

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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KIM MARSHALL,

Plaintiff,

Case No. 22 Civ. 7990 (NSR)

- against -

AMENDED COMPLAINT

JURY TRIAL DEMANDED

WESTCHESTER MEDICAL CENTER
HEALTH NETWORK,
CARLOS ROBINSON, and
VANESSA MACKAY

Defendants.

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Plaintiff Kim Marshall, by her attorneys, Filippatos PLLC, hereby complains of Defendants Westchester Medical Center Health Network (“Westchester Medical Center” or “WMCHN”) and Carlos Robinson and Vanessa Mackay (the “Individual Defendants”), upon personal knowledge, as well as information and belief, by alleging and averring as follows:

PRELIMINARY STATEMENT

1. Westchester Medical Center is a pillar in the Westchester County healthcare community which, as alleged herein, has unfortunately discriminated and retaliated against Plaintiff Kim Marshall because of her disability. As detailed below, despite claiming to be a diversity-minded enterprise, Westchester Medical Center has set an exceptionally low bar when it comes to accommodating, or even tolerating, employees with disabilities.

2. Ms. Marshall was, by all accounts, an exemplary employee who consistently received positive performance reviews and went above and beyond her duties. Yet, Ms. Marshall was targeted and discriminated against not once, but twice, after requesting FMLA leave to reasonably accommodate her severe symptoms of arthritis, culminating in her unlawful firing.

3. As discussed more fully below, Defendants unlawfully retaliated against Ms. Marshall shortly after she returned from FMLA leave by refusing to reasonably accommodate her disability and placing her on an unfounded Performance Improvement Plan. Then, when Plaintiff subsequently requested an additional FMLA leave as a reasonable accommodation, she was abruptly terminated.

4. Accordingly, and in order to vindicate the violation of her rights as an employee, Ms. Marshall hereby brings this action alleging that Defendants for violating the Family and Medical Leave Act, 29 U.S.C. §§ 2601, *et seq.* (“FMLA”), the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101, *et seq.*, as amended by the ADA Amendments Act of 2008, Pub. L. No. 110-325 (“ADAA”); and the New York State Executive Law, §§ 296 *et seq.* (“NYSHRL”).

JURISDICTION, VENUE AND PROCEDURAL PREREQUISITES

5. Jurisdiction of this Court is proper under 29 U.S.C. § 2617 and 28 U.S.C. §§ 1331 as this is a civil action arising under the FMLA and ADA.

6. This Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367(a) because those claims are so related to the federal claims contained in this action that they form part of the same case or controversy.

7. This Court has personal jurisdiction over Defendants because Defendants are found, reside, or transact business in the Southern District of New York.

8. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391(b) because Defendants conduct business, and some or all of the actions or omissions giving rise to Plaintiff’s claims occurred within this judicial district.

9. By Plaintiff: (a) timely filing a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) on August 18, 2022; (b) receiving a Notice of Right to Sue from the EEOC on November 8, 2022; and (c) filing this Amended Complaint without 90 days thereof, Plaintiff has satisfied all procedural prerequisites to bringing her claims under the ADA in this action.

PARTIES

10. At all times relevant hereto, Plaintiff has been a resident of the State of New York, County of Orange.

11. Plaintiff is a 61-year-old female.

12. At all times relevant hereto, Plaintiff was a full-time employee of WMCHN.

13. At all times relevant hereto, Defendant WMCHN was and is a domestic for-profit corporation duly existing pursuant to, and by virtue of, the laws of the State of New York and maintains its principal place of business at 100 Woods Road, Valhalla, New York.

14. Defendant WMCHN is a regional trauma center that provides health services to residents of the Hudson Valley, and, upon information and belief, employs over 7,000 individuals on a full-time or full-time equivalent basis and thus is subject to all statutes upon which Plaintiff is proceeding herein.

15. At all times relevant hereto, Defendants Robinson and Mackay were employees of Defendant WMCHN, holding the positions of Regional Director of Patient Access and Vice President of Revenue Cycle, respectively.

16. At all times relevant hereto, Defendants Robinson and Mackay were Plaintiff’s supervisors, and as such, had authority to hire, terminate, and/or affect the terms and conditions of Plaintiff’s employment.

