

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

HANSEL NOFFSINGER,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	Case No. 5:24-cv-00900-HDM
	)	
CULLMAN REGIONAL	)	
MEDICAL CENTER, INC.,	)	
	)	
DEFENDANT.	)	

CULLMAN REGIONAL MEDICAL CENTER’S
BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Submitted by:

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INTRODUCTION

This is an age discrimination case. Dr. Hansel Noffsinger says that he was terminated from employment with Cullman Regional Medical Center (“CRMC”) because he was 66 years old. In reality, he was terminated because he was unprofitable and unprofessional. He engaged in practices of delayed billing and overbilling that impacted CRMC’s revenues. Perhaps worse, he was accused of inappropriate behavior by female employees, engaged in patient examinations that resulted in complaints and repeatedly berated co-workers and at least one vendor. Thus, when CRMC executives were discussing business changes on June 6, 2022, it is unsurprising that they terminated the relationship. There simply is no evidence that CRMC was motivated to terminate Noffsinger because of his age. Indeed, he was 64 when he was hired. As a result, this Court should grant summary judgment and dismiss this action with prejudice.

STATEMENT OF UNDISPUTED RELEVANT MATERIAL FACTS

I. Dr. Noffsinger’s employment, compensation structure and supervisors

1. Noffsinger was born on November 14, 1955. (Noffsinger dep. at 256 ln. 17.) He is a board-certified internal medicine physician. (*Id.* Ex. 1.) He negotiated his employment contract at CRMC with CRMC’s Vice-President of Physician Relations, Lisa Courtney. (Noffsinger depo. at. at 43 ln 20-23.) Courtney’s date of birth is April 27, 1979. (Courtney dec. ¶ 3.)

2. Noffsinger started to work at CRMC's primary care clinic on April 1, 2020. (Noffsinger depo. at 50.) Courtney was his supervisor. (*Id.* at 56 ln 10-13.)

3. Noffsinger's initial employment contract provided base compensation plus an *annual* productivity bonus of \$50 per worked RVU in excess of 5,085 RVUs per year. (Courtney depo. Ex. 20 at 4.) On April 1, 2021, Noffsinger and CRMC executed an amended agreement to pay a *monthly* bonus, instead of annual, of \$50 per worked RVU in excess of 423.75. (Courtney depo. Ex. 37.)

4. Relative Value Units ("RVUs") are a metric used by Medicare and private insurance payers that serves to quantify and monetize health care that patients receive. (Courtney Depo. at 66 ln 14-17.) RVU levels are assigned a higher or lower numerical value based on level of treatment. (Courtney depo. at 66 ln 4.) Thus, the more complicated a single patient visit is, the higher value of the RVU that is assigned for that treatment. (Noffsinger depo. at 46 ln 21-22.)

5. CRMC hired Schinley Land in April of 2021 as its Executive Director of Physician Services. (Land depo. at 9 ln 20 to 10 ln 3.) She supervises each of the CRMC's physician practices, including the Primary Care clinic. (*Id.* at 10 ln 4 to 11 ln 10.) Land's date of birth is October 4, 1975. (Land dec. ¶4.)

6. CRMC employed a practice manager, Stacy Graves, for the Primary Care practice. (Land dec. ¶ 6.) Graves was responsible for managing the day-to-day operations of the clinic and supervising non-physician employees. (*Id.*)

II. 2021 allegations of inappropriate conduct

7. On February 25, 2021, two female former employees submitted affidavits to Cullman Regional claiming Noffsinger engaged in inappropriate conduct and comments of a sexual nature. (Courtney depo. Ex. 22.)

8. On March 11, 2021, Noffsinger met with Courtney, CRMC's Human Resources Director Pam Brown and CRMC's General Counsel, Colin Luke. (Noffsinger depo. at 72 and Ex. 6.) Noffsinger admitted he told "off-color jokes" in the workplace. (Noffsinger depo. at 75, ln. 14-19.) On April 1, 2021, Noffsinger met with Brown who provided a reprimand that required him to attend sensitivity training. (Noffsinger depo. Ex. 6.)

9. Noffsinger attended sensitivity training on April 22, 2021. (Noffsinger depo. Ex. 7.) The trainer reported Noffsinger admitted he has a "strong personality" that can be "caustic" at times. (*Id.*) The trainer said he admitted he could be seen as "polarizing and incendiary". (*Id.*) The trainer also said he may be perceived or come across "as impatient and pushy." (*Id.*)

III. "Black Dogs" Comment

10. On May 3, 2021, Graves gave Courtney a memo claiming Noffsinger told a nursing assistant he "was anti-racist because he rescued black dogs because they are the top mostly euthanized." (Courtney depo. at 126-27 and Ex. 31.) Noffsinger admits making the statement "in joking form." (Noffsinger depo. at 99

In 16-21.) On May 4, 2021, Courtney, Graves and Brown met with Noffsinger to discuss his “black dogs” comment. (Courtney depo. at 128 and Ex. 32.)

IV. Patient complaints

11. On August 24, 2021, Land e-mailed Courtney describing four, similar complaints from female patients regarding physical examinations by Noffsinger since May of 2021. (Land dec. ¶ 7 and Ex. A at 002422.) On September 7, 2021, an employee who was also Noffsinger’s patient e-mailed Land about Noffsinger’s physical examinations and inappropriate comments. (Courtney depo. Ex. 49.)

