

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

AMANDA L. MCCORMICK,

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Plaintiff,

)

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v.

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Case No.: 5:24-cv-00820 HDM

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CULLMAN REGIONAL

)

MEDICAL CENTER,

)

)

Defendant.

)

CULLMAN REGIONAL MEDICAL CENTER'S REDACTED
CORRECTED BRIEF IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

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TABLE OF CONTENTS

<u>INTRODUCTION</u>	4
<u>STATEMENT OF UNDISPUTED RELEVANT MATERIAL FACTS</u>	4
I. Amanda McCormick’s hiring and assignment to the Cardiology Clinic	4
II. Schinley Land’s initial interactions with McCormick	5
III. McCormick’s 2021 performance evaluation	6
IV. McCormick avoids termination during RIFS in 2022	7
V. Meetings between Schinley Land and McCormick	9
VI. The decision to conduct a RIF in March 2023	11
VII. Other Clinic Nurses employed by CRMC in 2023	11
VIII. Land’s decision to terminate McCormick but not other nurses	12
IX. Termination of McCormick’s employment	13
X. Continuation of duties after McCormick’s Termination	14
<u>DISCUSSION OF RELEVANT LEGAL AUTHORITIES</u>	15
I. Summary judgment analysis	15
A. The general summary judgment analysis in discrimination claims	15
B. Analysis of ADEA claims	16
C. McCormick’s increased burden	18

II.	McCormick cannot establish a <i>prima facie</i> case of age discrimination under <i>McDonnell Douglas</i>	19
A.	McCormick was not replaced by a substantially younger employee.....	19
B.	McCormick cannot show that CRMC intended to discriminate on the basis of age.....	21
III.	McCormick cannot rebut CRMC’s legitimate, nondiscriminatory reason for terminating her employment.	22
A.	McCormick was selected for the RIF because Schinley Land determined McCormick was performing clerical duties that could be absorbed by other employees.	23
B.	McCormick’s comparators are not similarly situated.	25
IV.	McCormick cannot present a “convincing mosaic” of discrimination.....	26
A.	Suspicious timing	29
B.	Ambiguous statements.....	30
C.	Systemically better treatment of similar employees.	31
D.	Pretext	32
E.	Conclusion.....	32
<u>CONCLUSION</u>		32
<u>CERTIFICATE OF SERVICE</u>		33

INTRODUCTION

Amanda McCormick believes she was included in a Reduction in Force at Cullman Regional Medical Center (“CRMC”) because she was 53 years old. In reality, McCormick was the only Clinic Nurse under the supervision of Schinley Land who was not primarily performing the duties of a Clinic Nurse. Instead, McCormick’s was coordinating CRMC’s Pacemaker Clinic. And that duty could be performed by someone who was not a nurse. Indeed, the Pacemaker Clinic duties were reassigned to a 61-year-old non-nurse, Glenda Pelfrey. Thus, McCormick’s only evidence of age discrimination is that she was the oldest Clinic Nurse employed by CRMC and she was terminated. But, that’s simply not enough to prove age discrimination. Accordingly, this Court should grant summary judgment.

STATEMENT OF UNDISPUTED RELEVANT MATERIAL FACTS

I. Amanda McCormick’s hiring and assignment to the Cardiology Clinic.

1. Amanda McCormick is a Registered Nurse who was born on [REDACTED] [REDACTED]. (Doc. 25-16 at 2.) She commenced employment with CRMC on June 11, 2018. (Doc. 25-13 at 6, pg 19 ln 12-19 and Doc. 25-14 at 1.)

2. On April 13, 2020, McCormick transferred to CRMC’s Cardiology Clinic. (Doc. 25-13 at 9, pg. 30 ln 16 to 31 ln 4 and Doc. 25-14 at 6.) Initially,

McCormick did a little bit of everything. (Doc. 25-13 at 18, pg. 65 ln. 6 to 11.)

Then, she assisted Dr. Edward Mahan. (*Id.* pg. 59 ln. 12 to 15.)

3. Eventually, McCormick started working with CRMC's Pacemaker Clinic and helping with new patient referrals. (*Id.* pg. 58 ln 20 to 59 ln.3.)

II. Schinley Land's initial interactions with McCormick.

4. Schinley Land was hired as CRMC's Executive Director of Physician Services in April of 2021. (Doc. 25-1 at 1 ¶ 2.) Land directly supervises each of the medical practices owned and operated by CRMC, including the Cardiology Clinic. (*Id.* at 1 ¶ 3.) Land's date of birth is October 4, 1975. (*Id.* at 2 ¶ 5.)

5. One of McCormick's primary duties was to manage and schedule referrals of patients from other providers to the Cardiology Clinic. (*Id.* ¶ 7)

6. In October of 2021, Land became concerned because of a backlog of patients on the Cardiology Clinic's referral list. (Doc. 25-1 at 2 ¶ 8.) The referral list is a list of individuals waiting for an appointment who have been referred by another provider. (*Id.*) Some patients had been on the list waiting to schedule an appointment for more than a year, which is an unacceptable delay. (*Id.*)

7. Land talked with McCormick about the referral delays. (Doc. 25-1 at 3 ¶ 9.) While McCormick offered an explanation, Land still did not believe the backlog was being addressed with the urgency she expected. (*Id.*)

8. On October 25, 2021, Land sent an e-mail to McCormick which made clear that “patients languishing on a list of referrals is not appropriate.” (Doc. 25-2 at 1.) She also required McCormick to complete a weekly report to document her work attempting to reduce the list of outstanding referrals. (*Id.*)