FACTUAL ALLEGATIONS

I. Plaintiff's Successful Career in the Healthcare Management Field

17. Plaintiff joined WMCHN in 2019 with over 14 years of experience in healthcare and hospital management.

18. After graduating in 1985, with a degree from Morse School of Business in Medical Administration, Ms. Marshall began her career at St. Luke's Cornwall Hospital in Newburgh, New York, where she worked for eight years, and eventually oversaw a staff of 40 employees, including teams in the finance/revenue cycle, emergency room registration, admitting, and scheduling departments.

19. Ms. Marshall then returned to school and earned her bachelor's degree in Organizational Management from Nyack College in 2013, and subsequently landed managerial roles at Health-Quest overseeing a staff of 30 employees, and at Nthrive, where she served as the ARS Services project manager overseeing a staff of 15 internal and 40 global employees.

II. Plaintiff Joins WMCHN as a Patient Account Manager

20. In June 2019, Plaintiff joined WMCHN as a Patient Accounts Manager, a role with substantial responsibilities. Ms. Marshall was tasked with overseeing a staff of four direct reports and a team of approximately 50 indirect reports. Among other duties, Ms. Marshall identified trends and proposed process improvements to assure that health insurance claims were successfully worked to resolution.

21. In October 2019, Ms. Marshall was elevated to the role of Patient Access Manager by Arlene Ligos, Patient Access Director. In this position, Ms. Marshall was responsible for overseeing patient pre-registration, insurance verification, scheduling, authorization, and financial counseling for both inpatient and outpatient services at Westchester Medical Center ("WMC") and

Mid-Hudson Regional Hospital (“MHRH”). Ms. Marshall was given heightened responsibility that was commensurate with her skillset and experience.

22. On December 20, 2019, Ms. Marshall received her first performance appraisal, in which she was held to “meet/exceed expectations.” Regarding her job responsibilities, Ms. Marshall was rated “successful,” with her manager noting that she: (i) “has met and in many cases exceeded the expectations for the role of AR Manager”; (ii) “conducts herself in a professional manner”; (iii) “has displayed a strong work ethic”; (iv) “demonstrates the skills needed to resolve interpersonal conflicts”; (v) “works to ensure department compliance”; (vi) “work[s] tirelessly to improve department morale and interhospital communications”; (vii) “has shown ability to manage and motivate direct reports and to assist management staff ... to improve oversight and communication with staff”; (viii) “maintains verbal and written communications of all necessary and appropriate meeting minutes, staff memo’s [sic], etc”; and (ix) “keeps the staff informed of policy changes or responsibility changes.”

23. Overall, Ms. Marshall’s accomplishments were unquestioned: “Kim has reached and in many cases exceeded the performance expected of her. She continues to be a positive force in the department and strives to seek out new and innovative ways to improve the interdepartmental morale and processes.”

24. Once the COVID-19 pandemic hit in early 2020, like many in the healthcare industry, Ms. Marshall was faced with additional responsibilities. While maintaining their normal responsibilities, Ms. Marshall and her staff had to provide coverage for COVID-19 testing tents and off-site vaccination “pods.” Ms. Marshall was also tasked with hiring and managing temporary staff.

25. When Plaintiff voiced concerns to Ms. Mackay, Vice President of Revenue Cycle, about her staff being spread too thin, Ms. Mackay told Plaintiff that she needed to “make it work.” Ms. Marshall worked diligently and juggled these new tasks without any additional compensation, for which she received nothing but positive feedback.

26. In June 2021, Ms. Marshall began reporting to Mr. Robinson, Regional Director of Patient Access.

III. Plaintiff Requests FMLA Leave, and Seeks a Reasonable Accommodation for Her Disability

27. Plaintiff suffers from debilitating arthritis, chronic pain, and limited range of motion in her legs and hips, which makes it exceedingly difficult for her to get dressed, walk any meaningful distances, and sleep. Plaintiff takes pain medication and various dietary supplements to help regain her energy due to her lack of sleep.

28. Plaintiff’s arthritis impeded her ability to perform her job as a Patient Access Manager by hindering her ability to make rounds and supervise staff, sit, and work for long periods of time, and commute to WMCHN’s sites in Valhalla and MHRH in Poughkeepsie. These limitations also required Plaintiff to purchase a standing desk in order to perform her work (clearly visible to her supervisors).

