IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

PRIME REALTY VENTURES, LLC, Plaintiff, v. ONEFEME OGBENI, OLAYINKA ODUNLAMI, AND NELLY WAMBUGU, Defendants.	)	No. 2:21-cv-02786-TLP-cgc

ORDER ON DEFENDANTS' MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND FOR FAILURE TO STATE A CLAIM

Plaintiff Prime Realty Ventures, LLC sued Defendants Onefeme Ogbeni, Olayinka Odunlami, and Nelly Wambugu (collectively "Defendants") in December 2021. (ECF No. 1.) Defendants now move to dismiss under Rule 12(b)(2) for lack of personal jurisdiction and under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. (ECF Nos. 23, 24 & 25.) Plaintiff responded. (ECF Nos. 33, 34 & 35.) And Defendants replied. (ECF Nos. 39, 40 & 41.)

For the reasons below, the Court **GRANTS** Defendants Ogbeni and Wambugu's motions to dismiss under Rule 12(b)(2) without prejudice. And the Court **DENIES** Defendant Odunlami's motion to dismiss under Rule 12(b)(2) . The Court also **GRANTS** Defendant Odunlami's motion to dismiss under Rule 12(b)(6) without prejudice.

BACKGROUND

I. The Complaint

Plaintiff Prime Realty Ventures, LLC ("Prime Realty") is a Tennessee limited liability company with its domicile and principal office in Shelby County, Tennessee. (ECF No. 1 at PageID 1.) Prime Realty's principal is Dr. Olubenga Faleye, who resides in Shelby County, Tennessee. (*Id.*) According to the complaint, Defendants Ogbeni, Odunlami, and Wambugu reside in Georgia. (*Id.* at PageID 1–2.)

Plaintiff alleges that Defendants approached Dr. Faleye about investing in the African oil and gas market in July 2021. (*Id.* at PageID 3.) Dr. Faleye discussed the investment with Defendants and decided that "any investment proposed by Defendants should be made by Prime [Realty]." (*Id.*) According to Prime Realty, "Defendants identified a company they called Quantex Oil & Gas Limited as the investment vehicle for Plaintiff's investment ('Quantex')." (*Id.* at PageID 4.) Prime Realty invested in Quantex by a wire transfer of $250,000 from its bank account at Patriot Bank in Tennessee. (*Id.*) Defendants required Prime Realty to wire the funds to a bank account at Wells Fargo purportedly belonging to a company named Stealth Management, Inc. ("Stealth Management"). (*Id.*) According to the complaint, neither Quantex nor Stealth Management exists as legal entities. (*Id.* at PageID 4–5.)

Prime Realty claims that Defendants made several representations to Dr. Faleye by written and oral communications, which persuaded him to invest with them:

> (1) that Defendants had the requisite skill and experience, as well as numerous contacts within and outside of Africa, to enable them to successfully exploit opportunities in the African oil and gas market, (2) that there were other investors who had invested in the project and/or were ready, willing and able to invest in the project, (3) that the value and valuation of Quantex was at least $ 10,000,000, (4) that Stealth Management, Inc. was incorporated under the laws of the State of Georgia, (5) that Stealth Management, Inc. had entered into a valid and binding Agency Agreement with Quantex, (6) that Stealth Management, Inc. was owned

> and/or controlled by Defendants, (7) that Plaintiff's $250,000 investment would be used to purchase equity ownership in Quantex Oil & Gas Limited and (8) that Quantex was in the business of exploiting profitable and lucrative commercial opportunities within the African oil and gas market.

(*Id.* at PageID 3.) Prime Realty alleges that "[u]pon information and belief, these representations were false and Defendants knew that such representations were false at the time of making them." (*Id.* at PageID 3–4.)

For instance, Plaintiff alleges that Defendant Odunlami contacted Dr. Faleye via WhatsApp and informed him that "Defendants had been nurturing the project for 11 years and that Defendants 'have the ability to take 5-10% of the production capacity of $450M production facility.'" (*Id.* at PageID 4.) And Prime Realty alleges that Defendant Odunlami represented that Defendants had "lined up relationships and markets in 3-5 African countries all while still opening the Nigerian market," stating that "Defendants 'ha[d] the tools' to get products to market." (*Id.*) A week later, Defendant Odunlami told Dr. Faleye that Defendants "ha[d] new rollouts in the pipeline every 6 months for at least 2 years . . . [a]ll great and viable on their own." (*Id.*)

According to the complaint, Prime Realty relied on Defendants' representations when choosing to invest $250,000 with Defendants. (*Id.*) But once Plaintiff invested the funds, Defendants took the money for themselves rather than invest it in the African oil and gas market. (*Id.* at PageID 5.)

Prime Realty alleges (1) fraud; (2) conversion, trover, and misappropriation; (3) negligent misrepresentation; (4) fraudulent concealment; (5) violations of § 10(b) and Rule 10b-5 of the Securities and Exchange Act of 1934; (6) violations of § 12(1) of the Securities Act of 1933; and (7) a claim for punitive damages. (*Id.* at PageID 5–14.) And as explained above, Defendants

now move to dismiss for lack of personal jurisdiction and for failure to state a claim. (ECF Nos. 23, 24 & 25.)

II. The Parties' Affidavits

Defendants Ogbeni and Wambugu included affidavits with their motions to dismiss. (ECF No. 24-2 & 25-2.) And Plaintiff included an affidavit from Dr. Faleye in its responses.[1] (ECF Nos. 33-1, 34-1 & 35-1.)