9. The October 25, 2021 e-mail also referenced a discussion between Land and McCormick on September 17, 2021. (Doc. 25-2 at 1.) During that discussion, McCormick shared with Land that she had taken over responsibilities in the Pacemaker Clinic. (*Id.*) Those duties required McCormick to submit bills and charges to payors for work done at the Pacemaker Clinic. (*Id.*)

10. There was a backlog of charges for submission, but McCormick claimed she needed training on submitting them. (*Id.*) Land had directed her to get training immediately and have charges complete by the end of September. (*Id.*)

11. McCormick responded that she had been trying to get the necessary training. (Doc. 25-2 at 2.) But, she also acknowledged that the charges were not completed by the end of September. (*Id.*) McCormick also addressed the referral backlog and the weekly report. (*Id.*)

III. McCormick’s 2021 performance evaluation.

12. McCormick received an evaluation on December 17, 2021. (Doc. 25-3.) McCormick’s overall score on the evaluation was a “3,” which is satisfactory. (Doc. 25-3 at 1.)

13. The evaluation contained the following comments: “She puts patients first sometimes to a fault which will cause her to get off track with time management”; “Amanda needs to work on communicating more clearly with other team members and to stay focused on the task at hand”; “Within this year, she has taken responsibilities upon herself to help the practice but allowed assigned duties to lag”; “Even after she was given guidance by the director to get the necessary training and get them completed, she still allowed the charges to remain undone.”

(Doc. 25-3 at 1.) The evaluation also said:

Still not giving the requested informaton on the weekly scheduling reports, despite numerous efforts. Scheduling efficiency is poor. While she makes great efforts to accommodate the patient, she has not taken the initiative to create better processes for the intake of patient referrals. This has caused re-work, patients waiting for appts for over a year and frustrations for our referral sources as patients cannot get the access they need.

(Doc. 25-3 at 4.)

IV. McCormick avoids termination during RIFS in 2022.

14. In 2022, CRMC was reviewing its fiscal effectiveness. (Doc. 25-1 at 4 ¶ 12; Doc. 25-10 at 2 ¶ 7.) This included potential ways to save costs. (Doc. 25-1 at 4 ¶ 12.) As a result, CRMC implemented a reduction-in-force in June of 2022. (*Id.*)

15. As part of the RIF, Land recommended cost-savings measures in CRMC’s physician practices. (*Id.* ¶ 13.) Thus, Land recommended termination of

McCormick's employment to CRMC's Chief Financial Officer, Nesha Donaldson, and Vice-President of Physician Services, Lisa Courtney. (*Id.*)

16. As a result, McCormick was scheduled to be terminated from employment on June 17, 2022. (*Id.* ¶ 14.) On the morning of June 17, however, Courtney suggested that the termination be delayed until Monday, June 20. (Doc. 25-1 at 4 ¶ 15 and Doc. 25-4.)

17. McCormick was not terminated from employment on June 20, 2022. (Doc. 25-1 at 4 ¶ 16.)

18. CRMC continued to engage in cost-savings measures. (*Id.* ¶ 17.) And, another reduction-in-force was conducted in October of 2022. (*Id.*) Land was asked to recommend staffing changes in CRMC's clinics. (Doc. 25-1 at 4-5 ¶ 18.)

19. On October 20, 2022, Land submitted an e-mail with a list of personnel recommendations in 5 Clinics. (*Id.* and Doc. 25-5.) The recommendation for the Cardiology Clinic included downgrading McCormick's position with McCormick leaving or taking a pay cut. (Doc. 25-5.)

20. Thereafter, Human Resources Director Barbara Estes and Land met with McCormick and offered a move to a full-time position as a Registered Nurse in the main hospital. (Doc. 25-1 at 5 ¶ 20.) That position required longer hours and harder work than a Clinic Nurse. (*Id.*; Doc. 25-13 at 29, pg. 109 ln 22 to 110 ln 1.)

21. McCormick made an emotional plea to keep her position as a Clinic Nurse. (Doc. 25-1 at 5 ¶ 20; Doc. 25-13 at 29, pg. 111 ln 12-15.) Land recalls that McCormick did not want to work in the main hospital. (Doc. 25-1 at 5 ¶ 20)

22. Estes and Land then conferred with Courtney and Donaldson regarding McCormick's desire to remain full-time at the Cardiology Clinic. (Doc. 25-1 at 5 ¶ 21.) They decided to justify McCormick's continued assignment by assigning her to obtain precertification for tests ordered in the Clinic. (Doc. 25-1 at 5-6 ¶ 21.)

23. Before that, precertifications were usually performed by CRMC's Patient Access, Communications and Resource Scheduling Office. (Doc. 25-1 at 6 ¶ 23.) On January 25, 2023, Katie Walker, CRMC's Patient Access, Communications and Resource Scheduling Manager e-mailed Land and Glenda Pelfrey, the Cardiology Clinic's practice manager. (*Id.* and Doc. 25-6.) Walker noted that McCormick was calling her office "every time she is having to do a precert for those that she does now and is already overwhelmed." (*Id.*)

V. Meetings between Schinley Land and McCormick.

24. McCormick met with Land two or three times. (Doc. 25-13 at 45, pg. 176 ln. 3-5.) In each meeting, Land expressed concerns about the quality of job that McCormick was doing, including time management, quickness of work and work on the Cardiology Clinic's referral list. (*Id.* pg. 176 ln 6-22.)