12. CRMC conducted an investigation of the complaints during which Pam Brown interviewed patients who made complaints. (Land dec. ¶ 9.) That investigation determined that Noffsinger’s actions with patients were appropriate. (*Id.*) Land met with Noffsinger on October 13, 2021 to discuss the allegations and the need to have a chaperone present when examining female patients. (*Id.*) At 9:30 PM on October 13, 2021, Noffsinger sent a text message to Land saying that she “planted a seed in the heads” of his patients and asking if he needed his employment attorney to contact HR. (Land Dec. ¶ 10 and Ex. C at 002837.)

V. Noffsinger’s demanding nature

A. Bonus demands

13. CRMC provides RVU-based bonus incentives to all of its employed physicians. (Land dec. ¶ 13.) Noffsinger repeatedly made demands and requests

related to calculation and payment of his bonuses. (Courtney dec. ¶ 5; Land dec. ¶13.) Those demands and requests were made verbally and in text messages. (*Id.*) Noffsinger's demands were far more voluminous than any other physician. (*Id.*) From May 12, 2021 to May 6, 2022, Noffsinger sent Land at least 28 text messages relating to his bonus or RVUs. (Land dec. ¶ 14 and Ex. A.)

14. In May of 2021, after Noffsinger's bonus was changed from annual to monthly, Courtney and Land calculated his bonus payment for April 2021 and Land explained the payment to him. (Land dec. ¶ 14.) Noffsinger originally accepted their calculation, but on May 26, 2021 he texted Courtney and claimed he was "getting the run around" about his April bonus. (Courtney dec. ¶ 9 and Ex. A at 02804.)

15. On May 26, 2021, Noffsinger also texted Courtney:

We both correlated about 418 RVUS coverage which is about 21 K why has it taken a whole month to figure this out and how am I supposed to trust it if you guys don't understand how it works.

(Courtney dec. ¶ 9 and Ex. A at 02805.) Courtney explained the calculation process to him (*id.*) and also texted Land: "He's all up in arms again now and he was good with that number. Let's get him back there." (*Id.* and Land dec. Ex. D at 02972.)

16. Land then held a telephone call with Noffsinger on May 27, 2021 to explain the calculation. (Land dec. ¶ 15.) Noffsinger expressed his displeasure with the calculation and spoke with a raised voice. (*Id.*) This prompted Land to text

Courtney while her conversation with Noffsinger was ongoing: “Noffsinger is furious. He told me that he doesn’t trust me at all.” (*Id.* and Ex. C at 02976.)

17. Noffsinger’s disagreement with the bonus calculation continued. (Land dec. ¶16.) On June 11, 2021, Courtney sent Land an e-mail: “Noffsinger is saying we owe him about \$9-10K moreI need to make sure we are 10000% comfortable with what we are paying him.” (Courtney dec. ¶ 10 and Ex. B.)

18. On September 28, 2021, Land and Noffsinger had a call discussing the calculation. (Land dec. ¶ 17.) Noffsinger believed that, in addition to a monthly bonus, he was entitled to an annual bonus for any RVUs that exceeded 5,085. (*Id.*) Noffsinger believed CRMC owed him an additional \$300,000 per year. (*Id.*)

19. During that call, Noffsinger yelled and screamed at Land, told her he was a genius, said that Land couldn't do math and claimed CRMC was trying to screw him out of his money. (Land dec. ¶ 17.) Land told him she wasn’t going to allow the insults and conversation to continue. (*Id.*) She told him that they had to hang up and would resume the conversation after he calmed down. (*Id.*)

20. They spoke by telephone again later in the day and Land was able to explain the calculations in a manner that Noffsinger finally understood. (Land dec. ¶ 17.) Noffsinger also sent a message to Courtney asking her to call him. (Courtney dec. ¶11 and Ex. A at 2807.) That led to the following text exchange:

Courtney: I’m about to call Noffsinger. Any idea what I’m stepping into about[.] I may fire him over the phone.

Land: Just talked Noffsinger off the ledge. He got in his mind that we were screwing him out of his bonus of anything over 5085 RVUs so he thought we were stealing about 300K from him. It took me breaking it down for him (old v. amendment) to see he was getting all that is due, just wasn't having to wait on it.

(Land dec. ¶ 17 and Ex. E at 02987.)

21. Noffsinger and Courtney also exchanged text messages that day:

Noffsinger: You need to call me.

Courtney: Is all good now? Schinley called me to tell me she talked with you. Making sure I don't need to step out from meeting with the contractor to call you.

Noffsinger: I'm so embarrassed everything great now I didn't calculate out properly thanks for all your support

Courtney: Ok great.

(Courtney dec. ¶ 11 and Ex. A at 2807.)

B. Interaction with CRMC's shredding service

22. On July 21, 2021, Land and Courtney received a report of inappropriate behavior by Noffsinger towards employees of CRMC's shredding vendor, VRC Companies. (Courtney dec. ¶12 and Ex. C.) VRC reported that on July 6 Noffsinger "berated" an employee for not accepting a box of shredding and said: "You're just a company boy aren't you?" (Courtney Dec. Ex. C at 02421.) Noffsinger admits it's possible he made that statement. (Noffsinger depo. at 131 ln 14-23.)

