IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JENNIFER WILSON-BRADY, Plaintiff, vs. STATE OF IOWA, IOWA DEPARTMENT OF CORRECTIONS, Defendants.	CASE NO. LACL153625 DEFENDANTS' MOTION FOR NEW TRIAL AND, IN THE ALTERNATIVE, MOTION FOR REMITTITUR

COME NOW Defendants the State of Iowa and Iowa Department of Corrections ("DOC") and move this Court, pursuant to Iowa Rule of Civil Procedure 1.1004, to vacate the jury verdict returned on May 3, 2024, and grant a new trial. Alternatively, Defendants also move this Court, pursuant to Iowa Rule of Civil Procedure 1.1010, for remittitur of Plaintiff's award for emotional distress damages. In support of their motions, Defendants state the following:

INTRODUCTION

This Court recently presided over trial on Plaintiff Jennifer Wilson-Brady's claim that she was terminated by the DOC in retaliation for her workplace complaint against a fellow co-worker, Byron Stevens, which she claimed notified her supervisors at Mount Pleasant Correctional Facility ("MPCF") that she was reporting what she believed to be sex-based discriminatory harassment by Stevens. At trial, Plaintiff's only claim was for retaliation[1] in violation of the Iowa Civil Rights Act ("ICRA"), Iowa Code section 216.11(2). After a four-day jury trial, on May 3, 2024, the jury returned a verdict for Plaintiff and awarded her $250,000 for past emotional distress and $1,000,000 in future emotional distress damages, for a total of $1,250,000.

[1] Count I of Plaintiff's Petition also raised a claim of a sex-based hostile work environment in violation of Iowa Code § 216.6. *See* D001 (Plf's Pet.). However, during the pre-trial conference held on April 26, 2024, Plaintiff's counsel informed Defendants and the Court that Plaintiff was withdrawing Count I and only proceeding with her retaliation claim.

LEGAL STANDARD

Iowa Rule of Civil Procedure 1.1004 states, in relevant part:

> On motion, the aggrieved party may have an adverse verdict, decision, or report or some portion thereof vacated and a new trial granted if any of the following causes materially affected movant's substantial rights:
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> …
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> 1.1004(4) Excessive or inadequate damages appearing to have been influenced by passion or prejudice.
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> …
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> 1.1004(6) That the verdict, report or decision is not sustained by sufficient evidence, or is contrary to law.
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> …
>
> 1.1004(8) Errors of law occurring in the proceedings, or mistakes of fact by the court.

In addition, "[t]he grounds for new trial listed in our rules are not exclusive. In ruling upon motions for new trial, the court has a broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties." *Cowan v. Flannery*, 461 N.W.2d 155, 157 (Iowa 1990).

FACTS RELATED TO PLAINTIFF'S EMOTIONAL DISTRESS CLAIMS

At trial Plaintiff did not seek compensatory damages in this case—not lost wages, lost benefits, or medical expenses. Instead, she only requested the jury award her emotional distress damages. In response to Defendants' interrogatory seeking specific information about the damages claimed and Plaintiff's methods of calculation, Plaintiff initially submitted the following answer:

> Plaintiff will make a claim at trial for both Past and Future Emotional Distress. Jennifer Wilson-Brady understands that a Polk County jury will ultimately determine what would be fair and reasonable compensation for what has been taken from her by reason of the illegal discrimination. She is willing to defer to the jury selected during the trial of this matter to make those determinations.

Attachment A (Plf's Answer to Defs.' Interrog. No. 17).

After Defendants moved in limine to exclude evidence at trial on Plaintiff's emotional distress damages that Plaintiff failed to disclose (*see* D1006 (Defs.' Mot. in Limine No. 1)), Plaintiff supplemented her response with the following on her emotional distress claim:

> As noted in Plaintiff's Initial Disclosures and Plaintiff's Answers to Interrogatories, at trial, Plaintiff will make a claim for emotional distress (past and future) caused by the hostile work environment and retaliatory discharge she was subjected to by Defendant.
>
> A person's emotional distress is difficult to assess at any moment, given that circumstances change over time. The harm may escalate or decrease, depending on a wide variety of factors. The value is even more difficult to assess. This is a function the ordinary citizens who serve on Iowa juries are uniquely and ably qualified to perform. The value the jury places on Plaintiff's harms will naturally depend on the evidence the Judge admits at trial, the instructions the Judge decides to give the jury, the testimony of all the witnesses (especially Plaintiff), and how well the witnesses are able to communicate to the jury the harms suffered by Plaintiff.
>
> Members of the jury will use their sound judgment based upon their impartial consideration of the evidence, including the nature, character, and seriousness of the emotional pain Plaintiff felt, how bad it was, how long it lasted, and how long they believed it will last into the future. Different jurors will undoubtedly view the evidence regarding how the Defendants' conduct affected Plaintiff, depending on their personalities, backgrounds, and values. Plaintiff has no way of knowing in advance who will be on the jury and how they might evaluate the dollar value of the emotional distress of a particular human being.
>
> Plaintiff places great trust in the citizens who will serve on this jury. It is not our place to value Plaintiff's pain and suffering and emotional distress damages; it is the jury's. It is especially difficult for a person to attach a dollar value to her emotional distress damages. After all, the individual suffering the damage is hardly neutral and these are, by definition, emotionally charged subjects.
>
> Plaintiff's Counsel usually decides what amount to ask the jury to award for noneconomic damages during closing arguments. In the event that a decision is reached before then, the Defendant will be notified.
>
> Requiring a number for insurance purposes or setting reserves takes this evaluation out of the hands of the jury and places it outside of their discretion, which is contrary to the function of our civil justice system in Iowa. However, Plaintiff is providing a summary of several damages awards and expect that a value in the range of these awards could be a fair and reasonable value for their noneconomic damages (see below summary). However, the evidence adduced at trial could very well support a higher or lower amount. Additionally, a jury would also be well within its rights and discretion to determine a higher or lower amount is necessitated.