25. Land never made any comments that indicated her criticism was because McCormick was over age 50. (Doc. 25-13 at 46, pg. 177 ln 7-11.) Nobody in management ever said anything about her age. (*Id.* at 178 ln 17-19.)

26. McCormick typed a description of her job, which she called “Device Clinic Coordinator.” (Doc. 25-13 at 51, pg. 199 ln. 15-20 and Doc. 25-14 at 66.) She gave that to Land in the Fall of 2022. (Doc. 25-13 at 37, pg. 141 ln 4-13.)

27. McCormick recorded that the Pacemaker Clinic had 25 scheduled patients on its most-recent occurrence. (*Id.* at 56, pg. 219 ln 3-14.) “[T]hat would be a pretty full clinic” day. (*Id.* pg. 219 ln 11-14.) The Clinic was conducted two-and-a-half days a month. (Doc. 25-13 at 33, pg. 125 ln 20 to 126 ln 5.)

28. McCormick was issued a satisfactory employment evaluation for the 2022 work year on March 15, 2023. (Doc. 25-1 at 6 ¶ 24 and Doc. 25-7.) Even so, it continued to reflect concerns with her pace of work: “She is very detailed which tends to slow her down when trying to complete a job”; “She is very empathetic with patients and tries to accommodate their needs. This will sometimes get her off schedule”; “Amanda needs to work on her time management. She needs to try and stay focused with the job at hand.” (Doc. 25-7 at 8.)

VI. The decision to conduct a RIF in March 2023.

29. On March 20, 2023, Land met with CRMC's CEO, James Clements, Donaldson and Courtney. (Doc. 25-1 at 6 ¶ 25.) They discussed the need for productivity adjustments to address increased costs and expenses at CRMC. (*Id.*)

30. On March 21, Land sent an e-mail to Courtney and Donaldson with proposed staffing changes at 9 clinics. (Doc. 25-1 at 7 ¶ 26 and Doc. 25-8.) Among others, Land recommended termination of McCormick's position. (*Id.*) The total savings from Land's changes was \$522,812.80. (Doc. 25-1 at 7 ¶ 26.)

31. Donaldson developed an "Action Plan" reflecting anticipated cost savings and revenue growth at CRMC. (Doc. 25-10 at 3 ¶ 9 and Doc. 25-11.) That plan predicted cost savings of about \$2,500,000.00 with changes in staffing. (*Id.*)

32. Donaldson also developed an "Action List" which detailed the specific staffing changes that would occur as part of CRMC's RIF. (Doc. 25-10 at 3 ¶ 10 and Doc. 25-12.) Donaldson incorporated Land's recommended staffing changes into the Action List. (*Id.* ¶ 12.) In total, the Action List details approximately 29 employment decisions that would save the Hospital \$2,506,651.00. (*Id.* ¶ 13.)

VII. Other Clinic Nurses employed by CRMC in 2023.

33. When Land made her recommendations, CRMC employed eleven (11) people in the position of Clinic Nurse, plus McCormick. (Doc. 25-1 at 7-8 ¶ 27.)

34. Of those eleven individuals, Jessica Cagle and Chasity Tate worked at CRMC's Hartselle facility. (Doc. 25-1 at 8 ¶ 28.) Land did not have any managerial responsibilities for the Hartselle facility. (*Id.*) So, she did not consider whether to terminate Cagle or Tate when she made employment recommendations. (*Id.*)

35. Tammy Watson is a Registered Nurse who provided assistance on an "as needed" basis throughout the hospital, including CRMC's clinics. (Doc. 25-1 at 8 ¶ 29) Watson's work was sporadic and she would frequently go a month or two without working. (*Id.*) She was not a full-time employee and did not receive benefits. (*Id.*) Because Watson was not a full-time employee, Land did not consider her in connection with Land's recommendations on March 21, 2023. (*Id.*)

36. The other eight (8) individuals (Jessica Gable, Holly Elliott, Melanie Hamm, Christy Fisher, Naomi Cooper, Meg Morrow, Elizabeth Bluebaugh and Lauren Dixon) worked directly in a one-on-one relationship with a specific physician and his/her patients on a daily basis. (Doc. 25-1 at 8-9 ¶ 30.)

VIII. Land's decision to terminate McCormick but not other nurses.

37. Land determined that each of the 8 Clinic Nurses was working directly and primarily with patients and physicians and were needed to continue efficient operations of their Clinics. (Doc. 25-1 at 9 ¶ 31.)

38. Of those 8, Lauren Dixon was the only other Registered Nurse at the Cardiology Clinic. (Doc. 25-1 at 9 ¶ 32.) Dixon's assignment was to work with Dr.

Sampath Singireddy. (*Id.*) Dixon provided clinical nursing services to each patient who had an appointment each day with Dr. Singireddy. (*Id.*)

39. McCormick was not assigned to work directly with a physician and she did not have face-to-face interaction with patients on a daily basis, like Dixon. (*Id.*)

40. Other nurses were employed by CRMC in the Cardiology Clinic. (Doc. 25-1 at 9 ¶ 33.) Other than Dixon, they were not Registered Nurses. (*Id.*) Each of the others worked directly with a physician and his patients each day. (*Id.*)

41. Land included McCormick in her list of recommended employment actions because she determined McCormick was the only Registered Nurse working at a Clinic that Land supervised who was not performing duties directly with a physician and his/her patients on a daily basis. (Doc. 25-1 at 10 ¶ 34.)

