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STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF OLMSTED — THIRD JUDICIAL DISTRICT

Case Type: Employment

Michael Joyner, M.D., Plaintiff, vs. Mayo Clinic, Gianrico Farrugia, M.D. and Carlos Mantilla, M.D., PH.D., Defendants.	Court File No. 55-CV-23-7708 (Judge Kathy M. Wallace) **DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF PARTIAL MOTION TO DISMISS**

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I. INTRODUCTION

In his Complaint, Dr. Michael Joyner alleges five causes of action: (1) Breach of Contract (Against Mayo Clinic); (2) Promissory Estoppel (Against Mayo Clinic); (3) Violation of Minnesota's Personnel Record Statute (Against Mayo Clinic); (4) Violation of the Minnesota Whistleblower Act (Against Mayo Clinic); and (5) Tortious Interference with Contract (Against Dr. Gianrico Farrugia and Dr. Carlos Mantilla). This Motion addresses the contract-related claims in Counts I, II and V.

Dr. Joyner does not allege a traditional contract; he did not have an employment agreement with Mayo Clinic ("*Mayo*"). Rather, Counts I, II and V rest on three Mayo policies/procedures: the Freedom of Expression and Academic Freedom Policy ("*Academic Freedom Policy*"), Anti-Retaliation Policy, and Appeals Procedure (collectively, the "*Policies*"). Dr. Joyner asserts the Policies are unilateral contracts, or should be treated as enforceable promises in equity, and alleges that Mayo violated them. Those claims fail as a matter of law.

With respect to Counts I and II, none of the Policies made a binding offer or promise. Further, even if the Academic Freedom Policy was contractually binding (and it is not), Dr. Joyner

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alleges that Mayo did what the policy expressly permits – namely, regulate employees' speech – precluding a breach. Likewise, Mayo's Anti-Retaliation Policy explicitly rests on Mayo's own discretionary determinations of whether retaliation has occurred, also precluding proof of breach.

With respect to Count V, the absence of a contract also precludes Dr. Joyner's tortious interference with contract claim. That claim also should be dismissed because Minnesota law provides that a party cannot interfere with its own contract; this includes corporate officers and managers acting on behalf of their employer. Mayo cannot interfere with its own agreements, and the Complaint is replete with allegations that Dr. Farrugia and Dr. Mantilla were acting on behalf of Mayo – indeed, Dr. Joyner specifically alleges that Dr. Farrugia, Mayo's CEO, was Mayo's ultimate decision maker.

Accordingly, Defendants respectfully move to dismiss Counts I, II, and V of the Complaint. Further, because Count V is the only claim alleged against Defendants Farrugia and Mantilla, they should be dismissed as defendants.

II. PERTINENT ALLEGATIONS[1]

At all times relevant to this lawsuit, Dr. Joyner has been employed by Mayo as a Physician and Professor of Anesthesiology. (Compl. ¶ 1.) He specializes in the study of human performance and exercise physiology. (Compl. ¶ 40.) During the COVID-19 pandemic, he focused his research on convalescent plasma treatment for COVID-19 patients. (Compl. ¶ 2.)

Dr. Farrugia is Mayo's President and Chief Executive Officer, and Chair of Mayo's Board of Governors. (Compl. ¶ 34.) Dr. Mantilla is the Chair of Mayo's Department of Anesthesiology

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1 By restating fact allegations in the Complaint, Defendants do not admit or concede that they are true. Rather, Defendants merely acknowledge that well-pleaded fact allegations must be accepted as true for purposes of a motion to dismiss under Rule 12.02(e). *See Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

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& Perioperative Medicine and was Dr. Joyner's direct supervisor during the relevant period. (Compl. ¶ 35, 98, 215.)

Dr. Joyner premises his breach of contract claim on the Policies. The Policies are attached to the Complaint. (Compl. Exs. A, B, C.) Dr. Joyner alleges that Mayo violated the Academic Freedom Policy by limiting his speech in interviews with the media and presentations at conferences. (Compl. ¶¶ 42–78, 116, 135–38, 156–73, 235, 272.) He alleges Mayo violated the Anti-Retaliation Policy and the anti-retaliation provision of the Appeals Procedure by disciplining him for his appeal of his 2022 Final Written Warning, reporting alleged violations of the Academic Freedom Policy, and other alleged protected conduct. (Compl. ¶¶ 273–277, 287–291.)