23. VRC also reported that on July 20 Noffsinger “berated” an employee and called VRC’s customer service line to make a “report.” (Courtney Dec. Ex. C at 002421.) Noffsinger said that VRC had a “lazy employee” on its hands. (*Id.*) Noffsinger believes he called VRC and admits he may have called the employee lazy. (Noffsinger depo. at 132 ln 16-22.) VRC reported that Noffsinger said “he was going to ensure that we’re fired.” (Courtney Dec. Ex. C at 002421.) Noffsinger denies that but believes he “may have said that we’ll look at other options.” (Noffsinger depo. at 132 ln 23 to 133 ln 14.)

24. Courtney was frustrated by VRC’s report and the conduct attributed to Noffsinger. (Courtney Dec. ¶ 12.) As a result, she e-mailed Land: “I’m deducting RVUs for everytime he yells at someone for stupid things.” (*Id.* and Ex. C at 2420.) Thereafter, Land told Noffsinger his actions were inappropriate. (Land. dec. ¶ 18.)

C. Reaction to cancellation of test

25. In September 2021, Noffsinger ordered a test to determine whether a bacteria called *Clostridioides difficile*, commonly called “C. Diff,” was present in a patient. (Land dec. ¶19.) That test required analysis of the patient’s stool sample. (*Id.*) But, CRMC’s lab cancelled the test because the stool sample was too firm. (*Id.*)

26. When Noffsinger learned the test was cancelled, he reacted emotionally and his reactions are captured in a text exchange between Graves and Land on September 7 and 8, 2021. (Land dec. ¶ 19 and Ex. F.) Graves reported that

Noffsinger “wants someone’s head for this.” (*Id.* Ex. F at 03062.) When Land told Graves “we will all need to proceed in a professional manner,” Graves responded: “I do my best to settle him down as much as I can.” (*Id.*) The next day, Graves told Land that Noffsinger was on “the warrior path” about the test and said “if he gets sued that we are all going down.” (*Id.* at 3064.)

27. Land investigated Noffsinger’s complaint and learned that a stool specimen is only “eligible” for testing if it is loose/liquid. (Land dec. ¶ 21.) Under CRMC’s lab procedures, a patient with a firm stool would not be considered a patient with active C. Diff or need testing. (*Id.*) Land spoke to Noffsinger about the lab procedures and cancellation of the test. (*Id.*)

D. CME Documentation

28. On October 6, 2021, CRMC’s Credentialing Committee notified Noffsinger that his credentialing application was incomplete because it did not have documentation of Continuing Medical Education. (Noffsinger dep. Ex. 33.) The Committee said his privileges at CRMC would expire if he did not supply the information by November 2. (*Id.*) Noffsinger expressed his displeasure to Land because he submitted the CME information when he started work. (Land dec. ¶ 22.)

29. Thereafter, Noffsinger exchanged text messages with Land:

Noffsinger: So they had my Cme down there the whole time no one bothered to go look for it instead of a threatening letter and I couldn’t find any previous e-mail back to July.

....

Noffsinger: They owe me an apology

Land: I will investigate the situation and see what has occurred or what should have. Until I have all the facts, I will assume this was a standard letter (albeit poorly worded) with no ill intentions.

Noffsinger: Maybe they should do their job before sending a letter like that Stacy will give you the facts.

Land: I agree. It does sound like there is an opportunity for improvement. I promise I will investigate and get a resolution.

Noffsinger: That letter should be taken out of my file or I will have a legal letter in rest

(Land dec. ¶ 22 and Ex. C at 02835-36.)

E. Patient volume.

30. In January of 2022, Courtney hired a new primary care doctor for CRMC, Dr. John Morgan. (Courtney depo. at 177 at ln 22-23.) In Courtney's opinion, Noffsinger was extremely upset that Courtney recruited Morgan. (*Id.* at ln 21-22.) Noffsinger wanted to maximize the number of patients he treated and believed hiring Morgan would cut into his ability to see patients. (Courtney dec. ¶ 13.) On February 23, 2022, Graves texted Land:

Graves: Noffsinger just said it's not worth the drive to see less than 30-35 patients, he has gone mad, he had 17 patients today, started out with 23.

Land: So, does he want to go to 3 days per week?

Graves: He kept saying that today over and over, like he was threatening me about going three days a week.

He is about to run all of his help off including me, if we have many more days like today.

(Land dec. ¶ 24 Ex. G at 003091.)

31. Land told Courtney about Graves's messages. (Courtney dec. ¶ 14.) As a result, on February 24, 2022, Courtney prepared a report showing the number of patients treated by Noffsinger from September 2021 to February 2022. (*Id.* and Ex. D at 2374.) (*Id.*) Courtney e-mailed the report to Graves noting that "he is above where he has ever been other than Nov and it's pretty much the same." (*Id.*) Graves replied: "I know but you can not make him believe that, I have tried." (*Id.*) Then, Courtney wrote: "Pretty sure after I'm done today he will." (*Id.*) Courtney then had a tense conversation with Noffsinger explaining that his patient volume was unaffected by adding Morgan. (Courtney dec. ¶ 14.)

F. Other Issues

32. On May 4, 2021, Courtney texted Land that Noffsinger was "loosing his mind" and wanting to file a complaint about a nurse in the Primary Care practice. (Courtney dec. ¶ 16 and Ex. H at 02963.) Courtney noted "he gets things in his head and is crazy when that happens" and "demanded a meeting with HR" even though he was "in the wrong and zero clue he is." (*Id.* at 2963-64.) His attitude resulted in Courtney calling him "Stupid Noffsinger." (*Id.* at 2965.)