42. Land determined that McCormick's duties in the Cardiology Clinic were primarily clerical and McCormick directly worked with a limited volume of patients during the two-and-a-half days the Pacemaker Clinic was conducted. (*Id.*) In Land's judgment, McCormick's duties could be assigned to other employees. (*Id.*) As a result, McCormick could be terminated from employment and CRMC would receive commensurate cost savings with that termination. (*Id.*)

IX. Termination of McCormick's employment

43. On March 31, 2023, McCormick met with Land and Estes, and Estes told her that her employment was terminated. (Doc. 25-1 at 10 ¶ 35.)

44. Prior to the meeting, Estes prepared a memorandum for McCormick that stated: “Cullman Regional has made the decision to eliminate a clinic RN position due to low volume in the CV Clinic and not working at the scope of an RN.” (Doc. 25-1 ¶ 36 and 25-9.) The memo also contained a chart of 6 unnamed Clinic RNs, their ages and whether they were “retained” or “separated.” (Doc. 25-9.)

45. Estes is no longer employed by CRMC. (Doc. 25-1 at 10 ¶ 36.) Land has reviewed CRMC employees who were Clinic RNs on March 30, 2023. (Doc. 25-1 at 11 ¶ 37.) Land believes the chart is referencing: Jessica Cagle, age 33, Clinic RN - Hartselle Specialty Clinic; Jessica Gable, age 25, Clinic RN - Rheumatology; Holly Elliott, age 41, Clinic RN - Orthopedic Surgeon; Melanie Hamm, age 50, Clinic RN - Orthopedics; Amanda McCormick, age 53, Clinic RN - Cardiology Clinic; and, Christy Fisher, age 35, Clinic RN - Orthopedics. (*Id.*)

46. Each of the retained Clinic RNs worked in different departments with different supervisors and physicians from McCormick. (Doc. 25-1 at 11 ¶ 38.)

IX. Continuation of duties after McCormick’s termination.

47. CRMC did not hire anybody to replace McCormick. (Doc. 25-1 at 11 ¶ 39.) Instead, Land assigned McCormick’s Pacemaker Clinic duties to Glenda Pelfrey, who is not a nurse. (Doc. 25-1 at 12 ¶ 40.) Pelfrey’s birth date is October 24, 1961, so she was 61 years old on March 30, 2023. (Doc. 25-22 at 1 ¶ 3.)

48. Pelfrey performed all of McCormick’s duties with the Pacemaker Clinic, in addition to Pelfrey’s own duties as the Clinic practice manager, through May 19, 2025. (Doc. 25-1 at 12 ¶ 41.) On or about May 19, 2025, CV Remote Solutions began doing some of McCormick’s former Pacemaker Clinic duties. (*Id.*)

49. CV Remote Solutions manages remote device submissions (scheduled and unscheduled). (Doc. 25-1 at 12 ¶42.) Pelfrey continues to perform her own management duties as practice manager. (*Id.*) She also continues to do McCormick’s former duties which require interaction with patients and device manufactures on Pacemaker Clinic days; and, billing for services rendered at the Clinic. (*Id.*)

DISCUSSION OF RELEVANT LEGAL AUTHORITIES

I. Summary judgment analysis.

A. The general summary judgment analysis in discrimination claims.

The Age Discrimination in Employment Act (“ADEA”) protects employees who are at least 40 years of age. 28 U.S.C. § 631(a). “In an unlawful age discrimination case, the plaintiff bears the ultimate burden of proving by a preponderance of the evidence that age was a determining factor in the employer’s decision to dismiss [her].” *Zaben v. Air Prods. & Chemicals, Inc.*, 129 F.3d 1453, 1457 (11th Cir. 1997). At the summary judgment stage, there are two ways that an employee can satisfy her burden of demonstrating discrimination. *See Ismael v.*

Roundtree, 161 F.4th 752 (11th Cir. 2025). She can satisfy the traditional *McDonnell Douglas* burden-shifting scheme:

1. First, the plaintiff demonstrates a prima facie case, which may be done by showing: (i) the plaintiff is in a protected group; (ii) the plaintiff was well qualified; (iii) the plaintiff suffered an adverse employment action; and (iv) the plaintiff was treated less favorably than similarly situated employees outside of the plaintiff's protected group.
2. Second, the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason for the adverse action.
3. Third, if the employer provides an adequate reason, the plaintiff has the opportunity to demonstrate that the employer's proffered rationale is pretextual.

Ismael, 161 F.4th at 759.

Alternatively, if the plaintiff cannot satisfy a prima facie case under *McDonnell Douglas*, a trial court “should advance directly to the convincing mosaic inquiry.” *Id.* at 765. Under the “convincing mosaic,” a plaintiff “must produce enough evidence, on her own and without any helpful evidentiary burdens or presumptions, to demonstrate a material issue of triable fact.” *Id.* A plaintiff is “afforded the opportunity to confront her burden of proof head-on” and given an “opportunity at summary judgment to directly create an inference of discrimination or retaliation” *Id.* at 763.

B. Analysis of ADEA claims

Under *McDonnell Douglas*, the traditional prima facie case for ADEA claims is: “To make a prima facie case of age discrimination, the employee must show: (1)

he was a member of the protected group between the age of forty and seventy; (2) he was subject to an adverse employment action; (3) a substantially younger person filled the position from which he was discharged; and (4) he was qualified to do the job from which he was discharged.” *Liebman v. Metropolitan Life Ins. Co.*, 808 F.3d 1294, 1298 (11th Cir. 2015).

