

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 24-0717

Austin Roger Carter,

Pro Se,

Plaintiff and Appellant,

v.

Magris Talc USA, Inc., Louise M. Carter, AND Julie Ann Bittick

Defendants and Appellees.

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APPELLANT'S OPENING BRIEF

On Appeal from Cause No. DV 16-2024-315-WS in the Montana Eighteenth

Judicial District Court,

Gallatin County, The Honorable Andrew Bruener, Presiding

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STATEMENT OF THE ISSUES

- I. Whether, in constitutional challenges like this, MCA Rule 12(b)(6), M.R.Civ.P., has been misused / misapplied by the court when a sum made certain, legal theory for relief, and states a valid legal claim with facts, is present and is specific in a complaint.
 - A. Whether Rule 12(b)(6) takes precedent over Montana Code Annotated §§§ 39-2-801, 39-802, 39-2-803, and § 39-2-804 when dismissing defendants Louise M. Carter and Julie Ann Bittick. Mr. Carter stated the claim, and the blacklisting clearly identified and well-pled in the initial complaint.
 - B. Whether this amounts to an unconstitutional rule against plaintiff by depriving Mr. Carter of his constitutional rights

and protections under the Montana Constitution and the Montana Code Annotated. If defendants are dismissed Appellant can never be made whole.

II. Whether this Court should overrule the District Courts err on their determination to dismiss Defendants Louise M. Carter and Julie Ann Bittick as “individuals”, where it is described as “individuals” or “person” as legally responsible, in MCA §39-2-801, §39-2-802, §39-2-803, and § 39-804, as opposed to an “employee” reflected in the position of the district court.

A. Did the court wrongfully interpret WDEA § 39-2-912 “exemptions” when the judge stated “Nothing in the WDEA suggests that a wrongful discharge claim can be brought against a fellow employee in an individual capacity separate and apart from the actions of the employer.”, when the “blacklisting” portion of WDEA, §39-2-801, §39-2-802, §39-2-803, and § 39-804 state “person”.

B. Whether the court erred in its opinion that “none of the “exemptions” of § 39-2-912, “create a cause of action for wrongful discharge against a fellow employee in an individual capacity.”, and therefore “The Court finds that the WDEA is

addressed to the wrongful actions of “employers” as manifested by the actions of their employees within the scope of their employment.” When in § 39-2-912 (1)(a) details that it “does not apply to a discharge”...”that is subject to any other state or federal statute”...”statutes include those that prohibit discharge for filing complaints,”. Where Appellant did file complaints and was ultimately blacklisted by the individual defendants.

- III. Whether a judge can unconstitutionally misdirect a WDEA pleading of wrongful termination § 39-2-904, where Mr. Carter did refuse to violate public policy and reported it, and his employer materially violated its own written policy, and as a result Mr. Cater was subjected to Blacklisting as described in MCA §§ 39-2-801, 39-2-802, 39-2-803, § 39-2-804, with § 39-2-904 (a), and § 39-2-904 (c) elements. Then the judge converted it to a Workers Compensation Act using “intentional injury cites” and applying MCA §§ 39-71-411; and 39-71-413, stating that the only relief that can be sought in this case must have “wrongful conduct or intentional torts (e.g. battery)” to qualify in a “wrongful discharge”. Suggesting that blacklisting and a wrongful termination does not qualify under WDEA § 39-2-904 (a), §

39-2-904 (c), and the blacklisting under §§§ 39-2-801, 39-2-802, 39-2-803, § 39-2-804, as plead in Appellants Complaint.

A. Appellant had a prima facie showing of “Blacklisting” in his complaint, however the district court applied the incorrect standard and converted it into Workers Compensation Act and cited that Appellant needed to receive intentional injuries from the individuals and therefore dismissed Louise M. Carter and Julie Ann Bittick. This Court should overrule the District Courts decision.