According to Defendant Ogbeni's affidavit, Ogbeni is a resident of Georgia who currently resides in Nigeria and has no contacts with Tennessee. (ECF No. 24-2 at PageID 96.) Ogbeni's declaration states that he "conducted all business relating to the transaction at issue in the country of Nigeria, including signing and executing the contract." (*Id.*) Ogbeni also states that Dr. Faleye drafted the contract at issue. (*Id.*) And Dr. Fayele "visited Nigeria and the factory that [Quantex] contracts with to manufacture its products . . . and decided after visiting that he wanted to invest in [Quantex]." (*Id.* at PageID 97.) Lastly, Ogbeni's declaration states that Dr. Faleye "approached [Ogbeni] in Nigeria about investing in [Quantex]," and Ogbeni did not solicit Plaintiff's investment in Quantex. (*Id.*)

According to Defendant Wambugu's affidavit, Wambugu is a resident of Georgia and has no contacts with Tennessee. (ECF No. 25-2 at PageID 115.) Wambugu states that she has never spoken to Dr. Faleye and that she "had no involvement in the negotiation of the deal at issue." (*Id.*) Lastly, Wambugu states that she is not a member of Quantex and has no employment relationship with or ownership interest in Quantex. (*Id.*)

[1] For ease of reference, the Court will cite only to the first copy of Dr. Faleye's affidavit and the accompanying exhibits. (ECF No. 33-1.)

Dr. Faleye's affidavit repeats many allegations from the complaint. For example, Dr. Faleye states that Defendants knew that Dr. Faleye resided in Tennessee and that Prime Realty was domiciled and headquartered in Tennessee. (ECF Nos. 33-1 at PageID 157.) And Defendants knew that Plaintiff's funds were in Tennessee and held in accounts at Tennessee-based financial institutions. (*Id.*) What is more, Defendants allegedly communicated directly with Plaintiff's Tennessee financial institutions and accountant. (*Id.* at PageID 158.)

Dr. Faleye also claims that "Defendants were constantly soliciting Plaintiff in Tennessee to invest in various business enterprises." (*Id.*) And the affidavit describes—and includes as attachments—various communications from Defendants Ogbeni and Odunlami "about Defendant's investment schemes." (*Id.* at PageID 158, 163–84.) Dr. Faleye's affidavit also states that Defendant Wambugu, who is married to Defendant Ogbeni, "was actively involved in developing the investment scheme and materials, as well as converting Plaintiff's funds." (*Id.* at PageID 158.)

As stated above, Dr. Faleye attached to his affidavit messages and emails exchanged with Defendants Ogbeni and Odunlami about Plaintiff's investment in Quantex. (*Id.* at PageID 158–61, 185–206, 211, 237, 247–55.) In these conversations, Defendants Ogbeni, and Odunlami gave Dr. Faleye information about Quantex before Plaintiff invested, and the parties discussed the parameters of Plaintiff's investment. (*Id.* at PageID 185–98, 205–06.) The conversations also include exchanges between Dr. Faleye and Defendants Ogbeni and Odunlami after Plaintiff invested, detailing Dr. Faleye's dissatisfaction with the investment and the lack of information provided by Defendants. (*Id.*)

In August 2021, Dr. Faleye emailed Defendants Odunlami and Ogbeni about entering into a Memorandum of Understanding ("MOU") related to Plaintiff's investment. (*Id.* at PageID

159, 205–10.) The next month, Defendant Odunlami emailed Dr. Faleye a draft of the MOU, copying Defendant Ogbeni on the email. (*Id.*) The MOU contemplated a $750,000 investment by Plaintiff into "projects and business opportunities that Quantex undertakes." (*Id.* at PageID 159, 207.) After further discussions between the parties, Defendant Odunlami emailed Dr. Faleye an updated MOU, an Agency Agreement between Quantex and Stealth Management, and a Share Purchase Agreement between Prime Realty and Quantex. (*Id.* at PageID 211–36.) Again, Defendant Odunlami copied Defendant Ogbeni on the email. (*Id.* at PageID 211.)

The Agency Agreement, which is addressed to Defendant Ogbeni's attention, permits Stealth Management to act as an agent of Quantex. (*Id.* at PageID 213.) The Agency Agreement also authorizes Stealth Management to sell 1,000 common shares of Quantex at an offering price of $750 per share. (*Id.*) The Agency Agreement names both Defendants Ogbeni and Odunlami in its text. (*Id.* at PageID 213, 223–24.) And Defendant Ogbeni signed the document as "Director, Quantex Oil & Gas Limited." (*Id.* at PageID 226.)

The updated MOU between Prime Realty and Quantex reflects an agreement for Quantex to sell $750,000 in shares of the company to Prime Realty. (*Id.* at PageID 235–36.) According to the MOU, Plaintiff would deposit $200,000 followed by a payment of $550,000 by the closing date. (*Id.* at PageID 236.) Dr. Faleye signed the MOU for Prime Realty, and Defendant Ogbeni signed on behalf of Quantex. (*Id.*)

As explained above, the parties also executed a Share Purchase Agreement ("Agreement") between Prime Realty and Quantex in September 2021. (*Id.* at PageID 229.) The Share Purchase Agreement similarly contemplates a $200,000 deposit by Plaintiff with another $550,000 due upon closing of the agreement. (*Id.* at PageID 159, 229–30.) Under the Agreement, the parties "submit to the jurisdiction of the courts of the State of Tennessee for the

enforcement of this Agreement or any arbitration award or decision arising from this Agreement." (*Id.* at PageID 232.) And it also provides that the parties "submit to the jurisdiction of the courts of the State of Tennessee, USA and Nigeria, with the laws of the State of Tennessee, USA superseding, for the enforcement of this Agreement or any arbitration award or decision arising from this Agreement." (*Id.*) Lastly, the Agreement states that "[t]his Agreement will be enforced or construed according to the laws of the State of Tennessee." (*Id.* at PageID 232–33.) Dr. Faleye signed the Agreement for Prime Realty, and Defendant Ogbeni signed on behalf of Quantex. (*Id.* at PageID 234.)

After sending Dr. Faleye the documents described above, Defendant Odunlami emailed Dr. Faleye requesting payment of the $200,000 deposit. (*Id.* at PageID 160, 211.) Dr. Faleye then asked Defendant Ogbeni for information about Stealth Management so Plaintiff could initiate the wire transfer. (*Id.* at PageID 171–72.) Defendant Ogbeni provided an address and bank account associated with Stealth Management, listing Defendant Wambugu's name as linked to the address and account. (*Id.* at PageID 171.)

The Court will now turn to the legal standards governing Defendants' motions.