33. On August 26, 2021, Graves texted Land that Noffsinger's stethoscope was missing and he believed the cleaning crew took it. (Land dec. ¶ 26 and Ex. I at

03061.) Although Graves tried to get him to “settle,” he was “demanding to talk to the supervisor of housekeeping.” (*Id.*) Graves texted: “I need help.” (*Id.*)

34. On March 2, 2022, Graves texted Land trying to locate Noffsinger. (Land dec. ¶ 27 and Ex. J.) Graves reported that Noffsinger thought “his CMA are against him.” (*Id.*) A CMA is a Certified Medical Assistant. (Land dec. ¶ 27.) Graves said she was going to talk to the CMAs but was afraid that she “probably didn’t act fast enough and he went to HR.” (Land dec. Ex. J.)

VI. Issues with completion of notes and overbilling

A. Delays completing notes

35. Every time a patient visited Noffsinger, he was supposed to prepare notes to summarize the visit. (Noffsinger dep. at 220 ln 9-20.) Those notes are then placed in the patient’s chart. (*Id.* at 220 ln. 21-23.) Noffsinger must sign those notes and CRMC cannot submit a bill until he signs. (*Id.* at 221 ln. 1-7.) CRMC’s expectation for Primary Care providers is that a final bill should be issued within three days of a patient visit. (Courtney depo. at 180 ln 8-11.) Any failure to complete and sign the notes slows up cash flow for CRMC. (Courtney depo. at 169 ln 18-23.)

36. CRMC expects bills for Primary Care visits to be issued within 3 days. (Land. dec. ¶ 28.) Timely completion of treatment notes was an issue for Noffsinger. (*Id.*) On April 22, 2021, Land sent an e-mail to CRMC’s Billing Manager about Noffsinger’s completion of notes and processes to shorten lag time. (*Id.* and Ex. K

at 2325.) At some point, an exception in the time for submitting a bill was made for Noffsinger because of the volume of patients he treated. (Land dec. ¶ 29.) He was allowed to complete his notes within 7 days. (*Id.*)

37. Even with that extension, Noffsinger failed to complete treatment notes in a timely manner. (Land dec. ¶ 30.) On August 9, 2021, Land e-mailed Graves a report showing that Noffsinger had approximately 199 pending charges from July 13 to 29, 2021. (*Id.* and Ex. L at 2338-44.)

38. On November 29, 2021, CRMC's Outpatient Coder, Tammy Waters, sent an email to Land and Graves identifying approximately 123 pending charges from November 10 to 19, 2021. (Land dec. ¶ 31 and Ex. M at 2399-2403.)

39. On December 21, 2021, Waters e-mailed Graves and notified her that Noffsinger's claims from December 6 to December 15, 2021 were missing documentation. (Courtney dec. ¶ 17 and Ex. F at 2365.) Waters copied Billing Manager Chasity Stephens who forwarded it to Courtney with the note: "This is pitiful." (Courtney dec. Ex. F at 2365.)

B. Overbilling and audits

1. The auditing process

40. CRMC conducts annual audits of medical records generated by its employed physicians. (Courtney dec. ¶ 18.) Those audits help ensure compliance with federal laws designed to prevent overbilling of federal programs. (*Id.*) CRMC

retains a third-party auditing company to review a small sample of physician records. (*Id.*) The auditors compare the medical record with the bill issued to payors. (*Id.*)

41. The bill issued to payors is based upon the “level” of care provided by the physician. (Courtney dec. ¶ 19.) Upon completion of a visit with a patient, in addition to completing the medical record, the physician must enter information into CRMC’s electronic billing system identifying the level of care provided. (*Id.*) The higher the level of care, the greater the reimbursement. (*Id.*) Additionally, the higher the level of care, the more RVUs. (Courtney dec. ¶ 20.) Level One care is the most basic level of care and RVUs are lowest for Level One care. (*Id.*) Level Five care is the highest level of care for patients and RVUs for Level Five care are the highest. (*Id.*) Overbilling occurs when a physician bills for a level of care higher than the level of service reflected by the patient chart. (*Id.*) For example, if the medical record reflects a level of care that should be billed at Level Four, but the physician bills at Level Five, the physician has overbilled. (*Id.*)

42. CRMC primarily uses the audits to ensure that physicians are not overbilling for services rendered. (Courtney dec. ¶ 21.) Overbilling federal programs can be a crime under federal law. (*Id.*) It can also expose CRMC to fines and penalties from the government. (*Id.*) Overbilling has a financial impact on CRMC. (*Id.*) CRMC must return money it receives from overbilling. (*Id.*) It must engage in

a labor-intensive process to reverse incorrect charges, enter the correct charges and new bills. (*Id.*) Then, CRMC must wait to be paid. (*Id.*)

43. CRMC expects ninety 90% of audited records will reveal an appropriate level of billing. (Courtney dec. ¶ 22.) If an audit reveals that a physician has overbilled in more than 10% of his/her charts, then the physician to has “failed” the audit. (*Id.*) If a physician fails an audit, CRMC will conduct a more-comprehensive audit which will review a larger number of records. (*Id.*)

2. Noffsinger’s audits.

44. In July of 2021, CRMC’s auditor reviewed Noffsinger’s records and those of eight other physicians. (Courtney depo. at 157 ln 20 and Ex. 55.) Noffsinger’s audit showed he overbilled on seven out of ten patient records -- 70%. (Courtney dec. ¶ 23 and Ex. G at 2241.) Land spoke with Noffsinger about the audit results and told him that a second audit would be performed. (Land dec. ¶ 33.)