IV. Whether MCA Rule 55(a), M.R.Civ.P., takes precedent over MCA Rule 12(a)(1)(A), M.R.Civ.P., the MCA Official Summons Form, MCA Rule 55(b)(1), M.R.Civ.P., and entry of judgement under MCA Rule 21 (A)(8)(a)(1), M.R.Civ.P., as it relates to default Judgement in this case. Whether a judge can erroneously manipulate the factual dates in a case and apply his own laws to intentionally create damages to Appellant by delaying entries and not being forthcoming with statements provided in In-Chambers Conferences, waiting over six months so he can use lawfare and delays to make Plaintiff /Appellant be further damaged by the postponements, through the eventual orders.

- A. Whether Plaintiff / Appellant prejudiced by the court when the court dismissed Julie Ann Bittick and Louise M. Carter.
 - B. Whether the court abused its discretion when it shifted the burden to Plaintiff / Appellant by not awarding default judgements and causing further financial hardship.
- V. Whether the district court manifestly abused its discretion by failing to consider and assess the Plaintiff / Appellants arguments and rebuttal evidence presented in his Complaint and his rebuttals to the Defendants Motions and presented materials, when dismissing defendants.
 - A. Whether the court abused its discretion when it did not consider the Complaint and its detailed accusations of blacklisting.
 - B. Did the court abuse its discretion when it did not consider the written documents detailing the reporting from the Department of Labor, ClearView (hotline), and Mr. Carters Performance Review as provided in the complaint, but only considered the documents provided by the defendants.
- VI. Whether the actions of the court were intentional and therefore limited Plaintiff / Appellant access to the courts, to Montana's Constitutional Rights, and his access to the Montana Code Annotated Laws.

STATEMENT OF THE CASE

Plaintiff/Appellant, Austin Roger Carter (“Mr. Carter”), filed a Wrongful Discharge From Employment under Title 39” on March 27, 2024, after being terminated by Magris Talc USA, Inc., and being “Blacklisted” by Julie Ann Bittick (“Julie”) and Louise M. Carter (“Louise”) via written documentation, and verbal retaliatory activity (Complaint District Court Doc. 1, pages 7 & 9). Prior to being wrongfully terminated Mr. Carter had excellent “Performance Reviews” and received his bonuses consistent with the reviews. Mr. Carter received the retaliatory actions from Julie and Louise after following the Magris Code of Conduct Policy and contacting the two defendants as required, first Louise in September of 2021, and then Julie in November 2021, (Complaint District Court Doc. 1, page 25). Then ultimately Mr. Carter contacted the Company Hotline on January 10, 2022, (ClearView hotline) (Complaint District Court Doc. 1, page 13-24). Then retaliation came in October 26, 2022, in the form of Louise and Julie changing Mr. Carters goals, that he had already met, near the end of the year and constructing an egregious “Personal Improvement Plan” attempting to deprive Mr. Carter of his bonus and raise that he had earned. This was followed by weekly sessions where Louise would verbally abuse, bully, gaslight, and degrade Mr. Carter in attempts to make him quit. Mr. Carter was then confronted with an

entirely changed Performance and Development (PAD, yearly review) review where Louise changed every goal in the current performance review that was established in the first quarter of 2022, to fit her new narrative. Mr. Carter had already completed his goals for the year and scored as follows: (Mr. Carter was 91-95 % = Exceeds Expectations, on his goals for the year that ended 12/31/2022). Under Louise's newly developed attack the review stated that I did not meet any of the goals so she could set Mr. Carter up to not receive his raise or bonus and attempt to have him quit. Mr. Carter again contacted the Magris hotline for a second time and was shortly thereafter contacted by Scott Bergen, Vice President, Commercial and Corporate Affairs, of Magris Talc USA, who also coordinates legal defenses, and who advised that he was the one that received all hotline calls and correspondence from the supposed private hotline. In direct discussions with Scott, he advised that he had been working with Louise and Julie to, apparently, help facilitate Mr. Carter's forced leave from the company due to him exposing the wrongdoing, company policy violations, the Magris Code of Conduct.