29. In mid-June 2021, Plaintiff and her physician determined that she needed to have two surgeries to alleviate her pain: a right total hip arthroplasty, and a left total hip arthroplasty. The two procedures had to be scheduled at least three months apart to permit Plaintiff time to properly heal.

30. On or about June 28, 2021, Plaintiff requested FMLA leave to treat her arthritis with right hip replacement surgery.

31. Plaintiff was approved to take FMLA leave in July 2021 from August 9, 2021, through October 4, 2021.

32. Plaintiff was asked by Mr. Robinson and Ms. MacKay to assist with various tasks while out on leave, which she completed in spite of her doctor's orders to rest.

33. Plaintiff returned to work on October 7, 2021.

34. Then on November 30, 2021, Ms. Marshall received a far more critical and negative performance evaluation than the one she received previously. While she was found to "meet expectations," Plaintiff's manager, Mr. Robinson, alleged that she "need[ed] improvement" with "staff management," and provided only vague examples and guidance for how to improve. For instance, Plaintiff was criticized for "a few processes that have fallen through the cracks" without any further detail. Mr. Robinson also pointed out that he had received "staff complaints of [Ms. Marshall] being unfair and demonstrating favoritism," but failed to provide more detail.

35. Ms. Marshall was understandably concerned about the ambiguous staff management criticisms listed in her performance evaluation and requested bi-weekly meetings with Mr. Robinson in order to make sure she was doing what she needed for him to be confident in her ability to lead and achieve her stated goals.

36. Significantly, prior to going on FMLA leave, Plaintiff received no indication from Mr. Robinson nor any other Supervisor that they were unhappy with Plaintiff's performance.

37. Over the next two months, Plaintiff and Mr. Robinson met several times, at no point during which did Mr. Robinson ever raise any concerns he might have had with Ms. Marshall's performance or offer feedback on how she could improve her performance.

IV. Plaintiff Continues to Experience Symptoms Related to Her Disability at Work, Yet Defendants Fail to Engage in the Interactive Process in Order to Reasonably Accommodate Her

38. On or about December 9, 2021, while working at Mid-Hudson Regional Hospital, Ms. Marshall experienced severe stomach pains, nausea, and bleeding, requiring her to leave work. Ms. Marshall immediately notified Mr. Robinson of her medical emergency. She also visited a gastroenterologist who performed a colonoscopy and diagnosed Plaintiff with a bleeding ulcer and prescribed her medication.

39. Throughout this time, Plaintiff noticeably walked around work with a limp and abnormal gait, and on or about December 14, 2021, fell to the ground at work, badly injuring her leg, and exacerbating the arthritis pain in her left hip. Soon thereafter, Ms. Marshall and her doctor spoke about scheduling her second and required surgery for left hip replacement.

40. Plaintiff's arthritis diagnosis, the severity of her symptoms, and the fact that her ability to work was being compromised by her disability was well known by Mr. Robinson and Ms. MacKay; yet neither ever engaged in the interactive process to discern whether a reasonable accommodation would permit Plaintiff to better perform her job functions. Some of the possible accommodations included, but were not limited to: (i) allowing Plaintiff to park her car on the first floor of the parking garage to minimize the distance she had to walk to work; (ii) providing Plaintiff an ergonomic office chair to ease her hip pain; (iii) allow Plaintiff to work from home (or work more often from home); (iv) move Plaintiff's work station closer to a bathroom; or (v) permitting her to take periodic rest breaks.

V. Ms. Marshall Receives a Discriminatory and Retaliatory Performance Improvement Plan ("PIP") After Engaging in Protected Activity

41. On January 28, 2022, Defendants blind-sided Plaintiff by placing her on a Performance Improvement Plan ("PIP").

42. Upon information and belief, Defendants failed to follow WMCHN protocol or the formal disciplinary process before issuing Plaintiff the PIP. Plaintiff was never provided coaching or any warning regarding any of the areas of purported improvement.

43. By virtue of being placed on a PIP, Plaintiff was ineligible to receive a raise or promotion while on the PIP and six months thereafter. In fact, Plaintiff was once denied the opportunity by HR to interview an internal candidate for a role on her team because it had not been more than six months since the candidate's PIP ended.