A different *prima facie* case is used in *some* Reduction-in-Force cases. Under the RIF analysis, a plaintiff “may establish a prima facie case by showing (1) she is a member of a protected class; (2) she was terminated; (3) she was qualified to assume another position at the time of her termination; and, (4) there is evidence from which a reasonable factfinder could conclude the employer intended to discriminate against her in reaching the employment decision at issue.” *Crisman v. Fla. Atl. Univ. Bd. of Trustees*, 659 F. App'x 572, 578 (11th Cir. 2016); *Coutu v. Martin Cnty. Bd. of Comm'rs.*, 47 F.3d 1068, 1073 (11th Cir. 1995). That modified test only applies when a position is completely eliminated. *Mazzeo v. Color Resolutions, Intern., LLC*, 746 F.3d 1264, 1270-72 (11th Cir. 2014); *Adams v. Holland*, 824 Fed. Appx. 982, 984-85 (11th Cir. 2020).

“[T]he ADEA does not mandate that employers establish an interdepartment transfer program during the course of a RIF, or impose any added burden on employers to transfer or rehire laid-off workers in the protected age group as a matter of course.” *Ayala v. Sheriff, Broward Cty.*, 594 Fed. App'x 602, 603 (11th Cir. 2015).

Indeed, a court should not sit as a “super-personnel department that re-examines an entity's business decisions.” *Alphin v. Sears, Roebuck & Co.*, 940 F.2d 1497, 1501 (11th Cir.1991). Courts should not “second-guess the wisdom of an employer's business decisions—indeed the wisdom of them is irrelevant—as long as those decisions were not made with a discriminatory motive.” *Alvarez v. Royal Atl. Devs., Inc.*, 610 F.3d 1253, 1266 (11th Cir. 2010).

C. McCormick’s increased burden.

Schinley Land made the recommendation to terminate McCormick’s employment. On March 30, 2023, Land was 47 years old. (See Doc. 25-1 at 2 ¶ 5.) Because Land was over 40, McCormick faces a greater burden in showing that Land was 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)(noting “greater burden” where decision makers were 44 and 46); *Edwards v. Virginia Coll., LLC*, No. 2:13–cv–1945–KOB, 2015 WL 5444121 at * (N.D. Ala. Sep. 15, 2015)(discussing difficult burden where “Macon, the decisionmaker, was around 47 in 2012.”); *Swindoll v. Otto Bock Healthcare, LLP*, No. 2:09-cv-1200-AKK, 2010 WL 11564996 at *3 n.3 (N.D. Ala. Jul. 29, 2010)(noting difficult burden where “George, who discharged her, was forty-seven.”)

II. McCormick cannot establish a *prima facie* case of age discrimination under *McDonnell Douglas*.

A. McCormick was not replaced by a substantially younger employee.

McCormick cannot establish a *prima facie* case because she cannot establish that “a substantially younger person filled the position from which [s]he was discharged” *Liebman v. Metropolitan Life Ins. Co.*, 808 F.3d 1294, 1298 (11th Cir. 2015). To the contrary, she was replaced by a substantially *older* person, Glenda Pelfrey.

McCormick might argue that she can use the modified *prima facie* case for RIFs. *See Zaben*, 129 F.3d at 1457. Under the modified, *prima facie* case, an employee is not required to prove replacement by a substantially younger person. But, that modified test only applies when a position is completely eliminated in a RIF. *Mazzeo*, 746 F.3d at 1270-72; *Adams*, 824 Fed. Appx. at 984-85.

In *Mazzeo*, there was a dispute over whether the trial court should have applied the standard *prima facie* case or the RIF modification. *Mazzeo*, 746 F.3d at 1271. Because a RIF occurred, the trial court quite logically applied the RIF modification. Nevertheless, the Eleventh Circuit reversed because the plaintiff’s “position was not eliminated” as part of the RIF. *Id.* Instead, the plaintiff’s job duties were consolidated with those of another retiring employee. *Id.* Then, the consolidated duties were given to a younger employee. *Id.* Under those facts, the Court found that it was

error for the trial court to apply the RIF modification and remanded for application of the standard *prima facie* case. *Id.* at 1272.

The court reached a similar conclusion in *Adams*, 824 Fed. Appx. at 984, and affirmed a trial court's decision not to apply the RIF modification: "the modified *prima facie* test for RIF cases was inapplicable because the City had not eliminated Adams's position as a Property Field Representative and had replaced him with another individual following his termination." *Id.* Indeed, the *Adams* case is similar to McCormick's because "Adams failed to establish a *prima facie* case because the City did not fill his position with a substantially younger person and instead replaced him with someone older." *Id.* at 984-85.

More recently, Judge Manasco also followed *Mazzeo* and declined to apply the RIF modification. *See Jones v. Alfa Mutal Ins. Co.*, No. 2:21-cv-659-AMM, 2024 WL 3952573 (N.D. Ala. Aug. 26, 2024). In *Jones*, Alfa delegated "at least some of [the plaintiffs'] responsibilities to other employees in addition to those employees' own responsibilities, and therefore Alfa replaced them." *Jones*, 2024 WL 3952573 at *5. That's what happened in McCormick's case. Her responsibilities with the Pacemaker Clinic were delegated to Glenda Pelfrey -- therefore McCormick is considered replaced by Pelfrey.

