UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

SUSAN KRAUSE, **Plaintiff,** **v.** **INTEGRA LIFESCIENCES CORPORATION,** **Defendant.**	**CASE NO. 24-cv-4339 (LMP/ECW)** **MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S PARTIAL MOTION TO DISMISS**

Throughout Plaintiff's Susan Krause's ("Plaintiff") Complaint she makes allegations attempting to paint Defendant Integra LifeSciences Corporation ("Integra" or the "Company") and its executives as bad actors. But, even taking these salacious claims as true—which they are not—Plaintiff fails to state claims for intentional infliction of emotional distress and defamation upon which relief may be granted. As a result, Integra files this Memorandum of Law in Support of its Partial Motion to Dismiss Plaintiff's Complaint (the "Motion") pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Local Rule 7.1, and applicable law, and states as follows:

I. BACKGROUND

Integra employed Plaintiff as its Chief Quality Officer from June 1, 2021, until her voluntary resignation on or about March 11, 2024. *Compl.* at ¶ 7. Relevant to the claims at issue in Integra's Motion, Plaintiff generally alleges that throughout her employment, Integra harassed and verbally abused her, instructed her to violate the law, discriminated, and retaliated against her. *Id.* at ¶ 120. She baselessly asserts this alleged conduct was

intentional. *Id.* Plaintiff further alleges she has experienced emotional distress as a result of Integra's alleged actions. *Id.* at ¶ 75.

Plaintiff continues her allegations, claiming Integra defamed her to its investors by implying she did not have the right focus or capabilities to lead Integra's quality team. *Id.* at ¶ 124. She asserts Integra ridiculed her and made false statements about her livelihood in front of her employees, peers, and external experts that undermined her credibility and directly damaged her reputation. *Id.* at ¶ 125. Plaintiff claims these alleged statements were false representations of fact, made with knowledge of their falsity. *Id.* at ¶¶ 127–128. She generally asserts these alleged statements have adversely affected her reputation and have adversely affected her in her profession. *Id.* at ¶¶ 129–131.

For the reasons discussed herein, Integra seeks to dismiss Count Five, alleging intentional infliction of emotional distress because: (a) Plaintiff failed to plead facts to render plausible that Integra's alleged conduct giving rise to Plaintiff's claim was intentional or reckless; (b) Plaintiff failed to allege conduct egregious enough to support her claim; (c) the Minnesota Human Rights Act ("MHRA") preempts portions of Plaintiff's claim; and (d) Plaintiff's allegations do not meet the high standard for severe emotional distress.

In addition, Count Six, alleging defamation, must be dismissed because: (a) the first allegedly defamatory statement Plaintiff identifies does not identify or mention her; (b) the second allegedly defamatory statement Plaintiff identifies is a matter of opinion on its face and therefore constitutionally protected; and (c) the second allegedly defamatory statement Plaintiff identifies is protected by the qualified privilege.

II. STANDARD FOR DISMISSAL

A "dismissal under Rule 12(b)(6) serves to eliminate actions which are fatally flawed in their legal premises and deigned to fail, thereby sparing litigants the burden of unnecessary pretrial and trial activity." *Young v. City of St. Charles*, 244 F.3d 623, 627 (8th Cir. 2001). A motion to dismiss under Rule 12(b)(6) tests the sufficiency of the non-moving party's pleadings, and the motion should be granted if a complaint does not "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007).

> A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'"

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

As the Supreme Court noted in *Iqbal*, it is important to "begin by taking note of the elements a plaintiff must plead to state a claim." *Id.* at 675. A complaint must plead facts sufficient to render plausible that the defendant engaged in conduct to satisfy ***each*** element of the plaintiff's causes of action. *See Brown v. Simmons*, 478 F.3d 922, 923 (8th Cir. 2007) (emphasis added).

