

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

AMANDA L. MCCORMICK,

Plaintiff,

V.

**CULLMAN REGIONAL MEDICAL
CENTER,**

Defendant.

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

**PLAINTIFF'S CORRECTED BRIEF IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION

COMES NOW the Plaintiff, Amanda L. McCormick (hereinafter “Amanda McCormick”, “McCormick,” or “Plaintiff”), and respectfully submits this Brief in Opposition to Defendant’s, Cullman Regional Medical Center’s (“CRMC”), Motion for Summary Judgment. Genuine issues of material fact exist, and Defendant is not entitled to judgment as a matter of law.

II. SUMMARY OF THE CASE

Amanda McCormick is a Registered Nurse who worked at Cullman Regional Medical Center (“CRMC”) for approximately four years and nine months. (McCormick Decl. ¶ 2) (Plaintiff’s Ex. 1). At the termination of McCormick’s employment on March 31, 2023, she was 53 years old and the oldest clinical nurse. (Doc. 25-9.) McCormick was included in a Reduction in Force at CRMC because she was 53 years old. The reasons given for her termination are pretextual for age discrimination because CRMC **only terminated McCormick, who was the oldest of the clinic Registered Nurses**, and deviated from its usual standard procedure of offering another position to its clinical nurses in lieu of termination. **Accordingly, this Court should not grant summary judgment.**

III. STATEMENT OF FACTS

A. RESPONSE TO DEFENDANT’S STATEMENT OF MATERIAL FACTS¹

i. Schinley Land’s Initial Interactions with McCormick

5. Disputed and Clarified. The managing and scheduling of referrals of patients, which were backlogged before McCormick assumed her position, was McCormick’s secondary job. (McCormick Decl. ¶ 12.) McCormick was assigned the primary duty of coordinating CRMC’s Pacemaker Clinic, which required her, among other things, to check vitals, discuss issues with patients, create a game plan for patients that could be redirected to CRMC doctors or providers, determine if the pacemaker was low or if patients had to come in for other procedures, and inform CRMC doctors of any issues (McCormick Decl. ¶ 18.) In addition, McCormick called patients and conducted an assessment over the phone if there was a download from the system, submitted reports to CRMC doctors for review and signing, and reviewed individual charts. (McCormick Decl. ¶ 19.) Most of the tasks associated with

¹ Responding to Defendant’s Statement of Undisputed Relevant Material Facts in the order presented by the Defendant, noting specific paragraph headings and clarifying. Plaintiff agrees as to the paragraphs titled “McCormick’s Hiring and Assignment to the Cardiology Clinic” (1-3), “The Decision to Conduct a RIF in March 2023” (29-32), and “Other Clinic Nurses Employed by CRMC in 2023” (33-36).

McCormick's primary duty of coordinating the Pacemaker Clinic required her to have knowledge of the medical field. (McCormick Decl. ¶¶ 18-19.)

8. ***Disputed and Clarified.*** Land's request for McCormick to complete a weekly report to document her attempts to reduce the list of referrals was both extremely difficult to fill out and time consuming. (McCormick Decl. ¶ 14.) McCormick attempted to fill out the sheet and sent it to Land on numerous occasions. Land, however, sent back the sheet, requiring McCormick to spend more time on it rather than tending to her primary job duty of coordinating the Pacemaker Clinic. (*Id.*) McCormick met with Land every six months, and then later met with Land every three months for a status report. (McCormick Decl. ¶ 15.)

ii. **McCormick's 2021 Performance Evaluations**

13. ***Disputed and Clarified.*** McCormick's evaluation on December 17, 2021, also noted "Amanda is an encourager and team player. She demonstrates that she cares about her job." (Doc. 25-3 at 1.) In addition to individuals referenced in performance evaluations, evaluations were reviewed by Land. (Def. Answers to Pl. Interrogatory no. 6) On one occasion, Land got upset with Pelfrey over the positive comments she provided in McCormick's evaluation. (McCormick Decl. ¶ 17.) Land told Pelfrey she would have a say in what goes into the evaluations moving forward. (*Id.*)

iii. McCormick Avoids Termination During RIFs in 2022

20-21. *Disputed and Clarified.* Land and Barbara Estes, CRMC's Human Resources Director, met with McCormick and offered to reassign her to a part-time position in the Cardiology Clinic, essentially asking McCormick to take a pay cut and lose her benefits or take a full-time staff nurse position in the main hospital, which would have required working nights, weekends, and holidays. (McCormick Decl. ¶ 21.)

22. *Disputed and Clarified.* Estes and Land continued McCormick's full-time employment at the Cardiology Clinic but added additional secondary duties of obtaining precertification for tests and procedures ordered by doctors in the clinic and for communicating with payors, such as Medicare and insurance companies. (Doc. 25-1 at 5-6 ¶ 21 and McCormick Decl. ¶ 22.)