44. The PIP would also be added, upon information and belief, to her personnel file, which could affect her future ability to change positions within the organization or receive promotions given that the PIP would conceivably be accessible to managerial staff.

45. The PIP, which was, upon information and belief, spearheaded and had to be approved by both Mr. Robinson and his supervisor Ms. Mackay, listed thirteen "areas of focus," all which Ms. Marshall responded to with cogent, written objections.

46. For instance, one purported area of improvement was that Plaintiff needed to ensure her staff was obtaining written consent from patients prior to treatment 100% of the time, as well as obtain written consent from Medicare inpatients after they read an important message from Medicate ("IMM") 100% of the time.

47. However, this was an unreasonable mandate since, among other reasons, it is not uncommon for it to be impossible to obtain written consent due to a patient's medical condition such as if they are intoxicated, are going through a psychiatric episode, have suffered an overdose, or is experiencing severe trauma caused by an accident.

48. Notably, and as rather clear and direct evidence of disparate treatment, Defendants did not, however, subject similarly situated employees, namely Virginia ("Ginny") Grogan, to

such stringent completion rates. Indeed, Ms. Grogan admitted to completing only 90% of IMM's, but, upon information and belief, was not disciplined.

49. Other purported area of improvements in the PIP were vague and provided virtually no guidance as to how Plaintiff could actually improve in Defendants' view. For instance, Plaintiff was told that she needed to "enforce appropriate and timely documentation in notes," yet Defendants failed to provide any examples of how Plaintiff was allegedly failing to meet this requirement.

50. Other "areas of focus" were woefully unclear and impossible to objectively measure or evaluate (and thus were meant to set Plaintiff up for failure), such as the alleged concern that Plaintiff and her team must be "more engaged during meetings/calls."

51. The PIP also stated that, "[i]mprovement must occur immediately and must be maintained. If any portion of this improvement plan is violated at any time during the specified timeframe, disciplinary action to include separation from the company may occur."

52. Troublingly, Ms. Marshall received this PIP just three months after returning from protected FMLA leave and after she had previously received a resoundingly positive performance review in 2019 and a review just months earlier in November 2021 which vaguely stated she needed to improve in just one five out the six categories of expectations.

53. Notably, Mr. Robinson told Plaintiff that Ms. Mackay had wanted him to place Plaintiff on a PIP back in October, but when Plaintiff reminded him that she was on FMLA leave in October, he stumbled and claimed it must have been in November.

VI. Plaintiff Complains to HR About the Retaliatory PIP

54. On February 3, 2022, Plaintiff complained to Nancy Estremera and Christina Brennan of the Human Resources ("HR") (also called Labor Relations") department that many of

the thirteen areas of improvement on the PIP were vague, unattainable, and difficult to measure, and that the threatening language in the PIP's final paragraph (“[i]f any portion of this improvement plan is violated at any time during the specified timeframe, disciplinary action to include separation from the company may occur.”) was retaliatory.

55. Plaintiff also told Ms. Estremera and Ms. Brennan that she was being unfairly targeted for taking FMLA leave, and that she had been treated worse and differently after returning from FMLA leave than she was before she took job-protected leave.

VII. Plaintiff Schedules Her Second FMLA Leave and is Abruptly Fired in Retaliation

56. On or about February 4, 2022, Plaintiff notified Defendants about her upcoming left hip replacement surgery which was scheduled for March 7, 2022. Plaintiff submitted her leave request form to Defendant Robinson, which notified him that she planned to take a second FMLA leave to treat her disability (arthritis) from March 7, 2022, through May 7, 2022.

57. Plaintiff also contacted Allyson Chamberlaine, WMCHN Leave Management Specialist about submitting a disability leave claim.

58. On February 15, 2022, Plaintiff scheduled a meeting with Mr. Robinson to check in and discuss ongoing tasks. To her dismay, Mr. Robinson cancelled this meeting, which was set for February 17.

59. Then, on February 22, 2022, Plaintiff drafted and sent a four-page response to the PIP detailing her objections to Defendants Robinson and Mackay, and to Ms. Estremera, and Ms. Brennan. Plaintiff did not hear back from anyone in HR about scheduling a meeting to discuss her concerns about the PIP, as she had been promised. Defendants Robinson and Mackay also failed to respond to Plaintiff's written objections to her PIP.