LEGAL STANDARDS

I. Rule 12(b)(6)

Rule 12(b)(6) of the Federal Rules of Civil Procedure allows a defendant to move to dismiss a complaint for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). And courts assess whether a complaint states a claim upon which relief can be granted using standards from *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009), as well as *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 555–57 (2007). "Accepting all well-pleaded allegations in the complaint as true, the court 'consider[s] the factual allegations in [the]

complaint to determine if they plausibly suggest an entitlement to relief.'" *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 681). To avoid dismissal under Rule 12(b)(6), "a 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).

Though a court will grant a motion to dismiss if a plaintiff has no plausible claim for relief, a court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007). But a court "need not accept as true legal conclusions or unwarranted factual inferences." *Id.* (citing *Gregory v. Shelby Cnty.*, 220 F.3d 433, 446 (6th Cir. 2000)).

II. Rule 12(b)(2)

Likewise, Rule 12(b)(2) permits a defendant to move to dismiss a complaint for lack of personal jurisdiction. *See* Fed. R. Civ. P. 12(b)(2). A plaintiff has the burden of proving that the court has personal jurisdiction over a defendant. *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 887 (6th Cir. 2002). And so, if a defendant properly supports its motion to dismiss, "the plaintiff may not stand on his pleadings but must, by affidavit or otherwise, set forth specific facts showing that the court has jurisdiction." *Theunissen v. Matthews*, 935 F.2d 1454, 1458 (6th Cir. 1991).

District courts have discretion in how they resolve a 12(b)(2) motion. *Malone v. Stanley Black & Decker, Inc.*, 965 F.3d 499, 505 (6th Cir. 2020) (citing *Serras v. First Tenn. Bank Nat. Ass'n*, 875 F.2d 1212, 1214 (6th Cir. 1989)). A court "may determine the motion on the basis of affidavits alone; or it may permit discovery in aid of the motion; or it may conduct an evidentiary

hearing on the merits of the motion." *Dean v. Motel 6 Operating L.P.*, 134 F.3d 1269, 1271–72 (6th Cir. 1998) (quoting *Serras*, 875 F.2d at 1214). Consequently, the method of evaluation affects the plaintiff's burden. *See Malone*, 965 F.3d at 505.

When a court rules on a 12(b)(2) motion on the written submissions alone, for example, the plaintiff "need only make a prima facie showing of jurisdiction" and the court "must consider the pleadings and affidavits in the light most favorable to the plaintiff." *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1262 (6th Cir. 1996). This is a "relatively slight" burden for the plaintiff to meet. *Am. Greetings Corp. v. Cohn*, 839 F.2d 1164, 1169 (6th Cir. 1988). "Still, it remains the plaintiff's burden and the complaint must have 'established with reasonable particularity' those specific facts that support jurisdiction." *Palnik v. Westlake Entm't, Inc.*, 344 F. App'x 249, 251 (6th Cir. 2009) (quoting *Neogen Corp.*, 282 F.3d at 887).

If the plaintiff makes a prima facie case of jurisdiction in its complaint, the burden then shifts to the defendant to show that their motion is factually supported, and that jurisdiction is improper. *Malone*, 965 F.3d at 504 (citing *Theunissen*, 935 F.2d at 1458). If the defendant meets that burden, it shifts back to the plaintiff, who "must, by affidavit or otherwise, set forth specific facts showing that the court has jurisdiction." *Id.* (quoting *Theunissen*, 935 F.2d at 1458).

RULE 12(b)(2) MOTIONS

I. Standard for Finding Personal Jurisdiction over Defendants

Courts may exercise two types of personal jurisdiction over defendants: general and specific. *See Malone*, 965 F.3d at 501. "General jurisdiction exists when the defendant's affiliations with the forum state are 'so 'continuous and systematic' as to render' the defendant 'essentially at home' there." *Id.* (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*,

564 U.S. 915, 919 (2001); *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). "Specific jurisdiction, on the other hand, depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Goodyear*, 564 at 919 (internal quotation marks omitted). No one here argues that this Court has general jurisdiction over Defendants. But the parties disagree about whether the Court has specific jurisdiction over Defendants.

"In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Id.* (internal quotation marks omitted). In other words, a court has specific jurisdiction over a defendant when "the claims in the case arise from or are related to the defendant's contacts with the forum state." *Intera Corp. v. Henderson*, 428 F.3d 605, 615 (6th Cir. 2005). "In a diversity action, the law of the forum state dictates whether personal jurisdiction exists, subject to constitutional limitations." *Id*. In Tennessee, a court has specific jurisdiction over a nonresident for "any basis not inconsistent with the constitution of this state or of the United States." Tenn. Code Ann. § 20-2-214(a)(6). So this Court has to determine whether exercising personal jurisdiction over Defendants violates the Due Process Clause of the Fourteenth Amendment.

A non-resident defendant need not be "physically present in the forum state" for a Court to have personal jurisdiction over that party. *CompuServe*, 89 F.3d at 1264. But due process requires that a defendant "have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co.*, 326 U.S. at 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

The Sixth Circuit applies a three-prong test to determine whether a court's specific jurisdiction complies with due process:

> First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

S. Mach. Co. v. Mohasco Indus., Inc., 401 F.2d 374, 381 (6th Cir. 1968).

The Court now turns to the merits of Defendants' motions.[2] Because there is no dispute about general jurisdiction, the Court will address only specific jurisdiction.