On October 26, 2022, Louise and Julie presented Mr. Carter with the Performance Improvement Plan (PIP), which reversed all of Mr. Carter's work in his PAD and blamed Mr. Carter for Louise and Julie's illegal activity and activity that was not permitted under the Magris Code of Conduct. Under the Magris Code

of Conduct it was required that employees follow the policy or face termination, if they did not report as required in the policy.

On March 27, 2023, Louise called a meeting with Mr. Carter in his Three Forks, Montana, Magris Talc purchasing office. Mr. Carter was presented with a “Separation Agreement and General Release of All Claims” by Louise and advised that I was terminated. The unsigned “Employment Termination” produced by Scott Bergen (“Scott”) with the unsigned PIP (Magris Talc USA Inc.’s Response in Opposition to Motion for Default Judgement, District Court Doc. 10, pages 19-22), was likely produced at a later time because Appellant never received that document, and it is not dated. On March 28, 2023, Julie Ann Bittick left the company. Mr. Carter reached out to Magris HR and was sent to other individuals, and ultimately to Scott Bergen, to inquire about being reinstated or for a reason why he was terminated, however Scott advised, “We acknowledge receipt of your email below. Please note that you were not advised of any internal procedure to appeal your discharge as Magris Talc does have any such internal procedure in place”... “If you agree with the terms of the Separation Agreement and General Release of All Claims, including the separation payment, please reach out to either Mitch or me to coordinate execution of the agreement and payment.” (Complaint District Court Doc. 1, page 31). Mr. Carter viewed this as extortion, because it was, and did not sign any of their documents. Appellant applied for jobs weekly

but was unable to secure one due to the “Blacklisting” and has been unable to secure a job to this date.

After finding that Magris would not follow their policy and that I had no options but to file with the Montana Department of Labor & Industry – Unemployment Insurance Division, where Magris Talc USA, Inc., delayed my ability to receive any benefits, the division finally ruled that “You state you were retaliated against and discharged after filing several reports of serious violations of the companies Code of Conduct policy and rule. Your employer has been given the opportunity to provide specific information regarding your employment and separation but has failed to do so. Therefore, an intentional disregard of your obligation to your employer has not been established. Based on the information available, your discharge was not for misconduct under Montana Code Annotated Section 39-51-201(19) and 39-51-2303.” (Complaint, District Court Doc. 1, page 45).

On March 27, 2024, Plaintiff / Appellant filed the complaint with the district court. After the Defendants failed to answer the complaint timely, Plaintiff/Appellant filed a Motions for Default Judgement with the required affidavit (Motion for Default, District Court Doc’s. 9, 12, & 13), subsequently Magris Talc USA Inc., filed a Motion in Opposition (Motion in Opposition, District Court Doc. 10), Julie and Louise filed Motions to Dismiss (Combined

Motion to Dismiss, District Court Doc. 6). On May 1, 2024, Judge Breuner ordered a Case Management Conference (District Court Doc. 11), for May 28, 2024. On May 28, 2024, an In-Chamber Conference occurred with all parties present, the judge advised the parties in that hearing that he would need to rule on the pending motions before the case could proceed. After 120 days of waiting for some kind of disposition, and as the local rules allow, Mr. Carter sent the court letters (Letters, District Court Doc. 20, 22, and 23) requesting some movement on his motions. Over Six (6) Months passed before the court denied Plaintiffs Motions for Default Judgement (Orders, District Court Doc. 24, 25, 26 and attached). In the “Motion Denying Default Judgements” Judge Andrew Bruener dismissed both Louise M. Carter and Julie Ann Bittick, making the order dispositive. Defendants / Appellees, through their attorney, immediately filed a Motion to Amend Caption to remove Louise and Julie (Motion to Amend Caption, District Court Doc. 27), and like a bolt of lightning, two days later, Judge Andrew Breuner granted the motion and recaptioned the case heading (Order Granting Motion to Amend, Complaint District Court Doc. 28). The contrast between the over six months to address Mr. Carters motions and the two days it took for a ruling for Defendants, obviously demonstrates how the court views this case and Plaintiff. On December 11, 2025, Mr. Carter filed this appeal.