> Plaintiff will defer to the judgment of the jury selected in this case to determine the appropriate compensation for the harm suffered by Plaintiff. With that said, Plaintiff will likely make a claim for past emotional distress in an amount not to exceed $2,000,000. Plaintiff will also likely make a claim for future emotional distress in an amount not to exceed $2,000,000.

Attachment B (Plf.'s Supp. Answer to Defs.' Interrog. No. 17). Plaintiff then cited other recent verdicts[2] ranging from $1,000,000 to $10,000,000, which she claimed would justify her damages claim. *See id.* Despite this late disclosure, the Court denied Defendants' motion in limine on the introduction of evidence of damages for which Plaintiff had previously refused to provide an estimate as required by law.

At trial, the only evidence offered regarding Plaintiff's emotional distress claims was the testimony of Plaintiff and her fiancé and former co-worker, Phillip Stine. Plaintiff offered no testimony from a treating health care provider, nor any medical records. Plaintiff testified that following her termination, she felt deep sadness, a lost sense of purpose and confidence, and that she did not find joy in her usual leisure activities. She also testified that she struggled to the leave her house most days, particularly in the first two weeks after her termination. Plaintiff testified that nearly two years later, she began talk therapy services with Meadowlark Psychiatric Services, but that she discontinued those services after only four sessions. She also conceded that she has been treated for clinical depression and ADHD throughout her adulthood, long before her employment at MPCF ever began. Plaintiff also conceded that she was reemployed roughly a month after her termination and that her current salary is higher than it ever was at MPCF, with greater flexibility for her work hours. Plaintiff testified that she finds her current work rewarding, though she expressed doubt on how much longer she can do the job.

[2] These included cases involving medical malpractice, assault and battery, auto accidents involving the death of a spouse and/or parent, and verbal and physical sexual harassment in the workplace. *See id.*

Stine testified that in the immediate aftermath of Plaintiff's termination, she was "hysterically crying" and struggled to leave their living room couch for the next two weeks. He also testified that during those two weeks, he would have to remind Plaintiff to eat and that if he wasn't home, she would regularly fail to eat. Stine also testified that she no longer wanted to participate in their normal leisure activities, like going to his parents' house for dinner or doing rides in his side-by-side around town. Stine told the jury that even though Plaintiff has recovered some from the initial response to her firing, she still largely wants to stay home and watch TV during their leisure time, rather than doing activities they previously did earlier in their relationship. He also acknowledged that Plaintiff finds her current work "rewarding."

ARGUMENT

I. Defendants are Entitled to a New Trial or Remittitur on Damages.

Defendants are entitled to a new trial based on excessive damages appearing to have been influenced by passion or prejudice, because the damages are not sustained by sufficient evidence and/or are contrary to law, and because of errors of law occurring in the proceedings. *See* Iowa R. Civ. P. 1.1004(4), (6), (8). These materially affected Defendants' substantial rights and the damage awards fail to administer substantial justice. Alternatively, Defendants are entitled to remittitur. In remittitur, the Court "may permit a party to avoid a new trial under rule 1.1003 or 1.1004 by agreeing to such terms or conditions as it may impose, which shall then be shown of record and a judgment entered accordingly." Iowa R. Civ. P. 1.1010(1).

In Iowa, the plaintiff bears the burden of establishing a claim for damages with some reasonable certainty and for establishing a rational basis for determining the amount. *See Conley v. Warne*, 236 N.W.2d 682, 687 (Iowa 1975). Iowa courts recognize a distinction between proof

that damages have been sustained and proof of the amount of damages. *See Olson v. Nieman's Ltd.*, 579 N.W.2d 299, 309 (Iowa 1998). In *Rees v. O'Malley*, the Iowa Supreme Court explained:

> We will reduce or set aside a jury award only if it (1) is flagrantly excessive or inadequate; or (2) is so out of reason as to shock the conscience or sense of justice; or (3) raises a presumption it is a result of passion, prejudice or other ulterior motive; or (4) is lacking in evidentiary support…
>
> The most important of the above enumerated tests is support in the evidence. If the verdict has support in the evidence the others will hardly arise; if it lacks support they all may arise.

461 N.W.2d 833, 839 (Iowa 1990) (finding the damages excessive and ordering a new trial on damages); *see also id.* at 839-40 (stating when "a verdict is so flagrantly excessive that it goes beyond the limits of fair compensation…and fails to do substantial justice between the parties, it is our duty to correct the error by granting a new trial or requiring a remittitur on pain of the grant of a new trial.").

