IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

MARGARET ANN BRAILSFORD, Plaintiff, vs. FRESENIUS MEDICAL CENTER CNA KIDNEY CENTERS LLC, and BIOMEDICAL APPLICATIONS OF SOUTH CAROLINA INC., Defendants.	)	No. 2:15-cv-04012-DCN **ORDER**

This matter is before the court on defendants Fresenius Medical Center CNA Kidney Centers, LLC ("Fresnius") and Biomedical Applications of South Carolina, Inc.'s ("Biomedical") (collectively, "defendants") motion to dismiss, ECF No. 5, and plaintiff Margaret Ann Brailsford's ("Brailsford") motion to remand. ECF No. 6. For the reasons set forth below, the court denies Brailsford's motion to remand and grants defendants' motion to dismiss all of Brailsford's causes of action.

I. BACKGROUND

Defendants operate a therapeutic renal patient care treatment center in Clarendon County, South Carolina. Compl. ¶ 6. Defendants hired Brailsford as a patient care technician in 2003. Id. ¶ 7. Her duties included monitoring the vital signs of patients and initiating and monitoring the dialysis treatment process for patients. Id. In or about 2010, Brailsford became a certified hemodialysis technician, although her job duties remained the same. Id. ¶ 8.

On April 2, 2014, Brailsford called one of the clinic's patients, identified in her complaint as "Patient M," out of the waiting area for his weekly dialysis treatment. Id. ¶ 11. Patient M, who had arrived two hours early for his appointment, became agitated and hostile towards Brailsford because he had to wait for his treatment. Id. ¶ 12. Patient M used profane language and complained that the dialysis chair he was supposed to use was not clean. Id. Patient M sought out Cheryl Blackwell ("Blackwell"), clinical manager and area director of nursing, to complain about his chair. Id. ¶ 13. Brailsford asked Blackwell if she could switch patients with another hemodialysis technician and Blackwell agreed. Id.

Once Patient M had been escorted from the waiting room by the other technician, he was positioned behind Brailsford's work station. Id. ¶ 14. Patient M then told Brailsford that she "picked the right one to f*ck with today" and stood behind her in a physically threatening manner. Id. As Brailsford walked away, Patient M stated, "you better walk off before I put my foot up your ass." Id. ¶ 15. Brailsford went to nurse Lori Hodge ("Hodge"), who was the team leader on duty at the time, to report the incident. Id. Hodge told Brailsford to speak with Blackwell. Id. However, Brailsford could not find Blackwell in the facility. Id. Brailsford continued to perform her job duties amid intermittent snide and threatening comments from Patient M. Id.

At the conclusion of Patient M's treatment, it became apparent that he had defecated on himself and his chair, leaving bodily fluids and waste in the area he had been sitting. Id. ¶ 16. While Brailsford and two other technicians were cleaning Patient M's station, Brailsford informed her coworkers that Patient M had AIDS. Id.

¶ 17. Brailsford claims that no patients were in the vicinity when she made this comment. Id. While cleaning, Patient M reentered the area, speaking in a loud and threatening manner. Id. ¶ 18. Another nurse asked Patient M to leave and, when he did not, picked up the phone to call 911. Id. ¶¶ 18–19. Patient M stated, "y'all don't know who ya'll f*cking with" and turned and fled before the police arrived. Id. ¶ 19.

The next day, Brailsford reported the entire incident to Blackwell, her supervisor. Id. ¶ 20. Blackwell responded with a "complete and utter lack of concern." Id. Later the same day, Blackwell informed Brailsford that Patient M had filed a complaint against her. Id. ¶ 21. During a meeting that day, Leslie Shutz ("Shutz"), a human resources representative, berated Brailsford for having told her fellow staff that Patient M had AIDS. Id. When Brailsford asked if defendants intended to investigate Patient M's physical threats, Shutz stated that she would "get back in touch with her." Id. ¶ 22. Brailsford was ultimately suspended without pay. Id. ¶ 23. On April 15, 2015, Shutz informed Brailsford that she was being terminated for violating HIPPA and PHI. Id. ¶ 24. Brailsford contends that her termination was in retaliation for attempting to avail herself of defendants' problem resolution procedure and for a letter sent by another employee a year earlier outlining health and safety complaints. Id. ¶¶ 24–25.