Statement of the Facts

Plaintiff / Appellant, Austin Roger Carter (Mr. Carter) claims arise out of his termination from his position of Purchasing Manager for Magris Talc USA, Inc., and before the acquisition he was Purchasing Manager for Imerys, Talc North America, in Three Forks, Montana. Mr. Carters' position as purchasing manager, as well as the prior owner Imerys and Magris's Code of Conduct, required via policy that he be familiar with the Montana Uniform Commercial Code, under MCA Title 30 and United States UCC codes, as a requirement of his job. Under Imerys, there were no problems as Imerys was compliant and held to their policies and the law. When Imerys sold the talc division to Magris, Mr. Carter was responsible for putting in place "Bridging Agreements" with suppliers so that the transition would not have financial or supply chain issues during the transition. Unfortunately, after the transition to Magris, defendant Louise M. Carter went against the new policy and transferred purchasing authority to individuals without purchasing authority according to the Magris policy. Mr. Carter identified several areas of concern that required his reporting to management of Magris' according to the Code of Conduct policy, many problems were caused by the delegated authority that Louise granted to employees.

First, Mr. Carter attempted to work with and resolve the violations of Montana Laws, and Federal Laws through his supervisor Louise M. Carter, which

she rejected and attempted to shift the blame to Mr. Carter, thereafter Mr. Carter brought this to the attention of H.R. Director Julie Bittick, which was consistent with the Magris Talc USA, Inc., Code of Conduct (Complaint, District Court Doc. 1, page 2). Instead of resolving the issue with Magris' leadership, Julie Ann Bittick ignored the issues and instead colluded with Louise to formulate ways to conceal the violations of the laws and policy, and shift the blame to Plaintiff, Mr. Carter. This in turn was jeopardizing the company's compliance with the law, explosive permits, projects, agreements, and therefore damaging the relationships with Montana and U.S. suppliers (Complaint, District Court Doc. 1, pages 13-23). Mr. Carters is certified is a CPPB in Purchasing and the defendants / appellees were putting that certification at risk, due to Mr. Carter's compliance with the company policy and Montana Laws, as he was required as part of his certification to report issues of this nature to management and leadership (Complaint, District Court Doc. 1, page 3).

Mr. Carter had first notified Julie Bittick, H.R. Director for Magris, on November 1, 2021, (Complaint, District Court Doc. 1, pages 2-3), but the email and requests only spurred Julie to respond that "she would retaliate if I elevated this any further" (Complaint, District Court Doc. 1, page 47) which she did and joined with Louise to ramp up efforts in retaliation against Mr. Carter. Thereafter Mr. Carter called the Magris Hotline (ClearView) first on January 1, 2022, where

he reported the issues in hopes of getting a resolution as stated in the policy (Complaint, District Court Doc. 1, pages 13-22). On March 9, 2022, Giorgio LaMotta, General Manager for Talc North America, advised Mr. Carter that he had achieved 95.9% of his goals for the year and a bonus of \$10,132.60 for his achievements and good performance review (Complaint, District Court Doc. 1, page 51), similar to what Mr. Carter demonstrated that he received on his performance review that ended on December 31, 2022, for March 2023 distribution, (Plaintiffs Reply to Magris Talc USA Inc's Response in Opposition to Motion for Default Judgement, District Court Doc. 16, pages 34-43). Louise extorted the March 2023 bonus away from Mr. Carter, it is unlikely that this is coincidence, but the Separation Agreement / Covenant Not to Sue payment that was offered was exactly the amount that his bonus would have been for 2023.