II. Specific Jurisdiction over Defendants

The Court first asks whether Defendants purposefully availed themselves in Tennessee. Rather, as explained above, "[t]he defendant . . . must take 'some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State.'" *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021) (quoting *Hanson v. Denckla*, 357 U. S. 235, 253 (1958)). What is more, "[t]he contacts must be the defendant's own choice and

[2] As Defendants Ogbeni and Wambugu point out, the analysis differs when a plaintiff bases personal jurisdiction on the Securities Act of 1933, 15 U.S.C. § 77a, or the Securities Exchange Act of 1934, 15 U.S.C. § 78a. (ECF Nos. 24-1 at PageID 93–94; 25-1 at PageID 112–13.) Both Acts provide for nationwide service of process. S*ee* 15 U.S.C. §§ 77v, 78aa. And "[w]hen Congress has enacted such nationwide service of process statutes, personal jurisdiction exists whenever the defendant has 'sufficient minimum contacts with the United States' to satisfy the due process requirements under the Fifth Amendment." *Carrier Corp. v. Outokumpu Oyj*, 673 F.3d 430, 449 (6th Cir. 2012) (quoting *Med. Mut. of Ohio v. deSoto*, 245 F.3d 561, 566–67 (6th Cir. 2001)). But "if a plaintiff has not stated a claim under a federal law which allows for nationwide service of process, he cannot claim that the district court has personal jurisdiction over a defendant as to those claims." *Sledge v. Indico Sys. Res., Inc.*, 68 F. Supp. 3d 834, 838 (W.D. Tenn. 2014); *see also Indah v. SEC*, 661 F.3d 914, 922 (6th Cir. 2011); *United Liberty Life Ins. Co. v. Ryan*, 985 F.2d 1320, 1330 (6th Cir. 1993). The Court need not address this issue here because Plaintiff does not rely on the nationwide service of process provisions of the Acts as a basis for personal jurisdiction. (ECF Nos. 33 at PageID 154 n.21; 35 at PageID 284 n.21.)

not 'random, isolated, or fortuitous.'" *Id.* at 1025 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U. S. 770, 774 (1984)). And so a plaintiff seeking to establish personal jurisdiction "must show that the defendant deliberately 'reached out beyond' its home—by, for example, 'exploi[ting] a market' in the forum State or entering a contractual relationship centered there." *Id.* (quoting *Walden v. Fiore*, 571 U. S. 277, 285 (2014)).

Purposeful availment "is present where the defendant's contacts with the forum state 'proximately result from actions by the defendant himself that create a 'substantial connection' with the forum State,' and where the defendant's conduct and connection with the forum are such that he 'should reasonably anticipate being haled into court there.'" *Neogen Corp.*, 282 F.3d at 889 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–75 (1985)). This connection requires "something more than a passive availment of [the forum state's] opportunities." *Id.* at 891 (internal quotation marks omitted). "Rather, 'purposeful availment' is something akin to a deliberate undertaking to do or cause an act or thing to be done in [the forum state] or conduct which can be properly regarded as a prime generating cause of the effects resulting in [the forum state.]" *Id.* (internal quotation marks omitted).

Defendants assert that Plaintiff cannot satisfy the purposeful availment requirement for various reasons. In response, Plaintiff argues "[t]here can be no reasonable dispute that for at least a five month period in 2021, Defendants together actively and affirmatively targeted Plaintiff inside the State of Tennessee to solicit its involvement in Defendants' fraudulent scheme, to acquire and convert Plaintiff's funds, and to damage Plaintiff in Tennessee." (ECF Nos. 33 at PageID 151; 34 at PageID 266; 35 at PageID 381.) The main thrust of Plaintiff's argument on purposeful availment focuses on the communications between Dr. Faleye and Defendants Ogbeni and Odunlami. Because this analysis differs slightly for each Defendant,

the Court will address the question of purposeful availment separately for each Defendant, beginning with Defendant Wambugu.

A. Defendant Wambugu

Defendant Wambugu asserts that she "had nothing to do with the negotiation of the transaction complained of, is not a member of and has no employment relationship or ownership in Quantex . . . , and has never spoken to Dr. Olubenga Faleye." (ECF No. 25-1 at PageID 104.) What is more, Defendant Wambugu argues that "Plaintiff has not alleged any contacts that [Defendant Wambugu] herself has had with the State of Tennessee[.]" (*Id.*) Plaintiff's response focuses on the conduct of Defendants Ogbeni and Odunlami. (ECF No. 35 at PageID 373, 377–81.) And the complaint has no allegations specific to Defendant Wambugu, other than stating that she is married to Defendant Ogbeni. (ECF No. 1 at PageID 2.)

Indeed, the Court's analysis of Defendants' Rule 12(b)(2) motions is complicated by the fact that the complaint mostly calls Defendants a collective group rather than directing allegations toward each Defendant's conduct. (*Id.* at PageID 2–14.) For example, Plaintiff alleges that "Defendants together solicited Plaintiff in Tennessee and consummated the fraudulent transactions in the state of Tennessee." (*Id.* at PageID 2.) And the complaint states that "Defendants approached Dr. Faleye about investing in the African oil and gas market," that Dr. Faleye "discuss[ed] the investment with Defendants," and that "Defendants represented to Plaintiff" various pieces of information about Quantex and Plaintiff's investment. (*Id.* at PageID 3.) But the complaint fails to assert specific conduct or statements by Defendant Wambugu.

As explained above, Defendant Wambugu's affidavit states that she has never spoken to Dr. Faleye and that she "had no involvement in the negotiation of the deal at issue." (ECF No. 25-2 at PageID 115.) It also states that Defendant Wambugu has no employment relationship

with Quantex or ownership interest in the company. (*Id.*) Plaintiff offers nothing in its response to dispute these claims. Neither Dr. Faleye's affidavit nor the attached exhibits describe or contain any communications or conduct by Defendant Wambugu. Plaintiff points only to allegations in the complaint that consider Defendants a group. But the Court need not blindly accept the veracity of Plaintiff's conclusory assertions given Defendant Wambugu's well-supported motion under Rule 12(b)(2) and the lack of any attempt by Plaintiff to dispute these critical assertions from Defendant Wambugu's affidavit.[3]

Faleye's affidavit states that Defendant Wambugu "was actively involved in developing the investment scheme and materials, as well as converting Plaintiff's funds." (ECF No. 33-1 at PageID 158.) But the lone piece of evidence related to Defendant Wambugu is that her name appeared in an email from Defendant Ogbeni to Dr. Faleye as being linked to an address and bank account for Stealth Management. (*Id.* at PageID 171.) At bottom, the complaint does not allege any specific conduct Defendant Wambugu committed, plus Defendant Wambugu submitted an affidavit stating that she never communicated with Dr. Faleye and did not participate in negotiating Plaintiff's investment, and, in response, Plaintiff provides no evidence about any conduct or statements made by Defendant Wambugu.