23. *Disputed and Clarified.* Katie Walker, CRMC's Patient Access, Communications and Resource Scheduling Manager, noted that obtaining precertifications "would require work full-time M-F," which would not be possible for McCormick to do in addition to her work in the Pacemaker Clinic within McCormick's allotted work schedule days. (Doc. 25-6 at 1.) The additional precertification duty burdened McCormick's primary duties at the Pacemaker Clinic. (McCormick Decl. ¶ 23.) Obtaining precertifications required knowledge of the medical field. (McCormick Decl. ¶ 24.) Most times

insurance companies asked specific questions and for more information and McCormick knew how to answer the questions and obtain the additional information due to her knowledge and skill as a Registered Nurse. (*Id.*)

iv. **Meetings Between Schinley Land and McCormick**

26-27. ***Disputed and Clarified.*** In McCormick’s description of her job duties which she presented to Land in Fall 2022, McCormick also noted that the Pacemaker Clinic had a total of 596 patients, who were serviced by three providers (Medtronic, St. Jude, Boston Scientific). (McCormick Decl. ¶ 11.)

28. ***Disputed and Clarified.*** Pelfrey’s comments on McCormick’s employment evaluation on March 15, 2023, also noted “Amanda is an employee that takes pride in her work” and “She is always willing to help out when needed. She will help in clinic and cover the front when we have people out. She is very good with relaying important information to patients on a level that they can understand.” (Doc. 25-7 at 8.) Pelfrey also commented that “Amanda explains all aspects of the device to her patients. She is very knowledgeable when answering questions for patients and their family members.” (Doc. 25-7 at 6.) Pelfrey noted that “if any issues developed with a patients [sic] device, Amanda will always get with a provider to discuss the patients [sic] care” and “She always has a kind and caring attitude toward our patients.” (Doc. 25-7 at 7.)

v. **Land's Decision to Terminate McCormick but Not Other, Younger Nurses**

37-41. *Disputed and Clarified.* While McCormick was not assigned to work directly with a specific physician and his patients, she worked for four of CRMC's doctors (Dr. Edward Mahan, Dr. Sampath Singireddy, Dr. Tracy Neal, and Dr. James Lee), who had patients in the Pacemaker Clinic, patient referrals, and who ordered precertification tests. (McCormick Decl. ¶ 25.) On most days McCormick interacted with patients. (McCormick Decl. ¶ 26.) During in-person clinic days for the Pacemaker Clinic, McCormick interacted with several patients and clinic days were usually full unless a physician opted not to work part of that day. (*Id.*) Occasionally, McCormick would fill in for other nurses and would work directly with the doctors assigned to those nurses and would also interact with patients. (McCormick Decl. ¶ 27.)

vi. **Termination of McCormick's Employment**

46. *Disputed and Clarified.* Out of the six clinical RNs listed in the memorandum provided to her upon her termination, McCormick was the **oldest** clinical Registered Nurse, and she was the **only** one terminated. (Doc 25-9.) **At no time when McCormick was terminated was she offered an RN position elsewhere at CRMC, which she would have accepted.** (McCormick Decl. ¶ 30.) **There were RN vacancies at the time of her**

termination. (*Id.*) Notably, CRMC hired one nurse practitioner shortly before McCormick was terminated and hired one after she was terminated. (McCormick Decl. ¶ 28.)

It should be noted that Nesha Donaldson (“Donaldson”), Cullman Regional Medical Center’s Chief Financial Officer, testified that McCormick was “terminated during a reduction in force” and typically during a reduction in force CRMC tries “to find other positions for people.” (Doc. 25-21 at 4 pg. 11 and Doc. 25-21 at 7 pg. 22.) Donaldson further testified that **“Amanda would not have any trouble finding a position because [CRMC was] always looking for nurses” and she testified “they would have offered her a nursing position in the hospital.”** (Doc. 25-21 at 7 pg. 22.)

Notably, Kellie Seguin, a certified medical assistant, was also slated to be eliminated during CRMC’s 2023 RIF; she was not terminated, however, and was instead transferred to the call center. (Doc. 25-21 at 6-8 pg. 21-26.) **McCormick, however, was neither offered nor informed about an RN vacancy, which she would have accepted.** The following testimony took place:

Q. Now, Ms. Courtney has sent you--forwarded to you an email to her from Schinley Land. Do you see that?

A. Yes.

Q. Do you remember getting this at the time?

A. No, not specifically.

Q. Okay. And they're discussing possible position adjustments. And you see under Number 3, cardiology, it mentions a Kellie Seguin. Do you see that name?

A. Yes.

Q. Do you know her or know that name?

A. I know the name. I do not know her.

Q. Okay. Now, it says her CMA role was eliminated. For the record, what's a CMA?

A. A CMA is a certified medical assistant.

Q. Okay. So, her job has already been eliminated. Do you know why y'all didn't terminate her rather than transferring her to the call center?

A. I do not.

Q. Okay.

A. I know typically when we do a RIF, we try to find other positions for people. So, there may have been an opening in the call center.

