

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

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ANNE MIENKOWSKI,

*Plaintiff,*

v.

CLARKSON UNIVERSITY; CLIFTON  
PARK PHYSICAL REHABILITATION  
CLINIC (“CPPRC”), as a Member of ST.

PETER’S HEALTH PARTNERS;

CHRISTOPHER ROBINSON, in his  
Individual Capacity and in his Official  
Capacity as Provost Vice President of  
Academic Affairs of Clarkson

University; LENNART JOHNS, in his  
Individual Capacity and in his Official  
Capacity as a Dean of Clarkson

University; CINDY HAMMECKER-  
McLEAN, in her Individual Capacity  
and in her Official Capacity as  
Academic Fieldwork Coordinator of

Clarkson University; MICHAEL  
SEBASTIAN, in his Individual Capacity  
and in his Official Capacity as  
Fieldwork Educator for CPPRC; and

TINA HENNESSY, in her Individual  
Capacity and in her Official Capacity  
as Fieldwork Educator for CPPRC,

*Defendants.*

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Case No.: \_\_\_\_\_

**VERIFIED COMPLAINT**

**JURY TRIAL DEMANDED**

## INTRODUCTION

***“... I must also recognize that you were not provided accommodations for these clinical experiences.”***

*Provost Christopher Robinson’s December 28, 2023 letter to Anne Mienkowski recognizing that Clarkson University had violated her rights under the ADA and the Rehabilitation Act in 2023, before their unfair and unlawful repeat acts of discrimination involving the subject litigation in 2024.*

1. The Americans With Disabilities Act (“ADA”) of 1990 and Section 504 of the Rehabilitation Act (“RA”) of 1973 are two federal statutes that the representatives of the American people enacted to provide a means to remove barriers for individuals with intellectual, developmental, and physical disabilities, and for facilitating those individuals to have full participation in American life.
2. In passing the ADA in 1990, Congress had determined that forty-three million Americans have one or more physical or mental disabilities; that they are a discrete and insular minority; and that they have been subjected to purposeful unequal treatment and relegated to a status of political powerlessness based on characteristics that are beyond their control and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.
3. The purpose of the Rehabilitation Act of 1973 is similar to the ADA: it is to guarantee equal opportunity and independent living for disabled individuals to

maximize their employability, independence, and integration into the workplace and the community.

4. The prime job and the core function of occupational therapy (“OT”) practitioners is to address the needs of people with intellectual, developmental, and physical disabilities. As a result, OT practitioners play a crucial role at the intersection of those with disabilities and the ADA and Section 504 of the RA. Indeed, the ADA and the RA were crucial statutes to the birth of the modern-day OT profession.

5. Even though licensed OT practitioners are supposed to partner to achieve the goals of the ADA and the RA and to uphold their principles, the OT professionals at Defendant CLARKSON UNIVERSITY and Defendant CLIFTON PARK PHYSICAL REHABILITATION CLINIC (“CPPRC”) purposely and intentionally violated those goals and principles, as well as 2020 Occupational Therapy Code of Ethics required by the American Occupational Therapy Association (“AOTA”). That Code identifies the OT profession as being one grounded in seven longstanding Core Values: Altruism, Equality, Freedom, Justice, Dignity, Truth, and Prudence.<sup>1</sup>

6. Although these seven AOTA Core Values are supposed to provide a foundation to guide OT personnel in their interactions with others, the OT officials at CLARKSON UNIVERSITY and CPPRC violated these Core Values in their unfair and unlawful treatment of Plaintiff ANNE MIENKOWSKI (“Plaintiff”).

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<sup>1</sup> See [https://research.aota.org/ajot/article/74/Supplement\\_3/7413410005p1/6691/AOTA-2020-Occupational-Therapy-Code-of-Ethics](https://research.aota.org/ajot/article/74/Supplement_3/7413410005p1/6691/AOTA-2020-Occupational-Therapy-Code-of-Ethics)

They did this when they refused to provide Plaintiff with needed reasonable accommodations to complete her fieldwork at CPPRC, and then they purposely retaliated against her for reporting as a whistleblower about CLARKSON UNIVERSITY's failure to accommodate violations to the Accreditation Council for Occupational Therapy Education ("ACOTE") and to other officials at CLARKSON UNIVERSITY.

