

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

SUSAN KENDRICK,

Plaintiff,

v.

MAINE MEDICAL CENTER and
MAINEHEALTH,

Defendants.

Civil Action No.

COMPLAINT
JURY TRIAL REQUESTED
INJUNCTIVE RELIEF REQUESTED

NOW COMES the Plaintiff, Susan Kendrick (“Kendrick”), by and through undersigned counsel, and complains against the Defendants, Maine Medical Center (“MMC”) and MaineHealth, as follows.

INTRODUCTION

1. Kendrick, a Registered Nurse who currently works for Defendants, has filed this lawsuit against Defendants because they have discriminated and retaliated against her in violation of the Maine Human Rights Act, Americans with Disabilities Act, and Rehabilitation Act. Due to a disability, Kendrick is sensitive to certain fragrances when she inhales them. Defendants have a Fragrance-Free Policy that purports to protect the health of patients, visitors, and staff but Defendants have failed to take reasonable steps to enforce and effectuate that policy. As a result, Kendrick has come into contact with fragrances in the workplace that have caused her to suffer symptoms such as coughing, respiratory irritation, shortness of breath, and chest tightness. Defendants’ failure to take reasonable steps to enforce and effectuate its Fragrance-Free Policy

constitutes a failure to reasonably accommodate Kendrick. Defendants have also discriminated against Kendrick because of her disability and retaliated against her because she has requested reasonable accommodations for her disability and complained about violations of her rights. Among other discriminatory and retaliatory actions, Defendants removed Kendrick from her job in the neonatal intensive care unit (NICU) and have refused to let her return to the NICU.

JURISDICTION AND PARTIES

2. This action arises under the Maine Human Rights Act (“MHRA”), 5 M.R.S.A. §§ 4551 et seq., the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101 et seq., and Section 504 of the Rehabilitation Act (“Rehab Act”), 29 U.S.C. §§ 701 et seq.

3. Kendrick is a United States citizen residing in New Gloucester, Maine.

4. MaineHealth, a corporation, is a network of medical providers and healthcare organizations with its principal place of business in Maine.

5. MMC, a corporation, is a member of MaineHealth. It operates a 637-bed hospital in Portland, Maine.

6. MMC had 500 or more employees for each working day in each of 20 or more calendar weeks in the same calendar year as when the alleged discrimination in this Complaint occurred.

7. MaineHealth had 50 to 100 employees for each working day in each of 20 or more calendar weeks in the same calendar year as when the alleged discrimination in this Complaint occurred.

8. This Court has subject matter jurisdiction over Kendrick’s federal and state claims pursuant to 28 U.S.C. §§ 1331 and 1367.

9. On or about May 2, 2018, Kendrick filed a timely Complaint/Charge of Discrimination against Defendants alleging unlawful disability discrimination with the Maine Human Rights Commission (“MHRC”) and Equal Employment Opportunity Commission (“EEOC”).

10. On November 16, 2018, the MHRC issued a Notice of Right to Sue with respect to Kendrick’s state law claims.

11. On November 28, 2018, the EEOC issued a Notice of Right to Sue with respect to Kendrick’s claims under the ADA.

12. Kendrick has exhausted her administrative remedies with respect to all claims set forth in this Complaint.

FACTUAL ALLEGATIONS

13. Employees of Defendants mentioned in this complaint include:

- a. Judith M. West, Senior Vice President, Human Resources & Chief Human Resources, MMC;
- b. Diane Davis, ADA Specialist, MaineHealth;
- c. Susan Hodge, PHR, SHRM-CP, Human Resources, MMC;
- d. Sarah Thompson, MSN, RN, Director of Nursing NICU and CCN, MMC;
- e. Linda Brady, BSN, RN, Nursing Manager NICU and CCN, MMC;
- f. Susan Gatti, Employment Reassignment Specialist, MaineHealth;
- g. Andrea Korda-Willerson, RN, ADA Case Manager.

Kendrick’s employment history with Defendants

14. Kendrick is a registered nurse (RN).

15. Kendrick started working at MMC in June 1979 in the Neonatal Intensive Care Unit (NICU) taking care of ill and premature newborn infants.