Q. Did y'all try to find another position for Amanda McCormick?

A. Amanda wouldn't have had any trouble finding a position because we're always looking for nurses.

Q. Well, was another nursing position offered to her?

A. I mean, I can't speak to that one specifically. **I would think that they would have offered her a nursing position in the hospital.**

...

Q. (BY MR. SAXON) Are you aware of any effort to find her another position?

A. I don't know specifically because I wasn't in the meeting with her.

Q. Okay.

A. But like I said, I can't imagine them not telling her we had RN openings.

Q. And just to make sure I understand your last answer, at the time of her termination on March 31 of 2023--

A. Uh-huh.

Q. --Cullman Regional Medical Center had RN openings?

A. I feel certain we did. I would have to verify that, but we always have RN openings.

(Doc. 25-21 at 6-8 pg. 21-26.) (emphasis added).

vii. Continuation of Duties After McCormick's Termination

47-49. ***Disputed and Clarified.*** McCormick's position was terminated and she was not replaced. (Doc. 25-1 at 11 ¶ 39.) Pelfrey performed all of McCormick's duties for one and a half months and then CV Remote Solutions, an outside vendor, took over portions of McCormick's duties related to the Pacemaker Clinic. (Doc. 25-1 at 12 ¶ 41.)

B. ADDITIONAL UNDISPUTED FACTS

1. McCormick was 53 years old when she was terminated and was the oldest clinical Registered Nurse at CRMC. (McCormick Decl. ¶ 6.) She has a degree in nursing from Wallace State Community College, an accredited school of professional nursing. (McCormick Decl. ¶ 3.) She had a good progression at CRMC in terms of her position as a clinical Registered Nurse. (McCormick Decl. ¶ 4.)

2. McCormick transferred to CRMC's Cardiology Clinic after Dr. Bernice Serpas' termination. (McCormick Decl. ¶ 7.) After Dr. Serpas' termination, she was told she was a good nurse, and CRMC would put her somewhere else. (*Id.*)

3. McCormick took over the duties of the Pacemaker Clinic from where Brandi Howard ("Howard") left off. (McCormick Decl. ¶ 8.) Howard, an LPN, was working the Pacemaker Clinic; however, the doctor she worked

with became extremely busy and she could not keep up with the work the clinic required. (Id.) McCormick needed training for her new position at the Pacemaker Clinic and Howard could not train her due to time constraints and being occupied with the increased work with her doctor. (McCormick Decl. ¶ 13.)

4. Ten days after McCormick was terminated, Lauren Dixon (“Dixon”), a young clinical nurse (age 35) who was retained as a clinical Registered Nurse during CRMC’s reduction in force, resigned. (Plaintiff’s Ex. 3). In her exit interview she noted that, among other things, “Staffing (or lack thereof), administration telling us how to do our job but never stepping foot in our office to figure out what we actually do, [and] constantly adding more work and more providers but cutting hours and staff” greatly affected her decision to leave CRMC. (Id.) She also noted that she disliked “being rushed every minute of every day to the point that its not a nursing position anymore.” (Id.) Dixon also noted that “the staffing is unethical. More times than not, at least 2-3 days a week I am unable to take a lunch break in order to get my job done in a timely fashion with the minimum staff we are allowed and the hours we are allowed to work.” (Id.)

C. ADDITIONAL DISPUTED FACTS THAT REQUIRE DENIAL OF SUMMARY JUDGMENT

1. McCormick performed duties that were within the scope of work usually performed by a Registered Nurse. (McCormick Decl. ¶ 18.)
2. McCormick worked in the Pacemaker Clinic with approximately 600 patients with internal cardiac monitors (pacemakers, defibrillators, and loop recorders). (McCormick Decl. ¶ 11.)
3. All the other nurses called McCormick “momma,” and younger nurses came to her from time to time for advice on how to handle particular matters. (McCormick Decl. ¶ 5.)
4. McCormick’s position was eliminated and she was not replaced. (Doc. 25-1 at 11 ¶ 39 and McCormick Decl. ¶ 28.)

IV. STANDARD OF REVIEW

Under the Federal Rules of Civil Procedure, summary judgment is appropriate when the record shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). There is a genuine issue of material fact, “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The Court

must view all evidence and make all reasonable inferences in the light most favorable to the nonmoving party. *See Chapman v. AI Transp.*, 229 F.3d 1012, 1023 (11th Cir. 2000).

V. DISCUSSION OF RELEVANT LEGAL AUTHORITY

A. The Applicable Legal Framework

i. General ADEA Summary Judgment Standard

The Age Discrimination in Employment Act (“ADEA”) makes it unlawful for an employer “to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s age.” 29 U.S.C. § 623(a)(1). Essentially, the ADEA prohibits employers from discriminating against an employee who is at least 40 years of age on the basis of that employee’s age. 29 U.S.C. § 631(a). An ADEA plaintiff may withstand summary judgment in three potential ways: (1) through direct evidence of age discrimination; (2) by carrying her burden under the *McDonnell Douglas* framework; (3) or by otherwise presenting a “convincing mosaic of circumstantial evidence that warrants an inference of intentional discrimination.” *See Tsavaris v. Savannah Law Sch., Ltd. Liab. Co.*, 847 F. App’x 634, 637 (11th Cir. 2021). Regardless of the method chosen, a plaintiff

bringing an ADEA claim bears the burden of proving by a preponderance of the evidence that age was the “but-for” cause of the challenged adverse employment action. *See Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 180 (2009).