[3] It is true that a defendant may not "defeat[] personal jurisdiction merely by filing a written affidavit contradicting jurisdictional facts alleged by a plaintiff." *Malone*, 965 F.3d at 505 (quoting *Schneider v. Hardesty*, 669 F.3d 693, 697 (6th Cir. 2012)). For this reason, when a defendant files an affidavit that contradicts a plaintiff's factual allegations, the affidavit is irrelevant to a court's Rule 12(b)(2) analysis. *See id.* But as explained above, the plaintiff has the burden of "establish[ing] with reasonable particularity those specific facts that support jurisdiction." *Palnik*, 344 F. App'x at 251 (internal quotation marks omitted). And conclusory allegations and vague assertions cannot satisfy this burden when faced with a properly supported motion to dismiss under Rule 12(b)(2). *See Odish v. Peregrine Semiconductor, Inc.*, No. 13-cv-14026, 2015 WL 1119951, at *11 (E.D. Mich. Mar. 11, 2015); *see also Morrison v. Taurus Int'l Co.*, No. 3:11-cv-322, 2012 WL 5493962, at *1 (S.D. Ohio Nov. 13, 2012).

The Court finds that Plaintiff has not carried its burden of "establish[ing] with reasonable particularity those specific facts that support jurisdiction" over Defendant Wambugu. *See Palnik*, 344 F. App'x at 251 (internal quotation marks omitted). That Defendant Wambugu's name appeared in an email sent to Dr. Faleye is not enough to show that she purposefully availed herself in Tennessee. Plaintiff does not show any conduct by Defendant Wambugu or contacts with Tennessee. The Court therefore lacks personal jurisdiction over Defendant Wambugu. Accordingly, the Court **GRANTS** Defendant Wambugu's motion to dismiss under Rule 12(b)(2) without prejudice.[4]

The Court now turns to Defendant Ogbeni.

B. Defendant Ogbeni

Defendant Ogbeni emphasizes that "[a]ll of [his] acts relating to the alleged sale of securities occurred in Nigeria." (ECF No. 24-1 at PageID 85.) According to Ogbeni, "[t]he solicitation alleged did not occur in Tennessee; it occurred in Nigeria when Dr. Olubenga Faleye personally approached Defendant . . . and, after inspection and investigation, decided he wanted to invest in Quantex[.]" (*Id.*) Again, the complaint has no allegations specific to Defendant Ogbeni because it refers to Defendants only as a group. (ECF No. 1.) But Dr. Faleye's affidavit and the attached exhibits include evidence about Defendant Ogbeni's conduct and statements related to Plaintiff's investment. (ECF No. 33-1.)

[4] Because the Court finds that Plaintiff has not established that Defendant Wambugu purposefully availed herself in Tennessee, the Court need not address the other elements of personal jurisdiction or Defendant Wambugu's arguments for dismissal under Rule 12(b)(6). But the Court's analysis of Defendant Odulami's 12(b)(6) motion is instructive here. If Plaintiff chooses to file an amended complaint, he should also consider the Court's analysis below as applied to Plaintiff's claims against Defendant Wambugu.

As explained above, Plaintiff's response to Defendant Ogbeni's motion to dismiss emphasizes communications between Defendant Ogbeni and Dr. Faleye. (ECF No. 33 at PageID 148–51.) Plaintiff also points out that Defendant Ogbeni was copied on Defendant Odunlami's email to Dr. Faleye that included the Agency Agreement, Share Purchase Agreement, and MOU. (*Id.* at PageID 149.) And Defendant Ogbeni signed the Share Purchase Agreement for Quantex. (*Id.*) Plaintiff also asserts that "Defendants, including Ogbeni, were constantly soliciting Plaintiff in Tennessee to invest in various business enterprises." (*Id.* at PageID 148.) Lastly, Plaintiff states that Defendant Ogbeni emailed Plaintiff "soliciting the wire transfer" of Plaintiff's $200,000 investment.[5] (*Id.* at PageID 150.)

In reply, Defendant Ogbeni argues that his conversations with Dr. Faleye (1) did not relate to Plaintiff's investment, (2) resulted from Dr. Faleye reaching out and requesting information, or (3) occurred after Plaintiff invested in Quantex. (ECF No. 40 at PageID 505–06.) And Defendant Ogbeni asserts that he did not prepare or send any agreements to Dr. Faleye. (*Id.* at PageID 506.)

Dr. Faleye's affidavit and the attached exhibits establish that Defendant Ogbeni signed the MOU and the Share Purchase Agreement between Prime Realty and Quantex. (ECF No. 33-1 at PageID 234, 236.) But Defendant Ogbeni points out that Defendant Odunlami sent these documents to Dr. Faleye, copying Defendant Ogbeni on the email. (*Id.* at PageID 211.) And Plaintiff identifies the Share Purchase Agreement as a critical piece of evidence showing purposeful availment. (ECF No. 33 at PageID 149.) He points to the Agreement's "language establishing the State of Tennessee as having jurisdiction over any disputes arising from this

[5] Plaintiff spends five pages of its response discussing its factual assertions about all three Defendants without explaining how each fact is relevant to the Court's analysis. (ECF No. 33 at PageID 147–51.)

Agreement." (*Id.*) But Plaintiff fails to explain why or cite any legal authority pointing to how this proves Defendant Ogbeni purposefully availed himself in Tennessee.

Indeed, "[t]he mere act of entering into a contract is insufficient to establish purposeful availment." *BCM High Income Fund v. Newtek Small Bus. Fin., Inc.* No. 2:17-cv-02815, 2018 WL 6438569, at *4 (W.D. Tenn. June 19, 2018) (citing *Burger King*, 471 U.S. at 478). "Nor will a handful of emails or phone calls alone confer personal jurisdiction, particularly where such communications have been initiated by the plaintiff, and the direction of a defendant's reply into the forum state may be only incidental to the initial contact." *Id.* (citing *Rice v. Karsch*, 154 F. App'x 454, 459–64 (6th Cir. 2005)). But "email or telephone communications may be initiated by the defendant, directed into the forum, and reside at the 'heart' of the action, such that the contacts may contribute to the creation of personal jurisdiction." *Id.* at *5 (citing *Neal v. Janssen*, 270 F. 3d 328, 332 (6th Cir. 2001); *Sledge v. Indico Sys. Resources, Inc.*, 68 F. Supp. 3d 834, 841–45 (W.D. Tenn. 2014)).

