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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<p>KATHY KNIGHT-MCCONELL,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>MARY CUMMINS,</p> <p style="text-align: center;">Defendant</p>	<p style="text-align: right;">Civil No. 03 CV 5035</p> <p style="text-align: center;">Reply Memorandum of Defendant Mary Cummins to Plaintiff's Responses</p> <p style="text-align: center;">Judge: Buchwald</p>
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REPLY MEMORANDUM

Personal Jurisdiction

The Plaintiff, Kathy Knight-McConell, ("Plaintiff") has submitted no new evidence to support, on a preponderance of the evidence, the damages in controversy in this case. Plaintiff's alleged claims are based on state law, and her surviving personal jurisdiction claim is based upon diversity, which the Court in its previous ruling noted would permit this court to take jurisdiction. But the court also noted that it doubted that Plaintiff would be able to substantiate any plausible monetary damage amount.

Diversity of citizenship is not at issue. The only remaining issue

applicable to the diversity claim under 28 U.S.C. Section(s) 1332(a)(1) is whether the amount in controversy exceeds \$75,000.00. However, for the same reason that Defendant Mary Cummins (“Cummins”) believes that Plaintiff has failed to state a claim upon which relief can be granted, the Plaintiff, in her latest amended complaint, has failed to plead damages of any monetary amount which would plausibly exceed the required minimum of \$75,000.00.

The Plaintiff, in asserting federal jurisdiction, bears the burden of proving that the case is properly in federal court. *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *United Food & Commercial Workers Union, Local 919 v. Centermark Properties Meriden Square, Inc.*, 30 F.3d 304-05 (2d Cir. 1994). “To that end, it bears repeating that [the] party invoking [federal] jurisdiction . . . has the burden of proving that it appears to a ‘reasonable probability’ that the claim is in excess of the statutory jurisdictional amount.” *United Food*, 30 F.3d at 304-05 (quoting *Tongkook America, Inc. v. Shipton Sportswear Co.*, 14 F.3d 781, 784 (2d Cir. 1994)). Plaintiff must “justify [her] allegations” that her complaint asserts claims exceeding \$75,000 “by a preponderance of evidence.” *McNutt*, 298 U.S. at 189. Plaintiff has presented no new evidence in her response which should sway this court from its earlier ruling that Plaintiff has failed to plead any plausible claim for damages.

Defendant re-affirms her position that Plaintiff’s claims, whether or not they have merit, are state claims, and that the only proper venue

is California, of which Defendant is a citizen, having no substantial ties to New York; and that Plaintiff has pleaded no cause of action which lends jurisdiction to the federal District Court.

Plaintiff's "Rule 11" Motion

Without addressing the relevance of the claims expressed by Ms. McConnell to FRCP 11, Plaintiff's purported "Rule 11" sanctions motion against Defendant should not be considered by this court because it was not properly filed as required under FRCP 11, in that (1) twenty-one days advance service before filing with the Clerk Of the Court was not effected on Defendant, (2) Plaintiff's motion was not properly prepared as a motion separate from the Plaintiff's other motions; and (3) the motion was not properly scheduled for hearing.

It is Defendant's understanding that the court has already denied this motion in its order of April 26, 2005 which denied Plaintiff's motion to strike, however the sanctions motion was not specifically mentioned by name in the order.

For the reasons stated herein, and stated in Defendant's prior brief, Defendant Mary Cummins respectfully requests that this court dismiss Plaintiff's amended complaint with prejudice and without further leave to amend.

Dated this 14th Day of May, 2005.

by _____
Mary Cummins, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Affidavit was served on the plaintiff y postage paid U.S. First Class Mail on the date below at the following address:

Kathy Knight-McConnell
98 Van Cortland Park South
8C
Bronx, New York 10463-2921

Dated this 14th Day of May, 2005.

By _____
Mary Cummins

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