In addition, while a court must accept as true all "well-pleaded factual allegations," it must also identify allegations that are not entitled to assumption of truth, such as legal conclusions. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). "Threadbare recitals of

the elements of a cause of action, ***supported by mere conclusory statements***, do not suffice." *Iqbal*, 556 U.S. at 678 (citations omitted) (emphasis added). "As the Court held in *Twombly*, the pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.*

III. ARGUMENTS AND AUTHORITIES

1. Plaintiff Fails to Plead Facts Supporting a Plausible Claim of Intentional Infliction of Emotional Distress.

In Count Five of the Complaint, Plaintiff fails to state a claim of intentional infliction of emotional distress ("IIED") upon which relief could be granted. The bar for recovering on an IIED claim is high, as the Minnesota Supreme Court has "sharply limited" the common law tort "to cases involving particularly egregious facts." *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 438–39 (Minn. 1983). To prevail on a claim for IIED, a plaintiff must establish that: "(1) the conduct was extreme and outrageous; (2) the conduct was intentional or reckless; (3) [the conduct] must cause emotional distress; and (4) the distress was severe." *Id.* In addition, the defendant "***must intend to cause severe emotional distress or proceed with the knowledge*** that it is substantially certain, or at least highly probable, ***that severe emotional distress will occur***." *Shank v. Carleton College*, 232 F. Supp. 3d 1100, 1113–14 (D. Minn. 2017) (quoting *K.A.C. v. Benson*, 527 N.W.2d 553, 560 (Minn. 1995) (emphasis added). Plaintiff fails to plead facts sufficient to state a claim for IIED.

a. Plaintiff fails to plead facts to render plausible that Integra's alleged conduct was intentional or reckless.

Plaintiff's claim fails because she fails to plead facts sufficient to render plausible that Integra's alleged conduct upon which she bases her IIED claim was intentional or reckless. Nor does Plaintiff plead facts demonstrating or even suggesting that Integra intended to cause her severe emotional distress or proceeded with the knowledge that it was substantially certain or highly probable that severe emotional distress would occur. Rather, Plaintiff's Complaint includes a threadbare recitation of the intentionality element supported by mere conclusory statements.

In particular, Plaintiff employs the word "intentional" three times in Count Five of her Complaint with no factual support:

- "Integra's conduct as described herein, including its harassment, verbal abuse, retaliation after she reported violations of law, instructions that she violate the law, and discrimination based on sex, was intentional." *Compl.* at ¶ 120.
- "Plaintiff has suffered severe emotional distress because of the intentional, extreme, and outrageous conduct of Integra." *Id.* at ¶ 121.
- "As a direct and proximate result of Integra's intentional, extreme, and outrageous conduct, Plaintiff has suffered damages. . ." *Id.* at ¶ 122.

These legal conclusions are not entitled to assumption of truth. *See Scheuer*, 416 U.S. at 236. They are mere conclusory statements which do not pass muster under *Iqbal*. *See* 556 U.S. at 678.

Further, the only mention of Integra's mindset with respect to causing Plaintiff emotional distress elsewhere in the Complaint is that "Mr. De Witte and Mr. Schwartz intentionally embarrassed her in meetings." *Compl.* at ¶ 57. However, Plaintiff fails to allege any facts to support such a conclusory assertion. *See Roulo v. Keystone Shipping Co.*, No. CV 17-5538 (JRT/LIB), 2018 WL 5619723, at *9 (D. Minn. Oct. 30, 2018) (granting motion to dismiss and explaining: "Additionally, a plaintiff must do more than simply 'claim[ ] to suffer from general anxiety, depression, and embarrassment;' he or she must assert some facts which support those conclusory statements.").

Minnesota courts apply a heightened knowledge standard in the IIED context. For instance, in *Shank*, supra, the court granted in part and denied in part a defendant's motion to dismiss the plaintiff's IIED claim, hinging on the intent element. *See* 232 F. Supp. 3d at 1117. The plaintiff alleged that, while she was a college student, she was assaulted by fellow students on two occasions. *Id.* at 1106. In her amended complaint against the college, the plaintiff alleged that the college's treatment of her in the wake of her attacks traumatized her more than the initial crimes themselves. *Shank v. Carleton College*, No. 0:16-cv-01154, Dkt. 6 (D. Minn. May 17, 2016) (amended complaint). She alleged that although she disclosed the assaults to and sought help from a number of the college's officials, the college's response was woefully inadequate, and such inadequate responses constituted IIED. *Shank*, 232 F. Supp. 3d at 1106.