ii. **McDonnell Douglas Framework for ADEA Claims**

Under the *McDonnell Douglas* framework, the plaintiff must initially establish a *prima facie* case of discrimination, which creates a rebuttable presumption that she was unlawfully discriminated against. *See Mauter v. Hardy Corp.*, 825 F.2d 1554, 1557 (11th Cir. 1987). To establish a *prima facie* case of age discrimination, the plaintiff must show she was: (1) a member of the protected class; (2) subjected to an adverse employment action, (3) qualified to do the job, and (4) replaced by or otherwise lost a position to a younger individual. *See id.*; *Chapman*, 229 F.3d at 1024. “In situations involving a reduction in force, however, the employer seldom seeks a replacement for the discharged employee. Accordingly, the fourth prong of the *prima facie* case is altered to require that the plaintiff produce evidence, circumstantial or direct, from which the factfinder might reasonably conclude that the employer intended to discriminate in reaching the decision at issue.” *See Mauter*, 825 F.2d at 1557.

Once the plaintiff establishes a *prima facie* case, the burden of production shifts to the defendant employer, who must articulate a legitimate, nondiscriminatory reason for the challenged employment action. *See Tsavaris*, 847 F. App'x at 638. If the defendant can articulate such reasons, the presumption of discrimination is rebutted, and the burden of production shifts to the plaintiff to produce evidence sufficient for a reasonable factfinder to conclude that the reasons given by the employer were pretext and that the real reason for the employment action was discriminatory. *See id* at 638-39; *Chapman*, 229 F.3d at 1024.

B. McCormick Can Establish a *Prima Facie* Case of Age Discrimination Under the Modified Reduction in Force Analysis

i. McCormick's Position Was Eliminated and The Reduction in Force Analysis Applies

Where the plaintiff was terminated as a result of a reduction in force ("RIF"), she 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. *See Crisman v. Fla. Atl. Univ. Bd. of Trs.*, 659 F. App'x 572, 578 (11th Cir. 2016).

The RIF modification of the *McDonnell Douglas* test applies “in cases involving RIFs and in those where a position is eliminated entirely.” *See Zaben v. Air Prods. & Chems.*, 129 F.3d 1453, 1457 (11th Cir. 1997). *See also Adams v. Holland*, 824 F. App'x 982, 984 (11th Cir. 2020) (concluding that the modified prima facie test for RIF was inapplicable because the employer had not eliminated the employee's position and had replaced him with another individual following his termination); *Mazzeo v. Color Resolutions Int'l, LLC*, 746 F.3d 1264, 1271 (11th Cir. 2014) (concluding that the employee's position was not eliminated and that he was replaced because another employee serviced the former territory of the employee); and *Jones v. Alfa Mut. Ins. Co.*, No. 2:21-cv-659-AMM, 2024 U.S. Dist. LEXIS 152614, at *15 (N.D. Ala. Aug. 26, 2024) (noting the employer delegated at least some of plaintiff's responsibilities “to other employees in addition to those employees' own responsibilities, and therefore the employer replaced them.”).

McCormick's position was eliminated because her position was not filled or replaced by a new hire and the defendant outsourced most of her primary duties to an outside vendor. Unlike the employee's position in *Adams*, which

was filled by a new hire, McCormick's position was not replaced by a new hire. It is undisputed that the plaintiff was not replaced by a new hire. (Doc. 25-1 at 11 ¶ 39 and Def. Answers to Pl. Interrogatory no. 15).

Unlike the employee positions in *Mazzeo* and *Jones*, which were consolidated with the duties of another employee or other employees, not all of McCormick's duties were reassigned to employees at CRMC. Some of McCormick's duties were reassigned to Pelfrey who, under CRMC's proposed reduction in force changes, was to be assigned front desk duties at the Cardiology Clinic (Doc. 25-1 at 7 ¶ 26.) Pelfrey only performed all of McCormick's duties at the Pacemaker Clinic for a month and a half (Doc. 25-1 at 12 ¶ 41.). Given the abruptness of the reduction in force, it is not surprising that all of McCormick's duties were temporarily given to another employee.

CRMC delegated the plaintiff's primary duties to pacemaker companies (Def. Answers to Pl. Interrogatory no. 15). Specifically, on or about May 19, 2025, CV Remote Solutions, an outside vendor, began to perform a portion of the duties previously performed by McCormick relating to the Pacemaker Clinic. (Doc. 25-1 at 12 ¶ 41). Because the Defendant outsourced most of the

plaintiff's primary duties it cannot be said that Pelfrey replaced the plaintiff. Simply put, plaintiff's position was eliminated in the RIF.