Glenda Pelfrey is substantially older than Amanda McCormick. On March 30, 2023, Pelfrey was 61 years old. (See Doc. 25-22 ¶ 3.) McCormick was 53.

(Doc. 25-16 at 2.) Therefore, McCormick cannot state a *prima facie* case of age discrimination. As a result, this Court's next step should be to consider whether McCormick can establish a "convincing mosaic" of discrimination. *See Ismael*, 161 F.4th at 765.

B. McCormick cannot show that CRMC intended to discriminate on the basis of age.

Even if this Court applied the RIF modification to the *prima facie* case, McCormick could not satisfy the fourth prong -- "evidence from which a reasonable factfinder could conclude the employer intended to discriminate against her in reaching the employment decision at issue." *Crisman v. Fla. Atl. Univ. Bd. of Trustees*, 659 F. App'x 572, 578 (11th Cir. 2016).

To satisfy the last prong, ... the "plaintiff [must] produce some evidence that an employer has not treated age neutrally, but has instead discriminated based upon it. Specifically, the evidence must lead the factfinder reasonably to conclude either that the defendant (1) consciously refused to consider retaining or relocating a plaintiff because of his age, or (2) regarded age as a negative factor in such consideration."

Rowell v. BellSouth Corp., 433 F.3d 794, 798 (11th Cir. 2005).

McCormick possesses no evidence that CRMC consciously refused to retain or relocate her because of her age. Similarly, she has no evidence that CRMC regarded age as a negative factor when including her in the RIF. At most, McCormick possesses evidence that she was the oldest Clinic Nurse at CRMC and she was terminated. That's not enough.

Judge Putnam encountered a similar fact pattern in *Silverio v. Buffalo Rock Co.*, No. 2:09-cv-1914-TMP, 2011 WL 13286697 (N.D. Ala. Aug. 22, 2011). The plaintiff in *Silverio* had more evidence than McCormick. He was the oldest employee terminated in a RIF *and* a non-decisionmaker called him an “old man.” Judge Putnam concluded: “One comment by a non-supervisory co-worker, and the fact that, at age 70, Silverio was the oldest employee at Buffalo Rock, is simply not evidence that his termination was based on age.” *Silverio*, 2011 WL 13286697 at *5. In this case, McCormick’s only evidence is that she was the oldest Clinical Nurse at CRMC. But, that is simply not evidence that her termination was based on age.

Under either the standard analysis or the RIF analysis, McCormick cannot satisfy her prima facie case. Accordingly, this Court should proceed to the convincing mosaic analysis. *See Ismael*, 161 F.4th at 765.

III. McCormick cannot rebut CRMC’s legitimate, nondiscriminatory reason for terminating her employment.

Even if this Court finds that McCormick can establish a prima facie case, she cannot rebut CRMC’s legitimate nondiscriminatory reason for including her in the RIF. “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. McCormick was selected for the RIF because Schinley Land determined McCormick was performing clerical duties that could be absorbed by other employees.

McCormick was included in the March 30, 2023 RIF because Schinley Land recommended it. And, Land made that recommendation because she determined McCormick was the only Clinic Nurse who Land supervised and was not performing duties directly with a physician and interacting, face-to-face with patients on a daily basis. (Doc. 25-1 at 19 ¶ 34.) Land also determined that McCormick's duties in the Cardiology Clinic were primarily clerical and McCormick directly worked with a limited volume of patients during the two-and-a-half days the Pacemaker Clinic was conducted each month. (*Id.*) In Land's opinion, McCormick's duties could be assigned to other employees. (*Id.*)

In response to Land's determination, McCormick might be tempted to argue that her duties were more complex or important than perceived by Land. She might try to say that Land incorrectly perceived that 25 patients per Clinic day did not reflect the true number of patients she worked with. However, such arguments cannot establish pretext:

A plaintiff is not allowed to recast an employer's proffered nondiscriminatory reasons or substitute her business judgment for that of the employer. Provided that the proffered reason is one that might motivate a reasonable employer, an employee must meet that reason head on and rebut it, and she cannot succeed by simply quarreling with the wisdom of that reason.

Alvarez v. Royal Atl. Devs., Inc., 610 F.3d 1253, 1265–66 (11th Cir. 2010).

At the end of the day, McCormick’s beliefs about the importance of her job are irrelevant. *Akridge v. Alfa Ins. Cos.*, 93 F.4th 1181, 1196 (11th Cir. 2024). Instead, the only things that matter are the thoughts inside Schinley Land’s head. *Id.* Land didn’t think that CRMC needed a Registered Nurse running the Pacemaker Clinic and she assigned a non-nurse (Pelfrey) to do that job.

Indeed, any attempt to second-guess Land will run afoul of the Eleventh Circuit’s decision in *Godby v. Marsh USA, Inc.* 346 Fed.Appx. 491 (11th Cir. 2009). *Godby* was a Title VII retaliation case where the plaintiff was terminated as part of a RIF. The reasons for termination in *Godby* were substantially similar to the reasons for terminating McCormick:

Marsh terminated Godby as part of a company-wide RIF to compensate for reduced earnings. *Godby was chosen for the RIF because his salary was higher than other facilities employees doing similar work and his additional responsibilities could be handled by another employee.* These reasons were consistent with the goals of the RIF, which included reducing overall fixed expenses and eliminating positions where employees performed the same or similar duties.