The *Shank* court found that, for the most part, the college's response could not be considered atrocious or utterly intolerable to a civilized community and that, for the most part, the plaintiff's allegations were not sufficient to raise a plausible inference that the

college acted either intentionally or recklessly in causing emotional distress. *See id.* The court remarked the college's conduct may have been inadequate or even clearly unreasonable, "but there is a big difference between conduct that is clearly unreasonable and conduct that is utterly intolerable in a civilized society." *Id.*

Nothing in Plaintiff's 152-count Complaint constitutes a factual allegation which, if true, would establish that Integra intended to cause Plaintiff severe emotional distress or proceeded with the knowledge that emotional distress would likely occur. Unlike the young assault victim in *Shank*, Plaintiff does not allege she was a particularly vulnerable victim of any occurrence that would cause Integra to believe she could not tolerate her alleged interactions with Integra's executives. At most, Plaintiff alleges workplace disputes and perhaps the use of profanity. However, Integra had no reason to believe that Plaintiff, an experienced and highly-compensated executive, would suffer severe emotional distress as a result of the Company's operations. And further, unlike the plaintiff in *Shank*, who alleged the college had special notice from the Department of Education that forcing her to meet with her assailant was improper, Plaintiff did not and cannot point to anything that would suggest Integra knew its executives' alleged actions toward her would cause her distress. Accordingly, Plaintiff's IIED claim must fail.

b. Plaintiff failed to allege conduct so egregious as to support her IIED claim.

Plaintiff fails to allege conduct "so atrocious that it passes the bounds of decency and is utterly intolerable to the civilized community" as necessary to support an IIED claim. *Hubbard*, 330 N.W.2d at 439. For example, in *Peterson v. Healtheast Woodwinds Hospital*, a patient and family advocate at a hospital filed an IIED claim against her

employer, alleging her supervisor required her to engage in practices that were "unethical and possibly unlawful" and that her relationship with her supervisor deteriorated as a result of her supervisor's egregious conduct toward her. No. A14-1409, 2015 WL 4523558, at *1 and *5 (Minn. Ct. App. June 29, 2015). The employee testified she believed she was being pressured to leave her job and resign. *Id.* The trial court granted summary judgment in the employer's favor, and the appellate court affirmed. *Id.*

In *Peterson*, the appellate court stated "IIED claims are 'sharply limited to cases involving particularly egregious facts,'" which "is a high standard and especially difficult to meet in a case arising from the workplace." *Id.* at *5 (quoting *Hubbard*, 330 N.W.2d at 439.) The appellate court noted the trial court reasoned that "even if the employee could prove the employer directed her to take actions that would violate the law, the employer's actions would not rise to the level of extreme and outrageous conduct." *Peterson*, 2015 WL 4523558, at *5. In addition, the appellate court agreed with the trial court's assertion that even if the employee's supervisor "continually berated her, and questioned her competency at her job, reprimanding, suspending, or terminating an employee – regardless of the reason – does not satisfy the high standard required of a claim of IIED." *Id.* The court concluded that "asking an employee to engage in unethical or potentially unlawful conduct does not rise to the level of 'extreme and outrageous conduct' to support an IIED claim, even though it may be wrong for other reasons." *Id.* (citing other cases).

Notably, the facts the appellate court relied on in affirming summary judgment in *Peterson* are present in Plaintiff's Complaint in this case. In *Peterson*, the court considered Plaintiff's allegations that: (i) her employer "directed her to take actions that would violate

the law" and (ii) her supervisor "continually berated her and questioned her competency at her job." 2015 WL 4523558, at *5. The court found these allegations, even if true, were insufficient to constitute outrageous conduct for purposes of an IIED claim. *See id.* Here, Plaintiff supports her IIED claim with allegations that Integra subjected her to "harassment, verbal abuse, . . . [and] instructions that she violate the law." *Compl.* at ¶¶ 119, 120. As in *Peterson*, these allegations "do not satisfy the high standard required on a claim of IIED." 2015 WL 4523558, at *5.

Further, "[l]iability for intentional infliction of emotional distress does not extend to 'insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" *Salier v. Walmart*, Inc., 622 F. Supp. 3d 772, 779 (D. Minn. 2022) (granting motion to dismiss IIED claim on a Rule 12(b)(6) motion) (quoting *Langeslag. v. KYMN Inc.*, 664 N.W.2d 860, 865 (Minn. 2003) (further citations omitted). In *Langeslag*, the Supreme Court of Minnesota rejected a claim of IIED by an employee against a co-worker. *See Langeslag*, 664 N.W.2d at 869–70. In that case, the conduct included more egregious conduct than Plaintiff alleges including: (1) filing false police reports; (2) threatening legal action; and (3) frequently engaging in loud workplace arguments. *Id.* at 865. The Court held that such conduct was insufficient to meet the high standard for an IIED claim as a matter of law. *See id.* at 865–68.

