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IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 23-0094

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CINDY FUSON,

Plaintiff/Appellant,

v.

CHS INC., and DOES 1-5,

Defendant/Appellee.

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Appeal from the Ninth Judicial District Court, Toole County
Cause No. DV-18-044
The Honorable Robert Olson, Presiding

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# APPELLANT CINDY FUSON'S OPENING BRIEF

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Torrance L. Coburn
Tipp Coburn & Associates PC
2200 Brooks Street
P.O. Box 3778
Missoula, MT 59806-3778
406.549-5186
torrance@tcsattorneys.com

Attorney for Appellant
Cindy Fuson

John G. Crist
Crist, Krogh, Butler & Nord, LLC
The Securities Building
2708 First Ave. N, Suite 300
Billings, MT 59101
406.255.0400
jcrist@cristlaw.com

Attorney for Appellee
CHS, Inc.

# TABLE OF CONTENTS

Table of Authorities ..... ii

Issues on Appeal ..... 1

Statement of the Case ..... 1

Statement of Facts ..... 2

Standard of Review ..... 4

Summary of the Argument ..... 6

Argument ..... 6

I. The District Court erred in granting CHS summary judgment dismissing Fuson's disability discrimination claim, as Fuson held the necessary certifications and informed CHS of the same, and Fuson established that she was an otherwise qualified individual under the ADA and the MHRA. ..... 6

II. The District Court erred in granting CHS summary judgment dismissing Fuson's wrongful discharge and implied covenant of good faith and fair dealing claims, as they are separate and distinct from her discrimination claims and not barred by the Montana Human Rights Act. ..... 13

III. The District Court erred in granting CHS summary judgment dismissing Fuson's gender discrimination claim, as it was not time-barred. ..... 16

Conclusion ..... 19

Certificate of Compliance ..... 21

## TABLE OF AUTHORITIES

### Cases

*AMTRAK v. Morgan*, 536 U.S. 101, 122 S. Ct. 2061 (2002).....18

*Anthony v. Tax Int'l Corp.*, 955 F.3d 1123 (9th Cir. 2020) .....10

*Beck v. Univ. of Wis. Bd. Of Regents*, 75 F.3d 1130 (7th Cir. 1996).....10, 11

*Bishop v. Wilke*, 2021 WL 1339504 (E.D. Mich. 2021 – 2:19-cv-13552-APP).....9

*Chriske v. State*, 2010 MT 149, 357 Mont. 28, 235 P.3d 588 .....5

*D'Agostino v. Swanson*, 240 Mont. 435, 784 P.2d 919 (1990) .....5, 6

*EEOC v. UPS Supply Chain Sols.*, 620 F.3d 1103 (9th Cir. 2010) .....10

*Fisch v. Mont. Rail Link, Inc.*, 315 Mont. 13, 67 P.3d 267 (2003).....5

*Harrison v. Chance*, 244 Mont. 215, 797 P.2d 200 (1990) ..... 14, 15

*Jackson v. Costco Wholesale Corp.*, 2018 MT 262, 393 Mont. 191, 429 P.3d 641 ..9

*Marshall v. Gordon Trucking, Inc.*, 215 F. Supp. 3d 1036 (D. Or. 2016).....12

*Reinhardt v. BNSF Railway Company*, 2019 WL 3283131 (D. Mont. 2019 – CV 10-27-H-CCL.....9

*Samper v. Providence St. Vincent Med. Ctr.*, 675 F.3d 1233 (9th Cir. 2012).....7

*Sosa v. Hiraoka*, 920 F.2d 1451 (9th Cir. 1990) .....18

*Sprunk v. First Bank System*, 252 Mont. 463, 830 P.2d 103 (1992) .....5

*Tsur v. Intel Corp.*, 2021 U.S. Dist. LEXIS 194991 (D. Or. 2021).....18

*Vettel-Becker v. Deaconess Medical Center of Billings, Inc.*, 2008 MT 51, 341 Mont. 435, 177 P.3d 1034..... 13, 14

*Zook v. State*, 2009 Mont. Dist. LEXIS 118 (1st Jud. Dis. 2009).....16

**Statutes**

Montana Code Annotated § 49-2-501(4)(a)..... 16, 19

**Rules**

M. R. Civ. P. 8 .....17

M. R. Civ. P. 8(c).....12

**Regulations**

49 CFR 391.47 .....11, 12

COMES NOW the Appellant, Cindy Fuson ("Fuson"), and hereby submits her Opening Brief to the Supreme Court of the State of Montana.