The evidence viewed in the light most favorable to McCormick indicates that her position was eliminated and therefore, the RIF modification of the McDonnell Douglas test applies.

ii. **McCormick Can Show That CRMC Intended to Discriminate on the Basis of Age**

To satisfy the fourth prong of the RIF modification to the *prima facie* case, the plaintiff must present evidence that could lead a reasonable factfinder to conclude that (1) the defendant consciously refused to consider retaining or relocating the plaintiff because of her age, or (2) the defendant regarded age as a negative factor in its actions. *See Jones v. BE&K Eng'g Co.*, 146 Fed. Appx. 356, 359 (11th Cir. 2005).

Under the RIF modification, McCormick can satisfy her *prima facie* case. The defendant consciously refused to consider retaining or relocating McCormick because of her age. At the time of the plaintiff's termination, CRMC employed a total of eleven people in the position of clinical nurse. (Doc. 25-1 at 7 ¶ 27.) McCormick was the oldest clinical Registered Nurse, and she was the **only one terminated** on March 31, 2023. (Doc 25-9.) Six out

of the eleven clinical nurses were below the age of 40. (Doc. 25-1 at 7 ¶ 27.) Upon her termination, McCormick received a memorandum which noted five other clinical nurses who had been retained. (Doc 25-9.) **All the other nurses retained were relatively younger than McCormick:** Jessica Gable (age 25), Jessica Cagle (age 33), Christy Fisher (age 35), Holly Elliott (age 41), and Melanie Hamm (age 50). While McCormick was not assigned to work directly with a specific physician and his patients like the retained nurses, she worked for four of CRMC's doctors (Dr. Edward Mahan, Dr. Sampath Singireddy, Dr. Tracy Neal, and Dr. James Lee), who had patients in the Pacemaker Clinic, patient referrals, and who ordered precertification tests. (McCormick Decl. ¶ 25.) Due to her age, rather than the scope of her work, McCormick was not reassigned or retrained.

Notably, there were RN vacancies at the time of McCormick's termination. (McCormick Decl. ¶ 30.). Donaldson, CRMC's Chief Financial Officer, testified that McCormick was "terminated during a reduction in force" and typically during a reduction in force "we try to find other positions for people." (Doc. 25-21 at 4 pg. 11 and Doc. 25-21 at 7 pg. 22.)

Donaldson further testified that "Amanda would not have any trouble finding a position because we're always looking for nurses" and she believes "they would have offered her a nursing position in the hospital." (*Id.*)

Although CRMC was always in need of nurses and had RN positions available due to shortages, **the defendant terminated McCormick without offering her another position with the hospital.** She could have been offered a position which the defendant determined was more in line with the scope of her duties as an RN. Donaldson's testimony is evidence from which a fact finder could infer that the defendant consciously refused to consider retaining or relocating McCormick because of her age.

The fact that McCormick was the oldest clinical nurse terminated, she equally worked with patients and doctors at the clinic, and she was not offered another RN position or retrained is evidence from which the factfinder might reasonably conclude that the employer intended to discriminate when terminating the plaintiff. Therefore, McCormick has satisfied the fourth prong and can demonstrate that CRMC intended to discriminate on the basis of her age.

Therefore, there is a genuine issue of material fact as to whether McCormick can establish a prima facie case of age discrimination under the ADEA.

C. McCormick Can Rebut CRMC's Legitimate Non-discriminatory Reason for Terminating Her Employment

“The burden of proving pretext merges with the plaintiff’s ultimate burden of proving that age was a determining factor in his discharge, and it can be met by showing that a discriminatory reason more likely than not motivated the employer’s decision, or by discrediting the employer’s proffered explanation.” *See Clark v. Coats & Clark, Inc.*, 990 F.2d 1217, 1227 (11th Cir. 1993). In establishing pretext, the plaintiff must show both that the employer’s stated reason was false and that the discrimination was the real reason for the adverse employment action. *See Brooks v. City Comm’n of Jefferson Cty., Ala.*, 446 F.3d 1160, 1162 (11th Cir. 2006). A plaintiff may demonstrate “weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer’s proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence.” *See Alvarez v. Royal Atl. Developers, Inc.*, 610 F.3d 1253, 1258 (11th Cir. 2010)

An employer’s deviation from its own standard procedures may serve as evidence of pretext if a plaintiff can show that the deviation from policy occurred in a discriminatory manner. *See Rojas v. Florida*, 285 F.3d 1339, 1344 n.4 (11th Cir. 2002); *Hinson v. Clinch Cnty., Ga. Bd. of Educ.*, 231 F.3d 821, 831 (11th Cir. 2000) (reversing summary judgment where inference could be drawn that the proffered reason for termination was pretextual, where employer failed to raise a concern directly with the employee despite

generally doing so); *Hurlbert v. St. Mary's Health Care Sys., Inc.*, 439 F.3d 1286, 1299 (11th Cir. 2006) (reversing summary judgment in part and holding that the employer's failure to follow termination procedure raised at least an issue of fact as to whether the decision was discriminatory); *Hill v. Seaboard Coast Line R.R. Co.*, 885 F.2d 804, 811 (11th Cir. 1989) (observing that an employer's deviation from standard personnel management procedures can be evidence of pretext). *See also Shackelford v. Publix Super Mkts., Inc.*, No. 7:12-cv-03581-MHH, 2014 U.S. Dist. LEXIS 146029, at *44 (N.D. Ala. Oct. 14, 2014); and *Dyals v. Gregory*, No. CV 212-207, 2014 U.S. Dist. LEXIS 124467, at *21 (S.D. Ga. Sep. 5, 2014).