7. In fact, in less than a month from the date that Plaintiff's written complaint to ACOTE became known by CLARKSON UNIVERSITY's officials, which was by on or about January 26, 2024, they had drummed Plaintiff, an Honors Student, out of their OT Program, separating her in writing on February 23, 2024, by identifying phantom HIPAA violations and bogus claims of physical "safety violations" involving the patients she treated at CPPRC.

8. At the same time, even CLARKSON UNIVERSITY's own counsel has now formally renounced the alleged HIPAA violations, and neither the University nor CPPRC identified even one single documented occasion when Plaintiff supposedly committed a physical "safety violation." Indeed, in the three written evaluations that CPPRC provided to Plaintiff, none of them contained a documented "safety violation," much less a negative or adverse comment about her. *See Exhibits A, B, and C (attached).*

9. That's because the "safety violation" charges were unfounded allegations with no basis in fact or law. They were asserted at the urging of CLARKSON UNIVERSITY officials purely to provide them with camouflage to cover up their

dishonest desire to punish Plaintiff for bringing the anti-discrimination complaints about CLARKSON UNIVERSITY that she brought to light.

10. As a result, Plaintiff, who has completed all of her academic coursework with a GPA of 3.9, along with completing more than the required 24 weeks by doing 26 weeks of overall fieldwork to date, is entitled to the final equitable award from this Honorable Court of her Master's degree, as well as considerable monetary damages, both compensatory and punitive. Because CLARKSON UNIVERSITY has now violated Plaintiff's ADA and RA rights three times, this Court should order them to issue the Master's degree that she has earned, and a jury of her peers should award Plaintiff at least \$1M in compensatory and punitive damages.

### **JURISDICTION AND VENUE**

11. This Court has original jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.

12. This Court has supplemental jurisdiction over Plaintiff's state-law claims pursuant to 28 U.S.C. § 1367 because those claims are so related to the federal claims that they form a part of the same case or controversy between Plaintiff and Defendants.

13. Venue within the Northern District of New York is proper here pursuant to 28 U.S.C. § 1391 because the events that gave rise to Plaintiff's claims took place within Potsdam, New York, and Clifton Park, New York, which are within the Northern District of New York.

## **THE PARTIES**

14. Plaintiff is a resident and domiciliary of Rensselaer County, New York, within the Northern District of New York.

15. Defendant CLARKSON UNIVERSITY is a private educational institution located in Potsdam, New York, within the Northern District of New York.

16. CLARKSON UNIVERSITY accepts and receives substantial amounts of federal funding,<sup>2</sup> which makes it subject to the RA.

17. Defendant CPPRC is a private corporation that operates under the auspices of its umbrella corporation, St. Peter's Health Partners, which itself is a member of Trinity Health, which employs more than 15 individuals. CPPRC does a substantial amount of business within the Northern District of New York.

18. Defendant CPPRC, through its parent corporations, accepts and receives substantial amounts of federal funding, which makes it subject to the RA.

19. An employer/employee relationship existed between Plaintiff and CPPRC, since, for among other reasons, CPPRC controlled the manner and means of Plaintiff's work at CPPRC.

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<sup>2</sup> See <https://www.clarkson.edu/news-events/schumer-gillibrand-announce-more-7-million-clarkson-university-strengthen-health-care-workforce-resilience-and-green-energy-infrastructure-north-country>

20. Defendant CHRISTOPHER ROBINSON is a Provost and Vice President of Academic Affairs at CLARKSON UNIVERSITY, and so he is employed within the Northern District of New York.

21. Defendant LENNART JOHNS is Dean of Health Sciences at Clarkson University, and so he is employed within the Northern District of New York.

22. Defendant CINDY HAMMECKER-McLEAN is the Academic Fieldwork Coordinator for CLARKSON UNIVERSITY, and so she is employed within the Northern District of New York.