The largest piece of the puzzle is Defendant Ogbeni's communications with Dr. Faleye. As explained above, the Court's purposeful availment analysis must focus on Defendant Ogbeni's communications to Dr. Faleye, not Dr. Faleye's communications to Defendant Ogbeni. *See id.* at *4–5. Indeed, the defendant's contacts with the forum state "must be the defendant's own choice and not 'random, isolated, or fortuitous.'" *Ford Motor Co.*, 141 S. Ct. at 1025. And so the Court is probing for Defendant Ogbeni's unprompted communications with Dr. Faleye.

Plaintiff relies on *BCM High Income Fund* in the background section of its response as an example of a case in which the court found personal jurisdiction with less evidence of purposeful availment than is present here. (ECF No. 33 at PageID 143 (citing *BCM High*

Income Fund, 2018 WL 6438569, at *5).) But this Court's reading of *BCM High Income Fund* shows that it had more evidence of purposeful availment than Plaintiff presents here.

In *BCM High Income Fund*, the defendant "reached out" to the plaintiff "approximately sixty times via email to sell its product," earned over $3.5 million in premiums, and then transferred ownership of the subject "goods" once the transactions were complete. 2018 WL 6438569, at *5. The court emphasized that "[t]hese contacts were 'deliberate and repeated,' as opposed to a 'one-shot affair.'" *Id.* (quoting *CompuServe*, 89 F.3d at 1265). The court also pointed out that "these sales were initiated by [the defendant], which intended to solicit buyers by directing emails into Tennessee." *Id.* (citations omitted). That court acknowledged however that "this case present[ed] something of a close call," but ultimately found that the plaintiff had made a prima facie showing of purposeful availment. *Id.*

Unlike the parties in *BCM High Income Fund*, Defendant Ogbeni rarely corresponded with Dr. Faleye and rarely did so without Dr. Faleye initiating contact. Most of the discussions that Plaintiff cites occurred between Dr. Faleye and Defendant Odunlami, not Defendant Ogbeni. (ECF No. 33-1 at PageID 185–206, 211, 237–46, 249–51.) Of the communications between Dr. Faleye and Defendant Ogbeni, many do not mention Quantex or any potential investment into African oil and mining. (*Id.* at PageID 163–82.) In the few conversations between Dr. Faleye and Defendant Ogbeni about Quantex, Defendant Ogbeni responded to Dr. Faleye's messages rather than contacting him. (*Id.* at 183, 252–55.) It is true that Defendant Ogbeni sent Dr. Faleye the banking information for Stealth Management. (*Id.* at PageID 171.) But this is hardly a case involving "deliberate and repeated" contacts between Defendant Ogbeni and Dr. Faleye. *See BCM High Income Fund*, 2018 WL 6438569, at *5. Rather, based on the parties' submissions, the situation presented here seems closer to a "one-shot affair." *See id.*

As noted above, this case has less evidence of Defendant Ogbeni's purposeful availment than *BCM High Income Fund*. 2018 WL 6438569, at *5. In the end, the Court finds that Plaintiff has not carried its burden of "establish[ing] with reasonable particularity those specific facts that support jurisdiction" over Defendant Ogbeni. *See Palnik*, 344 F. App'x at 251 (internal quotation marks omitted). Because Plaintiff has not shown that Defendant Ogbeni purposefully availed himself in Tennessee the Court **GRANTS** Defendant Ogbeni's motion to dismiss under Rule 12(b)(2) without prejudice.[6]

The Court now turns to Defendant Odunlami.

C. Defendant Odunlami

Defendant Odunlami asserts that "there are no allegations that [he] has any substantial connection to Tennessee; no allegations that he directed marketing, promotion, or advertising specifically at Tennessee residents; no allegations that he entered into agreements specifically targeted at Tennessee; no allegations that he received monies in Tennessee related to consulting with Plaintiff; no allegations that the WhatsApp messages were even received in Tennessee; and no allegations that he had any contacts with Plaintiff in Tennessee." (ECF No. 23-1 at PageID 74.)

In response, Prime Realty emphasizes Defendant Odunlami's communications with Dr. Faleye about investing in Quantex, the agreements and documents Defendant Odunlami sent to Dr. Faleye, and the fact that Defendant Odunlami sent Dr. Faleye a request to deposit the

[6] Because the Court finds that Plaintiff has not established that Defendant Ogbeni purposefully availed himself in Tennessee, the Court need not address the other elements of personal jurisdiction or Defendant Ogbeni's arguments for dismissal under Rule 12(b)(6). But the Court's analysis of Defendant Odulami's 12(b)(6) motion is instructive here. If Plaintiff chooses to file an amended complaint, he should also consider the Court's analysis below as applied to Plaintiff's claims against Defendant Ogbeni.

investment funds in an account for Stealth Management. (ECF No. 34 at PageID 262–66.) In reply, Defendant Odunlami argues that his conversations with Dr. Faleye resulted from Dr. Faleye reaching out and requesting information. (ECF No. 39 at PageID 493–96.) And Defendant Odunlami emphasizes that he is not named in the MOU or Share Purchase Agreement. (*Id.* at PageID 494–96.)