## ISSUES ON APPEAL

1. Did the District Court err in granting CHS, Inc. ("CHS") summary judgment dismissing Fuson's disability discrimination claim, holding that Fuson could not establish that she was an otherwise qualified individual under the Americans with Disabilities Act ("ADA") and the Montana Human Rights Act ("MHRA")?
2. Did the District Court err in granting CHS summary judgment dismissing Fuson's wrongful discharge and implied covenant of good faith and fair dealing claims, holding that they were barred by the exclusivity provisions of the Montana Human Rights Act?
3. Did the District Court err in granting CHS summary judgment dismissing Fuson's gender discrimination claim, holding that it was time-barred?

## STATEMENT OF THE CASE

This case arises out of Fuson's complaint alleging both violations of anti-discrimination laws as well as Montana's Wrongful Discharge from Employment Act in relation to CHS's actions during Fuson's employment with CHS, and CHS's termination of her employment (Appendix 2, *Complaint and Jury Demand*, Dkt. 1). On August 8, 2022, CHS filed a *Motion for Summary Judgment* seeking dismissal of Fuson's disability discrimination claim, gender discrimination claim,

and her wrongful discharge and implied covenant of good faith and fair dealing claims. (Dkt. 28). The District Court entered its *Order Granting CHS's Motion for Summary Judgment and Judgment* on January 6, 2023, thereby dismissing Fuson's case, and all claims therein, with prejudice. (Appendix 1, Dkt. 50). Fuson timely filed her *Notice of Appeal* of the District Court's *Order* with this Court on February 6, 2023.

## STATEMENT OF FACTS

During her employment with CHS, Fuson worked as a driver/gauger. (Appendix 3, Deposition of Fuson, 12:25-13:2, attached to *Plaintiff's Response Brief in Opposition to Defendant's Motion for Summary Judgment* (Dkt. 39)). As a driver/gauger, Fuson was required to have a commercial driver's license ("CDL"), and a DOT medical certification which had to be renewed every two years. (Appendix 3, 14:4-20).

From December 14, 2016 through June 15, 2017, Fuson was on short-term disability leave. (Appendix 3, 22:2-9). On June 26, 2017, Fuson saw Physician's Assistant Christopher Rost and attempted to renew her DOT medical certification; however, Rost declined to renew her medical certification. (Appendix 3, 61:16-63:22). Upon the behest of CHS and its personnel, and with the understanding that it was required of her, Fuson also applied for long-term disability leave in mid-July

2017, despite her desire to return to work. (Appendix 3, 22:10-18, 65:22-66:3; 71:8-17).

After her unsuccessful attempt to renew her medical certification, Fuson was encouraged by CHS supervisor Craig Fish to get a second opinion and attempt to receive the renewal from a different provider. (Appendix 3, 65:16-21). Fish also informed Fuson that CHS did not require or rely solely on opinions provided by Mr. Rost. (*Id*).

Following Fish's advice, Fuson sought a second opinion and medical review, and on July 17, 2017, Fuson received a renewal of her DOT medical certification from Physician's Assistant Robert Babbitt. (Appendix 4, July 17, 2017 Medical Examiner's Certificate and Report, attached as Ex. B to Dkt. 39). On the same day, Fuson notified her supervisor Shelia Maloney that she had received the certification, and requested that her supervisor provide the email or fax number of the party to whom she was supposed to send it to be processed. (Appendix 5, Emails between Fuson and Sheila Maloney, attached as Ex. E to Dkt. 39; Appendix 3, 67:22-69:6). Despite Fuson's request, her supervisor did not provide the requested information. (*Id*).

On July 31, 2017, Fuson received notification from the TSA that her HAZMAT endorsement was eligible to be renewed. (Appendix 6, July 31, 2017 letter from TSA Re; HAZMAT endorsement, attached as Ex. D to Dkt. 39).

Thereafter, on September 12, 2017, Fuson renewed her Montana CDL. (Appendix 7, Fuson CDLs, attached as Ex. C to Dkt. 39).