16. In November 1998, Kendrick left MMC.

17. In 2000, MMC rehired Kendrick. Kendrick wanted to work in the NICU again but there was no vacancy.

18. For the next nine years, Kendrick worked in a variety of positions including the Dialysis Unit (2000-2002), the Orthopedic Neurology Unit (2002), and the Electrophysiology Lab (2003-2009). During that period of time, Kendrick applied eight different times for a job in the NICU.

19. In 2009, Kendrick finally achieved her goal of returning to the NICU.

20. Kendrick received favorable performance evaluations for the work she performed in the NICU.

21. Kendrick remained in that job until Defendants forced her out on January 28, 2018.

22. At the time she was forced out of the NICU, Kendrick was a Clinical Nurse II making \$78,380 per year.

Kendrick's requests for reasonable accommodations for her disability

23. Kendrick's disability is reactive airway dysfunction syndrome - recurrent bronchitis with immunodeficiency/low immunoglobulins and upper airway hyperreactivity.

24. Due to her disability, perfume and similar fragrances (hereinafter, "perfumes") cause Kendrick to suffer from symptoms such as coughing, respiratory irritation, shortness of breath, and chest tightness which she usually treats with an inhaler, nebulizer, and/or medication. Kendrick has also taken medication that is intended to help prevent her from having reactions to perfumes.

25. Kendrick's disability should not be a barrier to her employment in the MMC NICU because Defendants have a Fragrance-Free Policy that reads:

MMC is a Fragrance-Free environment (perfumes, colognes, lotions or any similar, scented product) of any kind are not permitted. In addition, tobacco products on clothing should not be noticeable by others.

26. On its website, MMC provides this information to families of babies who are patients in the Family Birth Center:

Preparing for Your Stay – What to Pack for Your Stay

...Please do not use heavy scented personal care products during your stay. Most chemicals used to create fragrances are also respiratory irritants and can trigger asthma, allergies, and migraines....

27. On December 12, 2017, West issued a message that set forth the reason for the fragrance-free policy. She wrote,

This policy is in place because fragrances...can severely affect the health of our patients, visitors and staff with sensitivities and allergies...

28. Defendants' policy has specific importance in the NICU because many patients on that unit are premature babies with breathing and other developmental problems.

29. Scientific studies suggest that it is harmful to premature babies and other neonates to be exposed to phthalates which are found in fragrances. *See, e.g.*, <https://www.sciencedaily.com/releases/2014/11/141113105423.htm> (visited Jan. 10, 2019).

30. For these reasons, Kendrick has advocated for a fragrance-free environment in the NICU.

31. Kendrick's manager in the NICU supported Kendrick's advocacy for a fragrance-free environment and stated as much, among other times, in Kendrick's annual performance review submitted on October 10, 2016.

32. However, Defendants did not and do not take all reasonable measures to enforce and effectuate their Fragrance-Free Policy.

33. As a result, Kendrick had multiple reactions to perfumes at work from March 2016 to December 2017 because visitors wore perfumes at MMC in violation of the Fragrance-Free Policy.

34. Kendrick reported each exposure and each reaction to Defendants' management.

35. Kendrick is not sensitive to every soap, deodorant, oil, shampoo, conditioner, hairspray, cream, lubricant, cleanser, sunscreen, or other types of fragrances that she encounters. The vast majority of reactions Kendrick had between March 2016 and December 2017 were to perfume. Two other reactions were to "heavy" and "strong" fragrances, both of which were probably perfume or cologne. Only one reaction was to "hair spray" (as reported by the visitor).

36. Kendrick does not have reactions to odors that are undetectable by other people. Other employees who were present when Kendrick had reactions while working in the NICU also smelled the strong perfumes and fragrances that caused Kendrick's reactions.

37. Kendrick requested reasonable accommodations because she was having multiple reactions to perfumes at work due to Defendants' failure to effectuate and enforce their Fragrance-Free Policy.