The court notes that it has addressed this dispute before, in Brailsford v. Fresenius Medicial Care CAN Kidney Centers LLC, et. al., 2:15-cv-0239-DCN ("Brailsford I"). Brailsford filed the Brailsford I complaint in state court on November 7, 2014, bringing causes of action for: (1) breach of contract; (2) breach of contract accompanied by a fraudulent act; (3) violation of public policy; and

(4) failure to protect. Defendants removed Brailsford I to this court, and on January 23, 2015, defendants filed a motion to dismiss. The court dismissed the Brailsford I claims without prejudice on July 21, 2015, reasoning that Brailsford had failed to allege that she entered into a contract which "'impose[d] a limitation on [defendants'] right to terminate [her] at any time for any reason.'" Brailsford I, 2015 WL 4459032, at *1 (D.S.C. July 21, 2015) (alterations in original) (quoting Grant v. Mount Vernon Mills, Inc., 634 S.E.2d 15, 20 (S.C. Ct. App. 2006)).

On August 17, 2015, Brailsford filed the instant complaint in state court, alleging the following causes of action: (1) breach of contract and (2) breach of contract with fraudulent intent.[1] On September 28, 2015, defendants removed the case to this court and on October 5, 2015, defendants filed a motion to dismiss. ECF No. 5. Brailsford filed a motion to remand on October 8, 2015. ECF No. 6. On October 14, 2015, Brailsford filed a response in opposition to defendants' motion to dismiss, ECF No. 7, and defendants replied on October 26, 2015. ECF No. 8. Defendants filed a response in opposition to Brailsford's motion to remand on October 26, 2015, ECF No. 9, and Brailsford replied on November 3, 2015. ECF No. 10. Both motions have been fully briefed and are ripe for the court's review.

Brailsford's most recent complaint differs very little from her complaint in Brailsford I, with the exception of the following additional paragraph:

[1] Brailsford's initial complaint in the Brailsford I action alleged two additional causes of action for violation of public policy and failure to protect. However, Brailsford voluntarily withdrew her violation of public policy and failure to protect claims at the hearing on the motion to dismiss in Brailsford I. 2015 WL 4459032, at *3 ("Brailsford voluntarily withdrew her negligence and violation of public policy claims at the hearing.").

> Defendant's policies and procedures contained in its employment handbook is [sic] couched in mandatory language which limits Defendant from terminating Plaintiff's employment for reasons relating to her making reports of abusive, threatening, or violent behavior.

Compl. ¶ 29. The complaint also contains a paragraph which states that "Defendant's Employment Handbook does not contain a conspicuous disclaimer." Id. ¶ 30. Other than these two paragraphs, and the omission of two causes of action, the complaints are identical.

II. STANDARDS

A. Motion to Remand

The right to remove a case from state court to federal court is derived from 28 U.S.C. § 1441, which provides that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). The party seeking to remove a case from state court to federal court bears the burden of demonstrating that jurisdiction is proper at the time the petition for removal is filed. Caterpillar Inc. v. Lewis, 519 U.S. 61, 73 (1996). If federal jurisdiction is doubtful, remand is necessary. Mulcahey v. Columbia Organic Chems. Co., 29 F.3d 148, 151 (4th Cir. 1994); Pohto v. Allstate Ins. Co., No. 10-2654, 2011 WL 2670000, at *1 (D.S.C. July 7, 2011) ("Because federal courts are forums of limited jurisdiction, any doubt as to whether a case belongs in federal or state court should be resolved in favor of state court.").

District courts have diversity jurisdiction over a case "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). When removal is based solely on diversity jurisdiction, however, an otherwise-removable case "may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b)(2). Federal law also requires that "[a] motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal." 28 U.S.C. § 1447(c).