Plaintiff's claims are less extreme than those rejected in *Langeslag*. Excluding the preempted claims discussed infra, Plaintiff alleges Integra harassed her, verbally abused her, and instructed that she violate the law. *Compl.* at ¶¶ 120–121. Plaintiff's claims are similar to *Langeslag* in that they consist mostly of workplace disputes (without the addition

of false policy reports and threats of legal action). Even if those allegations were true, which Integra denies, as *Peterson* and *Langeslag* make clear, such conduct does not support an IIED claim. "It is difficult to imagine an employment claim that would also give rise to a claim for intentional infliction of emotional distress." *Dyer v. Olson*, No. 20-2342 (PAM/ECW), 2021 WL 2210522, at *7 (D. Minn. June 1, 2021) (granting motion to dismiss IIED claim on a Rule 12(b)(6) motion). And, "[a]n employer's criticism of an employee's job performance, even if intended to harass, does not constitute extreme and outrageous behavior." *Langeslag*, 664 N.W.2d at 868.

Accordingly, for the reasons discussed above, and for this additional reason, Plaintiff fails to plead facts sufficient to clear the high bar for recovering under an IIED claim, and the Court should dismiss Count Five of her Complaint.

c. The MHRA preempts portions of Plaintiff's IIED claim.

To the extent Plaintiff relies on her allegations that Integra retaliated or discriminated against her to support her IIED claim, the MHRA's exclusivity provision preempts such a claim. Where a plaintiff relies upon the same facts and seeks redress for the same allegedly unlawful practices to support both a statutory discrimination or retaliation claim and common law claims, the exclusivity provision of the MHRA operates as a bar to the separate maintenance of the common law causes of action. Minn. Stat. § 363A.04 (providing exclusive procedures for acts declared unlawful by the MHRA); *see also Pierce v. Rainbow Foods Grp., Inc.*, 158 F. Supp. 2d 969, 975–76 (D. Minn. 2001) (stating the MHRA's exclusivity of remedies provision preempts a claim that is factually indistinguishable). The MHRA preempts common law causes of action if: (1) the factual

basis and injuries supporting the common law claim also would establish a violation of the MHRA; and (2) the obligations the defendant owes to the plaintiff are the same under the common law and the MHRA. *See Pierce*, 158 F. Supp. 2d at 975–76.

Here, Plaintiff asserts causes of action under the MHRA for discrimination on the basis of sex and for reprisal (*i.e.*, retaliation). *See Compl.* at Counts Two and Three. Yet in Count Five, Plaintiff asserts Integra's alleged extreme and outrageous conduct giving rise to her IIED claim included "discrimination based on sex" and "retaliation after she reported violations of law." *Compl.* at ¶¶ 120–121. Plaintiff may not seek to recover for statutory violations and at the same time allege that Integra breached a common law right upon the same set of facts. *See Peltonen v. Branch No. 9*, No. CIV 05-605 DWF/JSM, 2006 WL 2827239, at *5 (D. Minn. Sept. 29, 2006) (granting Rule 12(b)(6) motion and dismissing IIED claim to the extent it was preempted by the MHRA). Accordingly, to the extent Plaintiff relies on her allegations of discrimination and retaliation to support her IIED claim, it is preempted and must be dismissed.

d. Plaintiff's allegations do not meet the high standard for severe emotional distress.

Plaintiff's IIED claim also fails because it does not meet the high standard of severe emotional distress. In Minnesota, IIED is disfavored, with courts seeking to "restrict the availability of damages to those plaintiffs who prove that emotional injury occurred under circumstances tending to guarantee its genuineness." *Ferrell v. Cross*, 557 N.W.2d 560, 566 (Minn. 1997) (citing *Hubbard*, 330 N.W.2d 428 at 437). The distress caused to a plaintiff must be "severe." *See Johnson v. Morris*, 453 N.W.2d 31, 41 (Minn. 1990).