23. Defendant MICHAEL SEBASTIAN, OTR/L, is an employee of CPPRC, who works within the Northern District of New York, and he served as Plaintiff's Fieldwork Educator while she performed her fieldwork at CPPRC.

24. Defendant TINA HENNESSY, OTR/L, is an employee of CPPRC, who works in the Northern District of New York, and she served as Plaintiff's Fieldwork Educator while she performed her fieldwork at CPPRC.

### **FACTUAL BACKGROUND**

25. Plaintiff is an individual with several disabilities recognized under the ADA and the RA, including Attention-Deficit/Hyperactivity Disorder ("ADHD").

26. ADHD is one of the most common neurodevelopmental disorders of childhood. It is usually first diagnosed in childhood and often lasts into adulthood. Children with ADHD may have trouble paying attention, controlling impulsive behaviors,

and they are overly active. Although it is normal for children to have trouble focusing and behaving at one time or another, individuals with ADHD do not grow out of these behaviors. The symptoms continue, can be severe, and can cause difficulty in school settings, at home, or with friends.<sup>3</sup>

27. That is why district courts in the Second Circuit have held that ADHD is a disability for purposes of the ADA.<sup>4</sup> The same is true for disabilities under the RA. *Id.*

28. Despite her disabilities, Plaintiff maintained a GPA of 3.9 in the OT Graduate Program of Defendant Clarkson University. She was, therefore, a shining example of what the ADA and the RA can do: with some simple, reasonable accommodations, Plaintiff excelled in her coursework at Clarkson University, and thus she was given a Pi Theta Epsilon national award, an honors distinction for recipients in the top portion of their graduating class.

29. Plaintiff's academic rights were violated by CLARKSON UNIVERSITY on two prior occasions while she was performing her OT fieldwork. In fact, Plaintiff was separated from CLARKSON UNIVERSITY on one of those occasions, only to be reinstated when it was determined that CLARKSON UNIVERSITY officials had violated her academic rights and had failed, under the ADA and the RA, to provide

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<sup>3</sup> See <https://www.cdc.gov/ncbddd/adhd/facts.html>

<sup>4</sup> *Owens v. City of N.Y. Dep't of Educ.*, 2021 U.S. Dist. LEXIS 163819, at \*38 (S.D.N.Y. Aug. 30, 2021) (citing *Geoghan v. Long Island R.R.*, No. 06 CV 1435 (CLP), 2009 U.S. Dist. LEXIS 30491, at \*31 (E.D.N.Y. Apr. 9, 2009) (holding that ADHD is a “disease [that] does constitute a mental impairment under the ADA”).



her with reasonable accommodations. Because of the reversal of her separation in December 2023, CLARKSON UNIVERSITY agreed to offer Plaintiff free tuition as a result of the grievous violations of her rights.

30. In fact, in a December 28, 2023 letter to Plaintiff, Provost CHRISTOPHER ROBINSON acknowledged that violations of the ADA and the RA were committed by CLARKSON UNIVERSITY: "... I must also recognize that you were not provided accommodations for these clinical experiences." Exhibit D (attached).

31. Plaintiff continued in CLARKSON UNIVERSITY's OT Graduate Program after the University allowed her to walk for graduation, promised to provide her with reasonable accommodations, free tuition, and certain safeguards to protect her rights in the future, including a third-party intermediary to ensure fair grading and transparent communications.

32. In January 2024, Plaintiff only had to complete her fieldwork to obtain her OT Master's degree. But in the five weeks that she performed her fieldwork at CPPRC, that is, in January and February 2024, CLARKSON UNIVERSITY failed to uphold the promises that were made to Plaintiff in December 2023. Once again, reasonable accommodations were *not* fully implemented, even though she requested them multiple times in writing.

33. Those reasonable accommodations included, among other things: (a) short mental rest breaks following work requirements that lasted longer than one hour; (b) advanced access to training materials; (c) part-time work capacity, i.e., working

a reduced daily schedule for a longer period of time to complete the program; (d) extensions for submitting documentation; and (e) prompts and checklists to assist her. CLARKSON UNIVERSITY and its officials and CPPRC and its employees ignored Plaintiff's written and oral requests to fully implement these reasonable accommodations.

