making the following statements to augment the record on appeal to include missing colloquies made in open court during the pre-trial conference and the trial omitted from the transcripts included in the record on appeal that are essential to accurately reflect what happened during the proceedings so as to be added to the record, stating:

1.) I, Susan Romanov, am over the age of 18 and am the Plaintiff Appellant in this case; and I was present at all times during the pre-trial conference and the two (2) days of trial of Case No. 3:22-cv-00443 and from which I am now appealing.

2.) I have reviewed the certified transcripts filed in this case [DOCS 213, 214 and 215].

3.) I have identified certain statements made during the proceedings that have been omitted from the transcripts.

4.) Specifically at the approximate times and dates identified in each of the following numbered statements, I distinctly recall the statements being made and their implied communication(s).

5.) I understand that supplying false information under oath is a crime and I am declaring under oath, under penalty of perjury, that the statements I have included herein are true and correct.

STATEMENTS RE: DOCUMENT 213

The Court omitted the following "**statements**" made on July 1, 2024 that were part of the Jury Voir Dire transcript [DOC 213]:

6.) Omitted from the transcript [DOC 213, Id. pg. 48, line 9]: For some reason I "**read on the Juror sheet provided to us by the clerk that Mr. Keith worked in an insurance agency before he retired. So, I feel the gentleman sitting in the front row [indicating Juror #2] would be bias and I would like to challenge him as bias,**" yes. [Looking at the notes provided by the clerk] It would be Mr. Keith.

7.) Omitted from the transcript [DOC 213, Id. pg. 48, line 14]: But I feel like he might "**be bias because he worked for an insurance agency**

provider in the same business as State Farm and he is also a State Farm customer and that's why" he might have some bias.

8.) Omitted from the transcript [DOC 213, Id. pg. 48, line 16]: [The Judge said,] "**I liked Mr. Keith and I think he would be a good juror.**" Okay. Anything else you want to say?

9.) Omitted from the transcript [DOC 213, Id. pg. 49, line 2]: [The Judge said,] Okay. Anybody "**other than jurors I asked if they felt they could be impartial. Other than them,**" is there anybody else you would like to challenge for cause, Ms. Romanov?

10.) Omitted from the transcript [DOC 213, Id. pg. 49, line 6]: No, Mr. "**Keith was my main challenge for cause, as well as the ones who are customers of State Farm. Other than those,** no, no, Sir.

11.) Omitted from the transcript [DOC 213, Id. pg. 49, line 9]: [The Judge said,] In fact, I had a **"good feeling about those who were customers too. I asked if they could be impartial and they all said yes, including Mr. Keith.**" I mean, I think even you said you had a favorable impression of him, not in so many words, but he didn't give us any basis to strike him for cause.

Notations: The voir dire transcript does not specify the actual count of what appeared to be the vast majority of the prospective jurors who where customers of State Farm. According to the jury selection sheet provided to the parties before the trial that outlined the background of each juror, Juror #2 worked in the insurance business profession similar to State Farm.

STATEMENTS RE: DOCUMENT 214

The Court omitted the following "**statements**" made on July 1, 2024 found in Day One (1) of the Trial transcript [DOC 214]:

12.) Omitted from the transcript [DOC 214, Id. pg. 4, line 15]: [The Judge said,] Well I received the brief "**about lack of standing**" [DOC 187] the motion to dismiss and the submissions on that.

13.) Omitted from the transcript [DOC 214, Id. pg. 4, line 17]: [The Judge said,] And then "**the motion to compel**" [DOC 189] and then the motion for more definite statement. [DOC 190]

14.) Omitted from the transcript [DOC 214, Id. pg. 5, line 3]: Missing "**DOC 105 and DOC 135**"

15.) Omitted from the transcript [DOC 214, Id. pg. 5, line 5-8]: [you denied] the entire motion but your only talked about one "**of the requests by State Farm to prohibit me from entering into evidence in**" the first element and the last element. So I have no "**way to present my evidence or if I may do so from**" the way it appears to me, that you denied the entire motion, and it doesn't really say that. So that's why "**I was asking for clarification so that I would be able to present my case,**" that was my problem.

16.) Omitted from the transcript [DOC 214, Id. pg. 7, line 15-17]: [. . .] Tennessee law, the ability to then "**collect bad faith damages**" as that being contributing "**to the bad faith acts of State Farm, and therefore punitive damages can be pursued being**" a contributing factor, to the breach of contract claim, that then punitive damages would come into play.

17.) Omitted from the transcript [DOC 214, Id. pg. 7, line 21]: Okay. I have "**not gotten all the answers I need to my motion? I don't want to make the Court mad but I need clarification.**"

18.) Omitted from the transcript [DOC 214, Id. pg. 9, line 2]: And Mr. "**Evans told where Mr. Stone was during the pre-trial conference, never said he would not accept service as it says in his disclosures, and now today, Mr. Evans says**" I don't know where Mr. Stone is.

19.) Omitted from the transcript [DOC 214, Id. pg. 9, lines 12-15]: My concern was that I "**was led to believe by Mr. Evans that Mr. Stone would be a witness for State Farm and available for service of a subpoena through Mr. Evans and I had no reason to think otherwise as**" he is the person who was on the list that was provided many, many times, I said I was going to call him, and that I wasn't given that opportunity, and I don't have time "**to subpoena Mr. Stone because you did not rule on my previously filed motion recently**".

20.) Omitted from the transcript [DOC 214, Id. pg. 9, lines 9]: that you allowed me "**to subpoena Mr. Stone, I sent it to the clerk for your approval, and ultimately, Mr. Evans refused to present him as a witness due to the deadline passing.**"

21.) Omitted from the transcript [DOC 214, Id. pg. 10, line 3]: [I] was "**not given time because you set the pre-trial conference after the ten (10) day deadline had passed. Who knew?**"

22.) Omitted from the transcript [DOC 214, Id. pg. 11, line 10]: Even "**though you set the pre-trial conference after the ten (10) day deadline?**"

23.) Omitted from the transcript [DOC 214, Id. pg. 11, line 13]: Two things was, I was "**asked to show documented proof that I didn't owe any money on the lease and**" I had already provided to the Court . . ."

24.) Omitted from the transcript [DOC 214, Id. pg. 13, lines 15-18]: [I was] in default, but I "**had notified them I was going to not pay pending an Order of settlement**" there wasn't supposed to be a repossession. There was "**a mistake in the collection department**" they "**were not aware of the fact that**" the higher-ups know about it, and somebody in the "**repo department**" the people who actually do that work actually processed it.

25.) Omitted from the transcript [DOC 214, Id. pg. 14, line 20]: Your Honor "**excuse me**" . . .

26.) Omitted from the transcript [DOC 214, Id. pg. 14, line 24]: [Whether they were at the] moment "**is not the point.**"

27.) Omitted from the transcript [DOC 214, Id. pg. 15, line 1]: I just feel like he's "**trying to imply I am a liar to your Honor.**"

28.) Omitted from the transcript [DOC 214, Id. pg. 15, line 13]: No, I "**was not told that? I was told**

that I could not keep the Court waiting. You know that I had to wait to tell my witnesses when they would be called based on the subpoena."

29.) Omitted from the transcript [DOC 214, Id. pg. 17, line 15]: [. . .] be until "**Wednesday.**"

30.) Omitted from the transcript [DOC 214, Id. pg. 20, line 12]: - - because that was the reason that "**I informed you of the Rule and did not comply with your threats of contempt, I needed confidentiality**" . . .

31.) Omitted from the transcript [DOC 214, Id. pg. 22, line 13]: . . . that I have "**written down my opening statement and timed it to be certain that**" I am at less than ten minutes on my opening statement, Your Honor.

32.) Omitted from the transcript [DOC 214, Id. pg. 22, line 11]: So I have a question about "**what happens if I am interrupted with what**" I anticipate and "**expect a lot of**" what I would call objections . . .

33.) Omitted from the transcript [DOC 214, Id. pg. 150, line 10]: [Mr. Evans said, That was] supposed to be "**redacted or removed as attorney client privilege**" can we "**take that down . . . before we have a mistrial . . .** ".

34.) Omitted from the transcript [DOC 214, Id. pg. 150, line 12]: I'm sorry. "**It is part of the Claims File already in evidence approved by Mr. Evans. It is the evidence that I promised would be presented [as to fraud on the court]**".

35.) Omitted from the transcript [DOC 214, Id. pg. 204, line 10]: "(Evening recess.)" was not a statement made by the Judge. The instructions, by Ms. Camp were not provided in the certified copy of the transcript [DOC 214] as they would prove that Ms. Camp had indeed instructed everyone that she "**would not open the courtroom until 8:00am on Wednesday, so don't come early.**"

STATEMENTS RE: DOCUMENT 215

The Court omitted the following "**statements**" made on July 3, 2024 found in Day Two (2) of the Trial transcript [DOC 215]:

Notation: Ms. Romanov and her husband arrived a few minutes before at 8:00 A.M., surprised to find that everyone appeared to be in the courtroom. Ms. Romanov's husband left to go to park the car because there was no parking where she had to enter the handicapped entrance to the building at the post office located on the first floor of the federal building. Her husband returned to the courtroom at 8:03am and observed her struggling with a guard to get up the steps into the witness box.

36.) Omitted from the transcript [DOC 215, Id. pg. 4, line 1]: The following colloquies are missing from the transcript on the morning of the second day of trial which were held in open court prior to the judge entering the courtroom but contained directives to Ms. Romanov from the judge as delivered by Ms. Camp:

Ms. Camp, "**If you are not sitting in the witness box by 8:00am, your case will be**

dismissed."

Ms. Romanov, "**You said the doors would not be open sooner than 8:00am, so don't show up early, you won't be able to get in.**"

Ms. Camp, "**The court will start at 8:00am sharp.**"

Ms. Romanov, "**I need my husband to get into the witness box. He will be back in 2 minutes. He has to park the car.**"

Ms. Camp, "**You better be in the witness chair or your case will be dismissed, you are out of time.**"

Ms. Romanov [struggling to push herself in her wheeled chair toward the witness box], "**I can't get up the steps myself.**"

Ms. Camp, "**Your disability is not the court's problem. You were aware of the start time today.**"

[The Court Reporter who was setup in her usual place, looked over at me in sincere sympathy for my apparent pain and suffering apologizing that she was not allowed to help me. At the same time, I observed Mr. Evan's mockingly smiling at me.]

Ms. Romanov [trying to wheel herself close to the steps], "**My chair will not even fit in the space between the jury and the box and it's smaller most wheelchairs.**"

Ms. Camp, "**All I can say is you are required to be in the witness chair by 8:00am, period.**"

Ms. Romanov [trying to reach the high ledge around the witness box to stand on one foot and try to hop toward the steps, she was unable to do to so, "**I can't, can we please wait another minute for my husband.**"

Ms. Camp, "**It is by order of the judge.**"

Ms. Romanov, **[A large man in a security uniform came to help me. It was very painful, stressful and embarrassing in front of the many people in the courtroom and I had to hold on to his neck and shoulders to even stand on one foot. As I was crawling up the steps, my husband appeared in the courtroom.]**

Thereafter the judge appeared in the courtroom as Ms. Romanov was connecting her computer to the court's electronic display system. The computer was attached to the same cable that was used successfully by State Farm's witness on day one (1) of trial, but it would not work for Ms. Romanov. The cable ran through a hole in the wood and under the judge's bench.

Ms. Romanov, "**I can't get my computer to put anything on the court's screens?**"

Judge, gruffly admonishing Ms. Romanov, "**I told you we would start promptly at 8:00am today and that you needed to be ready to testify and your computer working.**"

Ms. Romanov, "**I have been trying, I don't understand.**"

Judge, "**Not my problem.**"

Ms. Romanov, "**Your Honor, we were supposed to deal with newly filed motions in**

limine and also the lack of standing motion this morning."

Judge, "**We are starting with your testimony.**"

Ms. Romanov, "**But Your Honor, I still don't know what evidence I am allowed to present, what I and my witnesses can and can't testify about, and all that the motions are trying to stop me from doing.**"

Judge, "**I will say what happens in my court.**"

Matthew Evans, "**I told you she wants a mistrial, Your Honor.**"

Ms. Romanov, "**I do not want a mistrial. I just want to put on all my evidence and plead my case and not get in trouble in the process.**"

Judge, "**Then, let's get at it.**"

Ms. Romanov, "**I need answers to the motions.**"

Judge, "**Ms. Romanov, I can find you in contempt.**"

Thereafter, transcript starts on Line 3.

37.) Omitted from the transcript [DOC 215, Id. pg. 6, lines 12-13]:

[The Court,] You're here to testify. You don't "**speak directly to the Jury**" you don't "**look at the Jury**" you don't explain the process. So if you have "**something to say**" if you want to do it in question-and-answer form, that's fine, but you need to start with a question just as I've been urging you to do all day. The jury understands what's going on.

38.) Omitted from the transcript [DOC 215, Id. pg. 23, line 11]:

[again?] "**My computer does not display on the court's monitors. I am not sure of the exhibit number.**"

39.) Omitted from the transcript [DOC 215, Id. pg. 23, line 14]: [The Court:] Are you asking "**the Court to display your documents? I told you that it was not the Court's responsibility. You needed to be ready.**"

40.) Omitted from the transcript [DOC 215, Id. pg. 23, line 15]: Yes. I don't "**know why it is not working for me, it worked for State Farm's witness before.**" I don't "**understand, I can display from my desk over there?**"

41.) Omitted from the transcript [DOC 215, Id. pg. 25, line 23]: [I don't] mean to, with "**what the Judge told me**" I'm sorry.

42.) Omitted from the transcript [DOC 215, Id. pg. 34, line 7]: Now, as far as the "**fact that I only have 90 minutes for me to give my testimony**" I'm looking at my time.

43.) Omitted from the transcript [DOC 215, Id. pg. 35, line 14]: [I'd] like to bring up my "**exhibits on my screen but I can't, can the clerk do it please?**" I'll start with Exhibit G on my "**thumb drive documents that were provided to the clerk as required**".

44.) Omitted from the transcript [DOC 215, Id. pg. 36, line 1]: The adapter doesn't "**need to be used and it**" isn't "**the issue because the cord by itself**

worked fine on day one of trial for the witness who had a computer like mine, if I remember correctly but," yeah, this is where I plugged it in.

45.) Omitted from the transcript [DOC 215, Id. pg. 36, line 5]: All right. Well "**for the record, the cord runs through this hole and under the Judge's bench.**"

46.) Omitted from the transcript [DOC 215, Id. pg. 36, line 10]: [I] don't know how to "**display my exhibits and evidence if I can't use the monitors and the Court will not allow the clerk to do it?**"

47.) Omitted from the transcript [DOC 215, Id. pg. 36, line 20]: [The Court:] Is it "**an exhibit that State Farm/Mr. Evan's has already displayed?**" Who is it from?

48.) Omitted from the transcript [DOC 215, Id. pg. 37, line 3]: [The Court:] Right. Is there "**objection?**"

49.) Omitted from the transcript [DOC 215, Id. pg. 37, line 5]: So "**why can't I present my evidence from the podium like Mr. Evans does?**"

Judge, "**You know why [relating to my disability and the Jury seeing it].**"

Ms. Romanov, "**I know why I can't go there, but I should be allowed to present my evidence to the Jury especially when the clerk already has it.**"

Judge, "**Mr. Evans, do you have the exhibit she is requesting?**"

50.) Omitted from the transcript [DOC 215, Id. pg. 39, line 1]: Now I am going to take a drink and explain to you "**the acts of State Farm and what happened when I tried to get paid for the work done by Mr. Cowan?**"

51.) Omitted from the transcript [DOC 215, Id. pg. 41, line 5]: Okay. It's "**on the flash drive. It's an email that was listed on my trial exhibits and**" the court clerk has a copy of it. I wish there was some way "**I could show the Jury from my computer or the podium.**"

52.) Omitted from the transcript [DOC 215, Id. pg. 41, line 17]: [Well Your Honor, could I just make a] request, then, for the "**court accommodate me under the circumstances**" in the interest of time and the short [time that I have remaining, I would like to be able to move back to that position where it worked without any problem . . ."