Godby, 346 Fed.Appx. at 494 (emphasis added). The plaintiff in *Godby* argued that his job duties were not redundant and that other employees should have been chosen for the RIF. *Id.* But, the Eleventh Circuit refused to “second-guess the business judgment” of the employer. *Id.* Then, the Court affirmed summary judgment because the plaintiff did not show the employer’s “proffered reasons were false and that a retaliatory motive was the real reason for his termination.” *Id.*

In this case, McCormick cannot second-guess Schinley Land's business determinations. As a result, she cannot show that CRMC's proffered reasons for termination were false and that age was the real reason for termination. Thus, this Court should find that McCormick cannot prove pretext.

B. McCormick's comparators are not similarly situated.

Of course, one well-established method of proving pretext is reliance upon comparators. *Stevenson v. City of Sunrise*, No. 20-12530, 2021 WL 4806722, at *9 (11th Cir. Oct. 15, 2021). But, such comparators must be "similarly situated in all material respects." *Id.* Generally, a "similarly situated" comparator is an employee who "engaged in the same basic conduct (or misconduct) as the plaintiff," was "subject to the same employment policy, guideline, or rule," had the "same supervisor as the plaintiff," and "share[d] the plaintiff's employment or disciplinary history." *Lewis v. City of Union City*, 918 F.3d 1213, 1227-28 (11th Cir. 2019). Ultimately, "a plaintiff and her comparators must be sufficiently similar, in an objective sense, that they 'cannot reasonably be distinguished.'" *Id.* at 1228.

McCormick is not similarly situated to any other employee at CRMC. That's because she was the only Registered Nurse employed in the Cardiology Clinic performing Pacemaker Clinic duties. Certainly, CRMC retained younger Clinic Nurses in other clinics at CRMC, but they all had different supervisors and different

duties from McCormick. Thus, McCormick’s comparator argument will once again boil-down to a single fact -- she was the oldest Clinic Nurse and she was terminated.

But, that’s not enough. A plaintiff made a similar argument in *Tsavaris v. Savannah Law School*, 847 Fed. Appx. 634, 640-41 (11th Cir. 2021). She argued: “pretext follows from the fact that she was the oldest professor at SLS and the only professor that SLS has ever chosen not to renew.” *Id.* at 640. The Court concluded “the logic of [the plaintiff’s] pretext argument seems to be that suspicious circumstances surrounding an employment decision undermine the employer’s proffered explanation for the decision.” *Id.* Such an argument flatly contradicts the principle that “[s]imply introducing evidence of discriminatory animus unconnected to the employer’s proffered reasons is insufficient to establish pretext.” *Id.*

In this case, there are no suspicious circumstances. It’s possible McCormick might argue that termination of the oldest Clinic Nurse is “suspicious” or “discriminatory.” Yet, such an argument won’t establish a connection with Land’s undisputed reasons for termination -- that McCormick wasn’t working as a nurse with a specific physician and his/her patients on a daily basis and that the Pacemaker Clinic duties could be assigned to other employees.

IV. McCormick cannot present a “convincing mosaic” of discrimination.

As discussed above, McCormick cannot satisfy her prima facie case under the *McDonnell Douglas* burden-shifting analysis. But, that does not end the analysis.

Even when a plaintiff cannot satisfy her prima facie case, a trial court must still determine if a “convincing mosaic” of evidence supports a discrimination claim. *See Ismael*, 161 F.4th at 765.

“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*, 934 F.3d at 1196. A “generalized averment” that an employer treated the plaintiff differently than employees outside the protected class cannot establish a convincing mosaic. *Turner v. Florida Prepaid College Bd.*, 522 Fed. Appx. 829, 833 (11th Cir. 2013).

Interestingly, the convincing mosaic analysis appears to be identical to the modified prima facie analysis used in RIF cases. *Gray v. Bd. of Trs. of Georgia Mil. Coll.*, No. 5:21-CV-52 (MTT), 2023 WL 5959428 at *6 n.6 (M.D. Ga. Sept. 13, 2023)(“It could also be said that the modified RIF prima facie case formulation, particularly its fourth element, is just another way of presenting a ‘convincing mosaic’ argument.”). After all, the fourth element of the modified RIF analysis seeks

“evidence from which a reasonable factfinder could conclude the employer intended to discriminate against her in reaching the employment decision at issue.” *Crisman*, 659 F. App'x at 578. Similarly, “[a] ‘convincing mosaic’ of circumstantial evidence is simply enough evidence for a reasonable factfinder to infer intentional discrimination in an employment action—the ultimate inquiry in a discrimination lawsuit. *Tynes v. Fla. Dep't of Juv. Just.*, 88 F.4th 939, 946 (11th Cir. 2023).

As a result, Judge Putnam’s opinion in *Silverio* is just as compelling in the “convincing mosaic” context. *See Silverio v. Buffalo Rock Co.*, No. 2:09-cv-1914-TMP, 2011 WL 13286697 (N.D. Ala. Aug. 22, 2011). The fact that McCormick was the oldest Clinic RN simply does nothing to show that she was terminated *because* she was the oldest Clinic RN.

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). McCormick simply does not possess any evidence to establish that her termination was because of her age. On that issue, the Eleventh Circuit provided a roadmap for the convincing mosaic analysis in *Akridge v. Alfa Insurance Cos.*, 93 F.4th 1181 (11th Cir. 2024).

Akridge was an ADA case where it was undisputed the plaintiff had Multiple Sclerosis and her employer incurred substantial costs in paying for her health care.