38. Defendants took the following actions to effectuate and enforce their Fragrance-Free Policy:

- a. Defendants published the message from West cited above. (Note that the message was sent on December 12, 2017, over a year-and-a-half after Kendrick first reported having adverse reactions to perfume in March 2016.)
- b. When Kendrick had reactions in the NICU, managers responded by reinforcing the Fragrance-Free Policy with visitors who violated the policy. However, nothing was done proactively to prevent visitors from entering the NICU wearing perfumes.

- c. In early 2017, there was increased signage of the Fragrance-Free Policy in the East Tower (where the NICU is located) to target family, visitors, and staff directly connected to the NICU.
- d. Signage was added at the East Tower Security desk although frequently it was not in view.
- e. In August 2017, MMC added multilingual signage of the Fragrance-Free Policy in the East Tower.
- f. Wipes were placed at the East Tower Security Desk for visitors to use before entering the East Tower.

39. Defendants' actions to enforce and effectuate the Fragrance-Free Policy were and are not adequate. For example:

- a. There was/is no signage instructing visitors to use the wipes to remove perfumes. Furthermore, if the wipes are not alcohol-based, they are probably not effective at removing perfumes.
- b. The signage posted by Defendants was/is not visible to and noticeable by visitors. The font size on the large posters is only about ¼ inch/7 mm/20 points, which does not meet ADA signage standards. To garner attention, the lettering should be at least 1 inch/26 mm/74 points.
- c. Phone messaging was/is not used to remind visitors and patients not to wear fragrances to the hospital.
- d. Employees were/are not told that they are expected to communicate the policy to individuals who are wearing perfumes or, if the employee is uncomfortable doing so, bringing the issue to the attention of a supervisor.

e. Visitors wearing perfumes were/are not prevented from entering the NICU.

40. On November 27, 2017, after Kendrick had reported having twelve separate reactions to perfumes, she met with Davis, Korda-Willerson, Hodge, Thompson and Brady to discuss her requests for reasonable accommodations.

41. Kendrick was told that Defendants would not do anything more to effectuate or enforce their Fragrance-Free Policy because wearing fragrance for some is a cultural choice and not wearing perfume impacts their lifestyle.

42. Kendrick asked if the employees at the security desk could inform people of the Fragrance-Free Policy if they smelled fragrances given that they directly interact with each visitor to the NICU. She was told that employees at the security desk would not be asked to do that because it was not their job.

43. Instead of taking reasonable steps to accommodate Kendrick in her current position, the managers encouraged Kendrick to explore reassignment to a different position.

44. In a letter dated December 11, 2017, which Kendrick sent to the managers on December 13, 2017, Kendrick renewed her request for the following reasonable accommodations:

- a. Insert pamphlets about the Fragrance-Free Policy in admission packets;
- b. Make public service announcements about the Fragrance-Free Policy;
- c. Improve visibility of signage about the Fragrance-Free Policy at every entrance;
- d. Use the Security Department to enforce the Fragrance-Free Policy using one or more of the following methods:

- i. Directing the person to remove fragrance by washing and/or changing clothes;
- ii. Having the person don a Tyvek suit to mask the fragrance, charging the person a small fee for the suit;
- iii. Asking the person to leave if they cannot or will not comply;
- iv. Disciplinary action for repeat offenders.

45. Kendrick also suggested that security personnel use an odor meter to detect perfumes.

46. On December 21, 2017, Kendrick met with Hodge to discuss her letter. Hodge told Kendrick that MMC was doing everything it could by using new signage to effectuate the policy.

47. In documents dated December 27, 2017, and January 1, 2018, two of Kendrick's medical providers recommended that, as a reasonable accommodation for Kendrick, MMC should more stringently enforce its Fragrance-Free Policy in the NICU.

48. Kendrick submitted both of these documents from her medical providers to Defendants.

49. On January 2, 2018, Kendrick broke the little finger on her right hand. It was set in a cast. Kendrick could not work with a cast so she took a medical leave of absence.