53.) Omitted from the transcript [DOC 215, Id. pg. 41, line 24]: My husband can "**try although it is not his strength using extended display monitors. But if he can come and get the computer, he will try to, I know**" [oh is the wrong word], display the documents over there?

54.) Omitted from the transcript [DOC 215, Id. pg. 42, line 14]: [This was in the claims file, or in my] submissions for "**trial exhibits and**" it's "**already been admitted into evidence by agreement, and they are aware of it because**" it was in my exhibits.

55.) Omitted from the transcript [DOC 215, Id. pg. 42, line 23]: I really need "**to be able to go to the podium or my table which is in plain view of the**

Jury and has worked fine during our first day of trial. I don't understand?"

56.) Omitted from the transcript [DOC 215, Id. pg. 42, line 25]: [The Court:] There's a reason we have witnesses sit where you're sitting, Ms. Romanov. **[talking in a bias manner]** So we're going to "**require you sit right there where the Jury can see you**" we're [going to stick to tradition.]

57.) Omitted from the transcript [DOC 215, Id. pg. 43, lines 3-4]: Well, I "**have explained that**" this is part of what was submitted to the Court as my exhibits. It's "**an email**" there was "**from the Summit Group.**"

58.) Omitted from the transcript [DOC 215, Id. pg. 44, line 5]: [Okay. I'm running out of time.] I going to need to be able to have access to some "**of my exhibits to show the Jury.**"

59.) Omitted from the transcript [DOC 215, Id. pg. 44, line 25]: The estimate for repairs was "**only what needed to be done to make the truck roadworthy.**"

60.) Omitted from the transcript [DOC 215, Id. pg. 52, line 25]: [I] don't understand why I can't "**go to the podium or my table and do it myself.**"

61.) Omitted from the transcript [DOC 215, Id. pg. 56, line 1]: Well, I "**really need the Jury to see the photos larger and in color to let them see the before and after condition of the truck.**"

62.) Omitted from the transcript [DOC 215, Id. pg. 67, lines 3-19]:

THE COURT: And so, Ms. Romanov I know

you're "**concerned about if**" the jury will see these photographs.

MS. ROMANOV: They will? Okay.

THE COURT: So I don't "**if I would use my time that way**" I don't "**know if it is wise when**" you can spend "**your time on things that are more important and**" you can use "**use your time for those.**"

MS. ROMANOV: Okay.

THE COURT: "**You can use**" your time however you want to - -

MS. ROMANOV: I understand.

THE COURT: - - but I'm not sure this is really going to the "**help you or**" going to give the jury anything that "**in my opinion is beneficial.**"

MS. ROMANOV: Just goes to the amount of damage.

THE COURT: "**I don't see**" that is particularly relevant to anything that you're in dispute with the insurance company about.

MS. ROMANOV: They'll be "**able to see the pictures larger and in color from my submitted photos?**"

THE COURT: They'll see those pictures. They'll see the before and after.

63.) Omitted from the transcript [DOC 215, Id. pg. 68, line 18]: So let's "**get this show on the road.**"

64.) Omitted from the transcript [DOC 215, Id. pg. 158, lines 19-25]:

The estimate for repairs was "**only what needed to be done to make the truck roadworthy.**"

65.) Omitted from the transcript [DOC 215, Id. pg. 166, lines 12]: I "**want to talk about the lack of standing motion and the repossession allegations. I do not owe the leasing company anything. I have fully answered the motion and have asked the Court to rule on it as it is not relevant. It is all in my response filed in the wee hours of the morning of day one (1) of the trial.**"

66.) Omitted from the transcript [DOC 215, Id. pg. 167, lines 1-6]: Alright. So maybe I should "**try again, and**" should try to be a little clearer. You just had an interaction with Mr. Evans where he decided that I hadn't paid for anything "**but I have paid and have not been able to put my exhibits in evidence and you have not ruled on the motions in limine and I am very concerned about being cited for contempt for trying to pled my case**".

67.) Omitted from the transcript [DOC 215, Id. pg. 167, line 6]: [I understand. And I need to argue, and I don't know if "**you even have jurisdiction to hear this case, for the record.**"

68.) Omitted from the transcript [DOC 215, Id. pg. 171, between the lines 7 and 8]: [Mr. Evans: I'm going to move for a directed verdict. I know that surprises you.]

Judge, "**No really.**"

Ms. Romanov, "**What is that Your Honor?**"

Mr. Evans, "**There she goes again trying for a mistrial.**"

Ms. Romanov, "**I am not! I am just trying to put on my case.**"

69.) Omitted from the transcript [DOC 215, Id. pg. 195, line 2]: [And I was] already under "**the court's order constraining the length of my testimony and**" not being able to do a lot of time.

70.) Omitted from the transcript [DOC 215, Id. pg. 205, line 2]: [. . . and if I don't make and objection, it] would seem a little odd. Okay? But Mr. "**Evans should not be asking me about private information.**" I "**don't think there is a foundation for it**" anyway, we can talk at a break.

71.) Omitted from the transcript [DOC 215, Id. pg. 214, line 7]: And in the end, just for the purpose of "**abiding by the Court's restrictions**" in the time that I had available to share with you . . .].

72.) Omitted from the transcript [DOC 215, Id. pg. 272, between the lines 23 and 25]:

LINE 24: **[There was no brief pause]**

Ms. Romanov: "**Your Honor!, Matthew Evans should not have been permitted to say I did not deserve anything because the truck was repossessed. You know that I did not owe anything on the truck, you said so yourself during the trial. Why did you give instructions to the Jury after my closing statement and not give instructions as to the "lack of standing" not being an issue in this case after Matthew Evan's closing statement? It is about whether or not State Farm breached my contract as you said yourself. I kept asking if you were going to rule on the motion? And, you have not addressed the fact that you do not even have jurisdiction due**

to you reducing my claims to below the statutory minimum to no fault of mine?"

Mr. Evans: "**Your Honor, she wants a mistrial!**"

Ms. Romanov: "**No I don't! He lied in his closing statement.**"

Mr. Evans: "**She's defaming me again!**"

The Court: "**We will get to that in a minute.**"

73.) Omitted from the transcript [DOC 215, Id. pg. 282, between the lines 4-13]: And what ended up happening was, I did not "**get to testify to anything that was in the motions**" I couldn't "**display my documents or evidence because of the court's electronic issues**" I couldn't put any of that in at all, because I asked for a ruling specifically on that, and I kept saying, "How am I going to prepare for a case when I '**am restricted by what you did not rule on and**' I can't put any of this in?" And you didn't give me any answer soon like I asked for so I could deal with what I had to deal with. And in the end what happened? I couldn't put anything in that was attached to my complaint, which is where all my receipts were, Your Honor. They were all attached to my complaint. They weren't separate.

74.) Omitted from the transcript [DOC 215, Id. pg. 286, between the lines 13-21]: And so because you didn't "**rule on my motion for more clarity and**" you didn't reserve the ruling on receipts, and that was one of the reasons why I asked you that morning, I said, "Your Honor, what about '**the motions in limine we still have pending and**' what about the things you didn't address in this when you listed the things in here that you were reserving a ruling on?" And you just said "**basically nothing**" just "**glared at me**" I mean, we didn't really have much conversation at all. So I was no way in my heart going to stand up there and try to put something in. I'm already getting in trouble.

Notation: Re ¶ 70 above:

Judge: "I'll give you plenty of opportunities to talk to me outside the presence of the jury and -- this is a jury trial, right?

However Romanov was denied her request and the result was that Romanov [against her will] had to continue with questions regarding the pregnancy and then later on re-direct attempt to explain the intended misrepresentation of Romanov's private medical information. The Court's denial of Romanov's objection has placed information in the record that should have been sustained to protect Romanov's medical right to privacy.

Respectfully submitted this 16th day of July 2025,
By: *<u>/s/Susan Romanov,</u>* Plaintiff - Appellant, pro se
1874 Country Meadows Dr.; Sevierville, TN 37862
865-919-7419/susan@dragonflyemail.com

I, Susan Romanov, hereby declare under penalty of perjury that the contents of these "**statements**" are correct and true.

<u>/s/Susan Romanov</u>, Plaintiff - Appellant, pro se

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

Filed
Feb 18, 2025
ECF DOC 223

SUSAN ROMANOV,
Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Case No. 3:22-cv-443
Judge Travis R. McDonough
Magistrate Judge Debra C. Poplin

ORDER

Before the Court are Plaintiff Susan Romanov's motion to redact personal information from transcripts in this case (Doc. 218) and motion to correct the transcripts in this case (Doc. 219). For the following reasons, Plaintiff's motion to redact (Doc. 218) will be **GRANTED IN PART** and **DENIED IN PART**. Plaintiff's motion to correct (Doc. 219) will be **DENIED**.

I. BACKGROUND

The jury returned a verdict in this matter on July 8, 2024. (*See* Doc. 201.) Plaintiff filed a motion for a new trial on July 31, 2024, and the Court denied Plaintiff's motion on October 7, 2024. (*See* Docs. 205, 209.) Plaintiff appealed the Court's decision on November 5, 2024. (*See* Doc. 210.) Plaintiff filed the present two motions to redact and correct the transcripts from trial on January 19, 2025, and February 7, 2025, respectively. (*See* Docs. 218, 219.)

Defendant State Farm has not responded to Plaintiff's motion to redact, and it is ripe for review. *See* E.D. Tenn. L.R. 7.1(a) (providing 14 days for a response). Plaintiff's motion to correct is not ripe for review but considering that Plaintiff argues she needs this relief for her appellate briefing, the Court will Case 3:22-cv-00443-evaluate the motion before it is ripe. *See* E.D. Tenn. L.R. 7.2 ("Under exceptional circumstances, the Court may act upon a motion prior to the expiration of the response time.").

II. STANDARD OF LAW

[. . . . Removed to save space . . . .]

Accordingly, Plaintiff's requests to redact the month and day of her birth from the transcripts are GRANTED. The Clerk is hereby ORDERED to redact the day and month of Plaintiff's birth date at:

1. Doc. 215, Page 122, Lines 11 and 13
2. Doc. 215, Page 186, Line 18

Plaintiff's other requests for redaction that concern her age and birth year are **DENIED**.

Next, Plaintiff argues that Rule 5.2 requires the redaction of medical information in the transcripts.

[. . . Removed to save space . . .]

. . . her requests to redact these portions of the transcript are **DENIED**.

Lastly, Plaintiff moves for a redaction of similar medical information because she argues that it "was not related to the legal matters before the Court." (*See* Doc. 218, at 4.) Plaintiff also claims that she objected to the questioning that led to the introduction of this medical information. (*See id.* at 2.)

[. . . Removed to save space . . .]

Plaintiff's request to redact this information is **DENIED**.

B. Correction

In Plaintiff's motion to correct the trial transcripts, she argues that the transcripts are "inaccurate and incomplete." (Doc. 219, at 4.) She also claims that the transcripts are "potentially doctored" and "materially incomplete." (*Id.*) Plaintiff goes on to provide a list of the material she believes is missing from the transcript. This includes (1) Plaintiff's statement about moving to the podium to put on evidence, (2) Plaintiff's statements regarding her difficulty with technical equipment in the courtroom, (3) discussion regarding a mistrial, (4) "[t]he Judge's chastising of [Plaintiff]," (5) the "Judge's demands made by the Court Clerk on the morning of day two (2) of trial that 'if [Plaintiff] was not in the witness stand immediately at 8:00 AM that [Plaintiff's] case would be dismissed and [Plaintiff] held in contempt," (6) further evidence "of the Court's violations of the Americans with Disabilities Act regarding [Plaintiff's] disability," and (7) some of Plaintiff's attempted legal arguments. (*See id.* at 5–6.) Plaintiff emailed the

Court Reporter in charge of the transcripts for her proceedings and requested that the allegedly missing material be added. (*See id.* at 8; Doc. 219-1.) She also claims the Court has an interest in ignoring the purported omissions, "as they would be supportive of [Plaintiff's] statement of issues for appellate consideration as to the action of the Court itself." (Doc. 219, at 8.) Plaintiff specifically requests that the Court order that she be provided with "corrected and supplemented" transcripts, and an "electronic copy of the Realtime Unedited Transcripts." (*Id.* at 1, 8.) Plaintiff asserts that the "unedited recordings are available and should match those filed in the Court as 'minutes' from each day of trial and the pre-trial conference." (*Id.* at 8 n.4.)

Court will deny Plaintiff's motion. Plaintiff's motion is generally unsupported by any evidence. Plaintiff provides a declaration from her husband in which he avers that he was in the courtroom during the proceedings, and that Plaintiff's contentions are correct. (*See* Doc. 219-2, at 1.) However, most of Plaintiff's contentions are conclusory, and she offers no evidence outside of the declaration to support them. (*See* Doc. 219, at 5–6.) In her email to Court Reporter Elizabeth Coffey, Plaintiff admits that the material she addresses in her fifth allegation took place "prior to the start" of the second day of trial.2 (*See* Doc. 219-1, at 1.) Ms. Coffey has already explained to Plaintiff that the transcripts were made "while the proceedings were in session." (Doc. 219-1, at 3.) Plaintiff has been provided with the official transcripts of the Court's proceedings. The Court will not order Ms. Coffey to provide her notes nor any other materials solely because of Plaintiff's allegations. Further, the Court finds that it is not the proper tribunal to determine whether these transcripts fail to meet the requirements of 28 U.S.C. § 753(b), and whether Plaintiff has suffered prejudice as a result. *See Gallo*, 763 F.2d at 1531 ("In determining whether hardship or prejudice results from a trial court's failure to record every statement made in 'open court,' the *reviewing court* must consider all the circumstances in the record surrounding the omission." (emphasis added)); *United States v. Ellzey*, 874 F.2d 324, 330 (6th Cir. 1989) (explaining that "a reviewing court must consider all circumstances in the record surrounding the failure to record in order to ascertain whether the failure created hardship or prejudice.") (citing *Gallo*, 763 F.2d at 1531). Her motion to correct these transcripts is **DENIED**.

Portions of Plaintiff's seventh allegation also appear to concern "attempted arguments *prior* to day two" of trial. (*See* Doc. 219, at 6 (emphasis added).) Ms. Coffey has certified that these transcripts are accurate. (*See* Doc. 212, at 182; Doc. 213, at 55; Doc. 214, at 204; Doc. 215, at 301.)

IV. CONCLUSION

For the foregoing reasons, Plaintiff's motion to redact (Doc. 218) is **GRANTED IN PART** and

DENIED IN PART. The Clerk is DIRECTED to redact the day and month of Plaintiff's birth date at:

1. Doc. 215, Page 122, Lines 11 and 13
2. Doc. 215, Page 186, Line 18

All other relief Plaintiff seeks in her motion to redact (Doc. 218) is **DENIED**.

Plaintiff's motion to correct the transcripts in this matter (Doc. 219) is **DENIED**.

SO ORDERED.

/s/ Travis R. McDonough
TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

Filed
October 7, 2024
ECF DOC 209

SUSAN ROMANOV,
Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Defendant.

Case No. 3:22-cv-443
Judge Travis R. McDonough
Magistrate Judge Debra C. Poplin

ORDER

Before the Court is pro se Plaintiff Susan Romanov's motion for a new trial (Doc. 205). For the reasons that follow, the Court will DENY the motion (id.).

I. BACKGROUND

The heart of this case is a typical insurance-contract dispute. Despite this fact, the parties litigated this matter for years. That litigation culminated in a two-day jury trial, the outcome of which was a verdict for Defendant State Farm Mutual Automobile Insurance Company ("State Farm"). (Doc. 201.) Romanov timely filed a motion for new trial. (Doc. 205.) As the basis for the appeal, Romanov criticizes, among other things, the jury instructions, the Court's ruling on various pretrial motions, the scheduling of the final pretrial conference, and the Court's failure to accommodate her disability. (Doc.