For example, in *Elstrom v. Independent School Dist. No. 270*, a teacher who was disciplined for allegedly making racially insensitive comments suffered "insomnia, crying spells, fear of answering her door and telephone, and depression, which caused her to seek treatment." 533 N.W.2d 51 (Minn. Ct. App. 1995), rev. denied (Minn. July 27, 1995). The Minnesota Court of Appeals concluded that she did not state a valid claim for intentional infliction of emotional distress because the alleged distress was not severe enough. *Id.* at 57. Noting that "the standard is high," the court concluded that if a reasonable person could be expected to endure the distress, the law does not intervene. *Id.*

Like in *Elstrom*, Plaintiff's allegations that she has been diagnosed and treated for depression and that she has suffered from anxiety, nightmares, and insomnia, do not meet the extreme emotional distress standard. *See also Peterson v. City of Plymouth*, 945 F.2d 1416, 1421 (8th Cir. 1991) (damages insufficient when conduct caused illness, sleeplessness, anxiety, mental anguish, loss of reputation, and marital problems); *Hubbard*, 330 N.W.2d at 440 (employee's damages insufficient to sustain IIED cause of action against employer when conduct caused depression, stomach disorders, rash, and high blood pressure); *Eklund v. Vincent Brass & Aluminum Co.*, 351 N.W.2d 371, 379 (Minn. Ct. App. 1984) (employee's damages insufficient to sustain IIED cause of action against employer when conduct caused depression, insomnia, nerves leading to consult with a physician, and stress requiring treatment from a psychologist.) Plaintiff did not plead facts to render plausible that Integra's conduct was sufficiently severe or that she suffered severe emotional distress. Therefore, her IIED claim must fail for this additional reason.

2. Plaintiff Has Failed to Plead Facts Supporting a Plausible Claim of Defamation.

In Count Six of the Complaint, Plaintiff fails to state a claim for defamation upon which relief could be granted. Under Minnesota law, a plaintiff must prove three elements to establish a defamation claim: "(1) the defamatory statement is communicated to someone other than the plaintiff, (2) the statement is false, and (3) the statement tends to harm the plaintiff's reputation and to lower the plaintiff in the estimation of the community." *Elkharwily v. Mayo Holding Co.*, 823 F.3d 462, 468 (8th Cir. 2016) (quoting *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919–20 (Minn. 2009) (internal quotation marks omitted)). The statement must also be "***of and concerning" the plaintiff***, either explicitly or "by fair implication." *Glenn v. Daddy Rocks, Inc.*, 171 F. Supp. 2d 943, 948 (D. Minn. 2001) (emphasis added). Moreover, "Minnesota law has generally required that in defamation suits, the defamatory matter be set out verbatim." *Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 326 (Minn. 2000).

Further, "truth is an absolute defense to a defamation claim." *Carpenter v. Extendicare Health Servs.*, No. 15-120 (MJD/JJK), 2015 WL 7729406, at *7 (D. Minn. Oct. 26, 2015) (granting motion to dismiss defamation claim on a Rule 12 motion) (citing *Moore v. Hoff*, 821 N.W.2d 591, 596 (Minn. Ct. App. 2012). The plaintiff in a defamation action "bears the burden of showing the statement was false," and "[a] plaintiff cannot succeed in meeting the burden of proving falsity only by showing that the statement is not literally true in every detail." *Bebo v. Delander*, 632 N.W.2d 732, 739 (Minn. Ct. App. 2001) (citation omitted). Importantly, if a party's statements are not "provably false," they

are not actionable. *Insignia Sys., Inc. v. News Am. Mktg. In-Store, Inc.*, 661 F. Supp. 2d 1039, 1070 (D. Minn. 2009) (citing *Fjelsta v. Zogg Dermatology, PLC*, 488 F.3d 804, 811 (8th Cir. 2007)); s*ee also McClure v. Am. Fam. Mut. Ins. Co.*, 223 F.3d 845, 853 (8th Cir. 2000) ("[R]emarks on a subject lending itself to multiple interpretations cannot be the basis of a successful defamation action because as a matter of law no threshold showing of 'falsity' is possible in such circumstances.") (quoting *Hunter v. Hartman*, 545 N.W.2d 699, 707 (Minn. Ct. App. 1996)).

In addition, not all derogatory statements, even if false, are defamatory. To the contrary, the First Amendment protects statements of pure opinion from defamation claims. *Diesen v. Hessburg*, 455 N.W.2d 446, 450–51 (Minn. 1990) (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339–40 (1974)). "[S]tatements [that] cannot be reasonably interpreted as stating actual fact are absolutely protected by the First Amendment." *Thomas v. UnitedHealth Grp., Inc.*, Civ. No. 12-47, 2014 WL 5307579, at *20 (D. Minn. Oct. 16, 2014). "Only statements that present or imply the existence of fact that can be proven true or false are actionable under state defamation law." *Marchant Inv. & Mgmt. Co. v. St. Anthony W. Neighborhood Org., Inc.*, 694 N.W.2d 92, 95 (Minn. Ct. App. 2005) (upholding the trial court's dismissal of a plaintiff's defamation claim). Thus "if it is plain that the speaker is expressing a subjective view . . . rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable." *Id.*