45. The auditors selected Noffsinger’s additional records for audit in October of 2021. (Courtney dec. ¶ 24.) On November 15, 2021, Noffsinger texted Land: “there is absolutely no way I’m only 20 percent accurate on my charts.” (Land dec. ¶ 34 and Ex. A at 002842.) He also texted:

My previous employer was trying to take my money which they admitted believing in socialism and I still had 100 percent so why is it taking so long and this delay does not motivate me to finish my charts.
...

As an employee it's your responsibility to audit my charts from the moment I was hired and up to this point no one complained and you can't change my charges so how does the audit affect my bonus.

(Land dec. Ex. A at 002843.)

46. Noffsinger's second audit showed he overbilled in 136 of 178 records -- over 76%. (Courtney dec. ¶ 25 and Ex. I at 00731.)

47. On February 28, 2022, Noffsinger met with Land, Billing Manager Chasity Stephens and Coder Tammy Waters to review the audit. (Land dec. ¶ 35.)

The meeting went well, prompting Land to text Courtney:

Land: Just wrapped up the coding audit review with Chasity, Tammy and Dr. Noffsinger. It really went well.

Courtney: Good! Is he less paranoid today

Land: He was absolutely delightful

Courtney: 🙄

Land: Truth

Courtney: I'm sure, they why the eye roll That's

Land: I say when he is but I also have to give him credit when he's nice. Today he was really engaging.

Courtney: If he could just stay that way.

Land: Oh ... put that on both our Christmas list. It would be amazing.

I do truly hope him seeing tonight as a proactive partnership helps overall. Realistically, it probably won't but here's to hoping. 🍷

(Land dec. ¶ 35 and Ex. N at 3005-06.)

VII. Termination of Noffsinger's employment

A. The decision-making process

48. During the two weeks prior to June 6, 2022, CRMC was completing its monthly financial reports for May. (Courtney dec. ¶ 26.) Courtney was on vacation but in communication with Land and CRMC's CFO, Nesha Donaldson. (*Id.*) They told Courtney that the financials were looking bad and that CRMC was going to have a bad overall fiscal year, which ended on June 30, 2022. (*Id.*)

49. Land had one conversation with Donaldson and CRMC's CEO, James Clements, about financial reductions while Courtney was away. (Land dec. ¶ 36.) She told them: "Dr. Noffsinger is out for himself and is not at all aligned with us as an organization. He will continue to pull against us." (Land depo. at 26 ln 1-6.)

50. Courtney returned to work on June 6, 2022. (Courtney dec. ¶ 27.) At 12:42 PM, she sent an e-mail to Donaldson titled: "Summary Talking Points for James." (*Id.* and Ex. J.) Attached to the e-mail was a list of potential business changes for six physician clinics operated by CRMC. (*Id.*) Among many changes, Courtney discussed changing the bonus structure of several doctors from an RVU basis to percentage of collections. This included: "• Noffsinger - Move to % of collections (this will make him leave)." (Courtney dec. Ex. J.)

51. The note about Noffsinger was not an expression of desire for him to leave. (Courtney dec. ¶ 28.) It was a prediction of Noffsinger's reaction if CRMC changed from an RVU-based bonus to a bonus based on percentage of collections:

I said when we do this, when I have to have this conversation with him, he is going to blow up on us and he is going to walk out the door. So this is notes to them, look, I know what is going to happen when this happens.

(Courtney depo. at 198 ln 7-13.)

52. Payment of bonuses based on a percentage of collections was more fiscally prudent for CRMC. (Courtney dec. ¶30.) Payment based on collections ensured that CRMC paid doctors commensurate with amounts CRMC actually received for their work. (*Id.*) Payment based on RVUs worked was speculative. (*Id.*) Doctors might be paid a bonus based on RVUs worked, but CRMC could be required to repay money if they overbilled. (*Id.*) Payment based on RVUs worked also required bonus payments to physicians even if payors delayed or never paid. (*Id.*)

53. On or about June 6, 2022, Courtney met with Clements and Donaldson. (Courtney dec. ¶ 31.) They reviewed the items on her list of talking points. (*Id.*) They made the determination as a team that Noffsinger's employment should be terminated. (*Id.*) Courtney recalls that they discussed: (a) Noffsinger's delays in completing patient records; (b) his audits and his overbilling; (c) the patient complaints about Noffsinger; and, (d) complaints that she and other staff had,

including the VRC incident. (*Id.*) There was some discussion of re-negotiating his contract, but Courtney did not believe it would be worthwhile to re-negotiate. (*Id.*)

54. Donaldson doesn't recall a specific meeting but remembers discussing complaints about Noffsinger, his pay structure and whether it would be best to terminate his employment. (Donaldson depo. at 49 ln 6-17.) Clements doesn't recall the meeting or termination decision. (Clements depo. at 24.) On June 6, Courtney was 46 years old, Donaldson was 59 and Clements was 65. (Courtney dec. ¶¶ 3, 7.)