B. Motion to Dismiss

Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss for "failure to state a claim upon which relief can be granted." When considering a Rule 12(b)(6) motion to dismiss, the court must accept the plaintiff's factual allegations as true and draw all reasonable inferences in the plaintiff's favor. See E.I. du Pont de Nemours & Co. v. Kolon Indus., 637 F.3d 435, 440 (4th Cir. 2011). But "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). On a motion to dismiss, the court's task is limited to determining whether the complaint states a "plausible claim for relief." Id. at 679. Although Rule 8(a)(2) requires only a "short and plain statement of the claim showing that the pleader is entitled to relief," "a formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). The "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is

plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570). "Facts pled that are 'merely consistent with' liability are not sufficient." A Soc'y Without a Name v. Virginia, 655 F.3d 342, 346 (4th Cir. 2011) (quoting Iqbal, 556 U.S. at 678).

III. DISCUSSION

A. Motion to Remand

Brailsford moves to remand this case to state court, arguing that the court does not have jurisdiction because the amount in controversy is less than $75,000.00.[2] Pl.'s Mot. 3. In support, Brailsford submitted an affidavit in which she certifies that she is seeking "monetary damages" in a "sum less than or equal to" $74,999.00. Pl.'s Mot. Ex. 1. In response, defendants argue that jurisdiction is proper because Brailsford failed to set forth a specific amount in controversy in her complaint and seeks punitive damages. Defs.' Resp. 5.

Federal courts are courts of limited jurisdiction. The burden of establishing the jurisdictional requirements for diversity jurisdiction is on the party invoking federal jurisdiction. See Strawn v. AT & T Mobility LLC, 530 F.3d 293, 298 (4th Cir. 2008) (holding that in removing case based on diversity jurisdiction, party invoking federal jurisdiction must allege the same in notice of removal and, when challenged, demonstrate basis for jurisdiction). However, the Fourth Circuit has not adopted a rule regarding the burden of proof on the removing party for establishing the amount in controversy. See, e.g., Rota v. Consolidation Coal Co., 1999 WL 183873 (4th Cir. Apr. 5, 1999) (expressly declining to adopt any particular standard

[2] At the hearing, Brailsford also raised certain concerns about defendants' citizenship. These concerns were resolved through jurisdictional discovery.

of proof for determining the amount in controversy). Regardless, "courts within the District of South Carolina have leaned towards requiring defendants in this position to show either to a 'legal certainty' or at least within a 'reasonable probability' that the amount in controversy has been satisfied." Brooks v. GAF Materials Corp., 532 F. Supp. 2d 779, 781–82 (D.S.C. 2008) (citing Phillips v. Whirlpool Corp., 351 F. Supp. 2d 458, 461 (D.S.C. 2005)).

The amount in controversy is determined by considering the judgment that would be entered if Brailsford prevailed on the merits of the case as it stands at the time of removal. See St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283 (1938). When a specific amount is not specified in the complaint, "the object which is sought to be accomplished by the plaintiff may be looked to in determining the value of the matter in controversy." Cannon v. United Ins. Co., 352 F.Supp. 1212, 1217 (D.S.C. 1973). Furthermore, where the plaintiff has alleged an indeterminate amount of damages, courts may consider the plaintiff's claims, as alleged in the complaint, the notice of removal filed with a federal court, and other relevant materials in the record. Crosby v. CVS Pharm., Inc., 409 F. Supp. 2d 665, 667 (D.S.C. 2005). According to the United States Supreme Court, where both actual and punitive damages are allegedly recoverable under a complaint, "each must be considered to the extent claimed in determining jurisdictional amount." Bell v. Preferred Life Assurance Soc'y, 320 U.S. 238, 240 (1943). Since Bell, courts have continued to include claims for punitive damages when assessing whether or not the amount in controversy is satisfied for purposes of establishing diversity jurisdiction. In fact, this court has held that claims for punitive damages "must be included in the

calculation of the amount in controversy." American Health and Life Ins. Co. v. Heyward, 272 F. Supp. 2d 578, 581 (D.S.C. 2003). This court has taken the same approach regarding consequential damages and attorney fees and costs. See Thompson v. Victoria Fire & Cas. Ins. Co., 32 F. Supp. 2d 847 (D.S.C. 1999) (holding no dispute that amount in controversy exceeds $75,000.00 where complaint sought punitive damages, consequential damages, and attorneys' fees and costs beyond the $25,000.00 in actual damages claimed).