In the alternative, Dr. Joyner alleges that the Policies constitute enforceable promises under the doctrine of promissory estoppel. (Compl. ¶ 282.)

Finally, Dr. Joyner alleges that Dr. Farrugia and Dr. Mantilla, in their positions of authority at Mayo, caused Mayo to breach the unilateral contracts created by the Policies, constituting tortious interference with those alleged contracts. (Compl. ¶¶ 322–326.)

III. ARGUMENT

A. Minn. R. Civ. P. 12.02(e) Standard

Under the Minnesota Rule of Civil Procedure 12.02(e), the Court should dismiss a claim if "no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Brenny v. Bd. of Regents of the Univ. of Minn.*, 813 N.W.2d 417, 420 (Minn. Ct. App. 2012).

While the Court accepts facts pleaded in the Complaint as true for purposes of this Motion, and draws all reasonable inferences in favor of Plaintiff, *see Gretsch v. Vantium Capital, Inc.*, 846 N.W.2d 424, 429 (Minn. 2014), the Court is "not bound by legal conclusions stated in a complaint

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when determining whether the complaint survives" a motion to dismiss. *Walsh v. United States Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014). This Court reviews the Complaint as a whole, including the documents upon which Plaintiff relies, to determine whether a claim has been stated. *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 740 (Minn. 2000).

B. General Statements of Policy Are Not Contracts.

Minnesota cases have recognized that an employer's written policy may create a unilateral employment contract if all the requirements for formation of a contract are met. *See Pine River State Bank v. Mettile*, 333 N.W.2d 622, 626 (Minn. 1983). Under Minnesota law, a unilateral contract requires (1) an offer definite in form; (2) communication of the offer; (3) acceptance; and (4) consideration. *Martens*, 616 N.W.2d at 742.

With respect to the first element, an offer must contain "sufficiently definite" terms to enable the fact-finder to interpret and apply them. *See* H*unt v. IBM Mid Am. Employees Fed. Credit Union*, 384 N.W.2d 853, 856 (Minn. 1986)*; see also Pine River*, 333 N.W.2d at 626 (only a promise of employment "on particular terms" can create a unilateral contract). Determining whether an offer is sufficiently definite is an objective consideration "determined by the outward manifestations of the parties," not by their subjective intentions. *Pine River*, 333 N.W.2d at 626; *see also Oni v. Target Corp.*, 27-CV-19-11468, 2020 Minn. Dist. LEXIS 267, *16 (Minn. Dist. Ct. 2020) ("In determining whether an offer to enter a contract occurred, the court examines the outward manifestations of the parties and not their subjective intent.").

Although some employment policies may constitute unilateral contracts, the only instances in which Minnesota courts have found a sufficiently definite offer involved policies that specified particular rights to compensation or benefits, or specific termination procedures. *See, e.g., Pine River*, 333 N.W.2d at 631; *Hall v. City of Plainview*, 954 N.W.2d 254, 268 (Minn. 2021); *Med.*

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Staff of Avera Marshall Reg'l Med. Ctr. v. Marshall, 857 N.W.2d 695, 704 (Minn. 2014); *Hunt*, 384 N.W.2d at 857.

By contrast, an employer's "general statements of policy" do not meet the contractual requirements for an offer. *Pine River*, 333 N.W.2d at 626. On that basis, Minnesota courts have declined to find unilateral contracts where the policy at issue did not promise particular pay or benefits, or provide for specific termination protections. *See, e.g.*, *id.* at 630; *Martens*, 616 N.W.2d at 744; *Ruud v. Great Plains Supply, Inc*. 526 N.W.2d, 369, 371–72 (Minn. 1995); *Goodkind v. Univ. of Minn.*, 417 N.W.2d 636, 640 (Minn. 1988); *Ward v. Emp. Dev. Corp.*, 516 N.W.2d 198, 203 (Minn. Ct. App. 1994); *Lindgren v. Harmon Glass Co.*, 489 N.W.2d 804, 810 (Minn. Ct. App. 1992); *Holman v. CPT Corp.*, 457 N.W.2d 740, 744 (Minn. Ct. App. 1990); *Overholt Crop Ins. Serv. Co. v. Bredeson*, 437 N.W.2d 698, 704 (Minn. Ct. App. 1989).