The Iowa Supreme Court later explained the interplay between these factors. A clearly excessive verdict gives rise to a presumption that it resulted from passion or prejudice. *See Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 771 (Iowa 2009). "An excessive award of damages that was influenced by passion or prejudice is necessarily based on insufficient evidence, but a verdict based on excessive damages can occur in the absence of passion or prejudice." *Id.* When raised, both Rules 1.1004(4) and (6) arguments must be addressed, because an excessive award of damages based on passion or prejudice may not be remitted on appeal as a condition of avoiding a new trial. *Id.* When a damage verdict is excessive because it is not supported by sufficient evidence, however, the Court may order a remittitur under Rule 1.1010 as a condition of avoiding a new trial. *Id.* at 777. Generally, this standard means the award should be reduced "to the maximum amount proved" under the record. *Id.*

A. Rule 1.1004(4)

Defendants first contend that factor (4) is met here. *See Rees*, 461 N.W.2d at 839. The damages awarded by the jury are clearly and flagrantly excessive, giving rise to a presumption that they resulted from passion or prejudice. *See Jasper*, 764 N.W.2d at 771; Iowa R. Civ. P. 1.1004(4) ("Excessive…damages appearing to have been influenced by passion or prejudice."). There is no evidentiary source for the jury's award which could remove the presumption that the excessiveness of the verdict was motivated by passion—particularly with regard to the award of damages for future emotional distress. *See WSH Properties, L.L.C. v. Daniels*, 761 N.W.2d 45, 50-51 (Iowa 2008). As the Court knows, ICRA emotional distress damages awards *cannot* be punitive in nature. *See City of Hampton v. Iowa Civ. Rts. Comm'n*, 554 N.W.2d 532, 537 (Iowa 1996) (reducing $50,000 emotional distress damage award to $20,000).

While "it is generally recognized that damages for pain and suffering are by their nature 'highly subjective' and are not 'easily calculated in economic terms'…an award for emotional-distress damages is not without boundaries." *Jasper*, 764 N.W.2d at 772 (quoting *Shepard v. Wapello Cnty.*, 303 F.Supp.2d 1004, 1021 (S.D. Iowa 2003)). "[I]t is helpful in considering a claim of excessive damages to consider the rough parameters of a range from other like cases." *Id.*

The Iowa Supreme Court's holding in *Jasper v. H. Nizam, Inc.* is instructive. There, the court first looked to a review of cases done by the U.S. District Court for the Southern District of Iowa in *Shepard v. Wapello County* of cases addressing claims of excessiveness of emotional-distress damages in employment cases." *Jasper* , 764 N.W.2d at 772. As the *Jasper* court summarized,

> While emotional-distress damages tend to range higher in employment cases involving sexual harassment and discrimination and other cases involving egregious, sometimes prolonged conduct, the awards are noticeably less in cases involving a single incident of wrongful discharge that gives rise to the common

> consequences of any involuntary loss of employment, such as "anger, confusion, loss of esteem, financial worry, and the effect on marital relationships."

Id. (quoting *Shepard*, 303 F.Supp.2d at 1022-23). The court then discussed four cases from the U.S. Court of Appeals for the Eighth Circuit:

> In *Kucia v. Southeast Arkansas Community Action Corp.*, 284 F.3d 944, 948 (8th Cir. 2002), the court said an emotional-distress award in a wrongful-termination action of $50,000 presented a "close" question of excessiveness. The plaintiff testified in the case that the termination resulted in low self-esteem, general uneasiness, loss of sleep, and marital problems. *Kucia*, 284 F.3d at 947. Some of these problems still persisted at the time of trial. *Id*. In *Frazier v. Iowa Beef Processors, Inc.*, 200 F.3d 1190, 1194 (8th Cir. 2000), the court said an emotional-distress award in a wrongful-termination case of $40,000 appeared "generous," but not "excessive." The plaintiff in the case testified he lost his dignity and self-esteem and felt lost and empty. *Frazier*, 200 F.3d at 1193. His wife testified he was a "broken man." *Id*. In *Foster v. Time Warner Entertainment Co., L.P.*, 250 F.3d 1189, 1196 (8th Cir. 2000), the court held an award of $75,000 was not excessive. In that case, the termination left the plaintiff devastated, withdrawn, and plagued by back pain, muscle stress, and stomach problems. *Foster*, 250 F.3d at 1196. She had not yet fully recovered by the time of trial and feared she would be unable to find another job. *Id*. Even more egregious circumstances, however, can push the range of emotional-distress damages higher. In *Mathieu v. Gopher News Co.*, 273 F.3d 769, 783 (8th Cir.2001), the court upheld an emotional-distress award of $165,000. In that case, the plaintiff had worked for the company for thirty-four years, the last sixteen years as the manager, and was close to retirement. *Mathieu*, 273 F.3d at 773. The termination substantially altered his financial future. *Id*.

Id.

From this sampling of cases, the *Jasper* court found that "the upper range of emotional-distress damages increases as the nature of the wrongful conduct involved becomes more egregious, and the emotional distress suffered becomes more severe and persistent" and "[e]ven the length of employment, compatibility of the worker in the employment, age and employment skills of the worker" and the span of time necessary to become reemployed impact the amount of emotional-distress damages." *Id.* at 773. The court also found that while some cases "may support awards of $200,000 and beyond, termination cases involving *a single incident of wrongful-termination conduct producing the more common consequences of any involuntary loss of*

employment support a much lower range of damages." *Id.* (emphasis added). Applying this to the case at hand, the *Jasper* court held that the jury's award of $100,000[3] in past emotional distress to Jasper was excessive. *Id.*

> A number of reasons support this conclusion. First, Jasper only worked for the day-care center for a few months prior to termination. Second, she was a relatively young person at the time of her termination and a was able to become reemployed on a full-time basis as a director of another day-care facility within five months after her termination. Third, the evidence of emotional distress was not supported by medical testimony and was largely nonspecific. Most of the evidence was confined to general descriptive observations, restricted to the first days and months following the termination. There was no evidence the emotional distress she experienced after losing her job continued for a prolonged period of time.