Brailsford alleges that she has suffered substantial damages for pecuniary losses, embarrassment, humiliation, pain and suffering, mental anguish, loss of enjoyment of life, and other non-pecuniary losses. Compl. ¶ 53. Brailsford seeks actual and punitive damages and alleges that she has suffered a loss of income and the loss of her job as a result of defendants' breach of contract and breach of contract with fraudulent intent. Id. ¶¶ 50–56. Brailsford also contends that she is entitled to back pay, payment for lost benefits, and reinstatement of benefits and front pay. Id. ¶ 38. However, Brailsford does not seek a specific amount of damages in her complaint. In the notice of removal, defendants contend that jurisdiction is proper because the matter in controversy exceeds the sum of $75,000.00, exclusive of interests and costs, citing Brailsford's request for actual and punitive damages, including back pay, lost wages, etc. Defendants also cite Brailsford's failure to provide an affidavit with her complaint.

Brailsford argues that defendants have failed to meet their burden of establishing jurisdiction. In Ellenburg v. Spartan Motors Chassis, Inc., 519 F.3d 192, 200 (4th Cir. 2008), the Fourth Circuit established certain standards for removal

notices when a plaintiff does not plead a specific damage amount, holding that a removal notice "sufficiently establish[es] jurisdictional grounds for removal by making jurisdictional allegations in the same manner" as a plaintiff's complaint alleging federal jurisdiction. While the removing defendant has the "burden of demonstrating that removal jurisdiction is proper[,] . . . this burden is no greater than is required to establish federal jurisdiction as alleged in a complaint." Id. (citing In re Blackwater Security Consulting, LLC, 460 F.3d 576, 583 (4th Cir. 2006)). As in the instant case, the complaint at issue in Ellenburg, "sought actual, incidental, consequential, and punitive damages on the common law claims . . . [t]he complaint, however, stated no dollar amount . . . of damages claimed." Id. at 194. In Ellenburg, following the defendants' removal to federal court, the district court sua sponte remanded the case to state court on the grounds that defendant's statement in the notice of removal at issue that "[t]he value of the matter in dispute in this case, upon information and belief, exceeds the sum of Seventy Five Thousand and No/100 ($75,000.00) Dollars, exclusive of interest and costs, as it appears from the allegations contained in Plaintiff's Complaint" was "inadequate to establish that the amount in controversy exceeds the jurisdictional" requirement. Id. at 194. The Fourth Circuit held that the evidentiary standard applied by the district court was too high and constituted reversible error. Id. Equating the requisite jurisdictional statement in a defendant's removal notice with the jurisdictional statement in a plaintiff's complaint that invokes federal jurisdiction, the Fourth Circuit cited Rule 8(a) of the Federal Rules of Civil Procedure, requiring only that a plaintiff's complaint contain "(1) a short and plain statement of the grounds for the court's

jurisdiction . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought . . . ." Id., Fed. R. Civ. P. 8(a). Thus, Ellenburg simply requires a defendant's notice of removal to parallel the jurisdictional requirements for a complaint in federal court. Id.