C. There Is No Promissory Estoppel Claim Absent a "Clear and Definite" Promise.

"Promissory estoppel is an equitable doctrine that implies a contract in law where none exists in fact." *Martens*, 616 N.W.2d at 746 (internal quotations omitted). To prevail, a plaintiff must prove "1) a clear and definite promise was made, 2) the promisor intended to induce reliance and the promisee in fact relied to his or her detriment, and 3) the promise must be enforced to prevent injustice." *Id.* at 746. Practically, determining whether there is an enforceable promise for a promissory estoppel claim involves the same analysis required to determine whether a sufficiently definite offer was made in the context of a contract claim. *See, e.g., Aberman v. Malden Mills Indus., Inc.*, 414 N.W.2d 769, 773 (Minn. Ct. App. 1987) ("[I]f [the alleged] promise was not sufficient to support an employment contract, the promise is also insufficient to support a claim of promissory estoppel."); *see also Martens*, 616 N.W.2d at 746.

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D. The United States District Court for the District of Minnesota Has Found that Analogous Mayo Policies Are Not Contractual.

Of significance to this Motion, the United States District Court for the District of Minnesota (Tunheim, J.) recently held that an analogous Mayo policy did not constitute an employment contract, as a matter of law.

In *Shelly Kiel v. Mayo Clinic Health System Southeast Minnesota*, No. 22-cv-1319, 2023 U.S. Dist. LEXIS 135595 (D. Minn. Aug. 4, 2023), Judge Tunheim analyzed whether Mayo's Equal Employment Opportunity & Affirmative Action policy[2] (the "*EEO Policy*") constituted a binding unilateral contract between Mayo and its employees, or was otherwise enforceable under the doctrine of promissory estoppel. *See id*. at *35–39. Applying Minnesota law, Judge Tunheim held that Mayo's EEO policy was not sufficiently definite to constitute an offer. Like the Policies at issue here, Judge Tunheim noted that Mayo's EEO policy "does not include any key employment terms like compensation or benefits." Rather, Mayo's EEO policy is a "general statement of policy" that does not meet the contractual requirements for an offer. *Id.* at *37.

More specifically, Judge Tunheim noted that Mayo's EEO policy states that Mayo is "committed to upholding laws prohibiting discrimination," reflecting its nature as a general statement of policy. *Id.* at 38. Likewise, Mayo's Anti-Retaliation Policy states that Mayo is "committed to its institutional integrity and conducts business in a manner that complies with applicable federal and state laws and meets the highest standards of business and professional ethics." (Compl., Ex. B.) Mayo's Academic Freedom Policy states that Mayo is "committed to the free and open discussion of ideas," "committed to academic freedom," and "committed to

[2] Mayo Clinic, *Equal Employment Opportunity & Affirmative Action*, available at https://www.mayoclinic.org/documents/equal-employment-opportunity-affirmative-action/doc-20112889#:~:text=Mayo%20Clinic%20is%20further%20committed,%2C%20genetic%20information%2C%20veteran%20status%2C (last visited December 18, 2023).

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freedom of expression." (Compl., Ex. A) Similarly, the anti-retaliation language in Mayo's Appeal Procedure constitutes two sentences, briefly articulating Mayo's commitment to non-retaliation. (Compl., Ex. C) Judge Tunheim's reasoning applies equally – if not more – to the Policies at issue in this case, which are less specific in their statement of principles than the statement of non-discrimination set forth in Mayo's EEO policy. *See* Compl., Exs. A–C.

For the same reasons, Judge Tunheim rejected the plaintiffs' promissory estoppel claim. *See e.g., Kiel*, 2023 U.S. Dist. LEXIS at *39 ("Plaintiffs have not stated a claim to relief premised on promissory estoppel because, like the breach of contract claim, the statements in Mayo [Clinic]'s equal opportunity policy are not sufficiently definite.").

E. The Policies Are "General Statements of Policy," Not Clear and Definite Promises for Purposes of a Contract or Promissory Estoppel Claim; Regardless, Mayo Did Not Violate Them.

As noted, Minnesota law is clear that an employer's "general statements of policy" are not contractually binding, as a matter of law. Here, the Policies are "general statements of policy" on their face. Moreover, even if they were contractual (and they are not), Mayo did not breach them.