Minnesota courts have recognized that the dichotomy between fact and opinion is artificial, but they recognize the utility of a four-factor test to assess whether a statement is an actionable factual statement or a protected opinion statement. *See Pearson v. City of*

Big Lake, Minn., 689 F. Supp. 2d 1163, 1190–91 (D. Minn. 2010). The test examines (i) a statement's precision and specificity, (ii) a statement's verifiability, (iii) the social literary context in which the statement was made, and (iv) the statement's public context. *Insignia Sys.*, 661 F. Supp 2d at 1070. Whether a statement is a statement of fact or a non-actionable statement of opinion is a question of law for the Court and is therefore suitable for determination on a Rule 12(b)(6) motion to dismiss. *See id.* at 1069.

Moreover, "[o]ne who makes a defamatory statement will not be held liable if the statement is published under circumstances that make it qualifiedly privileged and if the privilege is not abused." *Bol v. Cole*, 561 N.W.2d 143, 149 (Minn. 1997). "Statements made 'in the course of investigating or punishing employee misconduct' are generally privileged, based on the employer's interest in protecting against harmful employees." *Rudebeck v. Paulson*, 612 N.W.2d 450, 453 (Minn. Ct. App. 2000) (quoting *McBride v. Sears, Roebuck & Co.*, 306 Minn. 93, 235 N.W.2d 371, 374 (Minn. 1975)).

a. <u>The first allegedly defamatory statement Plaintiff identifies does not sufficiently identify her</u>.

The statement allegedly made by an Integra executive during Integra's May 6, 2024 Earnings Call to an audience of investors does not sufficiently identify Plaintiff. *Compl.* ¶ 124. Allegedly, the executive stated Integra "made changes to the operations and quality leadership and structure to ensure the right focus and capabilities is [sic] applied to Boston . . ." *Id.* at ¶¶ 73, 124. Plaintiff alleges the portion of this statement regarding changing quality leadership implied that to fix the alleged issues at the Boston facility, Integra had to terminate Plaintiff as its quality executive. *Id.* at ¶ 73. However, this attenuated

statement cannot serve as the basis for an actionable defamation claim because it is not "of and concerning" Plaintiff.

Minnesota case law supports dismissal of defamation cases where the identity of the plaintiff could be gleaned only following inquiry beyond the statement itself. For example, in *Clancy v. Vacationaire Estates., Inc.*, a land dispute, the plaintiffs alleged two YouTube comments the defendants posted were defamatory. No. CV 18-2249 (JRT/LIB), 2019 WL 955113, at *10 (D. Minn. Feb. 27, 2019). The first comment alleged "we were trying to tow a vehicle off our property after months of these people trespassing on our property." *Clancy*, No. 0:18-cv-02249, Dkt. 1 (D. Minn. July 31, 2018) (Pltf's Orig. Compl. at Ex. F). The second comment alleged, "we aren't afforded protection from these aggressive people. The sheriff actually visited my parents and told them they should sell their house to these people and that would make half their problem go away." *Id.* The court found these statements could not constitute defamation without more context because they were not "of and concerning" the plaintiffs, even by fair implication. *Clancy*, 2019 WL 955113, at *10; *See also Glenn*, 171 F. Supp. 2d at 948 (there was "no way" the recipient of allegedly defamatory statements could understand the statements referred to plaintiff, a bar, where the statements merely commented upon "a bar down town," and "only upon further inquiry could the recipient learn the identity of the bar in question").

Like the non-defamatory statements in *Clancy*, the statement at issue here does not reference, discuss, or refer to Plaintiff, much less name her. In fact, it did not even identify Plaintiff's job title. Plaintiff admits as much: the statement ***"impl[ies]*** that to fix the issues being addressed, Integra had to terminate Plaintiff as its Quality executive." *Compl.* ¶ 73

(emphasis added). Moreover, without further inquiry, the statement does not fairly imply a reference to Plaintiff. The phrase "changes to quality leadership" could refer to any number of changes, including changes to the quality leadership team's job duties, changes to their reporting structure, or any changes to the makeup of the quality team, including hiring new members. Without more context, it is impossible to determine to whom or what the executive was referring in this statement. Moreover, Plaintiff fails to allege that Integra specified what the "changes to quality leadership" were. Because this statement is not "of and concerning" Plaintiff, Count Six should be dismissed.

b. The second allegedly defamatory statement Plaintiff identifies is a constitutionally protected matter of opinion.