On or around September 29, 2017, Fuson and CHS were advised that Fuson's request for long-term disability had been denied. (Appendix 3, 89:1-15). Also on September 29, 2017, Fuson again notified CHS that had a valid CDL and met the necessary requirements to perform her job as a driver/gauger, and requested to be placed on the schedule. (Appendix 8, September 29, 2017 email from Flaherty to Jennifer Punzel, attached as Ex. G to Dkt. 39).

Despite Fuson's September 29, 2017 letter, CHS did not place Fuson on the schedule, nor did it request additional information concerning her ability to return to work and perform the duties of her job. Instead, on October 3, 2017, it sent Fuson a letter terminating her employment. (Appendix 9, CHS's October 3, 2017 letter to Fuson terminating her employment, attached as Ex. A to Dkt. 39). CHS's purported reason for terminating her employment was that she was not medically qualified to drive a commercial motor vehicle due to perceived mental health issues. (*Id*).

## STANDARD OF REVIEW

The Montana Supreme Court reviews a district court's grant of summary judgment de novo, applying the standard set forth in Rule 56 of the Montana Rules

of Civil Procedure. *Chriske v. State*, 2010 MT 149, ¶13, 357 Mont. 28, ¶13, 235 P.3d 588, ¶13.

In order to be granted summary judgment, the moving party must first "demonstrate the complete absence of any genuine issue of material fact." *D'Agostino v. Swanson*, 240 Mont. 435, 442, 784 P.2d 919, 924 (1990). Summary judgment should not be granted where genuine issues of material fact are present. "It is well established that when material facts are in dispute, summary judgment is not a proper remedy." *Sprunk v. First Bank System*, 252 Mont. 463, 466, 830 P.2d 103, 105 (1992). If the moving party can demonstrate no genuine issues of material fact, it must then also demonstrate that it is entitled to judgment as a matter of law before it can be granted summary judgment. *Fisch v. Mont. Rail Link, Inc.*, 315 Mont. 13, 16, 67 P.3d 267, 268 (2003). Summary judgment should not be granted easily, as summary judgment should "never be substituted for a trial if a material factual controversy exists." *Fisch*, 315 Mont. at 16, 67 P.3d at 268 (citing *Boyes v. Eddie*, 292 Mont. 152, 970 P.2d 91 (1998).)

In motions for summary judgment, "the evidence must be viewed in the light most favorable to the non-moving party". *Fisch*, 315 Mont. at 17, 67 P.3d at 269 (citing *Mickelson v. Mont. Rail Link, Inc.*, 299 Mont. 348, 999 P.2d 298). Additionally, all reasonable inferences that may be drawn from the offered proof must be drawn in favor of the party opposing summary judgment. *D'Agostino*, 240

Mont. at 442, 784 P.2d at 924 (citing *Cereck v. Albertson's, Inc.*, 195 409, 411, 637 P.2d 509, 510-11 (1981)).

## SUMMARY OF THE ARGUMENT

The District Court erred in granting CHS summary judgment dismissing Fuson's claims. Contrary to the District Court decision, at the time of her termination Fuson held the necessary medical certifications and was an otherwise qualified individual under the ADA and the MHRA. Similarly, her wrongful discharge and implied covenant of good faith and fair dealing claims did not rely upon allegations of a discriminatory termination; therefore, they were not barred by the exclusivity provisions of the Montana Human Rights Act. Lastly, while perhaps inartfully pled, Fuson's timely-filed complaint before the Montana Human Rights Bureau put CHS on notice that she alleged a gender discriminatory termination of her employment, in addition to other allegations. Therefore, her claim was not time-barred.

## ARGUMENT

### I. The District Court erred in granting CHS summary judgment dismissing Fuson's disability discrimination claim, as Fuson held the necessary certifications and informed CHS of the same, and Fuson established that she was an otherwise qualified individual under the ADA and the MHRA.

A prima facie case of employment discrimination is established by the plaintiff showing that: (1) she is disabled; (2) she is an otherwise qualified

individual able to perform the essential functions of the job with or without a reasonable accommodation; and (3) she suffered an adverse employment action because of her disability. *Samper v. Providence St. Vincent Med. Ctr.*, 675 F.3d 1233, 1237 (9th Cir. 2012) (citations and alterations in original omitted). In this present case, the District Court's sole grounds for granting summary judgment dismissing Fuson's disability discrimination claims is its erroneous conclusion that Fuson could not establish the second prong – that she was an otherwise qualified individual – because she did not hold a current DOT medical certification. However, the material facts before the District Court clearly established that Fuson held the necessary DOT medical certification at the time of her termination, and therefore was an otherwise qualified individual.