1. The Academic Freedom Policy.

Dr. Joyner asserts that the Academic Freedom Policy should be construed as a contract. As a preliminary matter, the conduct Joyner references is not even covered by the policy he claims is a "contract." Under the initial header ("Scope") the policy states that it applies when Mayo faculty are engaged in "educational activities within the Mayo Clinic College of Medicine and Science." Dr. Joyner alleges that Mayo violated the Academic Freedom Policy by limiting his speech in media interviews and presentations at outside conferences. *See* Compl., ¶¶ 14, 19, 69, 75, 83–90, 97, 103, 135, 156, 163, 167–69. Dr. Joyner did not participate in media interviews as

a member of Mayo's faculty,[3] and interviews and outside conferences are not "educational activities within the Mayo Clinic College of Medicine and Science."

Regardless, contrary to cases that have found policies to constitute unilateral contracts, Mayo's Academic Freedom Policy is primarily an aspirational statement of principles. Similar to the EEO policy Judge Tunheim found was not contractual in *Kiel,* it expresses Mayo's philosophical commitments to academic freedom:

- MCCMS is committed to the free and open discussion of ideas in both medical and non-medical areas
    - A professional and respectful exchange of views is integral to create a nurturing environment for learning, teaching, inquiry and research.
- MCCMS is committed to academic freedom, which includes the freedom to explore all avenues of scholarship, research, and creating expression, and to reach conclusions according to one's own scholarly discernment.
- MCCMS is committed to freedom of expression, which includes the right to discuss and present scholarly opinions and conclusions without fear of retribution or retaliation if those opinions conflict with those of the faculty or institution.

Compl., Ex. A.

Further, like many general statements of policy, the Academic Freedom Policy also notes that the principle of academic freedom is not absolute, but is balanced by individual obligations and other "fundamental principles":

- Learner and faculty freedom of expression comes with professional responsibilities.
    - Mutual respect is a fundamental principle of Mayo Clinic and all members of the community share the responsibility of cultivating and maintaining an environment of civility.

[3] Indeed, the Complaint repeatedly asserts that Dr. Joyner was *not* speaking on behalf of Mayo. *See* Compl. ¶¶ 62, 81, 105, 106.

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Id. Indeed, in stating the "Purpose" of the policy, Mayo notes the necessity of this balancing: "To communicate [Mayo's] commitment to academic freedom and freedom of expression for all learners and faculty, with an expectation of mutual respect and absence of harassment, and while protecting the obligations, relationships, and reputation of Mayo Clinic by ensuring that only authorized individuals speak on behalf of the organization." *Id.*

On this basis alone, the absence of a definite offer is apparent. A fact finder cannot determine what Mayo's commitment to such principles specifically requires it to do in this or any other case, or determine when there is a breach of such commitment. A fact finder certainly is not in a position to do so where the policy notes the necessity of balancing competing philosophical principles. *See*, *e.g.*, *Martens*, 616 N.W.2d at 742 (holding that for a policy to be contractual, it must be "sufficiently definite for a court to discern with specificity what the provision requires of the employer so that . . . it can be determined if there has been a breach"); *Hunt*, 384 N.W.2d at 857 ("To decide whether a contract has been breached, a fact-finder needs reasonably definite terms to interpret and apply . . . .").

Further still, the absence of a definite offer is apparent *because the policy expressly permits Mayo to do what Dr. Joyner alleges Mayo did*. Notwithstanding Mayo's commitment to the principle of academic freedom, the Academic Freedom Policy expressly reserves to Mayo the right to regulate employees' speech and conduct:

- MCCMS may restrict expression that violates the law or that is otherwise directly incompatible with Mayo Clinic values and policies.
- *Nothing in this policy prevents MCCMS from regulating speech or activity as allowed by law.*

Compl., Ex. A (emphasis added). This matter is as far from cases finding a unilateral contract based on policy statements as possible; to the extent the Academic Freedom Policy is definite at all, it expressly contemplates the regulation of speech about which Dr. Joyner complains.

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For the same reason, Dr. Joyner cannot establish a breach of any contract (which does not exist). His assertion that Mayo breached a contract by engaging in conduct that is expressly permitted by that contract fails as a matter of law. *See, e.g.*, *AGA Med. Corp. v. Beijing Since Med. Sci. Co.*, No. 06-cv-364, 2007 U.S. Dist. LEXIS 108361, at *14 (D. Minn. May 24, 2007) (holding breach of contract claim "fails by definition because Plaintiff reserved the right under the contract to take the exact action that [counterclaimant] argues is a breach of contract").