205.)

II. LEGAL STANDARD

Motions for new trial are governed by Rule 59 of the Federal Rules of Civil Procedure. The Rule provides in pertinent part that "[t]he court may, on motion, grant a new trial on all or some of the issues —and to any party . . . after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court[.]" Fed. R. Civ. P. 59(a)(1)(A). A new trial is appropriate only "when a jury has reached a 'seriously erroneous result' as evidenced by: (1) the verdict being against the weight of the evidence; (2) the damages being excessive; or (3) the trial being unfair to the moving party in some fashion, i.e., the proceedings being influenced by prejudice or bias." *Balsley v. LFP, Inc.*, 691 F.3d 747, 761 (6th Cir. 2012) (quoting *Holmes v. City of Massillon*, 78 F.3d 1041, 1045–46 (6th Cir. 1996)). The third ground "requires a showing that the proceedings were influenced by prejudice or bias." *Kusens v. Pascal Co.*, 448 F.3d 349, 367 (6th Cir. 2006). A petition for rehearing pursuant to Rule 59 should be based upon manifest error of law or mistake of fact, and judgment should not be set aside except for substantial reasons. *Hager v. Paul Revere Life Ins. Co.*, 489 F. Supp. 317 (E.D. Tenn. 1977), aff'd, 615 F.2d 1360 (6th Cir. 1980).

III. ANALYSIS

Romanov has not demonstrated that a new trial is appropriate under any of the three possible grounds. The second ground, "the damages being excessive," is inapplicable. Because the jury found in favor of Defendant State Farm, it did not award damages. Romanov has also not suggested that the verdict was "against the weight of the evidence," under the first ground. Instead, Romanov devotes her motion to arguing for a new trial under the third ground—that she was unfairly treated, which prejudiced the proceedings. But she has not shown, as she is required to do, that "the proceedings were influenced by prejudice or bias." See *Kusens*, 448 F.3d at 367. Romanov first takes issue with the Court's instructions to the jury, but, by her own admission, she had "pre-approved the Court's Jury Instructions" and did not raise objections to the instructions at any time after the charge conference. (Doc. 205, at 3–4.) She has also not shown that the timing of the Court's rulings on pretrial motions or of the final pretrial conference resulted in bias to the proceedings. The same is true of her qualms with the Court's treatment of her disability. The Court took care to ensure that the jury would not be present whenever Romanov needed to move across the courtroom so as to avoid any bias stemming from her apparent immobility. In fact, Court and security personnel even assisted Romanov in ascending to the witness stand when her husband was unavailable to do so. Romanov's criticisms of voir dire and her assertion that one or more jurors slept during her testimony also do not amount to a showing of prejudice. Romanov received and used preemptory strikes as permitted by 28 U.S.C. § 1870, and her statements about sleeping jurors are neither accurate nor consequential. See *United States v. Fritts*, No. CR 11-25, 2012 WL 12871658, at *3 (E.D. Ky. July 27, 2012), aff'd, 557 F. App'x 476 (6th Cir. 2014) (allowing a judge to rely on his own observations of juror behavior to determine whether misconduct has occurred), (noting that, even if jurors were sleeping, a movant must demonstrate that such behavior "prejudiced [her] to the extent that [she] has not received a fair trial") (citation and internal quotation marks omitted). Finally, Romanov has not shown how the Court's treatment towards her as a pro se litigant prejudiced the proceedings. When it became clear Romanov's testimony was moving in a direction that was not relevant to the dispute, the Court, as it would with a party represented by counsel, limited that testimony. To the extent Romanov believes the Court exhibited bias towards her as a pro se litigant, she has not demonstrated how such behavior influenced the proceedings. Therefore, Romanov has not shown that the proceedings were influenced by prejudice or bias as is required for the third ground for a new trial.

Because Romanov has not demonstrated she is entitled to a new trial under any of the three available grounds, the Court will deny her motion (Doc. 205).

IV. CONCLUSION

For the aforementioned reasons, the Court **DENIES** Romanov's motion for a new trial (Doc. 205).

SO ORDERED.

<u>/s/ Travis R. McDonough</u>
TRAVIS R. MCDONOUGH, U. S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

SUSAN ROMANOV,
Plaintiff,
v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Defendant.

Filed
July 8, 2024
ECF DOC 203

Case No. 3:22-cv-443
Judge Travis R. McDonough
Magistrate Judge Debra C. Poplin

JUDGMENT ORDER

On July 1, 2024 and July 3, 2024, a jury trial was held in this matter. On July 3, 2024, the jury found in favor of Defendant State Farm Mutual Automobile Insurance Company and that Plaintiff Susan Romanov recover nothing. Accordingly, judgment is entered in favor of Defendant State Farm Automobile Insurance Company. The Clerk of Court is DIRECTED to close this case.

SO ORDERED.

/s/ *Travis R. McDonough*
TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT
s/ LeAnna R. Wilson
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

SUSAN ROMANOV
[fka: Susan Carrichner],
Plaintiff,

Filed
June 27, 2024
ECF DOC 190

v. No. 3:22-cv-00443-TRM-DCP
JURY DEMANDED

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY
Defendant.

PLAINTIFF'S MOTION FOR MORE DEFINITIVE STATEMENT BEFORE TRIAL AS TO THE COURT'S ORDERS [Docs 180 & 186]

Comes now, Plaintiff, Susan Romanov [fka: Susan Carrichner], pro se, moving this Court for a more definitive statement as to this Court's Order [DOC 186 and DOC 180] pursuant to Fed. R. Civ. P. Rule 12(e) and for a direct RULING as to each of the following portions of Romanov's motion [DOC 178] which this Court did not include in its ORDER[1]:

This Court's Orders [DOC 180 and DOC 186] have ***still*** left Romanov without clear and necessary understanding as to the position Plaintiff will be on the day of trial or the ground rules under which pro se Romanov must act during presentation of her case. **This Court has left Romanov with too many unknowns by this Court still not pre-ruling on essential elements** to be presented by Romanov causing Plaintiff continued prejudice. The following **"bolded issues**

[1]Romanov gives notice to the Court that its alleged diagnosis of Romanov's motion to continue the trial in this matter is wholly misinterpreted as, "'. . . placed Romanov as a pro se litigant in a substantial position of prejudice" by requiring her to prepare for trial . . . and denying her motions. (Doc. 182, at 1–8.)'" The statement is wholly contrary to what Romanov averred and was clearly indicated as, "now having opined four (4) days prior to trial representing a loss of 42% of Romanov's time to prepare effectively and efficiently for trial with full knowledge of the permissible boundaries at trial; causing pro se Romanov substantial unfair prejudice." [Page 2, line 1] at the hand of this Court, which now appears purposeful and without consideration for her explanations and the fact that this Court has not specifically addressed all of the elements of the motions in limine as explained in detail beginning on page 2 and throughout Romanov's motion [DOC 178].

that are set out in quotes" in each identified numbered paragraph herein need an expedited definitive ruling as they are each specifically identified issues found within State Farm's motions [DOC 104 and 135] that this Court globally GRANTED in favor of Defendant and the Court's Order does not indicate any exclusion of those issues. Read as written, "ALL" of the elements are restricted from being offered as evidence, statements, opinions making arguments about, or otherwise mentioning information by Plaintiff or Romanov's witnesses.

The IGNORED elements of the Motions that are included in this Court's Order [DOC 180] are NOT "reserved for ruling at trial" and have completely shut down pro se Plaintiff's ability to present her case with the evidence necessary to even attempt to prove State Farm's breach of contract in this matter. Further, the motion [DOC 178] has nothing to do with a pro se's ability to or understanding of being prepared for trial. But has everything to do with the prejudice the Court has placed Romanov in by NOT directly ruling as to the elements herein and the Court expecting that Romanov [or anyone for that matter] within 72 hours from its Order [DOC 186] should be able to effectively prepare for trial and simply hoping that the Court did NOT mean what it ordered by GRANTING the motions [104 and 135] or estopping ALL essential elements of her evidence and testimony.[2] Romanov cannot hope in preparation for trial.

A. Romanov moves this Court for a direct RULING as to [DOC 178, page 2]:

1.) During the Pre-Trial Conference, a lengthy discussion was had wherein Romanov specifically asked this Court whether such evidence or testimony that is documented as to the facts of this case within "Carrichner's Claims File" would be restricted at trial. **"<u>This Court has not opined the issue or addressed admissibility of testimony or evidence related to the elements found in Carrichner's Claims File[3] that go</u>**

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[2] No special pro se accommodations have been forthcoming from this Court as to the issues presented in Romanov's instant motion [DOC 178] and notably, Defendant and this Court itself have also acted to continue the trial and to reset scheduling orders.

[3]Romanov is not asking this Court to cause State Farm to

"unredact" the redacted sections of the Claims File; but to permit Plaintiff to use the entirety of the Claims File that was not redacted. This Court has permitted Romanov's use of the Big Block Appraisal as State Farm has stipulated to the value of the truck at the time being $59,200.00.

directly to acts that have contributed to State Farm's breach of Romanov's contract in its Order [DOC 180]"; Romanov needs a direct ruling as to the admissibility of Carrichner's Claims File considering footnote #3 and argument of the parties during the Pre-Trial Conference whereafter the Court *verbally* indicated it would permit Plaintiff's use of Carrichner's Claims File and yet is not Ordered [DOC 180].

2.) "**Further, the Court has not opined as to the recoverability of any Punitive Damages or the admissibility of evidence that would support a statutory award related to a breach of contract claim"** which the facts of Plaintiff's case will show that Romanov indeed did comply with T.C.A.§ 56-7-105(a). Romanov needs a direct ruling as to the admissibility of those facts.

B. Romanov moves this Court for a direct RULING as to the amount of damages that are in controversy at trial. During the Pre-Trial Conference, the Court collected figures from Romanov as to the amount Plaintiff would ask the Jury to have State Farm "write her a check for" during closing arguments. The highest amount in controversy provided was less than the statutory minimum required for this Court to maintain its jurisdiction and the lowest was stated to be approximately $9,000.00.;

Romanov needs a direct ruling prior to trial as to the amount in controversy.

C. Romanov moves this Court for a direct RULING as to the jurisdiction of this Court based on the cases submitted to the Court pursuant to its Order [DOC 166]. The Defendant in this case [State Farm Mutual Automobile Insurance Company] was the Defendant in the *Torres* case provided. This Court gives no legal grounds as to its ability to maintain jurisdiction based on the facts of this instant case which upon completion in its current procedural posture will render the Trial MOOT. Romanov needs a direct ruling prior to trial as to jurisdiction that is not just "pursuant to Document 60" which does not apply to the facts and the procedural posture of this case due to no fault of Plaintiff.

D. Romanov needs a direct ruling prior to trial as to Attorney Fees [DOC 104 and DOC 135] which in its Order [DOC 180] is not directly addressed as to what grounds would prohibit of pursuit of attorney fees by Plaintiff. Although Romanov does not anticipate any reason to make comments prior to Plaintiff's closing statement as to recovery of attorney fees, the Court's Order has blanketly GRANTED State Farm's motion [104 and 135 collectively as one] prohibiting Romanov from "making comments, testimony . . . [and the rest of the list]" about the attorney fees issue while only describing Plaintiff's Dismissed Claims and Romanov's agreement not to make any comments or response as to counsel's acts related to the case or in trial in the Court's Order. Romanov needs a direct ruling prior to trial as to attorney fees being prohibited from even her closing argument.

Romanov maintains that the Court has caused Plaintiff to be unable to effectively prepare for a multi-day Jury trial in what is now approximately 72 hours before appearance before the Court, including the Court waiting past the deadline for Plaintiff to timely issue subpoenas to rule on Romanov's motion for remote testimony giving State Farm ability to refuse to produce a corporate witness, not ruling on all of the issues Romanov needs to realistically prepare for trial and that a continuance is warranted under the circumstances. Due to the Court's requirements to collect and produce documents [DOC 166], the harassment of State Farm's counsel(s) toward Romanov's former leasing company, the need to respond to late filed subpoenas by State Farm while at the same time Plaintiff must address the Court with a motion to compel, this instant motion, and the untimely motion to dismiss [filed by State Farm late this afternoon], Romanov has been working all day and into the wee hours as is evidenced by the ECF filing timestamps without being able to address the requirements necessary for remote testimony by witnesses. Romanov is also a subpoenaed witness on behalf of a Plaintiff in arbitration in California that was supposed to take place two (2) weeks ago and has been confirmed for June 28, 2024 [tomorrow] which means that Romanov will now have only approximately 48 hours to prepare for this important trial. Plaintiff has been unfairly and unjustly prejudiced by this Court on the eve of trial to no fault of Romanov. This Court did not address or acknowledge Plaintiff's motion for continuance [DOC 138] with respect to the added hardship of Romanov having to participate in pain in a multi-day trial due to her current immobility issue which will be hard to hide from the Jury. Romanov has physically struggled through the process. Romanov needs a directed order as to what else is required to have this Court GRANT a continuance[1] to avoid the multiple levels of prejudice against pro se Plaintiff. Romanov relies on the memorandum of law and cited cases in her previously filed motions related to the subject matters addressed in this instant motion.

Respectfully submitted this 27th day of June 2024.

By: */s/ Susan Romanov*
Susan Romanov, pro se [fka: Susan Carrichner]
1874 Country Meadows Dr.; Sevierville, TN 37862
865-919-7419/ dragonflyemail@comcast.net

CERTIFICATE OF SERVICE

I hereby certify that this MOTION was served upon Defendant State Farm Mutual Automobile Insurance Company [. . . removed for space . . .]

By: */s/ Susan Romanov*
Susan Romanov, pro se

No. _______

In the
Supreme Court of The United States

SUSAN ROMANOV

Petitioner,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

SEPARATE APPENDIX TO PETITION FOR A WRIT OF CERTIORARI
Volume 2

SUSAN ROMANOV,
PETITIONER, PRO SE
1874 COUNTRY MEADOWS DRIVE
SEVIERVILLE, TN 37862
865-919-7419
SUSAN@DRAGONFLYEMAIL.COM

SEPARATE APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI

(Follows . . . Bound Separately)

Volume One

Volume Two

357 F.3d 392 (2004)

Shamell SAMUEL-BASSETT, on behalf of herself and all others similarly situated, Appellees

v.

KIA MOTORS AMERICA, INC., Appellant.

No. 03-1427.

United States Court of Appeals, Third Circuit.

Argued November 3, 2003.
Filed February 5, 2004.

393*393 394*394 Joseph Kernen, (Argued), Neal Walters, Piper Rudnick, LLP, Philadelphia, for Appellant.

Michael D. Donovan, (Argued), David A. Searles, Donovan Searles, LLC, Philadelphia, James A. Francis, Francis & Mailman, P.C., Philadelphia, Alan M. Feldman, Feldman Shepherd, Wohlgelernter & Tanner, Philadelphia, for Appellees.

Before McKEE, SMITH and WEIS, Circuit Judges.

OPINION

WEIS, Circuit Judge.

In this diversity removal case involving a claim of a defect in an automobile, the District Court adopted the purchase price of the car as the overriding factor in assessing the jurisdictional amount in controversy. No allowance was made for the value of the car with the defect, nor was any reduction made for the plaintiff's use of the vehicle. Finding the record inadequate for determining the amount in controversy, we will remand for further proceedings.

The plaintiff purchased a model year 2000 KIA Sephia automobile on October 27, 1999. Dissatisfied with the performance of the car, she filed a class action against the manufacturer, Kia, in the Court of Common Pleas of Philadelphia County, Pennsylvania on January 17, 2001. The complaint alleges that because of a design defect in the braking system, plaintiff returned the car for repairs on five separate occasions between January 12, 2000 and August 22, 2000. In four instances, the brake rotors and pads had to be replaced even though the vehicle had been driven less than 17,000 miles.