50. On January 13, 2018, while Kendrick was on leave, Kendrick spoke to Korda-Willerson by telephone about her accommodation request. Korda-Willerson acknowledged receiving the forms from Kendrick's doctors and told Kendrick she had all the information she needed.

Defendants removal of Kendrick from NICU

51. On January 19, 2018, Defendants decided not to let Kendrick return to work in the NICU because of her airway hyperreactivity condition. Kendrick did not learn of this decision until later.

52. On or about January 28, 2018, Kendrick's cast on her finger was removed and she was ready to return to work.

53. On or about January 30, 2018, Kendrick was told that she was not allowed to return to work because of her repeated reactions to fragrances in the NICU.

54. Kendrick was told that Defendants would try to reassign her to a different position but that they would stop paying her as of February 17, 2018.

55. As of February 14, 2018, the only positions that Gatti, the reassignment specialist, had presented to Kendrick were entry level office positions with a starting pay scale of \$12-\$14 per hour.

56. On February 17, 2018, Defendants extended the deadline for when they would stop paying Kendrick to February 28, 2018.

57. On Friday, February 22, 2018, Kendrick applied through MMC's career website for some jobs.

58. Davis subsequently called and told Kendrick that she should not apply for positions she found on the MMC career website.

59. Kendrick spoke to Gatti and was told that Gatti had no listings for the positions Kendrick applied for on the career website.

60. On Tuesday, February 27, 2018, Kendrick wrote an email to Davis, Hodge and others with the following message:

I want you to understand that I am still committed to my position as an RN in NICU.

I am requesting, once more, that you, as a Magnet recognized, JCAHO accredited Maine hospital, find the means to enforce the Fragrance Free Policy that has been in the policy standards for many years. This policy was enacted to protect our general admission patients, our devastating multi-trauma patients, our sickest Chronically ill patients, as well as our tiniest Neonatal patients and nurses like me, who are dedicated to caring for them over so many years. Your doing so, will allow me to continue to be the nursing advocate for these babies and an asset to our NICU team.

I will continue to be open to discussion and interactive process about how to achieve this.

Thank you for your time, Susan Kendrick

61. On the morning of Wednesday, February 28, 2018, Kendrick had a conversation with Davis and Hodge.

62. Kendrick pointed out that the accommodation she needed – better enforcement and effectuation of the Fragrance-Free Policy – was also important for the health of the patients they care for in the NICU as well as other staff and visitors who are at risk of fragrance exposures.

63. In spite of this, Davis and Hodge claimed that they could not do anything more to accommodate Kendrick in her NICU position.

64. Davis and Hodge offered Kendrick reassignment to the Maine Medical Partners Pediatric GI Specialty Group (“Specialty Group”) starting on March 13, 2018.

65. The compensation for the position offered was \$38.89 per hour, which is \$6.14 per hour lower than Kendrick’s NICU pay (\$45.03 per hour). They refused to negotiate a higher pay rate.

66. Kendrick was given 28 hours to make a decision.

67. In an email sent later that day, Kendrick asked Davis for more time to decide because she continued to grieve the loss of her position in the NICU and felt that she needed emotional balance to make this difficult decision.

68. Kendrick accepted the position in the Specialty Group on March 5, 2018, and started working there on March 13, 2018.

69. Even though the transfer to the Specialty Group was allegedly made to accommodate Kendrick's reactive airway condition, nothing was done to check whether the new work site was any more fragrance-free than the NICU.

70. Kendrick is currently working at the Specialty Group without the reasonable accommodations she requested from Defendants and continues to have reactions to perfumes.

71. When Kendrick started work there in March 2018, the Specialty Group had the same Fragrance-Free Policy as MMC but there was no signage in the building or office, no patient education, and no individual reinforcement of the policy.

72. The Specialty Group practice is located in a building shared with other businesses and medical practices that may not have fragrance-free policies, so Kendrick encounters people in common areas of the building who are allowed to wear perfumes to work.

73. Kendrick has continued to have exposures and reactions to perfumes at work since her transfer to the Specialty Group. Thus, Defendants' failure to reasonably accommodate her disability continued after they forced her into this position.