Just as the Academic Freedom Policy does not constitute a definite offer for purposes of Dr. Joyner's contract claim, it also does not constitute a "clear and definite promise" for purposes of his promissory estoppel claim. *Martens*, 616 N.W.2d at 746. That claim also should be dismissed. *See Kiel*, 2023 U.S. Dist. LEXIS at *35; *Aberman*, 414 N.W.2d at 773; *see also Corum v. Farm Credit Servs.*, 628 F. Supp. 707, 716 (D. Minn. 1986) (holding that because the statement upon which plaintiff relies was too general to constitute a contractual promise, plaintiff also cannot satisfy the first essential element of a promissory estoppel claim).

2. The Anti-Retaliation Policy.

Likewise, Mayo's Anti-Retaliation Policy is a statement of general policy. Also similar to the policy in *Kiel*, the Anti-Retaliation Policy states:

- Mayo Clinic is committed to its institutional integrity and conducts business in a manner that complies with applicable federal and state laws and meets the highest standards of business and professional ethics.

Compl., Ex. B. As in *Kiel*, Mayo's statement of commitment to legal compliance is not a unilateral contract. *Supra*; *see also Minn. Dep't of Corr. v. Knutson*, 976 N.W.2d 711, 717 (2022) ("'A promise to do something that one is already legally obligated to do . . . does not constitute consideration' and therefore does not give rise to an enforceable contract.") (citation omitted). Likewise, standards of "institutional integrity" and "business and professional ethics" are not

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sufficiently definite to permit a fact finder to "discern with specificity what the provision requires of the employer," or determine if there has been a breach. *See Martens*, 616 N.W.2d at 742.

The same is true of Mayo's statement that it "does not tolerate retaliatory behavior against any individual who raises a compliance concern." Compl., Ex. B. As important as Mayo's commitment to non-retaliation is, the policy does not provide particular rights akin to specific compensation and benefits terms, or termination procedures, which have been found to be contractual by Minnesota courts.

In fact, the policy expressly reserves to Mayo the discretion to determine whether retaliation has occurred. *See id*. ("Any employee, regardless of position or title, that has engaged in retaliation *as determined by Human Resources* will be subject to discipline . . . .") (emphasis added). That reservation of employer discretion to interpret and apply a policy itself precludes a unilateral contract. *See Oni*, 2020 Minn. Dist. LEXIS at *18 ("Such discretion in the policy prevents the court from construing it as a contract.").

Similar to the Academic Freedom Policy, that reservation of discretion also precludes Dr. Joyner from establishing a breach of the Anti-Retaliation Policy as a matter of law. There can be no violation of the policy unless Mayo Human Resources says so, and Dr. Joyner does not (and cannot) allege any such determination.

And again, given the absence of any "clear and definite promise" in the Anti-Retaliation Policy, Dr. Joyner's promissory estoppel claim fails as a matter of law. *See Kiel*, 2023 U.S. Dist. LEXIS at *35; *Aberman*, 414 N.W.2d at 773.

3. The Appeals Procedure.

Finally, the "Procedural Notes" section of the Appeals Procedure consists of two sentences reiterating Mayo's commitment to the principle of non-retaliation:

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> Retaliation against anyone who brings forward complaints or assists in investigating complaints is prohibited. Anyone participating in retaliatory actions will receive formal corrective action, including possible termination of employment.

Compl., Ex. C. These "Notes" are even further dissimilar to the employment policies Minnesota courts have held constitute unilateral contracts, and less definite than the other Policies. They do not purport to convey rights or protections to employees at all, in principle or otherwise; rather, they state an unspecific threat of discipline. Such language also is far removed from the specific promises of benefits or procedural employment termination protections that Minnesota courts have found to constitute a definite offer for a unilateral contract, or a clear and definite promise for a promissory estoppel claim.

F. Without a Breach of Contract, Dr. Joyner's Tortious Interference Claim Fails as a Matter of Law; Regardless, Mayo Cannot Interfere With Its Own Contract.

To recover for tortious interference with contract, a plaintiff must prove five elements: "(1) the existence of a contract; (2) the alleged wrongdoer's knowledge of the contract; (3) intentional procurement of its breach; (4) without justification; and (5) damages." *Furlev Sales & Assocs., Inc. v. N. Am. Auto. Warehouse, Inc.*, 325 N.W.2d 20, 25 (Minn. 1982). Because the Policies are not a unilateral contract, and he cannot demonstrate a breach, *supra*, Dr. Joyner's tortious interference claim fails at the outset. *Id.*

Further, Minnesota law provides that tortious interference may only be committed by a third-party. "A party cannot interfere with its own contract." *See Michaelson*, 474 N.W.2d at 181; *see also Bouten v. Richard Miller Homes, Inc.*, 321 N.W.2d 895, 901 (Minn. 1982) ("With respect to the tort of interference with contractual relations, a breach by the defendant of his own contract with the plaintiff is not actionable.").