60. Plaintiff and Mr. Robinson then met on February 24, 2022, but Mr. Robinson ended their meeting half an hour early. Defendant Robinson failed to discuss any of Plaintiff's alleged shortcomings as vaguely listed in her PIP, nor did he provide Plaintiff with any coaching in furtherance of meeting the PIP's requirements. In fact, after Defendant issued Plaintiff a PIP, they failed to coach, have a substantive discussion, or provide any remedial feedback whatsoever about the requirements and areas of improvement set forth in the PIP.

61. On or about February 28, 2022, Plaintiff underwent her required yearly physical examination, which was conducted by a WMCHN nurse, during which Plaintiff discussed the ongoing pain she was experiencing in her hips, her continued sleep apnea, and her ulcer, once again placing Defendants on notice of her serious physical ailments and disability.

62. The following day, March 1, 2022, Ms. Marshall was asked to report to HR for a meeting, which she believed would be to discuss her objections to the PIP. While she sat in the waiting room, Ms. Chamberlaine notified Plaintiff that her second FMLA request was approved. Mr. Robinson was copied on this correspondence.

63. Once in the meeting with HR, Ms. Marshall was handed a folder with a termination letter, and was told that she could either resign or accept the termination. Ms. Marshall was completely shocked and taken aback by what she was being told. Her direct supervisor, Mr. Robinson, was also present at the meeting but did not speak, and instead stared awkwardly down at his phone.

64. As she was being escorted out of the hospital, Ms. Marshall asked Ms. Brennan why she was being fired, to which Ms. Brennan lackadaisically responded, "performance," without explanation. Baffled, Ms. Marshall queried why the follow-up meeting to discuss her PIP that had been promised was never scheduled, and why she was being fired before her PIP expired.

65. Ms. Marshall was also perplexed by how she could be fired supposedly for deficient performance when she received no feedback about her performance from Defendants after they issued her the PIP, despite multiple attempts by her to discuss her PIP with her supervisors.

66. To add insult to injury, Ms. Marshall was told by Barbara Kukowski, Senior Vice President of Labor Relations and Deputy General Counsel, that she apparently forfeited her accrued, unused, paid time off because she chose not to voluntarily resign (something that had never been explained to her), causing her to be deprived of \$10,098 worth of accrued, unused, paid time off.

67. Upon information and belief, WMCHN's accrued, unused, vacation/paid time out payout policy does not hinge on whether an employee is fired or resigns, but merely permits departed employees to "cash out" vacation days subject to a cap. As such, WMCHN's decision to claim that Plaintiff forfeited her accrued, unused, paid time off is yet another example of retaliatory animus harbored against Plaintiff because of her disability and reasonable accommodation requests, *i.e.*, her requests for job-protected FMLA leave.

FIRST CAUSE OF ACTION
Interference In Violation of FMLA
Against Defendants

68. Plaintiff repeats and realleges the allegations contained in the foregoing paragraphs of the Amended Complaint as if fully set forth herein.

69. Section 2612(D) of the Family Medical Leave Act, states in pertinent part: "an eligible employee shall be entitled to a total of 12 work weeks of leave during any 12-month period ... Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee."

70. Section 2615(a)(1) of the Family Medical Leave Act, states in pertinent part: “Interference with rights. Exercise of rights. It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter.”

71. To state a prima facie claim for interference under the FMLA, a plaintiff must allege the following: “(1) that she is an eligible employee under the FMLA; (2) that the defendant is an employer as defined by the FMLA; (3) that she was entitled to take leave under the FMLA; (4) that she gave notice to the defendant of her intention to take leave; and (5) that she was denied to which she was entitled under the FMLA.” *Graziadio v. Culinary Instit. Of Am.*, 817 F.3d 415, 424 (2d Cir. 2016).

72. Plaintiff and Defendant WMCHN are subject to the FMLA as an eligible employee and covered employer, respectively.

73. Plaintiff was entitled to take leave under the FMLA.

74. Plaintiff gave notice of her intention to take FMLA leave on or about February 4, 2022, in connection with a surgery scheduled for March 7, 2022.