Id. The court then affirmed the district court's decision to reduce the emotional distress award to $20,000.[4] *Id.*

Similarly, in *City of Hampton v. Iowa Civil Rights Commission*, the Iowa Supreme Court reduced an award by the Iowa Civil Rights Commission of $50,000[5] in emotional distress damages to $20,000.[6] 554 N.W.2d at 536-37. The court noted that the administrative law judge had "relied almost solely on the testimony of [the employee] and her daughter" and that the employee

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[3] Adjusted for inflation, this would be roughly $147,000 today, based on the most recent inflation numbers available. *See* CPI INFLATION CALCULATOR, U.S. Bureau of Labor Statistics, https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=100%2C000.00&year1=200903&year2=202403 (comparing March 2009 to March 2024).

[4] Adjusted for inflation, this would be just under $29,500 today. *See* CPI INFLATION CALCULATOR, U.S. Bureau of Labor Statistics, https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=20000&year1=200903&year2=202403.

[5] Adjusted for inflation, this would be just over $100,000 today. *See* CPI INFLATION CALCULATOR, U.S. Bureau of Labor Statistics, https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=50%2C000.00&year1=199603&year2=202403.

[6] Adjusted for inflation, this would be just over $40,000 today. *See* CPI INFLATION CALCULATOR, U.S. Bureau of Labor Statistics, https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=20%2C000.00&year1=199603&year2=202403.

"presented no medical evidence" to support her emotional distress claim. *Id.* at 537. There, again, the court compared the case to other cases and found that the award "exceed[ed] any under similar circumstances in a civil rights case." *Id.*

So too here. Like the plaintiffs in both *Jasper* and *City of Hampton*, Plaintiff here presented no medical evidence to support her emotional distress claims.[7] Instead, she relied solely on the testimony of herself and her fiancé. And the evidence presented amounted to "general descriptive observations" of the "more common consequences of any involuntary loss of employment"—anger, sadness, loss of enjoyment in certain leisure activities, impacts on her relationship with her fiancé, etc. The circumstances of Plaintiff's case also closely mirror those in *Jasper*. Like Jasper, Plaintiff had only worked at MPCF for a few months before her termination. Plaintiff also conceded that she was reemployed within roughly a month of her termination, in a job with higher pay, greater schedule flexibility, and doing "rewarding" work. And while the jury heard testimony that Plaintiff's emotional pain and suffering continued to this day, the testimony also showed that her emotional anguish had improved since the immediate weeks after her termination. Given these circumstances and comparative examples in *Jasper* and *City of Hampton*,[8] it is clear that the jury's

[7] Even when Plaintiff did testify about her mental healthcare, she acknowledged that she did not seek talk therapy from a psychiatrist until nearly two years after her termination and only attended four sessions.

[8] Defendants also direct the Court to the recent jury award in *White v. State of Iowa, Iowa Department of Human Services*, Polk County Case No. LACL146265. There, as this Court is aware, a Polk County jury awarded White at total of $790,000 in emotional distress damages after finding she had suffered under a discriminatory hostile work environment for nearly three years at the hands of her supervisor and colleagues. The State challenged this award as excessive, both at the district court level and on appeal, though the matter was mooted as the Iowa Supreme Court held that the State was entitled to judgment notwithstanding the verdict. *See White v. State*, __ N.W.3d __, 2024 WL 1589628 (Iowa Apr. 12, 2024). That said, the circumstances alleged by White, including her claim for emotional distress, far exceed those presented by Plaintiff here.

award of over $1,000,000 in emotional distress damages was flagrantly excessive and gives rise to a presumption of passion or prejudice.

B. Rule 1.1004(6) and Substantial Justice

Regardless of whether passion affected the damages awarded here, the amounts decided by the jury are not sustained by sufficient evidence and are contrary to law. *See Jasper*, 764 N.W.2d at 771; Iowa R. Civ. P. 1.1004(6). Rule 1.1004(6) "authorizes the trial court to grant a new trial when the verdict 'is not sustained by sufficient evidence' and the movant's substantial rights have been materially affected." *Est. of Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004). The damage awards also fail to administer substantial justice. "In additional to the grounds for granting a new trial set out in rule 1.1004(6), the trial court has inherent power to set aside a verdict when the court concludes 'the verdict fails to administer substantial justice.'" *Id.* (quotation omitted).

1. The jury's verdict was not sustained by sufficient evidence.

To prevail on her ICRA retaliation claim, Plaintiff needed to prove: (1) that she engaged in an activity protected under Iowa Code chapter 216; (2) that Defendants terminated her; and (3) that her protected activity was a motivating factor in Defendants' decision to terminate her employment. *See* Instruction No. 9; *Rumsey v. Woodgrain Millwork, Inc.*, 962 N.W.2d 9, 28 (Iowa 2021). Defendants admitted that they terminated Plaintiff's probationary employment on July 22, 2021, so the issues before the jury were whether Plaintiff had made a protected complaint opposing discriminatory harassment and, if so, whether her complaint was a motivating factor in the decision to proceed with probationary termination. *See* Instruction Nos. 9, 11. The jury was also required to answer whether Defendants proved their same-decision defense. *See* Instruction No. 12; *Hawkins v. Grinnell Reg'l Med. Ctr.*, 929 N.W.2d 261 (Iowa 2019).