In *Shackelford*, an employee was terminated on the spot for theft, rather than following an investigation. *Shackelford*, No. 7:12-cv-03581-MHH, 2014 U.S. Dist. LEXIS 146029, at *44. The store manager testified that the employer's procedure was to suspend an employee pending a complete investigation. *Id.* However, the employee was immediately terminated, which was a deviation from the employer's normal policy of suspending an employee pending a complete investigation before making a termination decision. *Id.* Viewing the evidence in the light most favorable to the employee, the court found that the employer's deviation was further evidence of pretext. *Id.*

In *Dyals*, former deputies were terminated as part of a reduction-in-force due to budget constraints. *See Dyals*, No. CV 212-207, 2014 U.S. Dist. LEXIS 124467, at *21. The court noted that the sheriff who terminated the deputies deviated from his ranking system on at least three separate occasions, and one of the deputy sheriffs testified that the two terminated employees would not have been her bottom choice in the ranking system, and with some retraining, one of the deputies “would have been okay.” *Id.* The court found that “when read in the light most favorable to Plaintiffs, these deviations from the sheriff’s purported ranking system create a genuine issue of material fact of pretext.” *Id.*

Deviation from the employer’s standard procedures and its inconsistent application are sufficient to infer intentional discrimination by the employer. *See Evans v. Hide*, No. 22-10912, 2023 U.S. App. LEXIS 10669, at *1 (11th Cir. May 2, 2023). *But see Streeter v. The Bridge, Inc.*, No. 2:04CV418, 2006 U.S. Dist. LEXIS 14084, 2006 WL 680573, at * 10 (M.D. Ala. Mar. 16, 2006) (finding that plaintiff failed to show that deviation from discriminatory policy occurred in a discriminatory manner because plaintiff failed to provide evidence that the policy was applied differently to those outside of her protected class). An employer’s failure to follow its standard procedure does not show discrimination if the procedure is optional and

provides “the flexibility to deviate from the normal procedures if the circumstances so require,” and “the nature of the situation” at issue warrants deviation. *See Schaaf v. Smithkline Beecham Corp.*, 602 F.3d 1236, 1244 & n.4 (11th Cir. 2010) (noting that the employer’s disciplinary process explicitly reserved to the employer the “right to combine or skip steps in [its disciplinary] process depending on the facts of each situation and the nature of the offense.”).

In this case, Donaldson, CRMC’s Chief Financial Officer, testified that McCormick was “terminated during a reduction in force” and typically during reduction in force “we try to find other positions for people.” (Doc. 25-21 at 4 pg. 11 and Doc. 25-21 at 7 pg. 22.) Donaldson further testified that “Amanda wouldn’t have had any trouble finding a position because we’re always looking for nurses” and she believed “they would have offered her a nursing position in the hospital.” (Doc. 25-21 at 7 pg. 22-23.)

Like in *Shackelford*, where the court found that deviation from the employer’s normal policy of suspending an employee pending a complete investigation before making a termination decision was further evidence of pretext, and like in *Dyals*, where the court found that deviations from the sheriff’s purported ranking system created a genuine issue of material fact of

pretext, CRMC's deviation from its standard procedure during RIFs of typically finding another position for employees slated to be terminated, is evidence of pretext. CRMC inconsistently applied its standard procedure because the Defendant transferred Kellie Seguin, a certified medical assistant, who was also slated to be eliminated during CRMC's 2023 RIF, to the call center. (Doc. 25-21 at 7 pg. 22.) **The Defendant did not find or offer McCormick another position or inform her of other clinical Registered Nurse positions available at the clinic.** (McCormick Decl. ¶ 30.) Therefore, CRMC deviated and inconsistently applied its standard procedure.

CRMC previously followed its standard procedure in 2022, when it offered McCormick an opportunity to keep her position and be assigned additional duties following CRMC's first inclination to terminate McCormick as part of its reduction-in-force plan in June of 2022. (Doc. 25-1 at 5-6 ¶ 21.) In 2023, however, McCormick was not afforded the same opportunity, and was the **oldest** clinical nurse terminated. (Doc 25-9.) All other clinical nurses who were considerably younger than McCormick were retained, and McCormick, the oldest of all the listed clinical nurses, was terminated. (*Id.*)

CRMC's deviation from its standard practice and its inconsistent application permits an inference that McCormick was terminated because of her age. When read in the light most favorable to the plaintiff, this deviation

from CRMC's standard procedure creates a genuine issue of material fact which requires defendant's motion for summary judgment be denied.