75. Defendants interfered with Plaintiff’s FMLA rights by terminating her employment on March 1, 2022, less than one week before her approved FMLA leave was set to begin, depriving her of her FMLA rights.

76. As a direct and proximate result of Defendants’ unlawful and wrongful actions or omissions against Plaintiff as described herein, Plaintiff has sustained injuries and damages, including, but not limited to: (a) loss of earnings; (b) loss of career opportunities; (c) mental and emotional distress; (d) loss of reputation and esteem in the community; and (e) loss of ordinary

pleasures of everyday life, including the opportunity to pursue the gainful occupation of her choice, for which she is entitled to the maximum damages recoverable under the law.

SECOND CAUSE OF ACTION
Retaliation In Violation of FMLA
Against Defendants

77. Plaintiff repeats and realleges the allegations contained in the foregoing paragraphs of the Amended Complaint as if fully set forth herein.

78. Section 2615(a)(2) of the Family Medical Leave Act, states in pertinent part: “Discrimination. It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter.”

79. To establish a prima facie case of FMLA retaliation, a plaintiff must establish that 1) she exercised rights protected under the FMLA; 2) she was qualified for her position; 3) she suffered an adverse employment action; and 4) the adverse employment action occurred under circumstances giving rise to an inference of retaliatory intent. *Graziadio v. Culinary Inst. of Am.*, 817 F.3d 415, 429 (2d Cir. 2016) (quotation omitted).

80. Plaintiff exercised rights protected under the FMLA by requesting leave on or about June 28, 2021, and on February 4, 2022.

81. Plaintiff consistently received overwhelmingly positive performance reviews and feedback over the course of her employment, including promotions; that is, until she returned from her first FMLA leave and received a performance review with negative comments and was then placed on an unfounded Performance Improvement Plan (PIP).

82. In response to Plaintiff’s activities, which were protected conduct under the FMLA, Defendants wrongfully retaliated against Plaintiff by placing her on an unfounded Performance Improvement Plan (PIP) shortly after she availed herself of her FMLA rights by, *inter alia*, failing

to engage in any substantive discussions to improve such allegedly deficient performance, and ultimately, by terminating Plaintiff's employment after she requested a second FMLA leave.

83. As a direct and proximate result of Defendants' unlawful and wrongful actions or omissions against Plaintiff, as described herein, Plaintiff has sustained injuries and damages, including, but not limited to: (a) loss of earnings; (b) loss of career opportunities; (c) mental and emotional distress; (d) loss of reputation and esteem in the community; and (e) loss of ordinary pleasures of everyday life, including the opportunity to pursue the gainful occupation of her choice, for which she is entitled to the maximum damages recoverable under the law.

THIRD CAUSE OF ACTION
Discrimination In Violation of NYSHRL
Against All Defendants

84. Plaintiff repeats and realleges the allegations contained in the foregoing paragraphs of the Amended Complaint as if fully set forth herein.

85. By the actions detailed above, among others, Defendants have discriminated against Plaintiff in violation of the NYSHRL by, *inter alia*, denying her the equal terms and conditions of employment because of her disability (arthritis).

86. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm, for which she is entitled to an award of monetary damages and other relief, in addition to reasonable attorneys' fees and expenses.

87. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, mental anguish and severe emotional distress, for which she is entitled to an award of monetary damages and other relief.

88. Defendants' unlawful and discriminatory actions constitute malicious, willful, and wanton violations of the NYSHRL, for which Plaintiff is entitled to an award of punitive damages.

FOURTH CAUSE OF ACTION
Retaliation In Violation of NYSHRL
Against All Defendants

89. Plaintiff repeats and realleges the allegations contained in the foregoing paragraphs of the Amended Complaint as if fully set forth herein.

90. By the actions detailed above, among others, Defendants have retaliated against Plaintiff based on her protected activities in violation of the NYSHRL, including, most recently, terminating Plaintiff's employment.

91. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm, for which she is entitled to an award of damages, in addition to reasonable attorneys' fees and expenses.

92. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, mental anguish and severe emotional distress, for which she is entitled to an award of damages.

93. Defendants' unlawful and retaliatory actions constitute malicious, willful, and wanton violations of the NYSHRL, for which Plaintiff is entitled to an award of punitive damages.