34. In fact, CLARKSON UNIVERSITY and its officials, specifically CHRISTOPHER ROBINSON, LENNART JOHNS, and CINDY HAMMECKER-McLEAN, and CPPRC and its employees, specifically MICHAEL SEBASTIAN and TINA HENNESSY, deliberately and intentionally violated the rights of Plaintiff by failing to fully implement the reasonable accommodations at her fieldwork site, CPPRC, and by then purposely retaliating against her after she became a whistleblower and complained to the Accreditation Council for Occupational Therapy Education ("ACOTE") about CLARKSON UNIVERSITY's purposeful failure to protect people like her who required reasonable accommodations.

35. Less than a month after CLARSON UNIVERSITY's officials, i.e., CHRISTOPHER ROBINSON, LENNART JOHNS, and CINDY HAMMECKER-McLEAN, learned of Plaintiff's written complaint to ACOTE, which was contemporaneously also addressed to certain other University officials, those same officials conspired with MICHAEL SEBASTIAN and TINA HENNESSY of CPPRC to trump up bogus charges against Plaintiff in retaliation so as to officially separate her from CLARKSON UNIVERSITY by falsely alleging that she had committed HIPAA violations and multiple "safety violations" at the fieldwork site, CPPRC.

36. The alleged HIPAA violation that Plaintiff was accused in writing of committing at CPPRC was recording the first names of her patients in her password-protected, locked Apple i-Pad. Yet after a demand letter was served on Clarkson University fully explaining that, under HIPAA case law and regulations, this was not a HIPAA violation, on March 8, 2024, CLARKSON UNIVERSITY's retained counsel from Bond, Schoeneck & King PLLC, Ms. Laura Harshbarger, freely admitted that, despite the University's written charge against Plaintiff, she was *not* in fact separated from CLARKSON UNIVERSITY because of a HIPAA violation. Rather, Ms. Harshbarger stated that Plaintiff was separated from Clarkson University for supposedly committing multiple "safety violations" while treating her patients at CPPRC.

37. Yet Plaintiff was never once informed by the CPPRC staff, MICHAEL SEBASTIAN or TINA HENNESSY, either orally or in writing, that she had committed even a single "safety violation." In fact, Plaintiff received three written evaluations from Mr. SEBASTIAN, her direct supervisor at CPPRC, i.e., her Fieldwork Educator. In those written evaluations, Mr. SEBASTIAN never identified even a single "safety violation."

38. Instead, in addition to heaping oral praise on Plaintiff, in those written evaluations, Mr. SEBASTIAN noted that Plaintiff was "very organized [sic]"; that she was "very prepared [sic] for Pt [patients] and DX [diagnoses]," that she "[p]repares [sic] well for patients"; that she "looks up what she does not know"; and that she was always "[p]repared [sic]." See Exhibits A, B, and C (attached).

39. The only areas for growth identified by Mr. SEBASTIAN in those same three evaluations were the following: “work on fun conversation with patients ... small talk. This will come with time”; “Time managemet [sic]. Flowing from one patient to the next.”; “increase speed of doing notes (come up with system)”; and “increase speed of measurements.” *Id.*

40. Again, Plaintiff was never informed that she committed even a single “safety violation” by anyone on the CPPRC staff, including by her Fieldwork Educator, Mr. SEBASTIAN, and by his assistant, Defendant TINA HENNESSEY, another employee of CPPRC. No one at CPPRC ever informed Plaintiff orally or in writing that a “safety violation” occurred for one simple reason: no “safety violation” was ever committed by Plaintiff at CPPRC.

41. Even hours *prior* to being told orally, on February 16, 2024, that she would be separated from CLARKSON UNIVERSITY, Plaintiff reiterated what she had previously informed the University officials: that her reasonable accommodation needs were still not being met at the fieldwork site. Defendants CHRISTOPHER ROBINSON, LENNART JOHNS, and CINDY HAMMECKER-McLEAN, ignored Plaintiff’s pleas for reasonable accommodations, and just as it had done in 2023, the University once again violated Plaintiff’s rights to reasonable accommodations under the ADA and the RA. In addition, CPPRC likewise ignored these same pleas for reasonable accommodations, after acknowledging that these reasonable accommodations needed to be implemented.