55. CRMC doesn't judge profitability based on revenue generation. (Courtney dec. ¶ 32.) Federal laws like the Stark law and Antikickback Statute are designed to deter providers from focusing on maximization of revenue. (*Id.*) Thus, CRMC doesn't measure revenue generated by individual physicians. (*Id.*) As a non-profit, rural healthcare provider CRMC focuses on providing the best services at the best cost. (*Id.*) CRMC has to generate revenue to pay its bills and stay open. (*Id.*)

56. Under that standard, Noffsinger was unprofitable in two ways. (Courtney dec. ¶ 33.) His failure to complete patient records in a timely manner impacted cash flows at CRMC. (*Id.*) Hundreds of bills were delayed because he did not complete his charts. (*Id.*) While CRMC did not quantify the impact of those delays, they were unacceptable to CRMC, particularly in June of 2022 when CRMC knew that its 2021-22 fiscal year was going to end poorly. (*Id.*)

57. Noffsinger's coding practices were also unprofitable for the hospital. (Courtney dec. ¶ 34.) CRMC lost money because of his overbilling. (*Id.*) It had to pay back money for the cases where Noffsinger overbilled and it had to spend time, money and labor re-entering the correct charges. (*Id.*) CRMC was paying Noffsinger for RVUs, but then returning money to the government for his overbilling. (*Id.*) But, Noffsinger still got to keep his overbilled bonus money. (*Id.*) That's one of the reasons Courtney recommended changing to a percentage of actual collections. (*Id.*)

B. Notification and post-termination issues.

58. Noffsinger's employment was terminated on June 15, 2022. (Noffsinger depo. at 299 ln 16-18.) He was notified in a meeting attended by Colin Luke, Courtney and HR Director Barbara Estes. (Courtney dec. ¶ 36.) Luke told him he was being terminated. (Noffsinger depo. at 302 ln. 20 to 303 ln 7.)

59. After Noffsinger's termination, CRMC continued to employ three Primary care physicians aged 57 or older. (Courtney dec. ¶ 37.) Dr. Carlos Villar was born on September 26, 1961 (Age 60); Dr. John Morgan was born on November 4, 1964 (Age 57); and, Dr. Richard Gonzalez was born on November 9, 1964 (Age 57). (*Id.*) CRMC did not replace Noffsinger. (*Id.*)

60. On August 19, 2022, Noffsinger filed an EEOC Charge. (Noffsinger depo. Ex. 5.) He claimed Dr. Shadeem Alam said: "I hear you are about to retire."

(*Id.* at 0082.) Alam has no managerial authority whatsoever at CRMC and was not involved in the termination decision. (Courtney depo. ¶ 39.)

61. Noffsinger's charge also references a management meeting. (Noffsinger dep. Ex. 5 at 00082.) Noffsinger does not know when this meeting was held (Noffsinger depo. at 277 ln. 14 to 278 ln 11) or who attended. (*Id.* at 286 ln 20-23.) But, Graves allegedly told Noffsinger he was "safe" because his name wasn't mentioned. (*Id.* at 286 ln 4-8.) That tells Noffsinger "they had already made a decision I was not going to be there." (*Id.* at 257 ln 21-23.) Graves wasn't involved in the discussions on business changes in June of 2022. (Courtney dec. ¶ 40.)

62. Noffsinger's EEOC charge says all internists were invited to participate in CRMC's marketing for the primary care practice, but not him. (Noffsinger depo. Ex. 5 ¶ 7.) On January 18, 2022, CRMC's director of marketing sent an e-mail to every Primary Care doctor notifying them of the start of a PR campaign and asking them to answer questions for social media. (Courtney dec. ¶ 42 and Ex. M at 02632.) A follow-up e-mail was sent on January 28. (*Id.* at 2631.) On February 4, the director of marketing notified Graves and Courtney that all providers except Noffsinger, Gonzalez and Nicole Mangum had replied. (*Id.* at 02630.) Noffsinger agrees it would be reasonable to include doctors in the campaign if they replied to the e-mail. (Noffsinger depo. at 244 ln 18 to 245 ln 7.)

63. Noffsinger's charge also claimed younger providers were given "credentials" for new software called iOrder. (Noffsinger depo. Ex. 5 at 083 ¶ 8.) iOrder was a Beta-test software which CRMC provided to a limited number of physicians. (Courtney dec. ¶ 43.) At the conclusion of Beta-testing, CRMC decided that it would not deploy iOrder throughout the Hospital. (*Id.*) Noffsinger was not selected for the Beta-test because of his difficult nature and his frustrations when dealing with computer- related issues, including text messages to Land on October 10, 2021 (Land dec. ¶ 37 and Ex. C at 2835), December 30, 2021 (*id.* ¶ 38 and Ex. C at 2850) and March 20, 2022. (*Id.* at 2853.) On at least one occasion, he also refused help from CRMC's help desk and hung up on a call with the help desk. (Courtney dec. ¶ 43 and Ex. N at 2624.)

64. Courtney and Land received numerous reports from Graves about Noffsinger yelling at nurses and other staff. (Courtney dec. ¶ 15; Land dec. ¶25.)

STATEMENTS OF DISPUTED FACTS

65. Noffsinger was terminated for two reasons: profitability and professionalism. (Courtney dec. ¶ 32.)

66. Noffsinger exhibited a demanding nature that made it difficult to work with him. (Courtney dec. ¶ 4; Land dec. ¶ 12.)