Despite her requests for rescission of the purchase contract, or correction of the braking problem, she asserts the defendant failed to meet its obligations. The 395*395 complaint asks for certification of a class consisting of Pennsylvania residents who purchased or leased KIA Sephia model automobiles in the years before she filed the suit.

The defendant removed the case to the Eastern District of Pennsylvania on February 12, 2001 asserting diversity between the parties and an amount in controversy exceeding $75,000. The District Court denied the plaintiff's motion to remand, rejecting her post-removal assertion that she did not seek damages in excess of $74,999. *Samuel-Bassett v. Kia Motors Am., Inc.,* 143 F. Supp 2d. 503 (E.D.Pa.2001).

Following further proceedings, the Court certified a class consisting of residents of Pennsylvania who purchased or leased model years

1997-2001 KIA Sephia automobiles for personal, family or household purposes. *Samuel-Bassett v. Kia Motors Am., Inc.,* 212 F.R.D. 271 (E.D.Pa. 2002). Pursuant to Federal Rule of Civil Procedure 23(f), we granted defendant's petition to appeal the class certification order.

I. Jurisdiction

Rule 23(f) provides that a Court of Appeals, in its discretion, may permit an appeal from an order of the District Court granting class certification. The scope of this review is a narrow one. *See McKowan Lowe & Co., Ltd. v. Jasmine, Ltd.,* 295 F.3d 380, 390 (3d Cir.2002) (the Advisory Committee notes "explicitly describe Rule 23(f) as not extending to any other type of order, even where that order has some impact on another portion of Rule 23").

Although the appeal in this case is limited to the certification issue, we are obliged to examine subject matter jurisdiction. Generally speaking, an interlocutory order on jurisdiction *per se* by the District Court is not appealable. *Harrison v. Nissan Motor Corp. In USA,* 111 F.3d 343, 347 (3d Cir.1996). However, the fact that review under Rule 23(f) is restricted does not relieve the court from the duty of inquiry into its jurisdiction. *See, e.g., Bender v. Williamsport Area Sch. Dist.,* 475 U.S. 534, 541, 106 S.Ct. 1326, 89 L.Ed.2d 501 (1986); *Mitchell v. Maurer*, 293 U.S. 237, 244, 55 S.Ct. 162, 79 L.Ed. 338 (1934); *Employers Ins. of Wausau v. Crown Cork & Seal Co.,* 905 F.2d 42, 45 (3d Cir.1990). Even if the parties have not raised the issue, a Court of Appeals should examine its authority *sua sponte* during its review of the case. *See, e.g., Medlin v. Boeing Vertol Co.,* 620 F.2d 957, 960 (3d Cir.1980); *Kessler v. Nat'l Enters.,* 347 F.3d 1076 (8th Cir.2003) ($1,666,626.26 judgment vacated for lack of jurisdiction after three appeals on various issues).

In the case before us, the parties did not brief the amount in controversy but did address the subject in supplemental submissions filed in response to our request. However, the parties would have us address the certification issue before scrutinizing subject matter jurisdiction. In *Amchem Products, Inc. v. Windsor,* 521 U.S. 591, 612, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997), the Supreme Court concluded that because the class certification rulings were dispositive as to all parties it would address them first rather than the jurisdictional challenges. Some of the *Amchem* class members unquestionably satisfied the jurisdictional monetary floor. Thus, the certification issues common to all were logically antecedent and merited priority because they applied to all members, whereas the question as to the amount in controversy concerned only some of the members.

The circumstances here are quite different and we will follow the usual sequence of looking first to subject matter jurisdiction, which in this case is based on diversity of citizenship. 28 U.S.C. § 1332 at 396*396. Our standard of review is plenary. *Packard v. Provident Nat'l Bank,* 994 F.2d 1039, 1044 (3d Cir.1993).

Removal of cases from state to federal courts is governed by 28 U.S.C. § 1441. In diversity suits, the requirement of an amount in controversy exceeding $75,000 applies to removed cases as well as to litigation filed originally in the federal court. 28 U.S.C. § 1447(c) requires that, in removed cases, [i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.

In *Meritcare Inc. v. St. Paul Mercury Insurance Co.,* 166 F.3d 214 (3d Cir.1999), we reviewed many of our opinions addressing the amount in controversy issue. Therefore, we will only briefly summarize the principles set forth in that case. It is important to bear in mind that parties may not confer subject matter jurisdiction by consent. *See, e.g., United States v. Griffin,* 303 U.S. 226, 229, 58 S.Ct. 601, 82 L.Ed. 764 (1938); *Liberty Mut. Ins. Co. v. Ward Trucking Corp.,* 48 F.3d 742 (3d Cir.1995); *United Indus. Workers v. Gov't of the Virgin Islands,* 987 F.2d 162, 168 (3d Cir.1993).

28 U.S.C. § 1441 is to be strictly construed against removal, *Boyer v. Snap-On Tools Corp.,* 913 F.2d 108, 111 (3d Cir.1990), so that the Congressional intent to restrict federal diversity jurisdiction is honored. This policy has always been rigorously enforced by the courts. *St. Paul Mercury Indem. Co. v. Red Cab Co.,* 303 U.S. 283, 288, 58 S.Ct. 586, 82 L.Ed. 845 (1938).

II. Standard of Review

The party asserting jurisdiction bears the burden of showing that at all stages of the litigation the case is properly before the federal court. *See Packard,* 994 F.2d at 1045. Articulation of the standard to be applied and the extent of the burden to meet that requirement have caused some disparity in District Court opinions within this Circuit.

In *Irving v. Allstate Indemnity Co.,* 97 F. Supp 2d. 653, 654 (E.D.Pa.2000), the District Court explained that "[c]ourts in the Third Circuit are unencumbered by consistency in their characterization of a defendant's burden of proving the amount in controversy on a motion to remand." In that case, the preponderance of the evidence standard was used.[1]

Other Courts have used a "reasonable probability" test, which requires the defendant to show that "a reasonable jury likely could value [the plaintiff's] losses at over $75,000." *Chaparro v. State Farm Ins. Co.,* 1999 WL 961035, at *3-4 (E.D.Pa. 1999). In *International Fleet Auto Sales, Inc. v. National Auto Credit & Agency Rent-A-Car,* 1999 WL 95258, at *4 n. 7 (E.D.Pa.1999), the District Court equated the "reasonable probability" standard to the "legal certainty" approach. Several District Courts have applied the legal certainty standard. *See, e.g., McDonough v. Crum & Forster Pers. Ins.,*1992 WL 114951, at *3 (E.D.Pa.1992).[2]
397*397. The Middle District of Pennsylvania has employed a two-step process involving both parties. *See Orndorff v. Allstate Ins. Co.,* 896 F.Supp. 173, 175 (M.D.Pa.1995)(adopting the approach taken

by *De Aguilar v. Boeing Co.,* 47 F.3d 1404, 1412 (5th Cir.1995)). Under this formula, if the defendant establishes a basis for asserting that the requisite amount in controversy has been met, the plaintiff must then prove "to a legal certainty that the claim is really for less than the jurisdictional amount" in order to support remand. *Id.*

Other versions have included: (1) the District Court "make[s] an independent appraisal of the value of the claim," *Neff v. Gen. Motors Corp.,* 163 F.R.D. 478, 482 n. 5 (E.D.Pa.1995)(citing *Angus v. Shiley Inc.,* 989 F.2d 142, 146 (3d Cir.1993)); *Bishop v. Gen. Motors Corp.,* 925 F.Supp. 294, 299-300, 300 n. 6 (D.N.J.1996)(utilizing a similar standard); (2) adoption of the inverted legal certainty approach, in which the defendant must prove to a legal certainty that the plaintiff's damages are not less than $75,000, *DiTullio v. Universal Underwriters Ins. Co.,* 2003 WL 21973324, at *3-*4 (E.D.Pa.2003); and (3) remanding a case "because ambiguity exists and doubt remains regarding the sufficiency of the amount in controversy." *Stuessy v. Microsoft Corp.,* 837 F.Supp. 690, 692 (E.D.Pa.1993).

Many of the variations are purely semantical and we have found no case where the result would have been different had one of the variations described been used. However, we think it would be helpful if consistent language were used by the District Courts within this Circuit.

The Supreme Court has discussed the nature of a defendant's burden of proof in a removal case. In *St.*

Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 58 S.Ct. 586, 82 L.Ed. 845 (1938) the plaintiff, in seeking a remand to the state court, amended the complaint after removal to allege damages less than the federal jurisdictional amount. The Court stated that the rule for determining whether the case involves the requisite amount as whether from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed, or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never was entitled to recover that amount. *Id.* at 289, 58 S.Ct. 586. If not, the suit must be dismissed.

Some courts have found inconsistencies between *Red Cab* and *McNutt v. General Motors Acceptance Corp. of Indiana,* 298 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135 (1936). In the latter case, the Supreme Court held that the party alleging jurisdiction [must] justify his allegations by a preponderance of the evidence. *McNutt,* 298 U.S. at 189, 56 S.Ct. 780. In that case, although a challenge to the amount in controversy had been raised in the pleadings, no evidence or findings in the trial court addressed that issue. In that respect, *Red Cab* differs because these factual findings had been made.

Rather than reading articulations of the standard as variations, we believe that the holdings in these two cases may be reconciled. In many instances the amount in controversy will be determined in whole or in part by state law. For example, if state law denies recovery for punitive damages, the federal court would be required to disregard the value of such a claim asserted to be included within the 398*398 jurisdictional amount. *See Packard,* 994 F.2d at 1046. In deciding applicable state law, the preponderance of the evidence standard would have no utility.

In many cases, however, disputes over factual matters may be involved. In resolving those issues, the *McNutt* preponderance of the evidence standard would be appropriate.[3] Once findings of fact have been made, the court may determine whether *Red Cab's*legal certainty test for jurisdiction has been met. In short, despite the use by some courts of such phrases as "more likely than not," "substantial likelihood," and "reasonable probability,"[4] we recommend that when the relevant facts are not in dispute or findings have been made the District Courts adhere to the "legal certainty" test cited in such cases as *Meritcare,* 166 F.3d 214; *Packard,* 994 F.2d 1039; *Bloom v. Barry,* 755 F.2d 356 (3d Cir.1985); and *Nelson v. Keefer,* 451 F.2d 289 (3d Cir.1971).

We recognize that requiring a defendant to show to a legal certainty that the amount in controversy exceeds the statutory minimum may lead to somewhat bizarre situations. As the Court observed in *Shaw v. Dow Brands, Inc.,* 994 F.2d 364, 366 (7th Cir.1993), oral argument presented a comic scene: plaintiff's personal injury lawyer protests up and down that his client's injuries are as minor and insignificant as can be, while attorneys for the manufacturer paint a sob story about how plaintiff's life has been wrecked. It would not be a surprise that when the time came for assessment of damages the parties would once again switch their views by some 180 degrees.

Because of the manner in which the claims for damages were stated in the complaint here, the District Court was required to apply state law in converting the categories to monetary sums. *See Horton v. Liberty Mut. Ins. Co.,* 367 U.S. 348, 352-53, 81 S.Ct. 1570, 6 L.Ed.2d 890 (1961) (In diversity cases courts must look to state law to determine the nature and extent of the right to be enforced). In fairness to the District Court, our review of the record indicates that the parties did not provide much assistance in this endeavor.

Having concluded that the legal certainty test is appropriate, we turn to the jurisdictional problem. In her motion to remand, plaintiff contended that the complaint filed in the state court established that her claims did not meet the required amount of $75,000. Although this was the plaintiffs clearly stated position, it did not resolve the jurisdictional issue because the defendant has a right to resort to a federal forum if it can establish that the jurisdictional requirements have been satisfied. *See, e.g., Red Cab,* 303 U.S. at 294, 58 S.Ct. 586.

III. Scope of Damages

In removal cases, determining the amount in controversy begins with a reading of the complaint filed in the state court. Unlike many instances in which a specific amount is requested, the *ad damnum* 399*399 clause in this complaint is stated in terms of categories of damages. Because the diversity statute speaks in terms of dollars, we must translate the categories plaintiff cites into monetary sums.

Count I of the complaint alleges that the defendant violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law (the Consumer Protection Law). Pa. Stat. Ann. tit. 73 § 201-9.2(a) (West 2003). The statute allows recovery of actual damages and reasonable attorney's fees, treble damages and such additional relief as [the court] deems necessary or proper. *Id.* Because this claim offers the highest potential recovery to the plaintiff, we will discuss it first.

The plaintiff sought damages for loss of value of the car, depreciation in resale value, repair costs, expense of repair attempts, loss of use, treble damages, and attorney's fees. In the alternative, she sought to rescind the contract.

In calculating the damages recoverable under the statute, the District Court began with the base purchase price of the automobile, $13,370, and added registration, title and filing fees, sales tax, service contract cost and expenses of financing to reach a total of $22,095. *Samuel-Bassett,* 143 F.Supp.2d at 507. The Court concluded that giving the damages claims the broadest possible reading and trebling the $22,095 which Plaintiff is obligated to pay for her automobile over five years in addition to attorney's fees and out-of-pocket expenses, would clearly total an amount in excess of $75,000. *Id.* The District Court did not explain the computation underlying its conclusion.

The Consumer Protection Law does not specify how actual damages should be measured and we therefore turn to relevant state appellate rulings. The Pennsylvania Supreme Court has not yet had the occasion to interpret the statutory term. The Superior Court, an intermediate appellate court, has utilized the purchase price of a vehicle as a starting point for calculating damages. From that amount, various sums have been deducted to arrive at the actual damages. *See Stokes v. Gary Barbera Enters.,* 783 A.2d 296, 299 (2001); *Young v. Dart,* 428 Pa. Super. 43, 630 A.2d 22, 26 (1993).

In *Stokes,* the plaintiff proved that the car dealer had tampered with the odometer and misrepresented that a van was new. *Stokes,* 783 A.2d at 297. In determining the damage award, the trial court began with the amount of monthly payments made by the plaintiff and added the down payment, the value of the trade-in and the amount necessary to pay off the loan. *Id.* at 298. From this total the following amounts were subtracted: (1) half of the monthly payments the plaintiff had made (to reflect usage), (2) an additional $4000 for usage and (3) a trade-in credit that the plaintiff received for the van when he purchased a new car. *Id.* The Superior Court affirmed. *Id.* at 299.

In *Young v. Dart,* the plaintiff purchased a car from a dealer who concealed the fact that the vehicle had been involved in a collision and had numerous hidden defects. *Young,* 630 A.2d at 23. Recognizing that the Consumer Protection Law "does not set forth a formula for the assessment of actual damages," the Superior Court held that the trial court did not err by looking to the method used under the Automobile Lemon Law. *See id.* at 26-27. *See also* Pa. Stat. Ann. tit. 73 § 1955 (West 2003). The trial court used the $12,800.68 purchase price as a starting point, and subtracted $4,858.20 for Young's usage between the date of purchase and the trial, as well as requiring the return of the car. *Young,* 630 A.2d at 27. The plaintiff was also awarded some minor consequential damages.

In *Suber v. Chrysler Corp.,* 104 F.3d 578 (3d Cir.1997), we were faced with somewhat 400*400 similar issues under the New Jersey Consumer Fraud Act. In that case, we remanded for reevaluation of the plaintiff's loss under the state's Lemon Law. *Id.* at 588-89. The District Court in *Suber* began and ended its analysis with the sticker price of the van. We noted that under the Lemon Law a claimant was required to return the car and that because the value of the vehicle had not been established, the issue should be reviewed on remand. *Id.* at 585 n. 7. We recognize that in discussing damages, *Suber* was applying New Jersey law, not the Pennsylvania Consumer Protection Law, and, hence, is not determinative here.