D. McCormick Can Present a "Convincing Mosaic" of Discrimination

The McDonnell Douglas "framework is not the sine qua non for a plaintiff to survive summary judgment in a discrimination case." *See Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011). As an alternative to using the McDonnell Douglas framework, a plaintiff may survive summary judgment by presenting "a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker." *Id.* The convincing mosaic standard allows consideration of all circumstantial evidence that might create an inference of discrimination, even if the plaintiff cannot disprove the employer's stated rationale. *See Ismael v. Roundtree*, No. 25-10604, 2025 U.S. App. LEXIS 31896, at *1 (11th Cir. Dec. 5, 2025); *Brown v. Wrigley Mfg. Co., LLC*, No. 21-11328, 2023 U.S. App. LEXIS 5408, at *18 (11th Cir. Mar. 7, 2023) (noting that although the plaintiff failed to raise a material issue of fact under McDonnell Douglas about whether he was discriminated against, the "convincing mosaic" theory allowed the plaintiff to add more general

evidence of discriminatory intent to the equation); *Jenkins v. Nell*, 26 F.4th 1243, 1251 (11th Cir. 2022) (concluding that even though the plaintiff failed to show race discrimination under the McDonnell Douglas framework, he presented sufficient evidence to meet the convincing mosaic of discrimination standard at the summary judgment stage). 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. *See Jenkins*, 26 F.4th at 1250.

i. Other Information from Which Discriminatory Intent May be Inferred

Even if this court finds that McCormick cannot satisfy the McDonnell Douglas burden-shifting analysis, she has presented sufficient evidence to meet the convincing mosaic of discrimination standard because there is information from which discriminatory intent can be inferred.

Notably, of the 11 RNs employed by CRMC, McCormick **was the oldest clinical Registered Nurse and the only one terminated.** (25-9.) CRMC retained clinical nurses who were, mostly, substantially younger than McCormick. (*Id.*) In addition, McCormick’s work was satisfactory, and she

had never been written up. (Doc. 25-7 at 8.) In fact, on March 15, 2023, **a few days before she was terminated** on March 31, 2023, she received an overall satisfactory evaluation on her performance evaluation for the 2022 work year dated on March 15, 2023. (*Id.*) Pelfrey noted in the evaluation that “Amanda is an employee who takes pride in her work. She is very detail-oriented, which tends to slow her down when trying to complete a job. She is always willing to help out when needed. She will help in the clinic and cover the front when we have people out. She is very good at relaying important information to patients at a level that they can understand. She is very empathetic with patients and tries to accommodate their needs.” In addition to Pelfrey’s overall comment on McCormick’s performance evaluation, in the section assessing whether McCormick provides evidence-based clinical care and education to patients and families, Pelfrey commented that “Amanda explains all aspects of the device to her patients. She is very knowledgeable when answering questions for patients and their family members.” (Doc. 25-7 at 6.) In a section assessing whether McCormick coordinates a plan of care activities for assigned patients, Pelfrey commented that “if any issues developed with a patients [sic] device, Amanda will always get with a provider to discuss the patients [sic] care.” (Doc. 25-7 at 7.) In a section assessing whether McCormick promotes teamwork with physicians and all health care providers,

fostering internal and external customer satisfaction, Pelfrey commented “Amanda is a team player and works well with others. She has a kind and caring attitude toward our patients.” (*Id.*) Pelfrey’s comments support the inference that McCormick’s work was satisfactory, she possessed great knowledge as a Registered Nurse, and she provided positive care experiences for patients.

Notably, in addition to individuals referenced in performance evaluations, evaluations were reviewed by Land. (Def. Answers to Pl. Interrogatory no. 6). On one occasion, Land got upset with Pelfrey over the positive comments she provided in McCormick’s evaluation. (McCormick Decl. ¶ 17.) Land told Pelfrey she would have a say in what goes into the evaluations moving forward. (*Id.*) To so boldly put herself at odds with the person who directly supervised and evaluated McCormick—Pelfrey—Land evidences animus against the plaintiff.

While McCormick needed support to improve efficiency, CRMC’s work environment did not provide her with the needed support. Notably, ten days after McCormick was terminated, Lauren Dixon (“Dixon”), a young clinical nurse (age 35) who was retained as a clinical Registered Nurse during CRMC’s reduction in force resigned. (Plaintiff’s Ex. 3). In her exit interview she noted that, among other things, “Staffing (or lack thereof), administration

telling us how to do our job but never stepping foot in our office to figure out what we actually do, [and] constantly adding more work and more providers but cutting hours and staff” greatly affected her decision to leave CRMC. (*Id.*) She also noted that what she liked the least about her position as a clinical Registered Nurse in CRMC’s Cardiology Clinic was “being rushed every minute of every day to the point that its not a nursing position anymore.” (*Id.*) Dixon also noted that “the staffing is unethical. More times than not, at least 2-3 days a week I am unable to take a lunch break in order to get my job done in a timely fashion with the minimum staff we are allowed and the hours we are allowed to work.”

