

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JEANNINE MITCHELL,)
)
Plaintiff,)
)
v.) No. 4:24 CV 377 CDP
)
WELLS FARGO COMPANY,)
)
Defendant.)

MEMORANDUM AND ORDER

Plaintiff Jeannine Mitchell filed this action in Missouri state court on February 9, 2024, alleging that her employer, defendant Wells Fargo Company, terminated her employment in October 2023 in retaliation for reporting unlawful practice that deprived Wells Fargo clients accumulated interest in their accounts. She brings this action under Missouri's Whistleblower Protection Act, Mo. Rev. Stat. § 285.575. Wells Fargo removed the action to this Court on March 13, 2024, alleging diversity jurisdiction under 28 U.S.C. § 1332(a). Mitchell moves to remand the case to state court, averring that her mitigation of damages results in the amount in controversy falling below the \$75,000 threshold. I will give Mitchell ten (10) days to provide evidence of such mitigation.

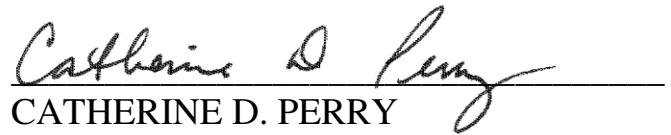
In her petition, Mitchell seeks reinstatement to her position at Wells Fargo with backpay, benefits, costs, and attorney's fees as provided by the WPA. In

seeking remand, Mitchell avers that she obtained employment in a similar field beginning May 6, 2024, thereby limiting the period for potential backpay to about eight months. Mitchell contends that this mitigation of damages brings the amount in controversy below \$75,000. I agree that evidence of mitigation is relevant to determining the amount in controversy, *see Fenlon v. Burch*, No. 4:15-CV-00185 JCH, 2015 WL 928558, at *3 (E.D. Mo. Mar. 4, 2015), but other than stating that she has obtained employment in a similar field, Mitchell provides no evidence regarding the amount(s) earned in mitigation. Because the level of earnings is relevant to Mitchell's potential recovery in this action and to my determination of subject-matter jurisdiction, I will order Mitchell to supplement the record with evidence of her earnings. *Cf. Clark v. Matthews Int'l Corp.*, 639 F.3d 391, 396-97 (8th Cir. 2011) (record unclear as to dates worked and amounts earned in other employment); *Caldwell v. General Motors, LLC*, No. 4:18-CV-01636 JAR, 2018 WL 6696624, at *3 (E.D. Mo. Dec. 20, 2018) (plaintiff submitted earning statement from new employment); *Fenlon*, 2015 WL 928558, at *4 (plaintiff provided no amount to aid calculation of mitigated damages).

Accordingly,

IT IS HEREBY ORDERED that within ten (10) days of the date of this Order, plaintiff Jeannine Mitchell shall supplement the record with evidence of her mitigating employment, including her earnings and whether such employment

is part-time, full-time, and/or temporary.


CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 14th day of May, 2024.