The court finds that under Ellenburg, defendants' description of the amount in controversy set forth in the Notice of Removal is sufficient to support removal to federal court. Defendants have shown that there is a reasonable probability that Brailsford could recover in excess of $75,000.00. As stated above, she requests actual and punitive damages. Where the plaintiff fails to specify an amount of damages in the complaint, this court has interpreted a later stipulation to damages as a permissible clarification of the amount of damages. See Cox v. Willhite Seed, Inc., No. 1:13–cv–02893, 2014 WL 6816990, at *2 (D.S.C. Dec.4, 2014) (interpreting the plaintiff's stipulation regarding damages as the total amount plaintiff was seeking and remanding to state court). However, this court has also held that a post-removal statement that damages did not exceed the jurisdictional amount was insufficient to deprive the court of jurisdiction where damages were not quantified in the complaint but plaintiff requested punitive damages. See Mattison v. Wal-Mart Stores, Inc., No. 6:10-cv-01739, 2011 WL 494395, at *3 (D.S.C. Feb. 4, 2011) ("Even though [the plaintiff's] Complaint does not specify the exact amount of damages [she] is claiming in this action, her request for punitive damages alone, which are properly considered for purposes of determining the amount in controversy, makes it difficult for [the plaintiff] to prove she could not possibly recover the jurisdictional limit were she to prevail at trial."); Meadows v. Nationwide Mut. Ins. Co., No. 1:14-cv-04531, 2015

WL 3490062, at *4 (D.S.C. June 3, 2015) ("In light of Plaintiff's six causes of actions against Defendant and Plaintiff's prayer for actual and compensatory damages, treble damages, attorney's fees, and punitive damages, the court finds it falls within a legal certainty or reasonable probability that the value of Plaintiff's claims exceed $75,000.00.").

Ultimately, Brailsford's post-removal affidavit does not change the court's conclusion that Brailsford's damages could reasonably exceed the jurisdictional amount. "The law is clear that post-removal events, such as amending a complaint in order to reduce the amount in controversy below the jurisdictional limit, do not deprive a federal court of diversity jurisdiction." Thompson v. Victoria Fire & Cas. Co., 32 F. Supp. 2d 847, 849 (D.S.C. 1999) (citing St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 294 (1938)); see also Gwyn v. Wal–Mart Stores, Inc., 955 F.Supp. 44, 46 (M.D.N.C. 1997) ("A post-removal stipulation or amendment of the complaint to allege damages below the jurisdictional amount will not destroy federal jurisdiction once it has attached."). Further, "court[s] should examine the complaint at the time of removal in order to determine the amount in controversy." Id. at 848. Thus, Brailsford's affidavit does not provide a valid basis for remand. See Mattison, 2011 WL 494395, at *4 ("[A]ny post-removal statements cannot now deprive this court of jurisdiction over a properly removed case.").

Therefore, the court denies Brailsford's motion to remand.[3]

[3] The court would note that if Brailsford had limited her complaint to $74,999.99 when she filed it, she would be litigating her case in the "cozy confines" of the Court of Common Pleas for Clarendon County. Obviously, she learned nothing from Brailsford I, since it too was removed. There is no education in the second kick of a mule.

B. Motion to Dismiss

Defendants move to dismiss each of Brailsford's claims. The court addresses each claim in turn.

1. Breach of Contract

Defendants first move to dismiss Brailsford's breach of contract claim because she has failed to allege facts changing her at-will employment status. Defs.' Mot. 6.

South Carolina has long recognized the doctrine of employment at-will. See, e.g., Mathis v. Brown & Brown of S.C., Inc., 698 S.E.2d 773, 778 (S.C. 2010). Generally, an at-will employee may be terminated at any time for any reason or for no reason, with or without cause. Stiles v. Am. Gen. Life Ins. Co., 516 S.E.2d 449, 450 (S.C. 1999). "Of course, an employer and employee may choose to contractually alter the general rule of employment at-will and restrict their freedom to discharge without cause or to resign with impunity." Prescott v. Farmers Tel. Co-op., Inc., 516 S.E.2d 923, 925 (S.C. 1999). Because employment is presumed to be at-will, in order to survive a motion to dismiss on a claim for breach of contract of employment, a plaintiff must plead sufficient factual allegations to establish the existence of an employment contract beyond the at-will relationship. Weaver v. John Lucas Tree Expert Co., No. 2:13-cv-01698, 2013 WL 5587854, at *4 (D.S.C. Oct. 10, 2013).