74. Kendrick has had reactions to perfume more frequently at her new job at the Specialty Group than at her job in the NICU.

75. During her first fourteen weeks working at the Specialty Group, Kendrick had seven episodes of bronchospasm due to Defendants' failure to enforce and effectuate their Fragrance-Free Policy.

76. Kendrick has taken steps to avoid perfume exposures at the Specialty Group, such as climbing the stairs instead of taking the elevator at work, but those steps are not an adequate substitute for the actions that Defendants could reasonably take to further limit her exposure to perfume.

77. Kendrick has asked to return to the NICU and has informed Defendants that she experiences perfume exposure more frequently at her current position at the Specialty Group than at the NICU.

78. Since her assignment to the Specialty Group, Kendrick has applied for the following positions on the following dates: Care Manager, Registered Nurse (RN) – Utilization Review (5/31/2018); Clinical Nurse/RN II-ASU/PACU Scarborough Surgery Center (5/31/2018); Care Manager, Registered Nurse (RN) (5/31/2018); Intake Registered Nurse/RN – Admitting (Per Diem) (6/28/2018); Clinical Nurse II (RN) – Cardiac Catheterization Lab (11/19/2018); Neonatal Nurse Practitioner – NICU (11/29/2018); Clinical Nurse (RN) II – Ambulatory Surgical Unit (ASU) (12/27/2018); Clinical Nurse (RN) II-Endoscopy (12/27/2018); Care Manager, Registered Nurse (RN) (12/28/2018); Clinical Nurse (RN) II – Inpatient Pediatrics/PICU (1/8/2019); Radiology or Cardiovascular Tech – Cardiac Cath Lab (1/8/2019); Clinical Nurse (RN) II – Ambulatory Surgical Unit – ASU (1/8/2019); Clinical Nurse II – Medical/Surgical Unit – P4C (1/8/2019); Clinical Nurse (RN) II- Inpatient Pediatrics/PICU (1/8/2019); and Clinical Nurse, RN – Cardiothoracic Intensive Care Unit (CTICU) (1/8/2019).

Kendrick has been informed that she was not selected for the positions that are underlined and has not heard whether she has been selected for the others.

79. Kendrick is qualified for all of the positions she has applied for since her assignment to the Specialty Group.

80. Even though there have been open positions in the NICU, Defendants have continued to refuse to let Kendrick work in the NICU because of her disability, her requests for reasonable accommodations, and/or her complaints about violations of her rights.

Defendants have no justifiable basis to deny Kendrick's accommodation requests

81. Kendrick seeks to protect the health of MMC's patients, visitors, and staff, including herself, through her requests that MMC take all reasonable steps to enforce and effectuate its Fragrance-Free Policy.

82. Defendants have claimed that it would be intrusive to do anything more to enforce or effectuate their own Fragrance-Free Policy. However, MMC already controls visitors in a number of ways.

83. MMC has dedicated staff for ensuring that visitors to the Hospital comply with the Defendants' policies.

84. MMC does not allow visitors to smoke on campus.

85. MMC does not let non-disabled visitors park in accessible parking spaces designated for people with disabilities.

86. MMC limits the places where visitors can go and the hours they can visit.

87. MMC does not permit patients to drink alcoholic beverages or take non-prescribed drugs.

88. MMC does not permit visitors who are loud, disruptive, or visibly intoxicated to remain in the facility.

89. MMC has required that visitors allow MMC personnel to squirt hand sanitizer gel onto their hands before they enter MMC's main entrance.

90. MMC personnel monitor visitors and staff (including doctors) to ensure that they use hand sanitizer gel before entering and after exiting patients' rooms.

91. Kendrick's request that visitors be monitored for perfumes is not qualitatively different from other "intrusions" that are necessary to protect the health and safety of patients, staff, and visitors.

92. Kendrick did not ask Defendants to adopt its Fragrance-Free Policy. Defendants adopted the policy many years ago without Kendrick's input.

93. MMC is a hospital with a mission and duty to protect the health of patients, employees, and the public.

94. MMC has not fulfilled this mission and duty because it has failed to do everything it reasonably could to enforce and effectuate its Fragrance-Free Policy.