As of both October 3, 2017 – the date of CHS's letter terminating her employment – and September 29, 2017 – CHS's stated effective date of her termination – Fuson held all necessary certifications. Despite CHS's statements to the contrary, Fuson had a valid Medical Examiner's Certification and Card as required under 49 CFR 391.41, and received the same on July 17, 2017. (Appendix 4). Fuson's Medical Examiner's Certification and Report Form established that she was qualified and met the standards of 49 CFR 391.41 as of July 17, 2017. Furthermore, she held a valid CDL throughout her employment

with CHS, including at the time of her termination, as well as the needed HAZMAT endorsement. (Appendix 6 and 7).

Furthermore, Fuson notified her supervisor that she had accomplished her DOT physical as of July 17, 2017. (Appendix 5). In doing so, Fuson directly asked for the email or fax number were the medical certification needed to be sent, as she understood that the long form was not supposed to be presented to her supervisor, but instead is presented to an independent company – Global Safety Network – as admitted to by CHS. (*Defendant CHS Inc.'s Brief in Support of Motion for Summary Judgment*, pg. 9, Dkt. 29). Despite Fuson's request for the contact information of the independent company, her supervisor refused to give it to her.

Fuson again notified CHS of her ability meet the qualifications necessary to perform her job duties on September 29, 2017, when her counsel contacted CHS requesting that Fuson be placed back on the schedule and notifying CHS that Fuson had a valid CDL. (Appendix 8). Interestingly, it was only on October 9, 2017, after CHS had terminated her employment, that it gave Fuson the contact information to Global Safety Network so that she could send the certification into the proper party. (Appendix F).

Both CHS and the District Court state that CHS was not obligated to rescind its termination decision after Fuson belatedly provided the medical documentation,

citing to *Jackson v. Costco Wholesale Corp.*, 2018 MT 262, 393 Mont. 191, 429 P.3d 641, in support of this argument. However, *Jackson* is entirely distinguishable from this matter. In *Jackson*, the employee was terminated for bad behavior, and only after his termination did the employee provide the employer information that about his disability and that the bad behavior was caused by his disability. *Jackson*, 2018 MT 262, ¶¶ 5-8, 10, 393 Mont. 191, 429 P. 3d 641. In contrast, Fuson was not belated in providing CHS with information demonstrating that she possessed the necessary medical certifications and qualifications, providing the same on July 17, 2017 and again on September 29, 2017, both before CHS's October 3, 2017 letter terminating Fuson's employment.

To the extent CHS required more information than what was given by Fuson, it was required to request the same instead of simply terminating her employment. The ADA – and by extension the MHRA – require the parties to engage in an interactive process when faced with an employee with a disability as defined by these acts, including cases in which the employee is perceived to be disabled. See *Reinhardt v. BNSF Railway Company*, 2019 WL 3283131, at *4 (D. Mont. 2019 – CV 10-27-H-CCL); *Bishop v. Wilke*, 2021 WL 1339504, at *2 (E.D. Mich. 2021 – 2:19-cv-13552-APP). The interactive process includes, among other things, direct communication between the employer and employee to explore in good faith the existence of a potential disability and any needed accommodation.

See *Anthony v. Tax Int'l Corp.*, 955 F.3d 1123, 1134 (9th Cir. 2020); *EEOC v. UPS Supply Chain Sols.*, 620 F.3d 1103, 1110 (9th Cir. 2010).

So important is the employer's obligation to engage in the interactive process in good faith that "it cannot prevail at the summary judgment stage if there is a genuine dispute as to whether the employer engaged in good faith in the interactive process." *Anthony*, 955 F.3d at 1134. Furthermore, "[a] party that fails to communicate, by way of initiation or response, may [] be acting in bad faith." *Beck v. Univ. of Wis. Bd. Of Regents*, 75 F.3d 1130, 1135 (7th Cir. 1996). Similarly, "[a] party that obstructs or delays the interactive process is not acting in good faith." *Id*.