In her complaint, Brailsford alleges that a contract between her and defendants arose out of defendants' various policies, promises, oral assurances, as well as an employee handbook. Compl. ¶¶ 28–31. Defendants contend that their policies and procedures did not disturb the parties' at-will relationship, and cite various policies,

procedures, and language from the employee handbook in their motion to dismiss. See Defs.' Mot. Exs. A ("Safety and Security In the Workplace Policy"), B ("Disruptive Patient Behavior and Use of Behavioral Agreement"), C ("Problem Review and Response Policy").[4]

"[A]n employee handbook may create a contract altering an at-will arrangement." Nelson v. Charleston Cnty. Parks & Recreation Comm'n, 605 S.E.2d 744, 747 (S.C. Ct. App. 2004) (emphasis added). A handbook forms an employment contract when: "(1) the handbook provision(s) and procedure(s) in question apply to the employee, (2) the handbook sets out procedures binding on the employer, and (3) the handbook does not contain a conspicuous and appropriate disclaimer." Grant v. Mount Vernon Mills, Inc., 634 S.E.2d 15, 20 (S.C. Ct. App. 2006). "When the evidence conflicts or is capable of more than one inference, the issue of whether an

[4] Brailsford initially argued that the court should not consider the employee handbook and the various documents provided by defendants in ruling on defendants' motion to dismiss, but later reversed this position at the hearing. The court notes that, in deciding a motion to dismiss:

> A court may . . . consider a 'written instrument' attached as an exhibit to a pleading, see Fed. R. Civ. P. 10(c), 'as well as [documents] attached to the motion to dismiss, so long as they are integral to the complaint and authentic.' Philips v. Pitt Cty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir. 2009).

Occupy Columbia v. Haley, 738 F.3d 107, 116 (4th Cir. 2013); see also Blankenship v. Manchin, 471 F.3d 523, 526 n.1 (4th Cir. 2006) (holding that at the motion to dismiss stage, the court can consider a document attached to a motion to dismiss if it is "clearly integral to, and was relied upon in, [the plaintiff's] complaint" and the plaintiff "does not dispute its authenticity."). "'[W]hen a plaintiff fails to introduce a pertinent document as part of his complaint, the defendant may attach the document to a motion to dismiss the complaint and the [c]ourt may consider the same without converting the motion to one for summary judgment.'" Perkins v. US Airways, Inc., No. 6:14-cv-2577, 2015 WL 5783561, at *4 (D.S.C. Sept. 30, 2015) (quoting Gasner v. Cty. of Dinwiddie, 162 F.R.D. 280, 282 (E.D. Va.1995), aff'd, 103 F.3d 351 (4th Cir. 1996)).

employee handbook constitutes a contract should be submitted to the jury; however, a court should intervene to resolve the handbook issue as a matter of law . . . if the handbook statements and the disclaimer, taken together, establish beyond any doubt tha[t] an enforceable promise either does or does not exist." Id.

The primary issue here is whether Brailsford has pleaded provisions and procedures which are binding on defendants. In order for a handbook to alter an employee's at-will status and create an employment contract, the employer must "phrase[] the document's language in mandatory terms giving rise to a promise, an expectation and a benefit to an employee." Nelson, 605 S.E.2d at 747 (citation omitted); see also Grant, 634 S.E.2d at 20 ("[I]f the language in the handbook sets out mandatory, progressive discipline procedures, those procedures alter the at-will employment relationship."). Such language must be "definitive in nature, promising specific treatment in specific situations." Hessenthaler v. Tri-Cnty. Sister Help, Inc., 616 S.E.2d 694, 698 (S.C. 2005). "When definite and mandatory, [such] procedures impose a limitation on the employer's right to terminate an employee at any time, for any reason." Grant, 634 S.E.2d at 20 (citation and internal quotation marks omitted).