67. Noffsinger's preferred method of communication was by telephone. (Courtney dec. ¶ 15; Land dec. ¶25.) He would regularly call Courtney and Land to

berate them about some perceived issue with the Primary Care practice or the hospital. (*Id.*)

68. In virtually every aspect of his employment, Noffsinger was unprofessional. (Courtney dec. ¶35.)

DISCUSSION OF RELEVANT LEGAL AUTHORITIES

I. Noffsinger faces an increased burden to prove age discrimination.

On June 6, 2023, Courtney was 46 years old, Donaldson was 59 and Clements was 65. (Courtney dec. ¶¶ 3, 7.) Because those decision-makers were over 40, Noffsinger faces a greater burden in showing that they were motivated by age discrimination. *See Moore v. Ala. Dep't of Corr.*, 137 Fed. Appx. 235, 239 n.4 (11th Cir. 2005) (“Where decision-makers are also members of a protected class, the plaintiff faces a greater burden.”); *Vahey v. Phillips Elec. North Amer. Corp.*, 461 Fed. Appx. 873, 875 n.5 (11th Cir. 2012)(“greater burden” where decision makers were 44 and 46).

II. Noffsinger cannot establish age discrimination under *McDonnell Douglas*.

A. Noffsinger was not replaced by a substantially younger person.

“In an ADEA case involving discharge, demotion, or failure to hire, a plaintiff may establish a prima facie case by showing: (1) that he was a member of the protected group of persons between the ages of forty and seventy; (2) that he was subject to adverse employment action; (3) that a substantially younger person filled

the position that he sought or from which he was discharged; and (4) that he was qualified to do the job for which he was rejected.” *Turlington v. Atlanta Gas Light Co.*, 135 F.3d 1428, 1432 (11th Cir.1998).

Noffsinger’s position was not filled by a substantially younger person. In fact, it was not filled at all. (Courtney dec. ¶ 37.) Thus, Noffsinger can’t satisfy his prima facie burden. *See Hudson v. Shaw Env't & Infrastructure, Inc.*, 267 F. App'x 892, 893 (11th Cir. 2008)(affirming summary judgment because plaintiff not replaced).

B. Noffsinger cannot rebut the reasons for termination.

Even if Noffsinger could state a prima facie case of discrimination, he cannot rebut CRMC’s legitimate, nondiscriminatory reasons for termination. “A reason cannot be proved to be a pretext for *discrimination* unless it is shown *both* that the reason was false, *and* that discrimination was the real reason.” *Akridge v. Alfa Ins. Cos.*, 93 F.4th 1181, 1196 (11th Cir. 2024)(emphasis in original). “[T]he pretext inquiry centers on the employer's beliefs, not the employee's beliefs and, to be blunt about it, not on reality as it exists outside the decision maker's head.” *Id.* “[A] plaintiff must produce sufficient evidence for a reasonable factfinder to conclude that each of the employer's proffered nondiscriminatory reasons is pretextual.” *Chapman v. AI Transp.*, 229 F.3d 1012, 1037 (11th Cir. 2000).

Noffsinger was terminated for two reasons: profitability and professionalism. (Courtney dec. ¶ 32.) CRMC expects Noffsinger’s response will focus on

profitability. Noffsinger wants to define himself as the most “profitable” of CRMC’s primary care doctors. In his view, he saw the most patients and generated the most RVUs, so he must have been the most profitable. That misses the point.

CRMC doesn’t judge profitability based on revenue generation. (Courtney dec. ¶ 32.) Indeed, federal laws like the Stark law and Antikickback Statute are designed to deter providers from focusing on maximization of revenue. (*Id.*) That’s why CRMC doesn’t measure revenue generated by individual physicians. (*Id.*) Instead, as a non-profit, rural healthcare provider CRMC focuses on providing the best services at the best cost to patients. (*Id.*) To do that, CRMC has to generate revenue to pay its bills and stay open. (*Id.*)

And, under that standard, Noffsinger was unprofitable in two ways. (Courtney dec. ¶ 33.) His repeated and unapologetic refusal to complete patient records in a timely manner impacted cash flows at CRMC. (*Id.*) Hundreds of bills were delayed because he wouldn’t complete his charts. (*Id.*) While CRMC did not quantify the impact of those delays, they were unacceptable, particularly in June of 2022 when CRMC knew that its 2021-22 fiscal year was going to end poorly. (*Id.*)

Noffsinger’s coding practices were also unprofitable for the hospital. (Courtney dec. ¶ 34.) While providers are expected to accurately bill in 90% of their files, he was at the opposite end of the spectrum -- overbilling more than 70% of the time. (*Id.*) As a result, CRMC lost money. (*Id.*) It had to pay back money for the

cases where Noffsinger overbilled and it had to spend time, money and labor re-entering the correct charges. (*Id.*) CRMC was paying Noffsinger for RVUs, but then returning money to the government for his overbilling. (*Id.*) But, Noffsinger still got to keep his overbilled bonus money. (*Id.*) That's one of the reasons Courtney recommended changing to a percentage of actual collections. (*Id.*)

Even if this Court finds that profitability is a false reason for termination. Noffsinger cannot rebut CRMC's second reason for termination -- professionalism. In virtually every aspect of his employment, Noffsinger was unprofessional. (Courtney dec. ¶35.) He was accused of inappropriate conduct by former nurses, counseled on ensuring that he conducted examinations with chaperones, berated VRC employees and repeatedly berated and threatened CRMC employees. Almost certainly, Noffsinger will deny or minimize this conduct. But, he can't refute the mountain of documentation and text messages showing exactly how Courtney, Land and Graves viewed him. And, at the end of the day that's all that matters -- reality as it existed inside Lisa Courtney's head as she discussed Noffsinger with Clements and Donaldson on June 6, 2022. *Akridge*, 93 F.4th at 1196. That reality is perfectly encapsulated in her May 4, 2021 text message: "Stupid Noffsinger." (Land dec. Ex. D at 2965.) That's not age discrimination. Instead, it shows that CRMC was motivated to terminate Noffsinger because of the way he treated others.