Kendrick is a qualified individual with a disability

95. Kendrick has a disability as defined by the MHRA, ADA and the Rehab Act.

96. Kendrick has reactive airway dysfunction syndrome which substantially limits, *inter alia*, the major life activity of breathing and the functioning of her respiratory system when she is exposed to strong perfumes. Kendrick has bronchospasms which cause her to cough and wheeze with throat and chest tightness and shortness of breath. She has also suffered headaches. She needs to use an inhaler and/or nebulizer treatment when she has an exposure. Kendrick's

medical provider took her out of work for four weeks in June-July 2016 in an attempt to break the cycle of reaction.

97. An impairment that is episodic or in remission is a disability if the impairment substantially limits the major life activity when it is active. That is the case for Kendrick. When Kendrick is not having a reaction to perfumes, her breathing is normal. When Kendrick is having a reaction, her breathing is substantially limited.

98. Kendrick's impairment has lasted more than six months and impairs her health to a significant extent as compared to what is ordinarily experienced in the general population.

99. At all relevant times, Defendants have regarded Kendrick as a person with a disability.

100. Kendrick is also a qualified individual with a disability in that she can perform the essential functions of her RN job in the NICU and Specialty Group with or without reasonable accommodations.

101. Kendrick's medical providers did not tell her to stop working in the NICU; Defendants removed her from the NICU.

Defendants have discriminated and retaliated against Kendrick

102. Kendrick's accommodation requests were reasonable and constituted protected activity under the MHRA, ADA, and Rehab Act.

103. Beginning in March 2016 and continuing through the present, as a reasonable accommodation for her disability, Kendrick asked Defendants to take reasonable steps to enforce and effectuate their Fragrance-Free Policy.

104. It is not "plainly unreasonable" or "unduly burdensome" for Defendants to take reasonable steps to enforce and effectuate their own Fragrance-Free Policy.

105. Defendants' refusal to provide Kendrick with her requested reasonable accommodation constitutes disability discrimination.

106. Kendrick has also suffered other adverse employment actions due to disability discrimination and retaliation.

107. Excluding an employee from work is an adverse employment action.

108. Here, Defendants excluded Kendrick from work from January 28, 2018, to March 13, 2018, due to her disability and in retaliation for her request for reasonable accommodation.

109. Defendants discriminated and retaliated against Kendrick by removing her from her position in the NICU and transferring her to a different position instead of accommodating her in the NICU.

110. Reassigning Kendrick to a different position is a form of discrimination and retaliation, not a reasonable accommodation. Kendrick did not want to leave her position in the NICU.

111. Kendrick's new job working for the Specialty Group is not substantially equivalent to the job she had in the NICU because, among other reasons, it pays less, is less prestigious, and involves materially different job duties.

112. Defendants' offer of alternative employment to Kendrick in the form of a lower paying, less prestigious job does not shield them from liability for discrimination and retaliation.

113. Transferring Kendrick to a job with the Specialty Group was also not an effective accommodation because Defendants did not take reasonable steps to enforce or effectuate their Fragrance-Free Policy at the Specialty Group either.

114. Kendrick could have continued to work in the NICU even if Defendants did not take the steps requested by Kendrick and her medical providers to enforce and effectuate their

Fragrance-Free Policy. Kendrick would have preferred to continue to suffer reactions to perfumes from time to time as an employee in the NICU rather than transfer to her current position where the frequency of perfume exposure is actually worse.

115. Defendants' refusal to transfer Kendrick back to the NICU because of her disability and requests for reasonable accommodations constitutes additional discrimination and retaliation that is continuing.

116. Kendrick's filing of charges of discrimination with the MHRC and EEOC also constituted protected activity and Defendants may not retaliate against Kendrick for this protected activity.

117. Upon information and belief, Defendants have also not selected Kendrick for other positions she has applied for since her assignment to the Specialty Group because of her disability, her requests for reasonable accommodations, and/or her complaints of discrimination which include the complaints she filed with the MHRC and EEOC.