In *Werwinski v. Ford Motor Co.,* 286 F.3d 661, 668, 670 (3d Cir.2002), the panel concluded that defendant had established removal jurisdiction in a case where the plaintiffs complained that their automobile had a defective transmission. The Court pointed out that the plaintiffs sought to recover compensatory damages and in addition all or part of the sums [plaintiffs] paid to purchase or lease their automobiles. *Id.* at 666. Moreover, plaintiffs demanded that the defendant disgorge its ill-gotten profits received from the sale of the subject vehicles and/or make full restitution. *Id.* at 667. The Court concluded, because of these provisions, the complaint clearly leaves the door open for them later to demand reimbursement for the purchase price of the cars. *Id.*

We observe that in the briefs in that case the parties cited four district court opinions and did not call the panel's attention to the two Superior Court cases interpreting relevant aspects of the Consumer Protection Law. District court rulings on Pennsylvania law are not authoritative and must yield to rulings of the state Supreme Court or, if none exist, consider decisions of the state's intermediate appellate courts in predicting how the state's highest court would rule. *Gares v. Willingboro Township,* 90 F.3d 720 (3d Cir.1996). In any event, the plaintiffs' complaint in the case before us does not contain the additional claims for damages which *Werwinski* relied upon in finding that the jurisdictional amount had been met.

IV. The Consumer Protection Law Claim

As noted earlier, the District Court here began its computations under the Consumer Protection Law[5] by assuming that the 401*401 "total sales price" of $22,095 was a beginning point. *Samuel-*

Bassett, 143 F.Supp.2d at 508. This figure included the price of the car, financing charges, sales tax, license, title and filing fees, as well as a service contract. *Id.* In addition, the Court referred to, but did not cite specific amounts of such expenses as costs as repairs, rental cars and attorneys' fees. *Id.* The District Court concluded that, considering these unquantified costs and trebling the price of the car, the plaintiff's recovery "would clearly total an amount in excess of $75,000." *Id.*

Conspicuously absent from the calculation were deductions for the value of the car and allowance for its use reductions applied by the Superior Court of Pennsylvania in similar cases. In the plaintiff's complaint she seeks out-of-pocket reimbursement of repairs but no amounts were stated. In this connection, it would appear that if the expense of a service contract is considered as an item of loss, the amounts paid for repairs covered by the terms of that agreement should not be considered as actual damage to the plaintiff.

The fact remains that the amount in controversy has not been properly established. The computations here are inadequate and fail to conform with the Pennsylvania statutory language of actual damages as applied by the state appellate court. Although the damages conceivably could be trebled, the record does not establish the multiplicand for such an award.

Some observations may be helpful on remand. Rescinding the contract apparently would provide plaintiff with the most advantageous result because it would place her in the same position she was in before purchasing the vehicle. That remedy would require plaintiff to return the vehicle to the dealer, who should assume the outstanding balance of the loan. Defendant would pay plaintiff the total amount of installment payments made by her, the out-of-pocket repair costs that she incurred, and incidental expenses. From this sum must be subtracted a reasonable amount to reflect the plaintiff's usage of the vehicle. To test the upper limits of the range for the jurisdictional amount, *Angus v. Shiley, Inc.,* 989 F.2d 142, 146 (3d Cir. 1993), the resulting computation may be trebled under the Consumer Protection Law. *Metz v. Quaker Highlands, Inc.,* 714 A.2d 447 (1998) (treble damages may be awarded in a rescission case).

Attorney's fees awarded under the Consumer Protection Law are to be reasonable. Pa. Stat. Ann. tit. 73 § 201-9.2(a). As the Superior Court has explained in *McCauslin v. Reliance Finance Co.,* 751 A.2d 683, 686 (2000), [t]he term reasonable does impart a sense of proportionality between an amount of damages and an award of attorney's fees.[6] We also point out that under the Consumer Protection Law no punitive damages other than the discretionary authority to treble is permitted. *McCauslin,* 751 A.2d at 685 (although the Act does allow the Court to 402*402 impose up to treble damages for actual damages sustained, it does not otherwise confer a right to punitive damages.).

The counts presented by the plaintiff appear to be in the alternative and the parties have not suggested that, except for the trebling provided by the Consumer Protection Law, there can be more than one recovery for the harm. Although Count I would seem to be the one to offer the most, although questionable, potential to reach the $75,000 mark, we shall briefly discuss the other claims.

V. The U.C.C. Claim

Under Pennsylvania law the measure of damages for breach of warranty under the Uniform Commercial Code is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount. 13 Pa. Cons.Stat. Ann. § 2714(b) (West 2003).

In addition to actual damages, plaintiffs may also recover incidental and consequential damages resulting from a breach of warranty. 13 Pa. Cons.Stat. Ann. §§ 2714(c), 2715, 2A519(d). However, punitive damages are not recoverable in an action based solely on breach of contract. *Thorsen v. Iron & Glass Bank,* 328 Pa. Super. 135, 476 A.2d 928, 932 (1984); *Johnson v. Hyundai Motor Am.,* 698 A.2d 631, 639 (1997).

The purchase price of a motor vehicle serves as *prima facie* evidence of value, but standing alone, as it does here, does not provide sufficient data to establish value. *Price v. Chevrolet Motor Div. of Gen. Motors Corp.,* 765 A.2d 800, 811 (2000). The record before us fails to establish the value of the automobile with and without the brake defect. Even adding consequential damages to a conjectural estimate of value here fails to establish anything near $75,000. Accordingly, the breach of warranty count fails to provide federal court jurisdiction.

VI. The Magnuson-Moss Warranty Improvement Act

The Magnuson-Moss Act provides that a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract may bring suit for damages and other legal and equitable relief. 15 U.S.C. § 2310(d)(1) (2003).

Suit may be filed in state or federal court. *Id.* However, federal jurisdiction for a Magnuson-Moss Act claim does not exist unless the amount in controversy exceeds $50,000, and, if the suit is brought as a class action, the number of named plaintiffs is at least 100. 15 U.S.C. § 2310(d)(3).

In *Voelker v. Porsche Cars North America, Inc.,* 348 F.3d 639, 643 (7th Cir.2003), an automobile warranty case, the Court of Appeals said that the party asserting federal jurisdiction must allege the cost of the replacement vehicle, minus both the present value of the allegedly defective vehicle and the value that the plaintiff received from the allegedly defective vehicle. The facts in that Magnuson-Moss case differ from those present here, but the requirements of allowance for usage and establishing the difference in value, rather than simply the purchase price are the same.

Treble damages may not be assessed in a Magnuson-Moss count. Nor may attorney's fees be considered in calculating the jurisdictional amount. *Suber,* 104 F.3d at 588 n. 12. It is clear that the amount recoverable under the claim here does not exceed $50,000 and this case cannot be maintained in the federal courts on an independent jurisdictional basis. There 403*403 is no need to address supplemental jurisdiction at this point.

By way of equitable relief, plaintiff asks that members of the putative class be notified and warned about the brake system defect. Because we must look to the jurisdictional status of the named plaintiff, it is obvious that injunctive relief is not appropriate.

VII. Conclusion

We conclude that the case must be remanded to the District Court for fact-finding on the amount in controversy. We repeat the admonition expressed in our case law that in order to carry out the Congressional intent to limit jurisdiction in diversity cases, doubts must be resolved in favor of remand. *See, e.g., Boyer v. Snap-On Tools Corp.,* 913 F.2d 108, 111 (3d Cir.1990); *Abels v. State Farm Fire & Cas. Co.,* 770 F.2d 26, 29 (3d Cir.1985). Moreover, estimations of the amounts recoverable must be realistic. The inquiry should be objective and not based on fanciful, pie-in-the-sky, or simply wishful amounts, because otherwise the policy to limit diversity jurisdiction will be frustrated.

Accordingly, the order of certification will be vacated and the case remanded to the District Court for a determination of subject matter jurisdiction.

[1] Opinions in other District Court cases filed within this Circuit have followed the preponderance standard. *See, e.g., Carrick v. Sears, Roebuck and Co.,* 252 F. Supp 2d. 116, 119 (M.D.Pa. 2003); *Fosbenner v. Wal-Mart Stores, Inc.,* 2001 WL 1231761 (E.D.Pa.2001); *Kobaissi v. Am. Country Ins. Co.,* 80 F. Supp 2d. 488, 489 n. 2 (E.D.Pa. 2000); *McFadden v. State Farm Ins. Co.,* 1999 WL 715162 (E.D.Pa.1999); *Imperial Spirits, USA, Inc. v. Trans Marine Int'l Corp.,* 1999 WL 172292 (D.N.J.1999); *Garcia v. Gen. Motors Corp.,* 910 F.Supp. 160, 165 (D.N.J.1995).

[2] *See also, Johnson v. Costco Wholesale,* 1999 WL 740690, at *2 (E.D.Pa.1999); *McNamara v. Philip Morris Cos.,* 1999 WL 554592, at *2 (E.D.Pa.1999); *Hunter v. Greenwood Trust Co.,* 856 F.Supp. 207, 219-220 (D.N.J.1992); *Carson v. ITT Hartford Ins. Group,* 1991 WL 147469 (E.D.Pa.1991). *See also Earley v. Innovex (N. Am.) Inc.,* 2002 WL 1286639, at *2 (E.D.Pa.2002) (noting that judges of the Eastern District of Pennsylvania have applied a preponderance of the evidence standard but explaining that [a]n action may not be remanded to state court unless it is apparent to a legal certainty that the plaintiff's claim cannot meet the amount in controversy requirement.).

[3] A pretrial ruling on jurisdictional facts should not be made if it constitutes a decision on the merits. *See Grubart, Inc. v. Great Lakes Dredge &*

Dock Co., 513 U.S. 527, 537-38, 115 S.Ct. 1043, 130 L.Ed.2d 1024 (1995); *Jaconski v. Avisun Corp.,* 359 F.2d 931, 935 (3d Cir.1966); 5A Charles Alan Wright & Arthur R. Miller, Federal Practice And Procedure § 1350 (2d ed.1990).

[4] *See Gafford v. Gen. Elec. Co.,* 997 F.2d 150 (6th Cir.1993) (reviewing various tests used by courts). *See also* Alice M. Noble-Allgire, *Removal of Diversity Actions When the Amount in Controversy Cannot be Determined from the Face of Plaintiff's Complaint: The Need for Judicial and Statutory Reform to Preserve Defendant's Equal Access to Federal Courts,* 62 Mo. L.Rev. 681 (1997).

[5] The order certifying the class also dismissed Count I. The District Court cited the *Werwinski* ruling that the economic damages doctrine barred recovery under the Consumer Protection Law. The dismissal is interlocutory and is not before us in view of the limited review under Rule 23(f).

Application of the economic loss doctrine to claims under the Consumer Protection Law has been questioned. The Pennsylvania Supreme Court has not addressed the issue. In *O'Keefe v. Mercedes-Benz USA, LLC,* 214 F.R.D. 266, 277 (E.D.Pa.2003), the District Court observed that the Superior Court, post-*Werwinski,* had approved treble damages under the Consumer Protection Law. In *Debbs v. Chrysler Corp.,* 810 A.2d 137, 164 (2002), the Superior Court, noting *Werwinski's* holding, stated we specifically decline to address Chrysler's invitation to address two particularly vexing questions: (1) application of the economic loss doctrine . . . Pennsylvania trial courts have rejected *Werwinski's* prediction that the Pennsylvania Supreme Court would apply the economic loss rule in claims under the Consumer Protection Law. *See, e.g., Oppenheimer v. York Int'l,* 2002 WL 31409949, at *5 (Pa. Com. Pl. 2002); *Zwiercan v. Gen. Motors Corp.,* 2002 WL 31053838, at *7 (Pa.Com.Pl. 2002). *See also Balderston v. Medtronic Sofamor Danek, Inc.,* 285 F.3d 238, 242 (3d Cir. 2002) ("[i]n construing claims under the CPL, Pennsylvania courts have distinguished purchases made for business reasons which are not actionable from those made for 'personal, family or household use.'").

Of course, in this case if the District Court's re-assessment of plaintiff's damages results in an amount less than $75,000, as seems likely, then the *Werwinski* ruling need not be addressed.

[6] We are impressed with the New Jersey Superior Court's appraisal of the value of a case in certifying a class action involving the brakes on the same model of Kia cars. According to the Court:

[T]he evidence here is that for the repair of a brake system of this nature, you re speaking in terms of a few hundred dollars. Nothing even coming close to $1,000. How many of the 8,455 members would seek, individually, to claim recompense of that small sum? To ask the question, I think answered in terms of qualification. *Little v. KIA Motors of America,* UNN-L-800-01 (N.J. Super. Ct. Law Div. filed August 20, 2003).

478 F.Supp.2d 924 (2007)

Rhonda TORRES, Plaintiff,

v.

STATE FARM MUTUAL AUTOMBILE INSURANCE COMPNY, Defendant.

No. 06-10980.

March 14, 2007.

United States District Court, E.D. Michigan, Southern Division.

925 *925

Gary B. Perkins, Rochester Hills, MI, for Plaintiff.

Paul H. Johnson, Jr., Cary R. Berlin, Patrick, Johnson & Mott, P.C., Southfield, MI, for Defendant.

ORDER OF REMAND

GADOLA, District Judge.

On March 7, 2007, after a jury was selected but before the parties' opening statements, the parties brought to the Court's attention a concern that there may not be a sufficient amount in controversy to satisfy federal diversity jurisdiction. The Court heard arguments and requested that the parties submit briefs on this issue. For the reasons stated below, the Court finds that the amount in controversy is not satisfied, and thus, lacking jurisdiction, the Court remands the case to Macomb County Circuit Court.

This case arises out of an automobile accident that occurred on October 6, 2004, when Plaintiff Rhonda Torres was rearended by another automobile while stopped at a red light in Troy, Michigan. Plaintiff filed a claim for no-fault benefits with her insurance company, Defendant State Farm Mutual Insurance Company. After investigating the claim, Defendant denied Plaintiff coverage after concluding that the injuries suffered by Plaintiff were not related to the automobile accident. Plaintiff then filed suit in Macomb County Circuit Court. On March 6, 2006, Defendant removed the case to this Court pursuant to 28 U.S.C. § 1441. In Defendant's Notice of Removal, Defendant stated that federal court jurisdiction was proper due to diversity of citizenship. Defendant also alleged that the amount in controversy exceeded the sum of $75,000, as required by 28 U.S.C. § 1332(a). Plaintiff did not contest federal court jurisdiction at the time of removal. As the case proceeded to trial, neither party raised the issue of a sufficient amount in controversy for diversity jurisdiction. It was on the morning of the parties' opening statements after a jury had been selected that the parties brought this to the Court's attention, after the parties had calculated Plaintiff's specific *926 is damages and realized that Plaintiffs damages may not exceed $75,000.

Though it is unfortunate that the parties did not raise this issue at an earlier time before a jury was selected, the Court cannot ignore this matter. "Unlike other issues not involving the merits of a case, subject-matter jurisdiction may be raised at any time, by any party or even sua sponte by the court itself." *Franzel v. Kerr Mfg. Co.*, 959 F.2d 628, 630 (6th Cir.1992).
Id, 926

"[F]ederal courts have an independent obligation to investigate and police the boundaries of their own jurisdiction." *Douglas v. E.G. Baldwin & Assocs., Inc.*, 150 F.3d 604, 607 (6th Cir.1998).

In addition to giving federal district courts original jurisdiction over cases arising under federal law, see 28 U.S.C. § 1331, Congress ""has granted district courts original jurisdiction in civil actions between citizens of different States, between U.S. citizens and foreign citizens, or by foreign states against U.S. citizens," "to provide a neutral forum for what have come to be known as diversity cases," *Exxon Mobil [v. Allapattah Servs.]*, 545 U.S. 546, 125 S.Ct. [2611] at 2617, 162 L.Ed.2d 502 [U.S. 2005]; see 28 U.S.C. § 1332. "To ensure that diversity jurisdiction does not flood the federal courts with minor disputes, § 1332(a) requires that the matter in controversy in a diversity case exceed a specified amount, currently $75,000." *Exxon Mobil*, 125 S.Ct. at 2617.