During the period between February and mid-October 2022, Mr. Carter was heavily involved in the rolling out of Magris's new ERP (computer accounting system), Mr. Carter was over the requisitions and purchasing modules (and much of the finance as it related to purchasing), including training all requisitioners companywide, and including programing and transfers of data from the legacy system, during the implementation. All of this in addition to his normal duties of Purchasing Manager, which the two combined consumed over 80 hours per week. Mr. Carter received a substantial bonus of several thousand for the extra efforts the

good job done on the ERP project, in September 2022, from the Director of Finance, Anthony Wilson.

Shortly after the implementation of the ERP, October 26, 2022, Louise and Julie revived their efforts to take out Mr. Carter. Louise, in meetings, started repeating verbatim everything that Mr. Carter had departed to the ClearView Hotline, controlling Mr. Carters work computer through TeamViewer, changing financial documents, altering purchasing documents / agreements, and gaslighting Mr. Carter. This was done to cover up for Louise and Julies' misdeeds and violations of Montana MCA Title 30 violations, including §§§§ 30-14-205, 30-14-208, 30-14-209, and 30-14-219 (Complaint, District Court Doc. 1, page 16). On October 26, 2022, Mr. Carter was presented with a Performance Improvement Plan, that repeated near verbatim what was provided to the hotline only turned around to make it seem like Mr. Carter was the one that had committed the acts, statements that work Mr. Carter had conducted did not happen, and a cadre of fraudulent statements that were derogatory to Mr. Carter and his career and including extortion remarks, (Magris Talc USA Inc.'s Response in Opposition to Motion for Default Judgment, District Court Doc. 10, pages 19-22, Exhibit C). Mr. Carter refused to sign the documents although Julie and Louise kept persisting through emails and calls to have him sign the PIP document.

Mr. Carter reached out to the hotline (ClearView) again to follow up on his initial complaint and to inform them that he was going to reach out to others in management (Eric Colby) to get the issues resolved and to disprove the PIP document and Julie and Louise provided in the efforts to get Mr. Carter fired and to effectively blacklist him (Complaint, District Court Doc. 1, page 18 - 24). On November 11, 2022, Mr. Carter received a call from Scott Bergen, Vice President of Magris, and was advised that he was the one that was receiving the reports, reviewing them, and responding through ClearView. He continued to advise Mr. Carter to just go along with the PIP and meetings with Louise while he completed the review of the January 10, 2022, report that Mr. Carter filed. He further repeated what he had written in the ClearView report that, "As stated in our Code of Conduct, Magris prohibits retaliation against any employee for submitting a report or complaint, or for participating in any investigation." And "The performance improvement plan is your opportunity to address the performance issues that have been identified, and as stated in the plan any failure to do so could result in disciplinary action. (Complaint, District Court Doc. 1, page 18).

Mr. Bergen also advised Mr. Carter to attend his annual performance review and just "hear out" what Louise had to say. Mr. Carter met with Louise for his annual performance review, and he was shocked to find out that every one of his goals were thrown back in his face as 0% complete and that she repeated every

ClearView point and discussions surrounding those reports. It was obvious that Julie, Louise, and Scott had conspired to take out Mr. Carter. After the Performance Review (not the PIP), Mr. Carter reached out to Mr. Bergen and wrote to him, "Just finished a performance review that was possibly the most degrading, humiliating, demeaning, dishonest and repugnant performance review and situation I have ever encountered in my career. Louise outright lied and misrepresented every aspect of my performance review to deliver a blow to my career and good standing as an employee -and all after I have given it my all, and more, to keep this companies purchasing aspect functional, she is a liability to this company. Using me as a fall person for all of the activities that I have brought to the attention of this company to support its policy on "Code of Conduct" and instead the policy is being used as a tool to retaliate against myself as an employee. As previously mentioned, you prompted me to do the actions requested in the "performance improvement plan" even though it was a cover for activities done by Louise and Julie and to counter my reporting to Clearview of activities not in line with the code of conduct both times. Instead, Louise used those meetings to degrade me and give me a performance review that was a clear display of high-handed bullying and retaliation meant to pressure me to quit. Well, even if I did quit because of this blatant abuse, I now have a performance review that would

haunt me, derail my career and reduce my salary requirements. All in the name of retaliation for following Magris's Code of Conduct, which I am required to do according to that policy. I assume you discuss all of this with Louise and Julie, at a minimum Louise, as she will "word drop" from what I depart to you, or she is reading that in my emails that I send to you, so am not certain that the issues are making it to the correct place in Magris (I will make certain they do if they are not) or the policies are hollow." (Plaintiffs Reply to Magris Talc USA Inc's Response in Opposition to Motion for Default Judgement, District Court Doc. 16, page 18).