"Although '[m]agic words are not required…protected opposition must at least alert an employer to the employee's reasonable belief that unlawful discrimination is at issue.'" *Godfrey v. State*, 962 N.W.2d 84, 107 (Iowa 2021) (quoting *Brown v. United Parcel Serv., Inc.*, 406 F. App'x 837, 840 (5th Cir. 2010) (per curiam)); *see also* Instruction No. 11. Examining federal case law shows that this requires the employee to provide sufficient, specific allegations tying the alleged harassment to a protected characteristic. *See Brown*, 406 F. App'x at 840; *Tratree v. BP N. Am. Pipelins, Inc.*, 277 F. App'x 390, 396 (5th Cir. 2008); *Harris-Childs v. Medco Health Solutions, Inc.*, 169 F. App'x 913, 916 (5th Cir. 2006); *Pope v. ESA Servs., Inc.*, 406 F.3d 1001, 1010 (8th Cir. 2005), *abrogated on other grounds in Torgerson v. City of Rochester*, 643 F.3d 1031 (8th Cir. 2011); *Anderson v. Academy Sch. Dist. 20*, 122 F. App'x 912, 916 (10th Cir. 2004); *Sitar v. Indiana Dept. of Transp.*, 344 F.3d 720, 727-28 (7th Cir. 2003); *Hunt v. Nebraska Pub. Power Dist.*, 282 F.3d 1021, 1028 (8th Cir. 2002); *see also Evans v. Tex. Dep't of Transp.*, 547 F.Supp.2d 626, 654 (E.D. Tex. 2007).

Here, Plaintiff's claim relied on her July 9, 2021, complaint to then-Associate Warden of Administration David Smith about the way her co-worker, Byron Stevens, treated her in the workplace. But the evidence presented at trial showed that this complaint was not a protected complaint for purposes of Iowa Code section 216.11 because Plaintiff did not adequately put MPCF on notice that she was reporting conduct she reasonably believed was sex-based discriminatory harassment.[9]

[9] Additionally, Plaintiff conceded at trial that she was aware of and trained on the DOC's sex harassment policy at the time of her complaint, knew how to report sex harassment under the policy, but did not consult or consider the policy when making her complaint to Smith on July 9, 2021. *See* Wilson-Brady Testimony.

It is undisputed at no point in Plaintiff's written statement provided to Smith—in which Plaintiff outlined her concerns and complaint about Stevens—did she accuse Stevens of discriminatory harassment. *See* Ex. 3 (7/9/21 Written Statement of Complaint). Plaintiff's written statement did not connect Stevens' alleged actions or behavior to her sex or gender, nor did Plaintiff accuse Stevens of similarly harassing other female co-workers or treating male co-workers more favorably. And while Plaintiff emphasized at trial her (unsubstantiated) allegation that Stevens made a one-time joke about "chivalry" and "feminists,"[10] this one allegation alone does not demonstrate that Plaintiff was attempting to bring a discriminatory harassment complaint. *See Anderson*, 122 F. App'x at 916. Instead, when Plaintiff's written statement is read as a whole, her complaint amounted to a workplace grievance about the tone and manner in which Stevens spoke to Plaintiff, as well as possible concern of workplace intimidation and threats of violence. *See* Ex. 3; *see also Sitar*, 344 F.3d at 727-28.

Indeed, Plaintiff's complaint resembles the complaint raised in *Evans v. Texas Department of Transportation*, which the U.S. District Court for the Eastern District of Texas found to be insufficient to constitute a protected complaint under Title VII. As the district court summarized,

> According to Evans' written complaint, fellow employee Cheryl McCray ("McCray") verbally attacked her in the presence of other co-workers, using abusive and profane language. Evans also reported that McCray's behavior continued at a meeting involving Evans, McCray, Dinger, and Assistant Supervisor Michael Tywater, during which Evans was "subjected to intimidating and malicious stares" from McCray, who stated to Evans, "I'm not scared of you." Dinger directed McCray to stop staring at Evans, and Evans asked that the meeting come to a close so that she could take her blood pressure medication. Evans further asserted in her complaint that she was prepared to file a grievance against McCray

[10] At trial, Plaintiff testified—after prompting by her attorney—that Stevens actually said "feminazis" instead of "feminists." But it is undisputed that this was *not* the term Plaintiff accused Stevens of using in either her written complaint or in her investigative interview. *See* Ex. 3; Ex. P. To the extent that Plaintiff relied on this language to amplify her claim that her complaint provided adequate notice of discriminatory harassment, this was improper evidence and should have been disregarded by the jury.

> if the hostile behavior continued; however it does not appear that Evans ever did so.