Everett v. Verizon Wireless, Inc., 460 F.3d 818, 821-22 (6th Cir.2006). In this case, Plaintiff seeks damages under Michigan's No-Fault Act for unpaid wage loss, replacement services, and unreimbursed medical and pharmaceutical expenses. See M.C.L. § 500.3101 et seq. The parties concede that these itemized damages total approximately. $67,675, and thus do not exceed $75,000 as required for diversity jurisdiction. Plaintiff also claims attorney fees and penalty interest at a rate of 12% per annum. If either attorney fees or penalty interest are added to

Plaintiff's alleged damages, then the jurisdictional amount would be satisfied. Thus, the question is whether attorney fees or penalty interest should be used in determining the amount in controversy required for federal diversity jurisdiction.

The Michigan No-Fault statute itself provides for recovery of attorney fees and penalty interest. See M.C.L. §§ 500.3142, 500.3148. Attorney fees and penalty interest, however, are not statutorily mandated upon a judgment in favor of Plaintiff. Foran award of attorney fees and penalty interest, an additional showing by Plaintiff is required. In particular, the Michigan No-Fault statute states that an attorney is entitled to a reasonable fee "if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment." M.C.L. § 500.3148(1). The statute also states that the 12% penalty interest is available for "overdue" payments and that payments are overdue if not paid within 30 days of the reception of "reasonable proof of the fact and of the amount of loss sustained." M.C.L. § 500.3142. Michigan courts read the provisions granting attorney fees and penalty interest as being complementary to one another. See *Beach v. State Farm Mut. Auto. Ins. Co.*, 216 Mich. App. 612, 550 N.W.2d 580, 588 (1996). Thus, the showing required for obtaining attorney fees and penalty interest is the same: that the insurer was unreasonable in failing to make payments.

Diversity jurisdiction under 28 U.S.C. § 1332 requires that the amount in controversy must exceed "the sum or value of $75,000, exclusive of interest and costs." 28 U.S.C. § 1332. On its face, this language appears to exclude attorney fees *927 and interest. There is an exception, however, for penalties and attorney fees that are provided by statute. Analyzing this provision in the case of *Clark v. Nat'l Travelers Life Ins. Co.*, 518 F.2d 1167 (6th Cir.1975), the Sixth Circuit Court of Appeals stated: "It is settled that the statutory penalty and a statutory attorney's fee can be considered in determining whether the jurisdictional amount is met." *Clark v. Nat'l Travelers Life Ins. Co.*, 518 F.2d 1167, 1168 (6th Cir.1975).

Several district courts have relied upon *Clark* to find that statutory fees can be considered in determining whether the amount in controversy is sufficient. See, e.g., *Gavriles v. Verizon Wireless*, 194 F.Supp.2d 674, 684 (E.D.Mich.2002) (considering the Michigan Consumer Protection Act); *Eungard v. Open Solutions, Inc.*, 2006 WL 177249 (E.D.Mich. Jan.24, 2006) (considering the Michigan Sales Representative Act). Unfortunately, there appears to be no case law that specifically considers how the penalty interest and attorney fees under the Michigan No-Fault Act should be treated.

927 In considering the question of whether statutory penalty interest and attorney fees under the Michigan No-Fault Act should be used in determining the amount in controversy, the Court finds the discussion in a recent district court case from the United States District Court for the Eastern District of Virginia to be helpful. In *Cradle v. Monumental Life*

Ins. Co., 354 F.Supp.2d 632 (E.D.Va.2005), the court analyzed the approaches taken by different circuit courts on this matter, observing that where attorney's fees were statutorily mandated, the fees were included in the amount in controversy. Citing the *Clark* case from the Sixth Circuit, the court further observed that some circuit courts had found that "the amount in controversy may include attorney's fees even if there must be an additional showing made."

Cradle, 354 F.Supp.2d at 636. The Cradle court, however, distinguished these cases from the particular case under the court's consideration by noting that they were cases where the "additional showing" could be considered prior to a judgment. *Id.* The *Cradle* court went on to say: In the context of the Virginia statute before the Court in this case, a finding in favor of the insured serves as a condition precedent to the insured's filing of a motion for fees, in which the plaintiff must allege and prove bad faith on the part of the defendant insurer. Therefore, the Court would be forced to speculate as to whether the amount in controversy will exceed $ 75,000. . . . To allow the parties to proceed would place the Court in the awkward position of potentially finding that it does not have jurisdiction after a judgment has been entered. *Id.* at 636-37.

Here, in this case, penalty interest and attorney fees are granted by the statutory language of the Michigan No-Fault Act. See M.C.L. §§ 500.3142, 500.3148. The penalty interest and attorney fees, however, are not mandated upon a judgment in favor of Plaintiff. Instead, similar to the circumstances in the *Cradle* case, the Court must make an additional determination, after a judgment has been rendered, that Defendant unreasonably failed to make payments. This puts the Court in the awkward position of now speculating as to whether the amount in controversy will exceed $75,000. See *Cradle*, 354 F.Supp.2d at 636-37. It is conceivable that should the parties proceed to trial and a judgment is rendered in favor of Plaintiff, this Court might find that Defendant's actions were not unreasonable. Plaintiff would then be unable to recover penalty interest and attorney fees, and consequently, the amount of controversy for federal *928 diversity jurisdiction would not be satisfied.

It should be noted that Plaintiff originally filed the case in state court, and that it was removed later by Defendant. "A defendant removing a case has the burden of proving the diversity jurisdiction requirements." *Rogers v. Wal-Mart Stores, Inc.*, 230 F.3d 868, 871 (6th Cir.2000). Therefore, the burden is on the defendant to show that the amount in controversy is "more likely than not" met. *Gafford v. General Elec. Co.*, 997 F.2d 150, 158 (6th Cir.1993).

Even now, on the eve of trial, Defendant concedes in its brief that diversity jurisdiction is uncertain. Because the Court must speculate about whether the amount in controversy will exceed $75,000, the Court finds that the amount in controversy required for diversity jurisdiction cannot be determined at this juncture. Accordingly, the Court cannot exercise jurisdiction over this case.

Furthermore, retaining jurisdiction of this action might lead to a jurisdictional challenge made after a jury trial and judgment or even on appeal before the Sixth Circuit Court of Appeals. See *City of Detroit Pension Fund v. Prudential Sec.*, 91 F.3d 26, 29 (6th Cir.1996) (finding that a challenge of jurisdiction may be made at any time, including on appeal after judgment at the trial court). Unlike the situation presented here in federal court, it is undisputed that the state court has full jurisdiction over the entire matter. Accordingly, remanding the case to state court is the more sound and prudent course to take under the circumstances.

The Court finds that having this case proceed to trial in state court, the forum initially selected by Plaintiff, will not prejudice either party and will still enable Plaintiff the ability to pursue all the relief she seeks. With discovery and trial depositions completed and outstanding motions resolved, the parties for both sides are ready to begin trial immediately. Thus, there is no reason to think that the start of trial in Macomb County Circuit Court will be unduly delayed.

ACCORDINGLY, IT IS HEREBY ORDERED that this action, No. 06-10980, is REMANDED to the Circuit Court for the County of Macomb, Michigan.

SO ORDERED.

[Petitioner Objects to the relevant Facts described in this order. Should this Writ be granted, and briefing be permitted, this order's errors will be cited. It happened often in this case below.]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

Filed
May 24, 2023
ECF DOC 40

SUSAN ROMANOV,
Plaintiff,
v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Defendant.

Case No. 3:22-cv-443
Judge Travis R. McDonough
Magistrate Judge Debra C. Poplin

MEMORANDUM OPINION

Before the Court are four motions: Defendant State Farm Mutual Automobile Insurance Company's ("State Farm") motion to strike pro se Plaintiff Susan Romanov's supplemental brief (Doc. 38); State Farm's motions to dismiss Romanov's complaint and amended complaint for failure to state a claim and for violation of a court order (Docs. 19, 29); and Romanov's motion for relief from the Court's judgment in Case No. 3:19-cv-90 (Doc. 27).

For the reasons that follow, the Court will **GRANT** State Farm's motion to strike Romanov's supplemental brief (Doc. 38), **DENY AS MOOT** State

Farm's motion to dismiss Romanov's initial complaint (Doc. 19), **GRANT IN PART** and **DENY IN PART** State Farm's motion to dismiss Romanov's amended complaint (Doc. 29), and **DENY** Romanov's motion for relief from judgment (Doc. 27). As a result, all but Romanov's breach-of-contract claim will be **DISMISSED**.

I. BACKGROUND

This case concerns a State Farm-issued insurance policy and an allegedly stolen truck. A long-time State Farm client, Romanov elected to insure her newly leased truck through the company on January 5, 2018. (Doc. 25, at 6.) On March 5, 2018, Romanov permitted an individual, Paige Summers, to drive the truck out of Tennessee, where Romanov resides. (*Id.* at 6.) However, at some point during the journey, "Summers went rogue with the vehicle," making it all the way to Houston, Texas, before Romanov was able to confront him. (*Id.* at 6–7.) What ensued is best described as a cross-country pursuit: before Romanov could secure the vehicle, Summers high-tailed it to another state, only to be briefly stopped by Romanov before recommencing the chase. (*Id.* at 7–8.) This cycle evidently continued for months until law enforcement finally located the stolen vehicle in Colorado. (*Id.* at 8.)

The recovered vehicle, however, was damaged. Apparently due to Summers's navigation of the vehicle "in a hot-rod fashion," which included "driving over curbs, grassed medians[,] and on gravel and dirt roads," the truck was no longer in drivable condition. (*Id.* at 8, 12.) As a result, on June 25, 2018, Romanov tendered a claim with State Farm for recovery related to the theft of and damage to her insured vehicle, seeking to be made "whole as to the . . . condition of the vehicle" and to be reimbursed for the cost of transporting the truck back to Tennessee. (*Id.* at 9, 13–14.)

A State Farm agent advised Romanov that the policy would not cover the requested costs due to State Farm's determination that the damage was attributable to "normal wear and tear." (*Id.* at 14.) Dissatisfied with this response, Romanov "pursued escalation of the issues," which led to State Farm's reevaluation of the claim in October of 2018. (*Id.* at 15.) State Farm ultimately assessed the damage to Romanov's truck as a "total loss" to be paid out in the amount of $25,392.87. (*Id.* at 17.) But because the vehicle's "lease payoff" was significantly larger—$39,975.32—Romanov rejected the payment amount. (*Id.*) State Farm then selected a third-party appraiser to assess the fair market value of Romanov's truck. (*Id.*) According to Romanov, the appraiser estimated the value of the truck to be comparable to the amount she had paid for it the previous year. (*Id.* at 17–18.) However, on March 3, 2019, State Farm denied the claim, informing Romanov it would not be paying for the truck as a total loss after all. (*Id.* at 18.)

This matter was first before the Court four years ago when Romanov filed a complaint bringing claims for intentional infliction of emotional distress, breach of contract, negligence and bad faith, and violation of Tennessee's Unfair Settlement Claims Practices Act—all related to State Farm's alleged failure to timely and fully reimburse Romanov for the loss of the stolen truck. (Doc. 1, at 13–17 in Case No. 3:19-cv-90). Romanov, through counsel, subsequently amended that complaint to allege only a breach-of-contract claim. (Doc. 25, at 12–13 in Case No. 3:19-cv-90.) After electing to proceed pro se, Romanov sought to again amend her complaint but delayed moving to do so until after the expiration of discovery and dispositive motion deadlines. (Doc. 152, at 9 in Case No. 3:19-cv-90.) United States Magistrate Judge Bruce Guyton denied the motion, finding that State Farm "would be highly prejudiced if the Court were to allow [Romanov] to amend the Amended Complaint at this late stage of the litigation." (*Id.* at 10 in Case No. 3:19-cv-90.)

Approximately two years into litigating the case and one month out from trial, Romanov moved to voluntarily dismiss her case. (Doc. 155, at 3 in Case No. 3:19-cv-90.) On September 24, 2020, this Court granted the motion on a provisional basis (Doc. 157 in Case No. 3:19-cv-90). So as to "offset the prejudice State Farm may suffer" as a result of a dismissal at so late a stage in the litigation, the Court instated the following conditions of dismissal:

1. Should Plaintiff decide to refile her case, it must be refiled in the Eastern District of Tennessee before this Court, and it must be filed within the time period permitted by law.

2. All previous rulings and entries on the docket for this case must stand, and, if refiled before the Court, the case will be in the same procedural posture as when it was dismissed.

3. If Plaintiff prevails in her refiled suit, she must pay Defendants' expenses, costs, and fees for work performed in the first suit that cannot be used in the second suit.

(*Id.* at 2.) Romanov then requested clarification from the Court as to the practical implications of the conditions. (Doc. 158 in Case No. 3:19-cv-90.) In regard to the second condition, the Court specified that, "absent a change in circumstances, [Romanov] would not be permitted to assert new claims against State Farm in any newly filed case in this Court." (Doc. 159, at 2 in Case No. 3:19-cv-90.)

Romanov appealed the voluntary-dismissal order (Doc. 160 in Case No. 3:19-cv-90). On February 4, 2022, the United States Court of Appeals for the Sixth Circuit entered an order dismissing the appeal for lack of jurisdiction and denying all pending motions. (Doc. 162 in Case No. 3:19-cv-90.) The mandate issued on March 1, 2022. (Doc. 163 in Case No. 3:19-cv-90.) In its order, the Sixth Circuit held that this Court's order granting Romanov's motion to voluntarily dismiss the case was not appealable because Romanov "has not shown that the conditions imposed by the district court resulted in legal prejudice." (Doc. 162, at 4 in Case No. 3:19-cv-90.) In arriving at this conclusion, the court referenced its prior holding in another case that the functional equivalent of the second condition—the imposition of "the law of the case from the original action" on any refiled action—was reasonable. (*Id.* at 4 (quoting *Duffy v. Ford Motor Co.*, 218 F.3d 623, 628 (6th Cir. 2000).)

On December 12, 2022, Romanov refiled her case, bringing claims for breach of contract, negligence and bad faith, violation of Tennessee's Unfair Settlement Claims Practices Act, and fraud. (Doc. 1, at 25–42.) Romanov also now seeks punitive damages related to her breach-of-contract claim. (*Id.* at 27.) State Farm moved to dismiss all claims, arguing that Romanov flouted the Court's order requiring that a refiled suit remain in the same procedural posture and that she waited too long to refile. (Doc. 19, at 2–4.) Romanov then amended her complaint, which still brings claims for breach of contract (including punitive damages), negligence and bad faith, violation of Tennessee's Unfair Settlement Claims Practices Act, and fraud. (Doc. 25, at 26–45.) That same day, Romanov filed a motion for reconsideration of the Court's voluntary-dismissal order in Case No. 3:19-cv-90. (Doc. 27.) In light of Romanov's amended complaint, State Farm filed another motion to dismiss all of Romanov's claims. (Doc. 29.) Most recently, State Farm moved to strike a supplemental brief Romanov filed related to the motion to dismiss, arguing it violated Local Rule 7.1. (Doc. 38.) The motions are now ripe for the Court's review.

II. STATE FARM'S MOTION TO STRIKE SUPPLEMENTAL BRIEF (Doc. 38)

State Farm moves to strike a supplemental brief filed by Romanov, arguing she failed to comply with the governing local rules. (Doc. 38, at 1.) Romanov avers that her decision to file a supplemental brief addressing State Farm's motion to dismiss "was to minimize the litigation of a motion to strike and simply direct the Court to the new developments." (Doc. 39, at 3.) Local Rule 7.1(d) bars the submission of any "additional briefs, affidavits, or other papers in support of or in opposition to a motion . . . without prior approval of the Court," unless a party files "a supplemental brief of no more than 5 pages to call to the Court's attention developments occurring after a party's final brief is filed." E.D. Tenn. L.R. 7.1(d).