By all accounts, she “excelled at her job, with excellent performance reviews.” *Akridge*, 93 F.4th at 1185. When she was terminated from employment, she sued under the ADA. But, the Eleventh Circuit affirmed summary judgment because she could not show she was terminated *because of* her MS and increased healthcare costs. *See Akridge*, 93 F.4th at 1197 (“the inference to be drawn by a jury must be that the employee’s [protected characteristic] was a but-for cause of the employer’s intentional discrimination.”).

Akridge is not explicitly a RIF case. Nevertheless, the employer in *Akridge* asserted it terminated the plaintiff as part of an effort to reduce expenses, which the court found was “evidenced by Alfa’s elimination of (1) two senior loss control representative positions in 2015, (2) three underwriting department positions in 2018 due to automation, (3) ten accounting positions since 2016, and (4) its entire real estate investment department.” *Akridge*, 93 F.4th at 1197. After finding that the plaintiff could establish neither a *prima facie* case nor pretext under *McDonnell Douglas*, the court proceeded to the convincing mosaic.

A. Suspicious timing

First, the *Akridge* court considered the issue of timing and concluded “the timing of the relevant events in this case is anything but suspicious.” *Akridge*, 93 F.4th at 1198. That was because the employee’s MS diagnosis and increased health

costs commenced in 1993, but Alfa continued to employ her “for decades” thereafter. *Id.*

McCormick was not employed by CRMC for decades. But, she *was* a member of the protected class when she was hired in 2018. She was 48 years old at that time. And, CRMC continued to employ her for almost five (5) years thereafter. As *Akridge* put it, “it is hard to understand why [CRMC] would wait” five years to terminate McCormick if it was biased against her age. *Akridge*, 94 F.4th at 1198. Indeed, if CRMC was truly biased against McCormick’s age, it is even more difficult to understand why CRMC did not terminate her during the two prior RIFs in 2022.

B. Ambiguous statements

Next, *Akridge* analyzed “potentially ambiguous statements.” *Akridge*, 94 F.4th at 1198. The plaintiff pointed to statements made by Alfa about rising healthcare costs. *Id.* But, the court found those statements were insufficient to infer discrimination. *Id.* “This is especially true given the absence of any comments, ambiguous or otherwise, to Akridge or others about her healthcare costs.” *Id.*

In this case, McCormick doesn’t even possess generalized statements made by CRMC about age. And, like the plaintiff in *Akridge*, there is a complete “absence of any comments, ambiguous or otherwise,” to McCormick about her age. *Id.*

C. Systemically better treatment of similar employees.

Under the convincing mosaic, a court can consider relevant evidence about similarly situated employees, even if those employees were not “strict comparators” at the prima face stage. *Akridge*, 93 F.4th at 1198. Nevertheless, the court found the plaintiff’s evidence insufficient to infer discriminatory intent. *Id.* Although the plaintiff unquestionably identified non-disabled employees who were retained, those comparators were insufficient because: “(1) Akridge had different job duties; (2) her duties were automated to a greater extent; and (3) Alfa eliminated a significant number of other positions, including several in the underwriting department and the elimination of its entire real estate investment department.” *Id.*

Those distinctions apply almost exactly in McCormick’s case. First, she had different job duties than any other Clinic Nurse. She managed the Pacemaker Clinic. Every other Clinic Nurse supervised by Land worked directly with specific physicians and their patients on a day-to-day basis. (Doc. 25-1 at 10 ¶ 34.) Second, although McCormick’s duties were not “automated” to a greater extent than other Clinic Nurses, they were of a different character. Again, the other Clinic Nurses worked with specific physicians and their patients on a day-to-day basis. In contrast, McCormick worked with about 25 patients per Pacemaker Clinic day, and those days occurred about two-and-a-half days a month. (Doc. 25-1 at 10 ¶ 34; Doc. 25-13 at 56, pg. 219 ln 3-14.) CRMC did not need a Registered Nurse to manage the

Pacemaker Clinic -- a fact reinforced by the assignment of a non-nurse, Glenda Pelfrey, to that duty for more than two (2) years. (Doc. 25-1 at 12 ¶ 41.) Third, CRMC unquestionably “eliminated a significant number of other positions” as part of its CRMC-wide RIF. (Doc. 25-10 at 3¶ 13.) Those job actions saved CRMC more than \$2,500,000 in salaries. (*Id.*)

D. Pretext

On this issue, the *Akridge* court simply noted that the plaintiff failed to prove pretext as part of the *McDonnell Douglas* analysis. *Akridge*, 93 F.4th at 1198. Similarly, as discussed above, McCormick fails to prove pretext.

E. Conclusion

This Court should follow the roadmap laid out by *Akridge*. Like the plaintiff in *Akridge*, McCormick simply has no evidence of suspicious timing, ambiguous statements, adequate comparators or pretext. As a result, she cannot meet her burden of showing that she was terminated *because of* her age. And, this Court should grant summary judgment.

CONCLUSION

Amanda McCormick was 53 years old when she was terminated from employment at CRMC. But, that’s not *why* she was terminated. Instead, CRMC was undergoing hospital-wide cost savings measures which included approximately 29 employment decisions that saved \$2,500,000. McCormick’s termination was one

of those decisions. The undisputed evidence shows she was included in CRMC's reduction-in-force because she was a Registered Nurse performing primarily administrative duties that could be assigned to a non-nurse. That's not age discrimination. It's good business sense. Accordingly, this Court should grant summary judgment and dismiss the complaint, with prejudice.

Respectfully submitted this the 14th day of March, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served by the Court's ECF system upon:

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