Although the parties have not raised the issue, the Court notes that Defendant Odunlami did not attach an affidavit to his motion to dismiss. (ECF No. 23.) And as a result, Defendant Odunlami offers nothing to contradict the assertion of personal jurisdiction in Plaintiff's complaint. Indeed, "when the defendant fails to attach supporting affidavits, as in this case, a Rule 12(b)(2) motion cannot be sustained because the Court will have been presented with no evidence contradicting the plaintiff's assertion of jurisdiction over the defendant." *Hagen v. U-Haul Co.*, 613 F. Supp. 2d 986, 1002 (W.D. Tenn. 2009); *see also Malone*, 965 F.3d at 504–05. And "the Federal Rules, specifically Rule 8(a), do not even require that the complaint allege facts supporting personal jurisdiction, but only subject matter jurisdiction." *Hagen*, 613 F. Supp. 2d at 1002 (citing *Milwee v. Peachtree Cypress Inv. Co.*, 510 F. Supp. 279, 283–84 (E.D. Tenn. 1977); *Stirling Homex Corp. v. Homasote Co.*, 437 F.2d 87, 88 (2d Cir. 1971)). And so, as in *Hagen*, "[b]ecause [Defendant] has failed to submit any contrary proof to the Plaintiff's assertion of personal jurisdiction, the Court denies [Defendant's] Rule 12(b)(2) motion to dismiss." *Id.*

Even if the Court proceeded to analyze question of specific jurisdiction over Defendant Odunlami, Plaintiff has satisfied the three *Southern Machine* factors. Unlike the analysis above related to Defendant Ogbeni, Prime Realty provided evidence of many contacts between Defendant Odunlami and Dr. Faleye about Quantex and securing Plaintiff's investment. (ECF

No. 33-1 at PageID 185–206, 211, 237–46, 249–51.) Dr. Faleye's conversations with Defendant Odunlami suggest "deliberate and repeated" contacts between them. *See BCM High Income Fund*, 2018 WL 6438569, at *5. And so the Court finds that Prime Realty has satisfactorily alleged purposeful availment.

As for the second *Southern Machine* factor, "[i]f a defendant's contacts with the forum state are related to the operative facts of the controversy, then an action will be deemed to have arisen from those contacts." *CompuServe, Inc.*, 89 F.3d at 1267. This is a "lenient standard." *Bird v. Parsons*, 289 F.3d 865, 875 (6th Cir. 2002) (finding that claim arose from defendant's contacts with state because "the operative facts [we]re at least marginally related to the alleged contacts" of defendant and state). Accepting as true Prime Realty's assertions about Defendant Odunlami's role in securing Plaintiff's investment and communicating with Dr. Faleye by various means, the Court finds that Prime Realty satisfies this factor.

Finally the Court considers whether the exercise of its jurisdiction over Defendant Odunlami is reasonable. When a plaintiff meets the first two prongs of the *Southern Machine* test, "there is an inference that the reasonableness prong is satisfied as well." *Intera Corp.*, 428 F.3d at 618. It is not automatic, however. Generally, the court should also consider these other factors: "(1) the burden on the defendant; (2) the interest of the forum state; (3) the plaintiff's interest in obtaining relief; and (4) the other states' interest in securing the most efficient resolution of the controversy." *Id.* Because Prime Realty meets the first two elements of the *Southern Machine* test, the Court infers that its jurisdiction over Defendant Odunlami is reasonable. As for the other factors, even though travelling from Georgia will burden Defendant Odunlami, Prime Realty has an interest in obtaining relief and Tennessee has an interest in the

litigation.[7] And Tennessee's interest here is greater than any other state's interest. So all in all this Court's exercise of personal jurisdiction over Defendant Odunlami is reasonable.

At this stage of the proceedings, and given Plaintiff's burden here, the Court finds that it personal jurisdiction over Defendant Odunlami. And the Court therefore **DENIES** Defendant Odunlami's motion to dismiss for lack of personal jurisdiction.

The Court now turns to Defendant Odunlami's motion to dismiss for failure to state a claim under Rule 12(b)(6).

DEFENDANT ODUNLAMI'S RULE 12(b)(6) MOTION

Defendant Odunlami argues that Plaintiff failed to plead fraud and misrepresentation with particularity as required by Federal Rule of Civil Procedure 9(b). (ECF No. 23-1 at PageID 77.) Defendant Odunlami argues that the complaint contains "only conclusory and generic allegations," emphasizing that Plaintiff's allegations refer to the Defendants collectively rather than describe each Defendant's allegedly wrongful conduct. (*Id.*) Plaintiff counters that the allegations in the complaint exceed Rule 9(b)'s heightened pleading standard. (ECF No. 34 at PageID 268.)

Federal Rule of Civil Procedure 9(b) provides that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). But "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." *Id.* "This rule requires a plaintiff: (1) to specify the allegedly fraudulent statements; (2) to identify the speaker; (3) to plead when and where the statements were made; and (4) to

[7] Tennessee's long-arm statute allows a court to exercise personal jurisdiction over a person who transacts business in the state, contracts to supply services in the state, or who causes tortious injury in the state. Tenn. Code Ann. § 20-2-223(a). So looking to § 20-2-223(a) for guidance, Tennessee has an interest in the current dispute.

explain what made the statements fraudulent." *Republic Bank & Trust Co. v. Bear Stearns & Co., Inc.*, 683 F.3d 239, 247 (6th Cir. 2012) (citation omitted). "Generalized and conclusory allegations that the Defendants' conduct was fraudulent do not satisfy Rule 9(b)." *Bovee v. Coopers & Lybrand C.P.A.*, 272 F.3d 356, 361 (6th Cir. 2001) (citation omitted). Put another way, the plaintiff must allege the "who, what, where, when, and why" of the allegedly fraudulent statements. *City of Taylor Gen. Emps. Ret. Sys. v. Astec Indus., Inc*., 29 F.4th 802, 810 (6th Cir. 2022).