The other alleged statement Plaintiff appears to rely on in support of her defamation claim, allegedly made by another Integra executive, is not actionable because it is a matter of opinion. Plaintiff's Count Six alleges Integra "ridiculed Plaintiff and made false statements about her livelihood in front of her employees, peers, and external experts that undermined her credibility and directly damaged her reputation." Compl. at ¶ 125. Plaintiff does not identify these statements in Count Six and there is only one other alleged statement Plaintiff labels as defamatory in the body of her Complaint.[1] But, to the extent she does rely on the alleged statement allegedly made by Integra's executive, her defamation claim must fail.

[1] This statement is at issue in Integra's pending Motion Regarding Continued Sealing (Dkt. 10) and is currently redacted. The Court may view the statement in its entirety at Paragraph 44 of Dkt. 8.

The First Amendment protects statements of opinion from defamation claims. *Diesen*, 455 N.W.2d at 450-51. The alleged statement at issue does not pass muster under the four-part "fact vs. opinion" test articulated in *Insignia Systems*. As to factor (i)—the statement's precision and specificity—the alleged statement at issue is neither precise nor specific. It is the executive's alleged reference to a general result he allegedly believed Plaintiff should have effectuated. It does not specify the result, how Plaintiff should have reached that result, or why Plaintiff did not reach the result—it is a simple statement of opinion. As to factor (ii)—the statement's verifiability—the portion of the alleged statement with which Plaintiff takes issue is not verifiable because, again, it is the executive's subjective opinion. Rather than stating what Plaintiff did or did not accomplish, which would be verifiable, the executive allegedly stated what he allegedly believed Plaintiff should have accomplished. And, a person's subjective opinion is not "sufficiently precise or verifiable to support a claim of defamation." *McClure*, 223 F.3d at 853.

With regard to factors (iii) and (iv), which concern context, Plaintiff alleges no facts to demonstrate the executive's alleged statement can be reasonably interpreted as stating a verifiable fact which may be proven or disproven. Again, the executive's opinion of what Plaintiff *should* have accomplished is his own, subjective opinion and is "absolutely protected by the First Amendment." *Moreno*, 610 N.W.2d at 326. Plaintiff's displeasure with alleged statements of opinion of Integra's executives does not transform the alleged speech into defamation or actionable conduct. Accordingly, Count Six should be dismissed.

c. The second allegedly defamatory statement Plaintiff identifies is privileged.

In addition to the constitutional protection discussed above, the second allegedly defamatory statement Plaintiff identifies is protected by the qualified privilege. Under Minnesota law, "[o]ne who makes a defamatory statement will not be held liable if the statement is published under circumstances that make it qualifiedly privileged and if the privilege is not abused." *Bol*, 561 N.W.2d at 149. Minnesota courts apply qualified privilege when "statements made in particular contexts or on certain occasions should be encouraged despite the risk that the statements might be defamatory." *Id.* (internal quotation marks and citation omitted).

The qualified privilege analysis encompasses the following two-step approach to determining whether the privilege applies:

> First, to establish the existence of the privilege, the defendant bears the burden of proving the communication was: (1) made upon a proper occasion, (2) made from a proper purpose, and (3) based upon reasonable and probable grounds. Whether the employer had a proper purpose and whether the employer had a proper occasion in making a communication are always questions of law for the court to decide. Whether the employer had reasonable and probable grounds for making the statement is also generally a question of law for the court, unless the evidence permits of more than one conclusion, when the question becomes one of fact for the jury.

Keenan v. Computer Assocs. Int'l, Inc., 13 F.3d 1266, 1269-70 (8th Cir. 1994) (internal quotation marks and citations omitted). "Communications between an employer's agents made in the course of investigating or punishing employee misconduct are made upon a proper occasion and for a proper purpose, as the employer has an important interest in protecting itself and the public against dishonest or otherwise harmful employees." *McBride*, 235 N.W.2d at 374 (Minn. 1975). The qualified privilege can only be overcome

if the plaintiff can demonstrate the defendant acted with actual malice. *See Lewis v. Equitable Life Assurance Soc'y of the U.S.*, 389 N.W.2d 876, 889 (Minn. 1986).