COUNT I: MHRA
UNLAWFUL DISCRIMINATION

118. Paragraphs 1-117 are incorporated by reference.

119. Defendants' conduct constitutes unlawful disability discrimination against Kendrick in violation of the MHRA.

COUNT II: MHRA
FAILURE TO ACCOMMODATE

120. Paragraphs 1-119 are incorporated by reference

121. Defendants violated the MHRA by failing to provide Kendrick with reasonable accommodations for her disability.

COUNT III: MHRA
UNLAWFUL RETALIATION

122. Paragraphs 1-121 are incorporated by reference.

123. Defendants violated the MHRA by retaliating against Kendrick because she requested and needs reasonable accommodations for her disability and/or because she complained about violations of her rights.

COUNT IV: ADA
UNLAWFUL DISCRIMINATION

124. Paragraphs 1-123 are incorporated by reference.

125. Defendants' conduct constitutes unlawful discrimination against Kendrick in violation of the ADA.

COUNT V: ADA
FAILURE TO ACCOMMODATE

126. Paragraphs 1-124 are incorporated by reference.

127. Defendants violated the ADA by failing to provide Kendrick with reasonable accommodation for her disabilities.

COUNT VI: ADA
UNLAWFUL RETALIATION

128. Paragraphs 1-127 are incorporated by reference

129. Defendants violated the ADA by retaliating against Kendrick because she requested and needs reasonable accommodations for her disability and/or because she complained about violations of her rights.

COUNT VII: REHAB ACT
UNLAWFUL DISCRIMINATION

130. Paragraphs 1-129 are incorporated by reference.

131. Defendants' conduct constitutes unlawful discrimination against Kendrick in violation of the Rehab Act.

COUNT VIII: REHAB ACT
FAILURE TO ACCOMMODATE

132. Paragraphs 1-131 are incorporated by reference.

133. Defendants violated the Rehab Act by failing to provide Kendrick with reasonable accommodation for her disability.

COUNT IX: REHAB ACT
UNLAWFUL RETALIATION

134. Paragraphs 1-133 are incorporated by reference.

135. Defendants violated the Rehab Act by retaliating against Kendrick because she requested and needed reasonable accommodations for her disability and/or because she complained about violations of her rights.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court grant the following relief:

- A. Declare the conduct engaged in by Defendants to be in violation of her rights;
- B. Enjoin Defendants, their agents, successors, employees, and those acting in concert with them from continuing to violate her rights;
- C. Order Defendants to reinstate Plaintiff to the NICU or, alternatively, award front pay to Plaintiff;
- D. Award lost future earnings to compensate Plaintiff for the diminution in expected earnings caused by Defendants' discrimination and/or retaliation;
- E. Award equitable-relief for back pay, benefits and prejudgment interest;
- F. Award compensatory damages in an amount to be determined at trial;

- G. Award punitive damages in an amount to be determined at trial;
- H. Award liquidated damages in an amount to be determined at trial;
- I. Award nominal damages;
- J. Award attorney's fees, including legal expenses, and costs;
- K. Award prejudgment interest;
- L. Permanently enjoin Defendants from engaging in any employment practices which discriminate on the basis of disability or retaliation;
- M. Require Defendants to mail a letter to all employees notifying them of the verdict against them and stating that Defendants will not tolerate discrimination or retaliation in the future;
- N. Require that Defendants post a notice in all of their workplaces of the verdict and a copy of the Court's order for injunctive relief;
- O. Require that Defendants train all management level employees on the protections afforded by the MHRA, ADA and the Rehab Act;
- P. Require that Defendants place a document in Plaintiff's personnel file which explains that Defendants unlawfully excluded her from work and reassigned her due to discrimination and retaliation;
- Q. Require Defendants to take all reasonable steps to enforce and effectuate their Fragrance-Free Policy; and
- R. Grant to Plaintiff such other and further relief as may be just and proper.

Respectfully submitted,

Dated: January 11, 2019

/s/ Allan Townsend

/s/ Chad T. Hansen

Attorneys for the Plaintiff

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