Evans, 547 F.Supp.2d at 631-32. Similarly, Plaintiff's complaint largely focused on Stevens perceived "aggression" in his "tone" and "posture," with no allegations tying his behavior to Plaintiff's sex or gender. *See* Ex. 3; Ex. P. This was affirmed by how MPCF leadership understood Plaintiff's complaint, with the consensus view being that Plaintiff was complaining of, at worst, workplace intimidation or threats of violence, but more directly a basic personality conflict with a co-worker. *See* Ex. K (7/9/21 Smith Email re: Plaintiff's Complaint); Smith Testimony; Shepherd Testimony; Court Ex. 1 (Nelson Dep. Recording); Stroud Testimony; Boatman Testimony. This was carried forward during Plaintiff's investigative interview, where she once again failed to causally connect Stevens' alleged behavior to her sex or gender. *See* Ex. P. Put simply, there was insufficient evidence in the record to support the jury's required finding that Plaintiff made a protected complaint.

Turning to the causation element, the undisputed evidence showed that Plaintiff's supervisor, Michael Shepherd, provided detailed grounds supporting his written recommendation to then-Warden Jay Nelson to proceed with probationary termination. *See* Ex. 12 (7/19/21 Shepherd Written Recommendation). These grounds included issues that Shepherd had raised before with Plaintiff throughout her employment. *See* Ex. D (March 2021 Performance Evaluation); Ex. E (Shepherd Supervisory Notes 2021). The jury also heard testimony that Shepherd had raised some of these concerns to Warden Nelson early in Plaintiff's probation. *See* Shepherd Testimony; Court Ex. 1. Plaintiff did not claim the listed grounds were fabricated or otherwise false. Instead, Plaintiff argued that these issues did not warrant probationary termination, largely by pointing to her June 2021 performance evaluation, in which Shepherd gave her an overall "Meets Expectations" rating. *See* Ex. I (June 2021 Performance Evaluation).

But there, Warden Nelson testified unequivocally that he performed his own *independent* assessment of the situation and *independently* concluded that probationary termination was warranted given the issues cited by Shepherd. *See* Court Ex. 1. And where the final decisionmaker makes an independent *determination*, the causal link for the "cat's paw" theory is broken. *See Coe v. Northern Pipe Products, Inc.*, 589 F.Supp.2d 1055, 1093 (N.D. Iowa 2008); *see also Kramer v. Logan Cnty. Sch. Dist. No. R-1*, 157 F.3d 620, 624 (8th Cir. 1998) (question is "whether [the decisionmaker] accurately a[ss]essed [the plaintiff's] situation or performed a perfunctory review and 'rubber stamped' the recommendation [for termination]"). Thus, Plaintiff could not properly rely on Shepherd's alleged bias to impugn Warden Nelson's decision.[11]

Finally, Plaintiff also failed to produce sufficient evidence to rebut Defendants' same-decision defense. Under the defense, an employer can avoid liability "by proving by a preponderance of the evidence that it would have made the same decision even if it had not taken the plaintiff's [protected characteristic or activity] into account." *Id.* at 272 (quoting *Price Waterhouse v. Hopkins*, 490 U.S. 228, 258 (1989)).

Here, the jury heard testimony from both Mike Shepherd and Warden Nelson that both of their decisions—Shepherd's decision to recommend probationary termination, and Warden Nelson's decision to proceed with termination—would have been unchanged had Plaintiff not brought her complaint to David Smith on July 9, 2021. *See* Shepherd Testimony; Court Ex. 2 (Nelson Dep. Tr. 53:16-20). Plaintiff offered no evidence to rebut this testimony.

As a result, the jury's verdict was not supported by sufficient evidence—neither that Plaintiff met her burden of proof on her retaliation claim, nor that Defendants failed to meet their

[11] And Plaintiff made no claims, nor offered any evidence showing, that Warden Nelson was himself motivated by retaliatory intent in his decision. Instead, Plaintiff's case relied on their "cat's paw" argument.

burden on their same-decision defense. Because the jury's verdict was not supported by sufficient evidence, Defendants are entitled to a new trial under Rule 1.1004(6).

2. Plaintiff's award for past emotional distress must be reduced based on the evidence presented at trial.

To begin, because Plaintiff voluntarily withdrew her hostile work environment claim before trial, Plaintiff's emotional distress claims were limited to emotional distress caused by her termination. Despite this, the jury heard testimony about Plaintiff's emotional distress tied to her alleged mistreatment by her co-worker, Stevens, before her termination. Plaintiff offered no medical testimony or evidence in support of her emotional distress claims, instead relying solely on her and her fiancé's testimony.

The testimony offered by Plaintiff and her fiancé largely amounted to "general descriptive observations" of the "more common consequences of any involuntary loss of employment." Both testified that in the immediate weeks after her termination, Plaintiff would cry regularly, struggle to leave their living room couch, and was otherwise despondent. Stine also testified that he would have to remind Plaintiff to eat and that he was sure she failed to eat whenever he was at work or otherwise not at home. Both also testified that Plaintiff longer enjoyed doing the same leisure activities as she had pre-termination, such as side-by-side rides with Stine or having dinner at Stines' parents' house.

But Stine also testified that after two weeks, Plaintiff began improving—she was more active, would leave the house more, and no longer had concerns about feeding herself. It was also undisputed that the couple got engaged in August 2021, something one would assume would buoy her spirits. It was also undisputed that Plaintiff was reemployed by September 2021. Though Plaintiff claimed that this new job has had worse work-life balance compared to her position at MPCF, she conceded that she has a higher salary than at MPCF and is able to set her own schedule

and work hours. And both Plaintiff and Stine testified that she finds her new job "rewarding." Finally, while there was no testimony from a medical professional, Plaintiff acknowledged that she has taken medication for preexisting depression throughout adulthood. She also conceded that she did not seek therapy services from a licensed psychiatrist until nearly two-years after her termination and only attended four sessions before discontinuing treatment.