Brailsford alleges, in conclusory fashion, that the Employee Handbook is couched in mandatory terms which limit defendants' ability to terminate her employment for reasons relating to her making a report of abusive, threatening, or violent behavior. Pl.'s Resp. 7–9. However, to survive a motion to dismiss, Brailsford must "set forth sufficient factual allegations in [her] [c]omplaint to state a facially plausible claim that the [p]arties entered into a contract with terms of employment that limited the duration of the relationship or the right of termination or

both." Weaver, 2013 WL 5587854, at *6. Brailsford has not attached the handbook or identified any specifically "mandatory" language in her complaint. Thus, Brailsford's complaint does not identify any language in the employee handbook or defendants' policies and procedures which "impose[s] a limitation on the employer's right to terminate an employee at any time, for any reason." Grant, 634 S.E.2d at 20. Other courts have found similar factual allegations insufficient to survive a motion to dismiss on a breach of contract claim. See, e.g., Nicholson v. Sci. Applications Int'l Corp., No. 2:12-cv-2779, 2012 WL 6568399, at *2 (D.S.C. Nov. 27, 2012) report and recommendation adopted, 2012 WL 6588635 (D.S.C. Dec. 17, 2012) ("Plaintiff has only alleged in very general and conclusory terms that she 'entered into a contract' with the Defendant, executed various [unspecified] documents which constituted a contract of employment, and that the Defendant had an Employee Handbook which used 'mandatory language creating a contractual agreement.'"). Such general and conclusory allegations are not sufficient to establish the existence of an employment contact. Moreover, despite Brailsford's failure to identify any particular provisions of the Employee Handbook that form the basis of her claim, the court has reviewed the handbook and found no language which "impose[s] a limitation on [defendants'] right to terminate [her] at any time, for any reason." Grant, 634 S.E.2d at 20.

At the hearing, Brailsford also argued that defendants breached certain promises contained in the policies and procedures attached to their motion to dismiss. See ECF Nos. 5-2, 5-3, 5-4. Specifically, Brailsford argued that the defendants' breached certain provisions of the "Safety and Security in the Workplace Policy," ECF No. 5-2, "Disruptive Patient Behavior and Use of Behavior Agreement," ECF

No. 5-3, and "Problem Review and Response Policy," ECF No. 5-4, by failing to protect her from Patient M's violent and harassing behavior and by failing to investigate the incident. However, even if these policies and procedures contained such promises, they would not have altered the at-will employment relationship because they did not restrict defendants' ability to terminate Brailsford. Cf. Grant, 634 S.E.2d at 20 (looking to language setting forth "mandatory, progressive discipline procedures" to determine whether such language alters the at-will employment relationship); Conner v. City of Forest Acres, 560 S.E.2d 606, 611 (S.C. 2002) (finding that mandatory language in handbook dealing with "progressive discipline, discharge, and subsequent grievance" procedures altered the at-will employment relationship). The fact that an employer is obligated to protect employees from harassment or investigate workplace incidents has little to do with the employer's obligation to maintain the employment relationship. It is easy enough to see how firing an employee might breach a promise to follow certain disciplinary or termination procedures, but it cannot be said that defendants breached their alleged obligations to protect Brailsford from harassment or investigate workplace incidents by terminating her. Even if defendants made such promises, those promises could not have "create[d] an expectation that [Brailsford's] employment [was] guaranteed or that a particular process [would] be complied with before [she was] terminated." Frasier v. Verizon Wireless, No. 8:08-cv-0356, 2008 WL 724037, at *2 (D.S.C. Mar. 17, 2008). Defendants' decision to fire Brailsford was, at most, only tangentially related to the alleged their promises to protect her from harassment and investigate employee concerns.

At the hearing, Brailsford appeared to argue that defendants' breach of these promises caused her termination, even if the termination was not itself a breach of any promise. This theory of relief was specifically rejected by the South Carolina Court of Appeals in Bookman v. Shakespeare Co., 442 S.E.2d 183, 184 (S.C. Ct. App. 1994). In Bookman, the plaintiff was fired after becoming involved in a physical altercation with a coworker. Id. The plaintiff alleged that the altercation was triggered by the coworker's sexual harassment, and pointed out that her employer was obligated to "promptly and carefully investigate" all complaints of sexual harassment pursuant to its "Sexual Harassment Policy." Id. at 183. The plaintiff argued that "had [her employer] adequately investigated the incident, they would have discovered the altercation resulted from sexual harassment by the fellow employee and, therefore, would not have terminated her." Id. at 184. The court found that the employer may well have breached its promise to investigate harassment claims, but held that this breach was immaterial because the promise to investigate did not limit the employer's right to terminate the plaintiff. Id. As the Bookman court explained, "[t]he essence of the at-will employment doctrine is the unfettered right to terminate the employment at any time for any reason or no reason." Id. Therefore, even if the employer had "conducted the investigation and determined the altercation resulted from the fellow employee's sexual harassment of [the plaintiff], [the employer] was nevertheless free to fire [the plaintiff] for any reason or no reason." Id.