Romanov's supplemental brief (Doc. 37) does not comport with Local Rule 7.1(d). She filed the document without first seeking the Court's approval, and it is unclear what "developments" occurring after final-brief submission would warrant an exception. Instead, Romanov's brief appears to advance arguments responding to State Farm's reply brief— arguments that she characterizes as "new law and argument that should be called to the attention of the Court in direct relation to new arguments and assertions made in State Farm's Reply Brief." (Doc. 39, at 1.) Contrary to Romanov's assertions, the opportunity to respond to a party's brief does not constitute "developments occurring after a party's final brief is filed" as contemplated by Local Rule 7.1(d), nor would allowing the brief's submission serve the Rule's goal of expeditious adjudication of claims. Accordingly, the Court will **GRANT** State Farm's motion to strike Romanov's supplemental brief (Doc. 38) and will not consider the arguments made therein for purposes of ruling on State Farm's motion to dismiss.

III. ROMANOV'S RULE 60(b) MOTION (Doc. 27)

A. Standard of Review

Rule 60(b) of the Federal Rules of Civil Procedure provides enumerated grounds that allow a court to relieve a party from operation of a final judgment or order. *Johnson v. Unknown Dellatifa*, 357 F.3d 539, 543 (6th Cir. 2004) ("As a prerequisite to relief under Rule 60(b), a party must establish that the facts of its case are within one of the enumerated reasons contained in Rule 60(b) that warrant relief from judgment.") (citation omitted). Rule 60(b) provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or

extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). "A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1).

Moreover, Rule 60(b) relief applies only in exceptional or "extraordinary circumstances justifying the reopening of a final judgment." *Sheppard v. Robinson*, 807 F.3d 815, 820 (6th Cir. 2015) (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005)). Whether a circumstance is "exceptional or extraordinary" requires a "case-by-case inquiry . . . [that] intensively balance[s] numerous factors, including the competing policies of the finality of judgments and the incessant command of the court's conscience that justice be done in light of all the facts." *West v. Carpenter*, 790 F.3d 693, 697 (6th Cir. 2015) (citations omitted).

B. Analysis

Romanov moves for partial relief from the Court's judgment (Doc. 157 in Case No. 3:19-cv-90) "pursuant to [Federal Rule of Civil Procedure] 60(b)(5) and/or (6)."[1] (Doc. 27, at 1.) Specifically, Romanov seeks relief from the second condition of dismissal the Court issued in Romanov's previously filed case, which orders that "[a]ll previous rulings and entries on the docket for [Case No. 3:19-cv-90] must stand, and, if refiled before the Court, the case will be in the same procedural posture as when it was dismissed." (Doc. 157, at 2 in Case No. 3:19-cv-90.) In response to Romanov's request for clarification (Doc. 158 in Case No. 3:19-cv-90) as to its

1 Romanov also mentions in her response to State Farm's motion to dismiss that she "has experienced changes in circumstances . . . related to new evidence." (Doc. 26, at 1–2.) To the extent Romanov is also requesting relief based on "newly discovered evidence" pursuant to Federal Rule of Civil Procedure 60(b)(2), the motion is time-barred. *See* Fed. R. Civ. P. 60(c)(1) ("A motion under Rule 60(b) . . . for reasons (1), (2), and (3) [must be made] no more than a year after the entry of the judgment or order or the date of the proceeding.").

order, the Court explained that "absent a change in circumstances, [Romanov] would not be permitted to assert new claims against State Farm in any newly filed case in this Court." (Doc. 159, at 2 in Case No. 3:19-cv-90.) In support of her motion, Romanov argues she has indeed experienced "changes in circumstances . . . [that] open[] the door for new causes of action against Defendant in [Romanov's] instant refiled case[.]" (*Id.* at 1–2.)

Rule 60(b)(5) permits post-judgment relief if "the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable[.]" Fed. R. Civ. P. 60(b)(5). The United States Supreme Court has interpreted this language as warranting relief when "'a significant change either in factual conditions or in law' renders continued enforcement 'detrimental to the public interest[.]'" *Horne v. Flores*, 557 U.S. 433, 447 (2009) (quoting *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992)). "The party seeking relief [under Rule 60(b)(5)] bears the burden of establishing that changed circumstances warrant relief. . . ." *Id.*

The Court is not persuaded by Romanov's argument that Rule 60(b)(5) applies to the provision of the Court's order barring her from bringing new causes of action because new factual and legal circumstances render its continued enforcement inequitable. (Doc. 27, at 1 ("Plaintiff *has* had changes in circumstances . . . that [] open[] the door for new causes of action against Defendant").) The "new circumstance" Romanov points to is the absence of "immediate pending financial obligations with regard to [the allegedly stolen] truck," which she argues is "*a deciding factor that this Court did not know.*" (*Id.* at 5.) According to Romanov, relief from this financial burden is decisive because she only voluntarily dismissed her initial case due to her inability to "afford a 'continuance.'" (*Id.*) From the Court's attempt to fill in the gaps of this theory, Romanov's argument is as follows: (1) in Case No. 3:19-cv-90, Romanov delayed moving to amend her complaint to include additional causes of action because her financial situation limited her ability to continue to prosecute her case; (2) Magistrate Judge Bruce Guyton denied Romanov's late-filed motion to amend because adding new causes of action so late in litigation would prejudice State Farm; (3) Romanov then moved to voluntarily dismiss her claims, which the Court granted on the condition Romanov did not bring new causes of action in the event she refiled her case; (4) after her financial situation improved, Romanov filed an amended complaint containing additional causes of action in the present matter; (5) because these new claims are being added at the outset of proceedings rather than just before trial, there is no longer a concern State Farm would suffer prejudice in fielding new causes of actions; and (6) because there is no longer a concern State Farm would be prejudiced, the Court should relieve Romanov from its condition barring her from bringing new causes of action.

Romanov's argument fails to consider the purpose of the dismissal conditions. The Court conceived of the conditions, including the one barring Romanov's incorporation of additional claims in a refiled suit, with the intention of "offset[ting] the prejudice State farm may suffer" as a result of her voluntary dismissal. *See Bridgeport Music, Inc. v. Universal-MCA Music Publ'g, Inc.*, 583 F.3d 948, 954 (6th Cir. 2009) (noting that district courts are entitled to impose dismissal conditions they deem necessary "to offset the prejudice the defendant may suffer from a dismissal without prejudice") citations omitted); (Doc. 157, at 1–2 in Case No. 3:19-cv-90.) The Court's decision to place a refiled case "in the same procedural posture as when it was dismissed[,]" which means Romanov may not bring new claims in a refiled case, indicates a concern that doing so would prejudice State Farm—namely, that State Farm was forced to expend time and resources litigating certain claims only to have Romanov introduce new claims after the time for amending her complaint had passed. (Doc. 157, at 2.) Though the Court noted release from the condition may be warranted in the event circumstances change, the change Romanov points to—her newfound financial ability to pursue litigation—is not such a change in circumstances. (Doc. 159, at 2.) Indeed, allowing Romanov to bring new claims against State Farm in the refiled case would fly in the face of the Court's stated justification for including the condition: "This condition . . . is meant to . . . discourage the parties from advancing alternate theories not developed in [Case No. 3:19-cv-90], especially since [Romanov] sought dismissal without prejudice [in Case No. 3:19-cv-90] after almost all deadlines in the Court's scheduling order had passed."[2] (*Id.* at 3.) The Court does not see how Romanov's changed circumstances, which affect only her individual decision-making calculus as to whether to pursue litigation, would render continued imposition of this condition "detrimental to the public interest." *Rufo*, 502 U.S. at 384. Thus, it will not grant relief under Rule 60(b)(5).

Rule 60(b)(6) is also inapplicable. That rule warrants relief only in "exceptional or extraordinary circumstances where principles of equity mandate [it].” *West*, 790 F.3d at 696–97 (internal citation omitted). When analyzing whether to grant relief under Rule 60(b)(6), the Court must engage in “a case-by-case inquiry . . . to intensively balance numerous factors, including the competing policies of the finality of judgments and the incessant command of the court’s conscience that justice be done in light of all the facts.” *McGuire v. Warden, Chillicothe Corr. Inst.*, 738 F.3d 741, 750 (6th Cir. 2013) (citations omitted). The Sixth Circuit has already held that the conditions instated by this Court did not “create sufficient ‘legal prejudice’ against [Romanov]” and were not unreasonable. (Doc. 34-2, at 3 in Case No. 13:19-cv-90.) That court

[2] Romanov herself observed that embarking on the course of action she is currently pursuing—filing a voluntary non-suit, then refiling her proposed (and rejected) amended complaint—would increase “the cost for both parties . . . and more delay would cause more undue hardship on [her].” (Doc. 117, at 4 in Case No. 3:19-cv-90.)

even went so far as to specifically recall its prior rejection of another plaintiff's argument that he would suffer legal prejudice from a condition imposing “the law of the case from the original action” on any refiled case. (*Id.* at 4 (quoting *Duffy*, 218 F.3d at 627).) Granting relief from a condition this Court set multiple years ago for the purpose of minimizing prejudice is not an action mandated by “principles of equity” or compelled by the Court’s commitment to justice.

Because it finds neither Rule 60(b)(5) or (6) applies, the Court will **DENY** Romanov's motion for partial relief from its order granting voluntary dismissal of Case No. 3:19-cv-90 (Doc.27). Therefore, the conditions of that order (Doc. 157 in Case No. 3:19-cv-90) remain in effect and apply to Romanov's refiled case.

IV. STATE FARM'S MOTIONS TO DISMISS (Docs. 19, 29)[3]

State Farm first filed a motion to dismiss (Doc. 19) shortly after Romanov refiled her case. However, Romanov amended her complaint as a matter of right (Doc. 25), which led to State Farm filing a second motion to dismiss (Doc. 29). Because, as State Farm notes in its subsequent motion, "an Amended Complaint supersedes the previous filing," the Court will **DENY AS MOOT** State Farm's initial motion to dismiss (Doc. 19) and address only its most

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[3] State Farm also seeks dismissal of Romanov's claims under Rule 41(b) of the Federal Rules of Civil Procedure as a sanction for violating this Court's order in Case No. 3:19-cv-90. (Doc. 29, at 1.) Pursuant to Rule 41(b), "[i]f the plaintiff fails to prosecute or to comply with [the Federal Rules of Civil Procedure] or a court order, a defendant may move to dismiss the action or any claim against it." Though the Court agrees Romanov effectively violated its order precluding her from bringing new causes of action in her refiled suit, Romanov is proceeding pro se and may have misunderstood the Court's qualification that new claims may be brought if circumstances change. The Court does not find Romanov's actions, at this time, constitute an abuse of the

judicial process and thus do not warrant the extreme sanction of dismissal. However, Romanov is advised that she is to make every effort to abide by this Court's orders and that future actions taken in direct opposition to them are likely to result in dismissal.

recent dispositive motion, which seeks to dismiss all of Romanov's claims with prejudice. (Doc.29, at 2.)

A. Legal Standard

According to Rule 8 of the Federal Rules of Civil Procedure, a plaintiff's complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Though the statement need not contain detailed factual allegations, it must contain "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rule 8 "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.*

A defendant may obtain dismissal of a claim that fails to satisfy Rule 8 by filing a motion pursuant to Rule 12(b)(6). On a Rule 12(b)(6) motion, the Court considers not whether the plaintiff will ultimately prevail, but whether the facts permit the court to infer "more than the mere possibility of misconduct." *Id.* at 679. For purposes of this determination, the Court construes the complaint in the light most favorable to the plaintiff and assumes the veracity of all well-pleaded factual allegations in the complaint. *Thurman v. Pfizer, Inc.*, 484 F.3d 855, 859 (6th Cir. 2007). This assumption of veracity, however, does not extend to bare assertions of legal conclusions, *Iqbal*, 556 U.S. at 679, nor is the Court "bound to accept as true a legal conclusion couched as a factual allegation," *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

After sorting the factual allegations from the legal conclusions, the Court next considers whether the factual allegations, if true, would support a claim entitling the plaintiff to relief. *Thurman*, 484 F.3d at 859. This factual matter must "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Plausibility "is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

B. New Claims

In her refiled case, Romanov brings claims for breach of contract, which includes a request for punitive damages, negligence and bad faith, violation of Tennessee's Unfair Settlement Claims Practices Act, and fraud. (Doc. 1, at 25–42.) One of the conditions the Court imposed on Romanov when it granted voluntary dismissal of the original case was that any refiled case remain in the same procedural posture, later clarifying that this meant "[Romanov] would not be permitted to assert new claims against State Farm in any newly filed case in this Court." (Doc. 159, at 2 in Case No. 3:19-cv-90.) Because this Court denied Romanov's motion to reconsider this condition, *see supra* Section III, it still stands. As a result, Romanov's refiled case assumes the same procedural posture of the now-dismissed case. And because Romanov filed an amended complaint bringing only a breach-of-contract claim—absent a punitive damages demand—in the dismissed case, that is the only claim she is now permitted to bring. *See Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir. 2000) (noting that an amended complaint supersedes all prior complaints and becomes the legally operative complaint) (citations omitted). Therefore, all but Romanov's breach-of-contract claim are **DISMISSED**.

C. Breach-of-Contract Claim

1. Whether the Breach-of-Contract Claim is Time-Barred

Pursuant to the Court's conditions of dismissal in Case No. 3:19-cv-90, Romanov's breach-of-contract claim is the only claim she is permitted to bring in her refiled case. Nonetheless, State Farm argues the claim is "time barred by the contractual limitations period in the insurance policy" agreement between it and Romanov, which it appended to its motion to dismiss, and, alternatively, by Tennessee's saving statute. (Doc. 30, at 1.) Romanov responds that she timely refiled her case "312 days after her appeal was dismissed and 53 days short of the deadline of

February 2, 2023," which is within the statutory limits. (Doc. 26, at 3.)

Romanov's breach-of-contract claim is not barred by the contractually agreed-upon statute of limitations. The relevant State Farm insurance policy Romanov agreed to plainly states that physical-coverage damages against State Farm must be brought "within one year immediately following the date of the accident or loss." (Doc. 29-1, at 9.) State Farm denied Romanov's claim on October 19, 2018. (Doc. 25, at 16.) Romanov filed her initial suit on March 18, 2019, which was within a year of the denial. (Doc. 1 in Case No. 3:19-cv-90.) Though Romanov did not file the present action until December 12, 2022, her initial suit was timely brought, and the conditions of dismissal in that case place any subsequently refiled case in the same procedural posture. *See Beahm v. Auto Owners Ins. Co.*, No. 3:13-cv-160, 2013 WL 3976622, at *2 (E.D. Tenn. Aug. 2, 2013) ("[I]f the insured files a proof of loss, the contractual statute of limitations begins to run upon denial of liability or upon expiration of the immunity period, whichever comes first.") (internal quotation marks and citation omitted); (Doc. 1.)

However, a plaintiff who files a complaint within the applicable statute-of-limitations period and then voluntarily dismisses the complaint is required to refile her case within one after the voluntary dismissal to take advantage of Tennessee's savings statute. Tenn. Code Ann. § 28-1-105(b). Per the language of the statute:

> In the case of a contract which limits the time within which an action arising out of such contract must be brought, if such action is commenced within the time as limited by the contract but the judgment or decree is rendered against the plaintiff upon any ground not concluding the plaintiff's right of action, or where the judgment or decree is rendered in favor of the plaintiff, and is arrested, or reversed on appeal, the plaintiff, or the plaintiff's representatives or successors, as the case may be, may, from time to time, commence a new action within one (1) year after the nonsuit, dismissal without prejudice, reversal or arrest.

Id. "The purpose of the statute is to give plaintiffs a 'brief period' within which to re-file their suit after it has been concluded on a basis other than dismissal on the merits." *McGee v. Jacobs*, 236 S.W.3d 162, 165 (Tenn. Ct. App. 2007) (citations omitted). Because "Tennessee law strongly favors the resolution of all disputes on their merits, [] the savings statute is to be given a broad and liberal construction in order to achieve this goal." *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 912 (Tenn. 2000) (citation omitted).