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In turn, employees are not liable for tortious interference with their employer's agreement when they are acting on behalf of the employer. *See Michaelson*, 474 N.W.2d at 181 ("Further, even if we agreed that these workers had interfered, as agents of respondent they are protected from liability because they were acting on behalf of one party to the contract."). "To hold otherwise would burden corporate officers from acting in the best interests of the corporation." *Furlev*, 325 N.W.2d at 26; *see also Nordling v. N. State Power Co.*, 478 N.W.2d 498, 507 (Minn. 1991) ("If a corporation's officer or agent acting pursuant to his company duties terminates or causes to be terminated an employee, the actions are those of the corporation; the employee's dispute is with the company employer for breach of contract, not the agent individually for a tort. To allow the officer or agent to be sued and to be personally liable would chill corporate personnel from performing their duties and would be contrary to the limited liability accorded incorporation.").

Dr. Joyner's Complaint is replete with allegations that Dr. Farrugia and Dr. Mantilla were acting on behalf of Mayo when they engaged in their alleged wrongful actions, precluding a claim of tortious interference. *See*, *e.g.*, Compl, ¶¶ 5–7, 26, 52, 94, 99, 104, 108, 111–114, 117, 120, 148, 156, 205, 210–12, 215, 264. Indeed, Dr. Joyner describes Dr. Farrugia, in particular, as Mayo's ultimate decision maker. *See id.*, ¶ 216.

Anticipating Dr. Joyner's response, the Minnesota Supreme Court has recognized that this protection for managers and officers may be lost "if the defendant's actions are predominantly motivated by malice and bad faith, that is, by personal ill-will, spite, hostility, or a deliberate intent to harm the plaintiff employee." *Nordling*, 478 N.W.2d at 507. The plaintiff must prove actual malice, which is a high standard. *Id.*; *Wallin v. Minn. Dep't of Corr.*, 598 N.W.2d 393, 402 (Minn. Ct. App. 1999) ("Actual malice means what it says: ill-will and improper motive or wishing wantonly and without cause to injure the plaintiff.")

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However, Dr. Joyner's Complaint asserts no basis for a conclusion that Dr. Farrugia or Dr. Mantilla acted out of personal malice. To the contrary, the Complaint asserts that Dr. Farrugia and Dr. Mantilla's alleged animosity arose from Mayo's business interests, including an alleged revenue/profit motive (Compl, ¶¶ 5, 7), protection of a business partner (Compl. ¶¶ 26, 210), protection of Mayo's "brand and reputation" (Compl, ¶¶ 29, 112), protection of a Mayo grant provider (Compl, ¶ 94), furthering the interests of Mayo's "PR machine" (Compl, ¶ 69), corporate disapproval of Dr. Joyner's statements to the press (Compl, ¶ 104), frustration with Dr. Joyner's perceived interference with Mayo's business planning (Compl, ¶ 205, 210), and a general interest in protecting Mayo's "leaders" and "powerful interests." (Compl., ¶ 148). The Court is not required to accept Dr. Joyner's conclusory legal allegations of bad faith. *See Walsh*, 851 N.W.2d at 603. Rather, on the facts alleged, the Complaint fails to allege any personal ill-will or spite, much less the high standard of actual malice, requiring dismissal.

IV. CONCLUSION

For the reasons set forth above, Defendants respectfully request that Dr. Joyner's breach of contract (Count I), promissory estoppel (Count II), and tortious interference (Count V) claims be dismissed. Since Count V is the only claim against Drs. Farrugia and Mantilla, Defendants respectfully request that Drs. Farrugia and Mantilla be dismissed from this case.

Dated: December 18, 2023

DORSEY & WHITNEY LLP

By s/Ryan Mick

Ryan E. Mick (#0311960)
mick.ryan@dorsey.com
Jillian Kornblatt (#0391232)
kornblatt.jillian@dorsey.com
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
Telephone: (612) 340-2600

Attorneys for Defendants Mayo Clinic, Gianrico Farrugia, M.D. and Carlos Mantilla, M.D., PH.D.

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