FIFTH CAUSE OF ACTION
Aiding And Abetting Unlawful Discrimination and Retaliation in Violation of the NYSHRL
Against Defendants Robinson and MacKay

94. Plaintiff repeats and realleges the allegations contained in the foregoing paragraphs of the Amended Complaint as if fully set forth herein.

95. By the actions described above, among others, Defendants Robinson and Mackay knowingly or recklessly aided and abetted and directly participated in the unlawful discrimination and retaliation to which Plaintiff was subjected in violation of the NYSHRL.

96. As a direct and proximate result of Defendants Robinson's and Mackay's unlawful conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm, for which she is entitled to an award of damages, in addition to reasonable attorneys' fees and expenses.

97. As a direct and proximate result of Defendants Robinson's and Mackay's unlawful conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, mental anguish and severe emotional distress, for which she is entitled to an award of damages.

98. Defendants Robinson's and Mackay's unlawful and retaliatory actions constitute malicious, willful, and wanton violations of the NYSHRL, for which Plaintiff is entitled to an award of punitive damages.

SIXTH CAUSE OF ACTION
Discrimination In Violation of the ADA
Against Defendant Westchester Medical Center Health Network

99. Plaintiff repeats and realleges the allegations contained in the foregoing paragraphs of the Amended Complaint as if fully set forth herein.

100. By the actions detailed above, among others, Defendants have discriminated against Plaintiff in violation of the ADA by, *inter alia*, denying her the equal terms and conditions of employment because of her disability (arthritis).

101. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the ADA, Plaintiff has suffered, and continues to suffer, monetary and/or economic

harm, for which she is entitled to an award of monetary damages and other relief, in addition to reasonable attorneys' fees and expenses.

102. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the ADA, Plaintiff has suffered, and continues to suffer, mental anguish and severe emotional distress, for which she is entitled to an award of monetary damages and other relief.

103. Defendants' unlawful and discriminatory actions constitute malicious, willful, and wanton violations of the ADA, for which Plaintiff is entitled to an award of punitive damages.

SEVENTH CAUSE OF ACTION
Discrimination In Violation of the ADA
Against Defendant Westchester Medical Center Health Network

104. Plaintiff repeats and realleges the allegations contained in the foregoing paragraphs of the Amended Complaint as if fully set forth herein.

105. By the actions detailed above, among others, Defendants have retaliated against Plaintiff based on her protected activities in violation of the ADA by, *inter alia*, terminating Plaintiff's employment.

106. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the ADA, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm, for which she is entitled to an award of monetary damages and other relief, in addition to reasonable attorneys' fees and expenses.

107. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the ADA, Plaintiff has suffered, and continues to suffer, mental anguish and severe emotional distress, for which she is entitled to an award of monetary damages and other relief.

108. Defendants' unlawful and discriminatory actions constitute malicious, willful, and wanton violations of the ADA, for which Plaintiff is entitled to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Declaring the acts and omissions complained of herein are in violation of the FMLA, ADA, and NYSHRL;
- B. Enjoining and permanently restraining Defendants from the violations of the protections contained in the FMLA, ADA, and NYSHRL;
- C. Awarding damages in an amount consistent with the evidence and according to proof, including, but not necessarily limited to, liquidated damages for two times the amount of back pay, interest on back pay, compensatory damages, and consequential damages as provided by the FMLA, ADA, and NYSHRL;
- D. Directing Defendants to reinstate Plaintiff to the position she would have occupied, but for Defendants' discriminatory and retaliatory treatment; or, in the alternative, awarding Plaintiff front pay in an amount to be proven and determined at trial;
- E. Declaring Defendants' acts against Plaintiff as willful, wanton, and malicious, and directing Defendants to pay Plaintiff punitive or special damages in an amount to be proven and determined at trial;
- F. Awarding interest on such damages at the legal rate from the date of judgment until paid;
- G. Awarding Plaintiff all reasonable expenses that were necessarily incurred in the prosecution of this action, plus all reasonable attorneys' fees and costs, as provided by the FMLA, ADA, and NYSHRL and;
- H. Ordering such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: December 30, 2022
White Plains, New York

Respectfully submitted,

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