For example, in *Thomas v. UnitedHealth Group, Inc.*, an employee sued her employer and coworker for defamation, asserting the coworker defamed her in an email. No. 12-47 (DWF/JSM), 2014 WL 5307579, at *2 (D. Minn. Sep. 16, 2014), *report and recommendation adopted by* No. 12-47 DWF/JSM, 2014 WL 5307579 (D. Minn. Oct. 16, 2014), aff'd, 604 F. App'x 523 (8th Cir. 2015). In the email, the coworker stated to his manager that the plaintiff "continue[d] to be a disturbance in the office" and that she was being loud, disruptive, and making derogatory comments about the company's management. *Id.* at *5, *19. Under these facts, the court concluded the coworker's statement was protected by the qualified privilege and that they were not said with actual malice, as the coworker felt no ill will or malice toward the plaintiff and only complained because the plaintiff was disruptive and he hoped she would change her behavior. *Id.* at *19.

Integra does not concede that its executive made the statement at issue. Nor does it concede that the alleged statement was defamatory. However, even if he did make the alleged statement, like the coworker in *Thomas*, Integra's executive would have made the alleged statement at issue because he hoped Plaintiff would change her behavior. The statement would have been made upon a proper occasion because it was allegedly said in a meeting about issues the Company believed Plaintiff should have resolved. Further, the alleged statement would have been made for a proper purpose, namely, to motivate Plaintiff to resolve the issues discussed in the meeting. And the alleged statement would have been

based upon reasonable and probable grounds. Contrary to Plaintiff's explanation as to why she believes the alleged statement was false, the Company reasonably believed Plaintiff would be able to remedy the issues regardless of when they began. Moreover, there is no evidence of malice, as the executive was intimately familiar with the issues discussed in the meeting and Plaintiff's commitment to ameliorate them. Plaintiff did not plead to the contrary.

Accordingly, for the reasons discussed above, and for this additional reason, Plaintiff fails to plead facts sufficient to recover for defamation, and the Court should dismiss Count Six of her Complaint.

CONCLUSION

As Plaintiff has failed to state of claim of intentional infliction of emotional distress and defamation, Integra respectfully requests that Counts Five and Six of Plaintiff's Complaint be dismissed with prejudice.

Dated: January 23, 2025

Respectfully submitted,

/s/ Charles J. Schoenwetter

Charles (C.J.) Schoenwetter (#025115X)
BOWMAN AND BROOKE LLP
150 South Fifth Street, Suite 3000
Minneapolis, Minnesota 55402
T: (612) 339-8682
F: (612) 672-3200
charles.schoenwetter@bowmanandbrooke.com

REED SMITH LLP

John T. McDonald (admitted pro hac vice)
NJ Bar No. 008362005
Joseph J. Mammone, Jr. (admitted pro hac vice)
TX Bar No. 24102131
506 Carnegie Center, Suite 300
Princeton, NJ 08540
T: (609) 987-0050
F: (609) 951-0824
jmcdonald@reedsmith.com
jmammone@reedsmtih.com

Attorneys for Defendant Integra LifeSciences Corporation

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

SUSAN KRAUSE, **Plaintiff,** **v.** **INTEGRA LIFESCIENCES CORPORATION,** **Defendant.**	**CASE NO. 24-cv-4339 (LMP/ECW)** **LR 7.1(f) WORD COUNT COMPLIANCE REGARDING DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF PARTIAL MOTION TO DISMISS**

I, Charles J. Schoenwetter, certify that Defendant's Memorandum of Law in Support of Partial Motion to Dismiss complies with the word limits in Local Rule 7.1(f) and with the type-size limit of Local Rule 7.1(h).

I certify that Defendant's Memorandum of Law in Support of Partial Motion to Dismiss contains 5,708 words set in a proportional font. I calculated the number of words by relying on the word-count function of Microsoft Word for Office 365, and that this word-count function was applied specifically to include all text, including headings, footnotes, and quotations, but excluding those portions of the memorandum identified in Local Rule 7.1(f)(1)(C).

Dated: January 23, 2025.

Respectfully submitted,

/s/ Charles J. Schoenwetter

Charles (C.J.) Schoenwetter (#025115X)
BOWMAN AND BROOKE LLP
150 South Fifth Street, Suite 3000
Minneapolis, Minnesota 55402
T: (612) 339-8682
F: (612) 672-3200
charles.schoenwetter@bowmanandbrooke.com

Attorneys for Defendant Integra LifeSciences Corporation