It is notable that the Bookman court indicated—albeit, in dicta—that the employer could not have fired the plaintiff in retaliation for filing a sexual harassment

complaint due to the Sexual Harassment Policy's guarantee that "all [employees] are assured that they will be free from any and all reprisal or retaliation from filing [a sexual harassment] complaint." Id. at 183–84. The defendants' "Problem Review and Response Policy" contains similar language, stating that "an employee will not be discharged, disciplined, or retaliated against for following the Problem Review and Response Procedure." Defs.' Mot. Ex. C.[5] Brailsford's complaint suggests that her firing was motivated by either her complaints regarding Patient M's abusive behavior or her connection to another employee's previous health and safety complaints in August of 2013. Compl. ¶¶ 25, 26. Thus, a fair argument could be made that Brailsford at least has a claim for defendants' breach of this anti-retaliation provision. However, as the court observed in Brailsford I, more recent decisions have moved away from this position. Frasier, 2008 WL 724037, at *2 ("The Defendant's promises that 'everyone should feel comfortable to speak his or her mind' and that '[defendant] prohibits retaliation against employees who, in good faith, submit or participate in the investigation of any complaints' 'do[ ] not create an expectation that employment is guaranteed or that a particular process must be complied with before an employee is terminated.'"); King v. Marriott Int'l, Inc., 520 F.Supp.2d 748, 756 (D.S.C. 2007) (finding that the defendant's promise "that 'there will be no discrimination or recrimination' against an employee who asserts a complaint against

[5] Similar language is found in the Employee Handbook, stating that employees "should feel free to discuss" problems with company representatives and that "retribution and/or retaliation for calling the Employee Action Line will not be tolerated." ECF No. 5-6 at 36. However, the first of these statements is too general to give rise to a contractual obligation and the second is irrelevant in this case because Brailsford did not call the Employee Action Line. Therefore, the court focuses on the language in the "Problem Review and Response Policy."

the Company" was insufficient to alter the employee's at-will employment status). Defendants' anti-retaliation provision is substantially similar to the provisions in Frasier and King. Therefore, the court finds that Brailsford's breach of contract claim fails under the anti-retaliation theory as well.

Because Brailsford has failed to allege that she entered into a contract which "impose[d] a limitation on [defendants'] right to terminate [her] at any time, for any reason," Grant, 634 S.E.2d at 20, her breach of contract claim must fail.

2. Breach of Contract with Fraudulent Intent

Next, defendants argue that the complaint fails to state a cause of action for breach of contract accompanied by fraudulent intent. Defs.' Mot. 9.

In order to have a claim for breach of contract accompanied by a fraudulent act, a plaintiff must establish three elements: "(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach." Conner, 560 S.E.2d at 612. "The fraudulent act is any act characterized by dishonesty in fact or unfair dealing." Id. "Fraud," in this sense,

> assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.

Id.

Defendants first argue that Brailsford has failed to state a claim for breach of contract accompanied by a fraudulent act because she has failed to plead a breach of contract. Defs.' Mot. 9. For the reasons laid out in part III.B.1. above, the court agrees.

Therefore, the court will also dismiss Brailsford's claim for breach of contract with fraudulent intent.

IV. CONCLUSION

For the reasons set forth above, the court **DENIES** Brailsford's motion to remand and **GRANTS** defendants' motion to dismiss as to all of Brailsford's causes of action.

AND IT IS SO ORDERED.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

March 31, 2017
Charleston, South Carolina