III. Noffsinger cannot present a “convincing mosaic” of discrimination.

Noffsinger may also attempt to demonstrate that a “convincing mosaic” of evidence supports his discrimination claim. *Ismael v. Roundtree*, 161 F.4th 752, 761-63 (11th Cir. 2025). “A plaintiff may establish a convincing mosaic by pointing to evidence that demonstrates, among other things, (1) suspicious timing, ambiguous statements, or other information from which discriminatory intent may be inferred, (2) systematically better treatment of similarly situated employees, and (3) pretext.” *Jenkins v. Nell*, 26 F.4th 1243, 1250 (11th Cir. 2022). Regardless of the type of evidence proffered, the record must permit the inference of a “causal link” between the “discriminatory animus” and the “discharge or other significant change in the terms or conditions of employment.” *Lewis v. City of Union City*, 934 F.3d 1169, 1196 (11th Cir. 2019). Indeed, the plaintiff always has the burden of persuasion “to proffer evidence sufficient to permit a reasonable fact finder to conclude that discriminatory animus was the ‘but-for’ cause of the adverse employment action.” *Sims v. MVM, Inc.*, 704 F.3d 1327, 1332 (11th Cir. 2013). Noffsinger simply does not possess any evidence to establish that he was terminated because of his age.

A. There is no suspicious timing

There is no suspicious timing. The timing of Noffsinger’s termination relates to one thing -- CRMC’s business planning in the face of poor year-end financials.

B. Dr. Alam’s statement about retiring does not establish that CRMC discriminated.

The only statement made by anybody remotely related to Noffsinger’s age was made by Dr. Shadeem Alam on Alam’s first day of work. (Noffsinger depo. at 67 ln 3.) Alam allegedly said: “I hear you’re about to retire.” (*Id.*) But, Noffsinger never asked Alam who told him that. (*Id.* at 68 ln 5-15.) Even so, Alam was not involved in the termination decision and “comments by non-decisionmakers do not raise an inference of discrimination, especially if those comments are ambiguous.” *Mitchell v. USBI Co.*, 186 F.3d 1352, 1355 (11th Cir. 1999).

C. There is no systematically better treatment of other employees.

In a convincing-mosaic case, the Court may consider relevant evidence about similarly situated employees, even if those employees are not “strict comparators” at the prima facie stage. *Akridge*, 93 F.4th at 1198. Even so, Noffsinger has no evidence of comparators whatsoever. There is no other employee who delayed completion of patient records, overbilled and engaged in unprofessionalism anywhere close to Noffsinger’s degree.

D. There is no other evidence of age discrimination.

Noffsinger’s other evidence doesn’t do anything to show age discrimination. His EEOC charge points to a meeting on an unknown date with unknown participants from which Graves drew the conclusion that he was “safe.” But, that doesn’t correlate to age discrimination. Instead, at best, as Noffsinger put it: “they

had already made a decision” Yet, it doesn’t shed light on *why* these unknown people made their decision. It would require speculation to say that he was not wanted because of age, instead of profitability and professionalism.

Next, Noffsinger’s EEOC charge points to CRMC’s marketing campaign, which supposedly included all physicians but excluded him. The reality is that Noffsinger didn’t reply to the e-mail inviting him to be part of the marketing campaign. (Courtney dec. Ex. M.) Today, he admits that it would be reasonable for CRMC to include any physicians in the campaign if they replied to the e-mail. (Noffsinger depo. at 244 ln 18 to 245 ln 7.)

Finally, Noffsinger suggests that the decision to exclude him from Beta-testing of iOrder may have been because of his age. But, Noffsinger was not selected for that Beta test because of his difficult nature and his demonstrated frustrations when dealing with computer-related issues. (Courtney dec. ¶ 43.)

E. There is no evidence of pretext.

As noted above in discussing the *McDonnell-Douglas* analysis, Noffsinger cannot prove pretext. The same analysis applies in the convincing mosaic analysis. *See Akridge*, 93 F.4th at 1198 (referencing *McDonnell-Douglas* analysis in finding not pretext in convincing mosaic analysis).

CONCLUSION

Dr. Hans Noffsinger was costing CRMC money and being unprofessional in the process. He also happened to be 66 years old. And, at the end of the day, that's the only evidence he possesses to support his age discrimination claim. But, that's not enough. Noffsinger has to show that he was terminated *because* he was 66. He can't do that. Instead, CRMC took the sensible step of ending its relationship with a troublesome employee. Accordingly, this Court should grant summary judgment.

Respectfully submitted this the 5th day of March, 2026.

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CERTIFICATE OF SERVICE

I certify that I have served a copy of this pleading upon counsel for the Plaintiff by utilization of the Court's electronic filing system, with service to:

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Done this the 5th day of March, 2026.

By: /s/ Robert C. Lockwood

Of Counsel