42. Not only did CHRISTOPHER ROBINSON, LENNART JOHNS, and CINDY HAMMECKER-McLEAN refuse to provide reasonable accommodations, they hastily notified Plaintiff that she needed to appear for a Zoom meeting during the afternoon of February 16, 2024. During that Zoom meeting, Provost CHRISTOPHER ROBINSON and Dean LENNART JOHNS unceremoniously notified Plaintiff that she would be separated from CLARKSON UNIVERSITY for committing multiple alleged “safety violations” while she worked at CPPRC.

43. When Plaintiff asked what the alleged “safety violations” were, she was told by Provost CHRISTOPHER ROBINSON and Dean LENNART JOHNS that the University would put them in writing and supply them to her in that form. This, however, never occurred. In fact, to this date, Plaintiff has still not been notified by either the CLARKSON UNIVERSITY Defendants, nor by the CPPRC Defendants, as to what alleged “safety violations” she supposedly committed.

44. Furthermore, Provost CHRISTOPHER ROBINSON and Dean LENNART JOHNS tried to threaten and bully Plaintiff by stating during that February 16, 2024 Zoom call that she was prohibited from having any contact with anyone at CPPRC. Provost CHRISTOPHER ROBINSON and Dean LENNART JOHNS had no authority to attempt to place an unlawful gag order on Plaintiff.

45. Days later, on February 23, 2024, CLARKSON UNIVERSITY sent Plaintiff a letter via email. In that letter, CHRISTOPHER ROBINSON notified Plaintiff that that she was being separated for a HIPAA violation, a charge that CLARKSON UNIVERSITY’s own attorney, Ms. Laura Harshbarger, has since officially walked

back. Additionally, Plaintiff was informed that she committed “safety violations.” However, despite the fact that Provost CHRISTOPHER ROBINSON and Dean LENNART JOHNS had stated that they would inform Plaintiff in writing what “safety violations” she supposedly committed, these Defendants refused to do so.

46. A contract existed between Plaintiff and CLARKSON UNIVERSITY. By refusing to issue Plaintiff her Master’s degree, CLARKSON UNIVERSITY and its officials breached that contract and Plaintiff sustained substantial damages as a result.

### **FIRST CLAIM**

#### **DISCRIMINATION UNDER THE AMERICANS WITH DISABILITIES ACT**

47. Plaintiff incorporates by reference the paragraphs above as if fully set forth herein.

48. Defendant CLARKSON UNIVERSITY and Defendant CPPRC discriminated against Plaintiff under the ADA by failing to accommodate Plaintiff, an otherwise qualified disabled person, with reasonable accommodations at her fieldwork worksite.

49. By way of summary, Plaintiff is and was a person with a disability under the meaning of the ADA; the Defendants had notice of her disability; with reasonable accommodations, Plaintiff could perform the essential functions of the fieldwork site job at issue; and the Defendants refused to make such reasonable accommodations.

50. Because of the discrimination of Defendant CLARKSON UNIVERSITY and Defendant CPPRC, Plaintiff was denied the ability to continue her fieldwork at CPPRC, and thus she was separated from Defendant CLARKSON UNIVERSITY, she was denied her OT Master degree, and Plaintiff has therefore been damaged in an amount to be determined at trial.

### **SECOND CLAIM**

#### **DISCRIMINATION UNDER SECTION 504 OF THE REHABILITATION ACT**

51. Plaintiff incorporates by reference the paragraphs above as if fully set forth herein.

52. Defendant CLARKSON UNIVERSITY receives federal funds.

53. Defendant CPPRC receives federal funds through its parent corporate organizations.

54. Plaintiff, an otherwise qualified individual, was subjected to Defendant CLARKSON UNIVERSITY's discriminatory acts solely because (1) she associated with and advocated for individuals with disabilities by whistleblowing on Defendant CLARKSON UNIVERSITY for its violations of the rights of individuals with disabilities, and (2) she requested reasonable accommodations for her known disabilities, reasonable accommodations that were denied to her.