In the present case, Fuson provided CHS with information demonstrating that she was able and medically certified to return to work and perform the duties of her position, informing them that she had her required medical certification and requesting the mailing information for Global Safety Network, the independent party that processes the medical certifications for CHS. CHS and the District Court allege that Fuson was required to provide the certification to CHS prior to her termination. However, after Fuson provided her information, CHS did not provide Fuson with the contact information of this independent party, despite her request for the contact information. In fact, it only provided her the information after it terminated her for not providing the same. As such, CHS acted in bad faith,

insuring it got the result it wanted, i.e., termination of Fuson's employment because of her perceived disability. If it required the additional information, it could not sit in silence hoping that Fuson would not provide the additional information prior to her termination. Such actions constitute a bad faith failure to engage in the interactive process. *Beck*, 75 F.3d at 1135.

Additionally, both CHS and the District Court erroneously argue that 49 CFR 391.47 works to both establish that Fuson cannot be a qualified individual as a matter of law, and that her claims are barred. However, both of these arguments must fail.

49 CFR 391.47 applies in situations in which an employer disputes and will not accept a medical certification provided by the employee, and requires the employee to follow certain administrative steps in such a situation. However, the evidence in this case demonstrates that CHS would not dispute the medical certification provided by Fuson. For instance, Craig Fish – a CHS supervisor – encouraged Fuson to get a second opinion, and informed Fuson that CHS did not rely solely upon opinions provided by Dr. Rost. (Appendix 3, 65:16-21). Additionally, when notified that Fuson received the medical certification, Fuson's immediate supervisor at CHS never indicated that CHS would not accept the same. As such, 49 CFR 391.47 did not require Fuson to complete the administrative steps set forth therein in order for her to become medically certified.

Additionally, the argument that Fuson's claim is barred because she did not exhaust the administrative procedures set forth in 49 CFR 391.47 must fail. Such an argument constitutes an affirmative defense. See *Marshall v. Gordon Trucking, Inc.*, 215 F. Supp. 3d 1036, 1040 (D. Or. 2016). As such, it must be raised in the answer or it is waived. M. R. Civ. P. 8(c). A review of CHS's *Answer to Complaint and Jury Demand* demonstrates that this affirmative defense was not raised by CHS. (See Dkt. 4).

Lastly, as recognized by the Montana Department of Transportation, a CDL cannot be maintained without a valid and current Medical Examiner's Certificate. (See MT DOJ – CDL Medical Certification Webpage, https://dojmt.gov/driving/medical-certification/). Given that Fuson held a valid and current CDL at the time of her termination, the facts before the District Court establish that Fuson had the necessary qualifications for her position, and CHS had notice of the same.

As demonstrated above, Fuson held the necessary DOT medical certification required for her position as driver/gauger. As such, she has provided facts establishing that she was an otherwise qualified individual, satisfying the second prong of her prima facie disability discrimination claim. Therefore, the District Court's order dismissing her disability discrimination claim was in error, and this case should be remanded for a trial on the merits of the claim.

## II. The District Court erred in granting CHS summary judgment dismissing Fuson's wrongful discharge and implied covenant of good faith and fair dealing claims, as they are separate and distinct from her discrimination claims and not barred by the Montana Human Rights Act.

Fuson's wrongful discharge and breach of the implied covenant of good faith and fair dealing claims can be established separate from – and without needing to establish – discrimination on the part of CHS. Therefore, she is not barred by the exclusivity provisions of the Montana Human Rights Act from bringing these claims. As this was the sole basis for the District Court granting the Defendant's *Motion* and dismissing Fuson's claims, its *Order* was in error and should be reversed.

As held by the Montana Supreme Court in *Vettel-Becker v. Deaconess Medical Center of Billings, Inc.*, 2008 MT 51, ¶39, 341 Mont. 435, 177 P.3d 1034, if a plaintiff's wrongful discharge from employment act ("WDEA") claim does not rest or depend upon establishing discrimination, it is not barred by the exclusivity provisions of the Montana Human Rights Act ("MHRA") and the claim can go forward, even when the plaintiff has also raised allegations of discrimination. In *Vettel-Becker*, the plaintiff raised both a discrimination in employment claim under the MHRA, alleging discrimination on the basis of marital status, gender and religion, as well a wrongful discharge claim under the WDEA. 2008 MT 51, ¶¶23-24. In determining that Vettel-Becker's WDEA claim was not barred by the

exclusivity provision of the MHRA, the Court recognized that Vettel-Becker offered facts, completely aside from any allegations of discrimination, which negated the employer's proffered good cause for terminating his employment. *Id* at ¶¶34, 38-39.