Comments made in Dixon’s exit interview support the assertion that generally time management was an issue at CRMC due to a lack of staffing. There is an inference that clinical Registered Nurses and other staff alike could not get their job done in a timely manner with minimum staff and limited hours. Based on Dixon’s exit interview one can infer that CRMC needed more staff to accommodate its patient load and to ensure efficiency of its Cardiology Clinic. Despite this, McCormick was singled out for inefficiency. The fact that McCormick was the oldest clinical Registered Nurse, the only one considered for the reduction in force and subsequently terminated, and Land’s obvious animus demonstrate that her age played a factor in her termination.

ii. **Systematically Better Treatment of Similarly Situated Employees**

A comparator need not be the plaintiff's doppelganger but must be similarly situated in all material respects. *Tsavaris*, 847 F. App'x at 640. A comparator will ordinarily share the plaintiff's employment or disciplinary history. (*Id.*) In *Turner*, a plaintiff who worked as a Financial Analyst for the employer presented a Management Assistant as a comparator. *See Turner v. Fla. Prepaid Coll. Bd.*, 522 F. App'x 829, 832 (11th Cir. 2013). The court stated that the plaintiff had not identified a proper comparator because the individual's misconduct was a mere typographical error [and] by contrast, [the plaintiff] conceded she sent an accusatory and unprofessional email to an employee at one of the employer's vendors. *Id.*

In this case, Dixon is a similarly situated employee who systematically received better treatment than McCormick, evidenced by the inference that she also struggled to complete her duties in a timely fashion; however, she was retained and McCormick was terminated. (Plaintiff's Ex. 3). There is no dispute that Dixon was the only other Registered Nurse employed in the Cardiology Clinic. (Doc. 25-1 at 9 ¶ 32.) Therefore, she likely performed in the same work environment, had to follow the same policies, and was supervised by the same person as McCormick. (*Id.*) Both McCormick and Dixon worked in the Cardiology Clinic and interacted with the Clinic's

doctors and patients. (*Id.*) Although Dixon was assigned to work directly with Dr. Sampath Singireddy, McCormick worked for four of CRMC's doctors (Dr. Edward Mahan, Dr. Sampath Singireddy, Dr. Tracy Neal, and Dr. James Lee), who had patients in the Pacemaker Clinic, patient referrals, and ordered precertification tests. (Doc. 25-1 at 9 ¶ 32 and McCormick Decl. ¶ 25.) On occasion, while McCormick substituted for other nurses who were absent, she worked face-to-face directly with physicians and patients. (Doc. 25-1 at 9 ¶ 32.) Despite Dixon also demonstrating instances of struggling to get her job done in a timely fashion, Dixon, who was 28 years younger than McCormick, was retained and McCormick, who performed satisfactory work, was terminated for the same reason. In fact, Dixon was not considered for CRMC's reduction in force in 2022 nor 2023 and never had to regularly meet with Land to address completing her job in a timely despite inferences that she also struggled to do so due to limited staffing.

iii. Pretext

As discussed above, McCormick has established pretext by showing that (1) she was the oldest Registered Nurse terminated, (2) CRMC inconsistently applied its standard procedure of offering another position with the hospital despite it needing Registered Nurses, and (3) a younger similarly situated employee also struggled to complete her job in a timely manner due

to limited staffing and hours; however only McCormick was singled out. In addition to these reasons which rebut CRMC's legitimate non-discriminatory reason for terminating McCormick, it should be noted that McCormick's duties were not primarily clerical. (McCormick Decl. ¶ 12.) Her primary duty was to coordinate the Pacemaker Clinic, which required knowledge of the medical field, and her secondary job was managing and scheduling patient referrals from other providers to the Cardiology Clinic. (*Id.*) In performing her primary duty, McCormick checked vitals, discussed issues with patients, created a game plan for patients that could be redirected to CRMC doctors or providers, determined if the pacemaker was low or if patients had to come in for other procedures, and informed CRMC doctors of any issues (McCormick Decl. ¶ 18.) In addition, McCormick called patients and conducted an assessment over the phone if there was a download from the system, submitted reports to CRMC doctors for review and signing, and reviewed individual charts. (McCormick Decl. ¶ 19.) All of these duties were in line with McCormick's scope of her duties as an RN. (McCormick Decl. ¶ 18.) The fact that some of McCormick's primary functions were outsourced to an outside vendor further lends support that her duties were not just clerical.

Given that the *McDonnell Douglas* test for employment discrimination cases in this circuit is evolving, to the extent that the court needs the plaintiff to establish a convincing mosaic, the plaintiff would be able to do so.

VI. CONCLUSION

McCormick has met her burden of demonstrating that she was terminated because of her age. There is sufficient evidence to create a genuine issue of material fact regarding whether CRMC's articulated reasons are pretextual. There are genuine issues of material fact regarding Plaintiff's ADEA claim. Accordingly, this Court should not grant summary judgment to the Defendant.

Respectfully submitted this on the 6th day of April 2026.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has
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