55. Plaintiff, an otherwise qualified individual, was subjected to Defendant CPPRC's discriminatory acts solely because of her known disabilities and because

she requested reasonable accommodations, which were denied to her by Defendant CPPRC.

56. As has been fully set forth in this Complaint, both Defendant CLARKSON UNIVERSITY and Defendant CPPRC acted with deliberate indifference and with malice to the rights that the Plaintiff with disabilities enjoyed under the RA. Officials from both Defendant CLARKSON UNIVERSITY and Defendant CPPRC had the authority to address the discrimination and to institute corrective measures on Plaintiff's behalf, they had actual knowledge of ongoing discrimination against Plaintiff, but those officials failed to respond adequately.

57. By way of summary, then, Defendant CLARKSON UNIVERSITY and Defendant CPPRC were well aware of Plaintiff's disabilities, with reasonable accommodations Plaintiff could successfully perform the essential functions of the fieldwork at CPPRC, Defendant CLARKSON UNIVERSITY and Defendant CPPRC were aware that Plaintiff requested reasonable accommodations to address her disabilities, and Defendant CLARKSON UNIVERSITY and Defendant CPPRC intentionally refused to take remedial or corrective action to remedy the problems when they refused to make such reasonable accommodations.

58. Because of the discrimination of CLARKSON UNIVERSITY and Defendant CPPRC, Plaintiff was denied the ability to continue her fieldwork at CPPRC, thus, she was separated from CLARKSON UNIVERSITY, she was denied her OT Master's degree, and Plaintiff has been damaged in an amount to be determined at trial.



### **THIRD CLAIM**

#### **RETALIATION UNDER THE REHABILITATION ACT BY CLARKSON UNIVERSITY**

59. Plaintiff incorporates by reference the paragraphs above as if fully set forth herein.

60. Plaintiff was subjected to Defendant CLARKSON UNIVERSITY's discriminatory retaliation because she associated with and advocated for individuals with disabilities by whistleblowing on Defendant CLARKSON UNIVERSITY for its violations of the rights of individuals with disabilities.

61. In other words, Plaintiff's protected activity was the action she took to protest and oppose statutorily prohibited discrimination by Defendant CLARKSON UNIVERSITY.

62. CLARKSON UNIVERSITY knew that Plaintiff was involved in protected activity under the RA; more specifically, at the end of January 2024, Defendant CLARKSON UNIVERSITY learned of Plaintiff's complaint to ACOTE, which complaint asserted that Defendant CLARKSON UNIVERSITY was violating the RA by not providing reasonable accommodations to its students.

63. An adverse action was taken against Plaintiff by Defendant CLARKSON UNIVERSITY; more specifically, the University separated Plaintiff from her OT Master's Program less than a month after learning of Plaintiff's ACOTE complaint about Defendant CLARKSON UNIVERSITY.

64. A causal connection exists between the protected activity asserted above and the adverse action taken by Defendant CLARKSON UNIVERSITY asserted above.

65. Because of the retaliation of Defendant CLARKSON UNIVERSITY, Plaintiff was denied the ability to continue her fieldwork at CPPRC, thus, she was separated from Defendant CLARKSON UNIVERSITY, she was denied her OT Master's degree, and Plaintiff has been damaged in an amount to be determined at trial.

#### **FOURTH CLAIM**

#### **NEW YORK STATE EXECUTIVE LAW § 290 *ET SEQ.***

66. Plaintiff incorporates by reference the paragraphs above as if fully set forth herein.

67. Defendants CHRISTOPHER ROBINSON, LENNART JOHNS, and CINDY HAMMECKER-McLEAN of CLARKSON UNIVERSITY, and MICHAEL SEBASTIAN and TINA HENNESSY of CPPRC, wrongfully aided and abetted in the discrimination against Plaintiff, who was an advocate for individuals with disabilities and a whistleblower, and who asked for and needed reasonable accommodations but was denied those reasonable accommodations, all in violation of New York's Human Rights Law Executive Law, Section 296.