Fuson's WDEA and breach of the implied covenant of good faith and fair dealing claims are indistinguishable from the plaintiff's claim in *Vettel-Becker*. Just like the plaintiff in *Vettel-Becker*, Fuson has provided the Court with facts negating CHS's proffered good cause for terminating her employment. CHS's proffered reason for terminating her employment is that she did not possess the certifications required for her position as a driver/gauger for CHS. However, the evidence disproves those reasons, as Fuson held both a valid CDL and medical certification/medical card prior to CHS issuing its October 3, 2017 letter terminating her employment. (Appendix 4, 6 and 7).

Furthermore, the present situation is entirely distinguishable from the situation *Harrison v. Chance*, 244 Mont. 215, 797 P.2d 200 (1990), the case cited and analyzed by the District Court in support of its ruling. In *Harrison*, the employee was subjected to unwanted sexual advances from her employer, which culminated in a demand that the employee either "put out or get out." *Id*, 244 Mont. 215, 218, 797 P.2d 200, 202. The employee responded to the demand by resigning from her employment. *Id*. The employee filed a tort action against the

employer; however, it was dismissed with the district court reasoning that the Montana Human Rights Act provided the exclusive remedy for actions based on sexual harassment. *Id*. The Court upheld the district court's order. *Id*, 244 Mont. 215, 223, 797 P.2d 200, 205.

In *Harrison*, no case existed absent sexual harassment and proving the same. Without proving sexual harassment, the district court would be faced solely with a resignation by the employee, which would not be actionable by itself. In contrast, and like the plaintiff in *Vettel-Becker*, Fuson has offered facts, completely aside from allegations of discrimination, which negate the employer's proffered good cause terminating her employment. Just as the plaintiff in *Vettel-Becker*, Fuson's WDEA and breach of the implied covenant of good faith and fair dealing claims do not hinge upon proving that CHS's decision to terminate her was motivated by a discriminatory intent.

The District Court places great emphasis in its analysis on the fact that Fuson uses the same facts to support her claims, namely that Fuson did – in fact – have the necessary medical certifications at the time of her termination. However, at least one district court within Montana has recognized that just because the same facts are relied upon to establish wrongful discharge and discrimination claims does not mean that the wrongful discharge claim is barred by the exclusivity

provision of the MHRA. *Zook v. State*, 2009 Mont. Dist. LEXIS 118 (1st Jud. Dis. 2009).

For the foregoing reasons, the District Court should have determined that Fuson's WDEA and breach of the implied covenant of good faith and fair dealing claims were not barred by the exclusivity provision of the MHRA, and denied the Defendant's *Motion*. Its failure to do so was in error; therefore, this Court should reverse the District Court's *Order* and remand this case back for a trial on the merits.

## III. The District Court erred in granting CHS summary judgment dismissing Fuson's gender discrimination claim, as it was not time-barred.

Fuson's gender discrimination claim alleges that "CHS terminated [Fuson's] employment based on her … gender." (Appendix 2, ¶ 19). CHS arguably terminated Fuson's employment on October 3, 2017, when it sent her the letter informing her of the termination of her employment. However, even if the September 29, 2017 "Effective Date" as set forth in CHS's October 3, 2017 letter is used as the date of her termination, Fuson's February 6, 2018 filing of her Human Rights Bureau Complaint is well within the 180-day deadline set forth by Montana Code Annotated § 49-2-501(4)(a), as the 180-day deadline would be March 28, 2018.

In finding Fuson's gender discrimination claim time-barred, the District Court focused on Fuson's allegations of a hostile work environment and disparate treatment. It is true that in her deposition Fuson described a hostile work environment during the time she worked for CHS, including being reprimanded more severely than her male co-workers and being required to follow a set schedule when her male co-workers were not. (Appendix 3, 25:19-35:9; 57:13-58:9). It is also true that the only specific statements solely concerning gender discrimination in her complaint before the Human Rights Bureau state that "Fuson was the only female driver …"; that she "was subject to a hostile work environment wherein a male supervisor treated her disparately than the other mail (sic) drivers"; and that this "resulted in strict rules for Fuson and a disproportionate amount of scolding." (Appendix 11, Fuson's Complaint to the Montana Human Rights Bureau, attached as Exhibit 1 to *Defendant CHS, Inc.'s Brief in Support of Motion for Summary Judgment*, Dkt. 29).