Taken together, there was not sufficient evidence in the trial record that Plaintiff suffered $250,000 worth of past emotional distress. Plaintiff did not request, nor did the Court give, an eggshell plaintiff instruction.[12] Plaintiff did not seek compensatory damages in this case. She did not seek lost wages or lost benefits. She did not seek damages for medical expenses. And while she suffered an adverse employment action and lost her job, she was quickly reemployed with a higher salary and greater schedule flexibility. In her personal life, her relationship with Stine progressed to the next stage and the two remain together to date. Based on the record presented at trial, there is insufficient evidence to support the high amount of past emotional distress damages awarded by the jury and this Court should order a new trial or remittitur.

3. Plaintiff's award of future emotional distress must be reduced based on the evidence presented at trial.

Even more astounding, the jury awarded Plaintiff $1,000,000 in future emotional distress damages, despite the scant evidence of future emotional distress presented at trial. Plaintiff and her fiancé made vague statements to the jury that Plaintiff had not fully recovered and continued

[12] Such an instruction would have permitted the jury to find that Defendants' actions exacerbated her previously existing mental health condition. *See Sleeth v. Louvar*, 659 N.W.2d 210 (Iowa 2003). The jury was instructed that it "may award compensatory damages only for injuries that Plaintiff proves were caused by the illegal conduct of Defendants." Instruction No. 15; *see also* Instruction No. 24 ("You may award Jennifer Wilson-Brady damages for the past and future emotional distress she suffered due to the termination of her employment."). The jury's verdict for $1.25 million is not based in the scant evidence of garden-variety emotional distress presented at trial.

to feel some degree of emotional pain to this day. But again, Plaintiff conceded that she did not seek therapy services until nearly two years after her termination and only attended four sessions before discontinuing services. Plaintiff also conceded that she was already taking medication for preexisting depression that she's dealt with throughout adulthood. Further, Plaintiff and Stine testified that Plaintiff's current job is "rewarding work" and that she makes more money there than she ever did at MPCF, with greater schedule flexibility. The only counterpoint to this raised by Plaintiff was a vague assertion that she may be unable to do her current job for longer than two more years. But Plaintiff offered no expression of the certainty of this prediction, such as stated plans to leave the job in that timeframe. Finally, when asked on cross-examination what would alleviate her emotional distress going forward, Plaintiff pointedly said, "The State could permit me to be reemployed by the State again. That'd do it." Plainly, the jury's award of $1,000,000 in future damages was not supported by this evidence or by any other testimony presented at trial, and as such, the Court should order a new trial or remittitur.

4. Emotional distress awards in similar cases demonstrate that this Court must order a new trial or remittitur.

In sum, there is an insufficient evidentiary basis to support a total emotional distress damages award of *more than a million dollars*. Although the Iowa Supreme Court hesitates to disturb a jury award, "there must be some reasonable limit on the awards that we will uphold. This award exceeds that limit." *Rees*, 461 N.W.2d at 840. The amounts decided by the jury are not sustained by sufficient evidence, are contrary to law, and fail to administer substantial justice. *See Jasper*, 764 N.W.2d at 771; *City of Hampton*, 554 N.W.2d at 536-37; *Estate of Hagedorn*, 690 N.W.2d at 87. Defendants contend that the evidence does not support emotional distress damages of $1.25 million in total, and that they are entitled to a new trial.

Alternatively, the Court should order remittitur. Other verdicts for emotional distress damages (past and future) in retaliation or wrongful discharge cases average around $370,000. *See Selden v. Des Moines Area Cmty. College*, 2 N.W.3d 437, 442 (Iowa 2024) (jury awarded $434,375 for past and future emotional distress damages on retaliation claim, which were reversed upon finding that defendant was entitled to directed verdict on claim); *Godfrey v. State*, 962 N.W.2d 84, 99 (Iowa 2021) (jury awarded $500,000 in emotional distress damages on sexual-orientation discrimination and retaliation claims, which was reversed upon finding that defendants were entitled to judgment notwithstanding the verdict on all claims); *Smith v. Iowa State Univ. of Sci. & Tech.*, 851 N.W.2d 1, 17 (Iowa 2014) (jury awarded $784,027 in emotional distress damages on whistleblower claim under Iowa Code section 70A.28(2), which was reversed on finding that defendant was entitled to directed verdict on claim); *Dorshkind v. Oak Park Place of Dubuque II, L.L.C.*, 835 N.W.2d 293, 299 (Iowa 2013) (awarding $22,500 in emotional distress damages for common law wrongful discharge claim); *Jasper*, 764 N.W.2d at 760, 773 (jury awarded $100,000 in past emotional distress, which was reversed on finding that award was excessive and new trial warranted). Even adjusted for inflation and not considering the fact that Plaintiff was quickly reemployed with higher pay and greater work flexibility, had no demonstration of requiring medical treatment for her emotional distress, and only presented evidence of the "more common consequences of any involuntary loss of employment," Plaintiff was awarded nearly three times the average amount awarded in similar cases and on scant evidence of future emotional distress. Because the jury's damage award in this case is not sustained by sufficient evidence, is contrary to law, and fails to administer justice, this Court should order remittitur. *See Jasper*, 764 N.W.2d at 771.