Parrish v. Marquis offers some insight as to when the one-year limit begins—or, when "the judgment or decree is rendered"—for purposes of the statute. 137 S.W.3d 621, 623 (Tenn. 2004). In *Parrish*, the trial court had granted the defendants' summary-judgment motions and dismissed the case on the merits. *Id.* at 622. Plaintiffs appealed the decision, and after the appellate court remanded the case to the trial court for further proceedings, the trial court dismissed the complaint for improper venue. *Id.* at 623. At issue in the case was whether the one-year limit contemplated by Tennessee's savings statute "commenced on the date of the appellate court's judgment remanding the cause to the trial court . . . or on the date of the trial court's order of dismissal following the remand." *Id.* at 622. The *Parrish* court explained that the one-year period began at the time the trial court dismissed the case rather than the time the appellate court issued its decision, and, in doing so, observed that the result would have been different "[i]f the Court of Appeals had dismissed [rather than remanded] the action," because the action would no longer have been pending before the lower court. *Id.* at 623.

The United States District Court for the Middle District of Tennessee has since confirmed in *Meersman v. Regions Morgan Keegan Trust* that, in *Parrish*, "[t]he Tennessee Supreme Court [] expressly held that the one-year deadline to refile claims under the savings statute starts running on the date the court 'has entered its order of dismissal.'" No. 3:20-cv-00154, 2020 WL 2319785, at *4 (M.D. Tenn. May 11, 2020) (quoting *Parrish*, 137 S.W.3d at 623). However, *Meersman* also demonstrated that, perhaps counter-intuitively, the entry date of an order granting a voluntary dismissal or nonsuit is not necessarily the date on which the court "has entered its order of dismissal" for purposes of Tennessee's savings statute. *Id.* Instead of starting the savings-statute clock when the judge presiding over the original suit entered a dismissal order, the *Meersman* court instead chose "the latest possible date on which . . . a dismissal order" was entered—"the date the Tennessee Supreme Court denied [the p]laintiff's application for permission to appeal." *Id.* Because the plaintiff refiled the case a year and one day from that date, the court dismissed it as untimely. *Id.*

Here, the determinative question is whether the one-year savings-statute clock starts from the date the Sixth Circuit dismissed Romanov's appeal, in which case her breach-of-contract claim survives, or from the date this Court entered an order granting Romanov's voluntary-dismissal motion, in which case it does not. This Court issued its order granting Romanov's motion to voluntarily dismiss Case No. 3:19-cv-90 on September 24, 2020 (Doc. 157 in Case No. 3:19-cv-90). Romanov filed the instant suit on December 12, 2022, over two years later and far beyond the one-year limit (Doc. 1). However, the Sixth Circuit did not enter its order dismissing Romanov's appeal until February 3, 2022 (Doc. 162 in Case No. 3:19-cv-90), and the mandate for that order did not issue until March 1, 2022 (Doc. 163 in Case No. 3:19-cv-90). If either of these later dates properly serves as the commencement of the one-year refiling period, Romanov timely refiled suit.

Based on its consideration of relevant state and federal caselaw, the language and purpose of Tennessee's savings statute, and overarching principles of equity and fairness, the Court finds

Romanov timely refiled her breach-of-contract claim. The saving statute's purpose, as per Tennessee courts, is to afford diligent plaintiffs "a 'brief period' within which to re-file their suit after it has been *concluded* on a basis other than dismissal on the merits[,]" and it is reasonable to regard a case as "concluded" only after a pending appellate decision is resolved. *McGee*, 236 S.W.3d at 165 (emphasis added) (citation omitted); *see also Gascho v. Glob. Fitness Holdings, LLC*, 875 F.3d 795, 799 (6th Cir. 2017) (noting that the district court's order "was final" at the time the United States Supreme Court denied certiorari). After requesting clarification on the ramifications of the Court-imposed dismissal conditions, Romanov appealed the dismissal, which the Sixth Circuit ultimately dismissed for lack of jurisdiction because "[Romanov] has not shown that the conditions imposed by the district court resulted in legal prejudice." (Doc. 34-2, at 4 in Case No. 3:19-cv-90.) Romanov reasonably waited until the originating case was resolved—i.e., until after she heard back from the Sixth Circuit on the enforceability of this Court's dismissal order—before refiling her case. Approximately nine months after the decision was rendered and the original suit concluded, she did so, thereby resuming efforts to pursue her claims against State Farm (Doc. 1).

This interpretation—that the Tennessee savings statute clock begins at the conclusion of the original suit—is also supported by both the *Meersman* court's decision to start the clock from the day the

Tennessee Supreme Court denied the plaintiff's request for appeal and by the *Parrish* court's observation that an appellate court's dismissal in that case would have started the clock. The Tennessee Supreme Court's decision not to conduct appellate review in *Meersman* is closely analogous to the Sixth Circuit's dismissal of Romanov's appeal. In both cases, the plaintiff attempted to invoke appellate review of the lower court's initial order dismissing the case, therefore staving off the "conclusion" of the case until resolution of that request. The *Meersman* court recognized this by electing to start the savings-statute clock at the time the Tennessee Supreme Court denied the request. Applying that logic to this case, the clock should begin at the time the Sixth Circuit denied Romanov's request for appellate review by dismissing her appeal for lack of jurisdiction. The *Parrish* court also recognized that the commencement of the one-year savings-statute limit coincides with the conclusion of the original case. In addition to deciding the clock should begin on the date the trial court dismissed the remanded case rather than the date the case was remanded, the court also noted that the appellate court's dismissal of the action would have served as the start date. *Parrish,* 137 S.W.3d at 624. In both instances, the *Parrish* court selected the date on which the action concluded—at which point no pending appeals or outstanding tasks for the trial court remained. Applied here, the appropriate date marking the beginning of Romanov's one-year limit to refile her suit is the date Romanov's appeal was resolved—March 1, 2022 (Doc. 163 in Case No. 3:19-cv-90).[4]

Requiring a plaintiff to refile her case within a year of the dismissal order's entry despite the pendency of an appeal in the original case may also have the untenable effect of discouraging

[4]This is the day the mandate was issued, which followed approximately a month after the Sixth Circuit ruled on Romanov's appeal. (Docs. 162, 163 in Case No. 3:19-cv-90.) Though Romanov refiled her case within a year of either date, the Court marks the start of the savings-statute clock from the former because it more aptly signals the case's conclusion. *See Moss v. Miniard*, No. 4:18-cv-11697, 2023 WL 2933209, at *1 (E.D. Mich. Apr. 13, 2023) ("A decision of a court of appeals is not final until the mandate issues.").

plaintiffs faced with apparently unfair dismissal conditions from pursuing appellate review. While an order granting voluntary dismissal is not ordinarily appealable, it is when the attendant conditions for dismissal are unreasonable. *See Scholl v. Felmont Oil Corp.*, 327 F.2d 697, 700 (6th Cir. 1964). In the event a plaintiff, particularly one proceeding without counsel, reluctantly submits to dismissal and believes she has suffered legal prejudice as a result, she should feel free to seek recourse in the form of appellate review without concern she may have to refile her case before receiving an answer. Thus, this consideration also militates in favor of delaying the start of the savings-statute clock until after the initial case has concluded.

For these reasons, the Court finds that

Romanov refiled her suit within the time permitted by the Tennessee savings statute. As a result, her breach-of-contract claim is not time-barred.

2. Whether the Breach-of-Contract Claim is Adequately Pled

Romanov's breach-of-contract claim also complies with Federal Rule 8(a)'s pleading standard. Assessment of each coverage claim is a matter of contract interpretation, to which Tennessee law applies.[5] *See Lancaster v. Ferrell Paving, Inc.*, 397 S.W.3d 606, 610 (Tenn. Ct. App. 2011) (observing that insurance policy contracts are interpreted "in the same manner as any other contract") (citation omitted). Insurance policy terms should be afforded the "meaning which the average policy holder and insurer would attach to the policy language." *Martin v. Powers*, 505 S.W.3d 512, 517 (Tenn. 2016) (quoting *S. Tr. Ins. Co. v. Phillips*, 474 S.W.3d 660, 667 (Tenn. Ct. App. 2015)). As with contracts generally, insurance policies are "construed as a whole in a reasonable and logical manner, and the language in dispute should be examined in the context of the entire agreement." *Id.* (internal quotations omitted). If, upon a comprehensive

[5] The policy was executed in Tennessee and seems to lack a choice-of-law provision. *See Ohio Cas. Ins. Co. v. Travelers Indem. Co.*, 493 S.W.2d 465, 467 (Tenn. 1973). The parties also do not appear to dispute that Tennessee law governs.

examination, the policy's terms—particularly in the context of coverage exceptions—remain ambiguous, Tennessee law requires that the language be "construed against the insurance company and in favor of the insured." *Tata v. Nichols*, 848 S.E.2d 649, 650 (Tenn. 1993); *see also Travelers Ins. Co. v. Aetna Cas. & Sur. Co.*, 491 S.W.2d 363, 367 (Tenn. 1973) (noting that "exceptions, exclusions, and limitations in policies of insurance are to be most strongly construed against the insurer").

Romanov has pled adequate facts to allege a breach-of-contract claim against State Farm. After her insured truck was highjacked and recklessly driven across the country, Romanov sought to be made "whole as to the . . . condition of the vehicle" and to be reimbursed for the cost of transporting the truck back to Tennessee. (Doc. 25, at 9, 13–14.) However, State Farm chalked the damage up to "normal wear and tear," refused to pay transportation costs, and denied the claim. (*Id.* at 14.) Due to Romanov's persistence, State Farm apparently reevaluated the vehicle, assessed the damage as a "total loss," and presented Romanov with a total-loss payment of $25,392.87. (*Id.* at 15–17.) Because the vehicle's "lease payoff" was significantly larger—$39,975.32—Romanov rejected the payment amount. (*Id.* at 17.) Shortly thereafter, State Farm notified Romanov the vehicle would not be paid for as a "total loss" and denied the claim. (*Id.* at 18.) Though it is unclear which specific provision of the agreement Romanov is challenging, the facts she has alleged allow the Court to draw the reasonable inference that State Farm breached its contract with her by failing to compensate her for the loss of her truck. According to the insurance-policy agreement provided by State Farm,[6] State Farm commits to paying

[6]Though Romanov did not append the policy agreement to her amended complaint, the Court may still consider it in evaluating the sufficiency of her allegations. *See Gibson v. Mortg. Elec. Registration Sys., Inc.*, No. 11-2173, 2012 WL 517329, at *3 (W.D. Tenn. Feb. 15, 2012) ("[D]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to the claims.")

"transportation expenses incurred by an ***insured***" whose vehicle has been stolen. (Doc. 29-1, at 6.) The policy also states State Farm "***will*** pay for ***loss***, except ***loss caused by collision***, to a ***covered vehicle***." (*Id.*) If the insured disagrees with State Farm's estimated "actual cash value" of the vehicle, the policy states that "the disagreement will be resolved by appraisal" in accordance with certain parameters. (*Id.*) Viewing the alleged facts in the light most favorable to Romanov, State Farm breached one or more of these provisions in its total denial of Romanov's claim seeking to recoup losses incurred from the theft of her truck. Therefore, Romanov's breach-of-contract claim survives State Farm's 12(b)(6) motion to dismiss.

V. CONCLUSION

For the aforementioned reasons, the Court **GRANTS** State Farm's motion to strike Romanov's supplemental brief (Doc. 38), **DENIES AS MOOT** State Farm's motion to dismiss Romanov's initial complaint (Doc. 19), **GRANTS IN PART** and **DENIES IN PART** State Farm's motion to dismiss Romanov's amended complaint (Doc. 29), and **DENIES** Romanov's motion for relief from judgment (Doc. 27). As a result, all but Romanov's claim for breach of contract are **DISMISSED**.

SO ORDERED.
<u>/s/ Travis R. McDonough</u>
TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT TENNESSEE AT
KNOXVILLE

SUSAN E. CARRICHNER,
Plaintiff,

Filed
July 7, 2019
ECF DOC 21

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Defendant.

Docket No: 3:19-cv-00090
Judge Travis R. McDonough
Magistrate Judge H. Bruce Guyton

AGREED ORDER

The parties, Plaintiff Susan E. Carrichner and Defendant State Farm Mutual Automobile Insurance Company, by and through counsel, having come to an agreement relative to the Plaintiffs application for the Clerk's entry of default (Doc. 7), the Clerk's entry of Default Judgment (Doc. 8), the Plaintiffs Motion for Default Judgment (Doc. 9), the Defendant's Response (Doc. 10), and having filed their Joint Motion to Enter Proposed Agreed Order (Doc. 19) and it appearing to the Court that the parties have reached an agreement and it further appearing that said agreement is just and proper, and the Court being pleased to accept same, finds as follows:

It is, therefore, ORDERED, ADJUDGED, and DECREED:

1. That counsel for the parties has met and conferred pursuant to Local Rule 16.1;

2. That the Plaintiff did not properly effectuate service on the Defendant and will seek to have a summons reissued by this Court;
3. That the Plaintiff shall leave to amend her Complaint and shall have ten (10) days to amend her Complaint from the date of entry of this Agreed Order;
4. That the Defendant will accept service of the re-issued summons and amended complaint through counsel;
5. That the Clerk's entry of Default Judgment granted to the Plaintiff is hereby set aside;
6. That the foregoing dispenses with the issues brought forth in this Court's' Order to Show Cause (Doc. 18) and the briefing schedule set forth therein.

SO ORDERED.

/s/Travis R. McDonough
UNITED STATES DISTRICT JUDGE

APPROVED FOR ENTRY:
/s/ Jerrold L. Becker
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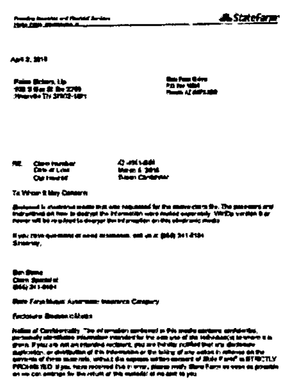
/s/ Matthew J. Evans
Matthew J. Evans (TN Bar No. 017973)

Attorney for Defendant

TRIAL EXHIBIT O

Letter from State Farm
Sent to Attorney's on:
April 2,2019



To: Paine Bickers, Up
900 S Gay St Ste 2200
Knoxville TN 37902-1821
Claim Number 42-4661-S68
March 5, 2018
RE: Susan Carrichner
Whom It May Concern:

Enclosed is electronic media that was requested for the above claim file. The password and instructions on how to decrypt the information were mailed separately. WinZip version 9 or newer will be required to decrypt the information on this electronic media.

If you have questions or need assistance, call us at (855) 341-8184.

Sincerely,

Ben Stone, Claim Specialist
State Farm Mutual Automobile Insurance Company
Enclosure: Electronic Media

Notice of Confidentiality: The information contained in this media contains confidential, personally identifiable information intended for the sole use of the individual(s) to whom it is given. If you are not an intended recipient, you are hereby notified that any disclosure, duplication, or distribution of this information or the taking of any action in reliance on the contents of these-materials, without the express written consent of State Farm* is STRICTLY PROHIBITED If you have received this in error, please notify State Farm as soon as possible so we can arrange for the return of this material at no cost to you.

TRIAL EXHIBIT M: Page 98 and 103
Report From Carrichner's Claim's File
Claim Number 42-4661-S68
Report Date: 04-03-2019 07:21 AM

Category: Outgoing Correspondence
Received Date: 04-02-2019
Status: Accepted
Description: FC0009082-Inform. on Electronic Media
Owner Description: Information on Electronic Media
Participant(s): PAINE BICKERS LLP
View Participant(s): PAINE BICKERS LLP
Capture Date: 04-02-2019
Review Date: 04-02-2019
Reviewed By: System (01SYS)

Category: Litigation
Received Date: 03-29-2019
Status: Accepted
Description: SUIT PPWK
Capture Date: 03-29-2019
Review Date: 03-29-2019
Reviewed By: Ben Stone (T7F3)

Category: Incoming Correspondence
Received Date: 03-20-2019
Status: Accepted
Description: Suit Papers
Capture Date: 03-20-2019
Review Date: 03-20-2019
Reviewed By: Ben Stone (T7F3)