As explained above, Plaintiff asserts claims for fraud, conversion, negligent misrepresentation, fraudulent concealment, and violations of the Securities Act of 1933 and the Securities and Exchange Act of 1934. (ECF No. 1 at PageID 5–13.) Prime Realty concedes that Rule 9(b)'s heightened pleading standard applies to its claims for fraud, fraudulent concealment, and the securities violations, arguing only that Rule 9(b) does not apply to his claims for negligent misrepresentation and conversion. (ECF No. 34 at PageID 269.) But "[u]nder Tennessee law, claims for intentional and negligent misrepresentation are analyzed under the heightened standard set forth in Rule 9(b)." *Marshall v. ITT Tech. Inst*., No. 3:11-cv-552, 2012 WL 1205581, at *3 (E.D. Tenn. Apr. 11, 2012) (citing *Power & Tel. Supply Co., Inc. v. SunTrust Bank, Inc.*, 447 F.3d 923, 831 (6th Cir. 2006); *In re Nissan North Am., Inc. Odometer Litig.*, 664 F. Supp. 2d 873, 881 (M.D. Tenn. 2009)); *see also Creative Lifting Servs. v. Steam Logistics, LLC*, No. 1:20-cv-337, 2022 WL 3040066, at *4 (E.D. Tenn. Aug. 1, 2022) (same). And so Rule 9(b) applies to all Plaintiff's claims except for his conversion claim. In the end, this distinction means little, because the Court finds that the collective pleading in the complaint fails to satisfy the lower pleading standard of Rule 8(a).

As Defendant Odunlami points out, most allegations in the complaint refer to Defendants collectively rather than attaching conduct to any specific Defendant. Indeed, the portion of the complaint that contains the counts against Defendants does not identify any Defendant by name, instead referring to the Defendants only as a collective group. (ECF No. 1 at PageID 5–14.) The lone paragraph in the complaint that contains factual allegations about Defendant Odunlami states that he contacted Dr. Faleye via WhatsApp and informed him that "Defendants had been nurturing the project for 11 years and that Defendants 'have the ability to take 5-10% of the production capacity of $450M production facility.'" (*Id.* at PageID 4.) The same paragraph alleges that Defendant Odunlami represented that Defendants had "lined up relationships and markets in 3-5 African countries all while still opening the Nigerian market," informing Dr. Faleye that "Defendants 'ha[d] the tools' to get products to market." (*Id.*) Lastly, this paragraph alleges that Defendant Odunlami told Dr. Faleye that Defendants "ha[d] new rollouts in the pipeline every 6 months for at least 2 years . . . [a]ll great and viable on their own." (*Id.*)

But Plaintiff does not identify Defendant Odulnami's statements as laying the foundation for its claims. Instead, Plaintiff argues that these communications from Defendants undergird its claims:

> (1) that Defendants had the requisite skill and experience, as well as numerous contacts within and outside of Africa, to enable them to successfully exploit opportunities in the African oil and gas market, (2) that there were other investors who had invested in the project and/or were ready, willing and able to invest in the project, (3) that the value and valuation of Quantex was at least $ 10,000,000, (4) that Stealth Management, Inc. was incorporated under the laws of the State of Georgia, (5) that Stealth Management, Inc. had entered into a valid and binding Agency Agreement with Quantex, (6) that Stealth Management, Inc. was owned and/or controlled by Defendants, (7) that Plaintiff's $250,000 investment would be used to purchase equity ownership in Quantex Oil & Gas Limited and (8) that Quantex was in the business of exploiting profitable and lucrative commercial opportunities within the African oil and gas market.

(*Id.* at PageID 3, 6, 8–10.) Indeed, Plaintiff's response also identifies this list of eight alleged statements when arguing that "Plaintiff's Complaint sets forth the misrepresentations made by Defendants." (ECF No. 34 at PageID 268.) But the complaint does not specify which Defendant made any of these eight statements, when or where they occurred, or what made each of the statements fraudulent. *See Republic Bank & Trust Co.*, 683 F.3d at 247; *see also Astec Indus.*, 29 F.4th at 810. And so Plaintiff's complaint does not satisfy the heightened pleading standard of Rule 9(b).

What is more, this method of group pleading not only arises in fraud cases in which Rule 9(b) applies. Providing allegations about a group of Defendants, and then claiming they acted without specifying which Defendants took the alleged action, can also render a complaint deficient under the Rule 8(a) pleading standard. Indeed, "[i]n some scenarios, this form of collective pleading—referring to multiple defendants only as a single entity or group—can fail to satisfy basic pleading requirements and place the defendants on notice of the claims against them." *Taylor v. Davis*, No. 2:21-cv-02028, 2022 WL 672689, at *3 (W.D. Tenn. Mar. 7, 2022) (citing *Mann v. Mohr*, 802 F. App'x 871, 877 (6th Cir. 2020); *Frengler v. GM*, 482 F. App'x 975, 977 (6th Cir. 2012))); *see also Cleaves v. Tennessee*, No. 20-2819, 2021 WL 5260364, at *6 (W.D. Tenn. June 10, 2021), *report and recommendation adopted*, 2021 WL 4176240 (W.D. Tenn. Sept. 14, 2021) ("While Cleaves attributes other conduct to Collins, a majority of the allegations in the complaint refer to defendants only as a collective group, making it unclear which allegations Cleaves intends to attribute to Collins. The allegations referring to defendants collectively fail to provide Collins with notice of any claim specific to her.").

Here, Prime Realty consistently calls Defendants a group rather than identifying an individual Defendant's conduct to support its claims. It is unclear against which Defendants the

complaint asserts each claim, and it is unclear which Defendants took which actions. And so the Court finds that Plaintiff's complaint fails to state a claim under either pleading standard against Defendant Odunlami. *See Taylor*, 2022 WL 672689, at *3; *Cleaves*, 2021 WL 5260364, at *6. The Court therefore **GRANTS** Defendant Odunlami's motion to dismiss under Rule 12(b)(6) for failure to state a claim upon which relief can be granted without prejudice.

CONCLUSION

For the reasons explained above, the Court **GRANTS** Defendants Ogbeni and Wambugu's motions to dismiss under Rule 12(b)(2) without prejudice. And the Court **DENIES** Defendant Odunlami's motion to dismiss for lack of personal jurisdiction. But the Court **GRANTS** Defendant Odunlami's motion to dismiss under Rule 12(b)(6) for failure to state a claim without prejudice.

SO ORDERED, this 7th day of October, 2022.

s/Thomas L. Parker
THOMAS L. PARKER
UNITED STATES DISTRICT JUDGE