68. As a result, Plaintiff has been damaged in an amount to be determined at trial.

## **FIFTH CLAIM**

### **NEW YORK STATE WHISTLEBLOWER LAW, LABOR LAW SECTION 740**

69. Plaintiff incorporates by reference the paragraphs above as if fully set forth herein.

70. Defendant CHRISTOPHER ROBINSON, LENNART JOHNS, and CINDY HAMMECKER-McLEAN of CLARKSON UNIVERSITY, wrongfully retaliated against Plaintiff as an advocate for individuals with disabilities and as a whistleblower, all in violation of New York's Labor Law, Section 740.

71. By way of summary, there was activity protected by the statute (i.e., the filing of a written complaint with ACOTE), there was retaliatory action (i.e., Plaintiff was separated from Defendant CLARKSON UNIVERSITY), and there was a causal link between the two.

72. As a result, Plaintiff has been damaged in an amount to be determined at trial.

## **SIXTH CLAIM**

### **BREACH OF CONTRACT AND OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

73. Plaintiff incorporates by reference the paragraphs above as if fully set forth herein.

74. Under New York Law, there was an implied contract and an implied covenant of good faith and fair dealing between Plaintiff and Defendant CLARKSON UNIVERSITY. Plaintiff complied with the terms of the contract and covenant prescribed by Defendant CLARKSON UNIVERSITY in order to obtain her Master's degree in OT. Defendant CLARKSON UNIVERSITY and Defendants CHRISTOPHER ROBINSON, LENNART JOHNS, and CINDY HAMMECKER-McLEAN breached the implied contract and the implied covenant of good faith and fair dealing between Plaintiff and Defendant CLARKSON UNIVERSITY by not dealing with Plaintiff in good faith.

75. By way of summary, then, a contractual agreement between Plaintiff and Defendant CLARKSON UNIVERSITY existed; there was adequate performance of contract by Plaintiff; there was a breach of contract by Defendant CLARKSON UNIVERSITY and Defendants CHRISTOPHER ROBINSON, LENNART JOHNS, and CINDY HAMMECKER-McLEAN; and Plaintiff sustained substantial damages as a result.

76. These same Defendants did not deal with Plaintiff in good faith when they purposely violated the ADA and the RA with regard to her and when they failed to provide to her a Master's degree in OT despite the fact that she had met all of the requirements for that degree, both in her academic course work and in her fieldwork.

77. As a result, Plaintiff has been damaged in an amount to be determined at trial.

**WHEREFORE**, Plaintiff requests that judgment be entered in her favor and against all Defendants as follows:

(a) Awarding as against all Defendants such compensatory damages as the jury shall determine;

(b) Awarding as against all Defendants such punitive damages as the jury shall determine;

(c) Awarding to Plaintiff as against Defendant CLARKSON UNIVERSITY the equitable relief of providing Plaintiff with an award of her Master's degree in OT; or in the alternative, awarding Plaintiff the equitable relief of the readmission of Plaintiff to the Master's Program in OT at Defendant CLARKSON UNIVERSITY, after finding that the University violated the ADA and the RA by failing to reasonably accommodate her known disabilities.

(d) Awarding as against all Defendants reasonable attorney's fees and costs.

Dated: March 22, 2024  
West Sand Lake, New York 12196

/s/ *Michael McCartin*

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**JURY DEMAND**

Plaintiff demands trial by jury on all issues so triable.

/s/ *Michael McCartin*

MICHAEL G. McCARTIN

*Attorney for Plaintiff*

**DECLARATION UNDER PENALTY OF PERJURY**

I, Anne Mienkowski, a citizen of the United States and a resident of the State of New York, have read the foregoing Complaint and hereby declare under penalty of perjury pursuant to 28 U.S.C. Section 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 22nd day of March 2024 at Rensselaer County, New York.

s/ Anne Mienkowski  
ANNE MIENKOWSKI