II. Defendants are Entitled to a New Trial Due to an Error in the Jury Instructions.

Defendants are entitled to a new trial due to errors of law in the jury instructions that materially affected their substantial rights. *See* Iowa R. Civ. P. 1.1004(8) ("Errors of law occurring in proceedings, or mistakes of fact by the court."). "A district court cannot instruct on 'an issue having no substantial evidential support or which rests on speculation.'" *Watters v. Medinger*, 988 N.W.2d 450 (Table), 2022 WL 3907759, at *5 (Iowa Ct. App. Aug. 31, 2022) (quoting *Thompson v. City of Des Moines*, 564 N.W.2d 839, 846 (Iowa 1997)). "Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion." *Johnson v. Dodgen*, 451 N.W.2d 168, 171 (Iowa 1990). "In determining whether the evidence supporting an instruction is substantial, we give the most favorable construction possible to the party urging submission." *Watters*, 2022 WL 3907759, at *5 (citing *Hoekstra v. Farm Bureau Mt. Ins. Co.*, 382 N.W.2d 100, 108 (Iowa 1986)).

Defendants objected to the inclusion of Instruction No. 20 because substantial evidence did not support instructing the jury on a "cat's paw" theory of liability. Under a "cat's paw" theory of liability, "an employer cannot shield itself from liability for unlawful termination by using a purportedly independent person or committee as the decisionmaker where the decisionmaker merely serves as the conduit, vehicle, or rubber stamp by which another achieves his or her unlawful design." *Dedmon v. Staley*, 315 F.3d 948, 949 n.2 (8th Cir. 2003); *see also Qamhiyah v. Iowa State Univ. of Sci. & Tech.*, 566 F.3d 733, 742 (8th Cir. 2009) ("In the employment discrimination context, the cat's paw refers to a situation in which a biased subordinate, who lacks decisionmaking power, uses the formal decisionmaker as a dupe in a deliberate scheme to trigger a discriminatory employment action."). "The 'cat's paw' theory is typically applied in direct evidence discrimination [or retaliation] cases rather than indirect evidence cases under the

McDonnell Douglas framework." *Goodman v. Performance Contractors, Inc.*, 363 F.Supp.3d 946, 958 (N.D. Iowa 2019) (internal quotations omitted). "[W]here a truly independent decisionmaker *properly assesses the situation*, notwithstanding information or recommendations provided by the allegedly biased subordinate, the employer cannot be subjected to 'cat's paw' liability, because the biased subordinate's conduct was not the cause of the adverse employment action." *Coe*, 589 F.Supp.2d at 1093 (emphasis by court); *see also Kramer*, 157 F.3d at 624 (the question is "whether [the decisionmaker] accurately a[ss]essed [the plaintiff's] situation or performed a perfunctory review and 'rubber stamped' the recommendation [for detrimental job action]").

Here, the jury heard testimony from Warden Nelson, who was indisputably the final decisionmaker on Plaintiff's probationary termination. *See* Court Ex. 1. Warden Nelson testified that he reviewed the written recommendation for termination provided by Plaintiff's direct supervisor, Shepherd, which included a detailed list of performance concerns for which Shepherd believed, in totality, warranted probationary termination. *See* Ex. 12. Plaintiff did not dispute the stated concerns raised by Shepherd, instead only contesting whether those concerns warranted termination. On that, Warden Nelson's testimony was clear—he did not make his decision because Shepherd was recommending termination. Rather, Warden Nelson testified that he independently reviewed the concerns raised by Shepherd—in particularly concerns of tool control and Plaintiff's dismissive response to corrective coaching and direction by Shepherd and other senior members of the food service team—and concluded that probationary termination was appropriate here. *See* Court Ex. 1. In fact, the jury heard testimony from both Warden Nelson and Shepherd that the Warden had suggested probationary termination when Shepherd first came to him with concerns about Plaintiff's performance earlier in her tenure at MPCF. Warden Nelson also testified that if he had concluded that termination was unwarranted, he could have and would have denied

Shepherd's recommendation. *See id.* Warden Nelson even directly denied functioning as a mere "rubberstamp" for Shepherd's recommendation. *See id.*

Defendants' counsel raised these points in oral argument on their objection to Instruction No. 20. In response, Plaintiff's counsel focused on the fact that Warden Nelson did not perform an independent "investigation" of Plaintiff's performance, and thus was impermissibly "influenced" by Shepherd. But again, Plaintiff misses that the central question is whether the decisionmaker made an independent and accurate assessment of the situation, even if they relied on information provided by the allegedly biased subordinate. *See Coe*, 589 F.Supp.2d at 1093. And Plaintiff failed to offer substantial evidence to refute that point and justify including a "cat's paw" instruction. And the Court's decision to instruct the jury on "cat's paw" liability impacted Defendants' substantial rights, requiring a new trial or remittitur of damages.

CONCLUSION

WHEREFORE for these reasons, Defendants request that the Court grant this Motion and grant a new trial or, in the alternative, enter an order for remittitur of Plaintiff's damages.

Respectfully Submitted

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Proof of Service

The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on this date: May 13, 2024.

☐ U.S. Mail	☐ Fax
☐ Hand Delivery	☐ Overnight Courier
☐ Email	X Other: EDMS

Signature: /s/ Megan Weber