The District Court uses Fuson's allegation in her Human Rights Complaint that "CHS illegally terminated Fuson because it perceived Fuson and disabled and used a false reason to terminate her" to argue that she did not claim that her termination was also a product of the gender discrimination she faced. However, Montana is a "notice pleading" state. M. R. Civ. P. 8. While inartfully pled, when taken as a whole, the allegations put CHS on notice that Fuson considered her

termination discriminatory and part of the gender discrimination she faced. This is in addition to the termination arguably constituting disability discrimination.

Moreover, the described prior discriminatory conduct establishes CHS's discriminatory animus, which in turn informed CHS's gender discriminatory termination. As the U.S. Supreme Court has previously held:

> The timely filing provision only requires that a Title VII plaintiff file a charge within a certain number of days after the unlawful practice happened. It does not matter, for the purposes of the statute, that some of the component acts of the hostile work environment fall outside of the statutory time period. Provided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile work environment may be considered by a court for the purposes of determining liability.

*AMTRAK v. Morgan*, 536 U.S. 101, 117, 122 S. Ct. 2061, 2074 (2002).

Furthermore, while time-barred events may not be actionable themselves, they may inform discriminatory animus relevant to a discriminatory termination claim. See *Tsur v. Intel Corp.*, 2021 U.S. Dist. LEXIS 194991, at *43 (D. Or. 2021). Lastly, evidence and claims of discriminatory conduct that would otherwise be time-barred are permitted under the "continuing violation doctrine." *Sosa v. Hiraoka*, 920 F.2d 1451 (9th Cir. 1990). Under the continuing violation doctrine, "a systematic policy of discrimination is actionable even if some or all of the events evidencing its inception occurred prior to the limitations period." *Id* at 1455 (citation omitted).

Citing to the eleven months between the date she last worked and the date of her termination, the District Court erroneously held that no continuing course of conduct existed. What the District Court fails to realize is that because of Fuson's approved leave and subsequent application for long-term leave pursuant to CHS policy, CHS had no opportunity in the intervening eleven months to engage in discriminatory conduct towards Fuson. It was only after her long-term leave request was denied that CHS had the opportunity to engage in further discriminatory conduct. And at its first opportunity, CHS resumed is discriminatory and hostile conduct, and terminated her employment.

In the present case, Fuson has described a gender-based hostile work environment, full of examples of discriminatory conduct by CHS and its supervisory personnel, which ultimately culminated in her discriminatory termination. As Fuson filed her Complaint with the Montana Human Rights Bureau within 180 days from her discriminatory termination, her gender discrimination claim is not time barred by Montana Code Annotated § 49-2-501(4)(a). Therefore, the District Court erred in dismissing this claim.

## CONCLUSION

As set forth above, the District Court erred in granting CHS summary judgment, thereby dismissing Fuson's claims. Therefore, Fuson respectfully requests that this Court reverse the District Court's *Order Granting CHS's Motion*

*for Summary Judgment and Judgment* and remand this case back to the District Court for a trial on the merits.

Respectfully submitted this 15th day of May, 2023.

TIPP COBURN & ASSOCIATES PC

By: */s/ Torrance L. Coburn*
Torrance L. Coburn
Attorney for Plaintiff/Appellant

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Times New Roman text of fourteen (14 points; is double-spaced; and the word count calculated by Word is 4,368 words, excluding the cover page, table of contents, table of authorities, certificate of compliance, certificate of mailing and appendix.

Dated this this 15th day of May, 2023.

TIPP COBURN & ASSOCIATES PC

By: */s/ Torrance L. Coburn*
Torrance L. Coburn
Attorney for Plaintiff/Appellant

## CERTIFICATE OF SERVICE

I, Torrance Lee Coburn, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 05-15-2023:

John Gregory Crist (Attorney)
2708 1st Avenue North
Suite 300
Billings MT 59101
Representing: CHS, Inc.
Service Method: eService

Electronically Signed By: Torrance Lee Coburn
Dated: 05-15-2023