There were prior telephonic meetings between Louise M. Carter and Mr. Carter where it was discussed that Plaintiff could end his career and risk losing his certification (CPPB) should he proceed with endorsing the explosive project, other projects, and other sham requests for proposals that were being conducted by unauthorized persons, according to the Magris Code of Conduct and other policies, if he endorsed or proceeded with the transactions. This only increased the bullying, harassing, and gaslighting by Defendants, directed toward Plaintiff, and culminated in the termination of Mr. Carter on March 27, 2023.

The written document that Defendants Louise M. Carter and Julie Ann Bittick constructed to "Blacklist" Mr. Carter and used as pressure to get him to quit or leave the company, known as the "Performance Improvement Plan" (PIP), where the document demanded that Mr. Carter admit to wrongdoing and to

presumably reverse all of Mr. Carters' work so they could retroactively punish him and impact his yearly bonus, which it did. Although Mr. Carter refused to sign this PIP document, which is provided unsigned in the defendants' response in opposition (Magris Talc USA Inc.'s Response in Opposition to Motion for Default Judgement, District Court Doc. 10, pages 19-23). A comparison to the performance review and how it was altered in the last few days of the year will corroborate the actions of Louise and Julie and their construction of the blacklisting document and wrongful termination, (Plaintiffs Reply to Magris Talc USA Inc's Response in Opposition to Motion for Default Judgement, District Court Doc. 16, pages 34-43).

After the termination on March 27, 2023, Mr. Carter, on the following day Julie Ann Bittick left the company for unknown reasons, but it is obvious that the blacklisting and termination was a parting shot by her in collusion with Louise. Mr. Carter attempted to get Magris to advise him why he was terminated, as required by MCA § 39-2-801, and was advised by Scott Bergen "We acknowledge receipt of your email below. Please note that you were not advised of any internal procedure to appeal your discharge as Magris Talc does have any such internal procedure in place. Please also note that the separation payment that was presented on March 27 and set out in the Separation Agreement and General Release of All Claims remains our offer to you, should you wish to accept it. We are not prepared to accept the options you have set out below. If you agree with the terms of the

Separation Agreement and General Release of All Claims, including the separation payment, please reach out to either Mitch or me to coordinate execution of the agreement and payment.” (Plaintiffs Reply to Magris Talc USA Inc’s Response in Opposition to Motion for Default Judgement, District Court Doc. 16, page 22).

Mr. Carter contacted the Montana Department of Labor & Industry for unemployment where the Adjudication Unit determined (from a no answer from Magris) that “Your employer has been given the opportunity to provide specific information regarding your employment and separation but has failed to do so. Therefore, an intentional disregard of your obligation to your employer has not been established. Based on the information available your discharge was not for misconduct under Montana Code Annotated Section 39-51-201(19) and 39-51-2303.” (Complaint, District Court Doc. 1, page 45). In the complaint, which specifically listed “blacklisting” (Complaint, District Court Doc. 1, pages 7 & 9), Petitioner / Appellant stated that each of the individuals, Louise and Julie, were sued in both their official capacity at Magris and as an individual (Complaint, District Court Doc. 1, page 8). Plaintiff / Appellant specifically stated a ”sum made certain” with the statement, “Plaintiff contends that he should be able to recover punitive damages as there is clear and convincing evidence that Magris engaged in actual fraud and malice in the discharge of Plaintiff in violation of MCA 39-2-904(1)(a), which Plaintiff thinks this amount can be calculated in an additional 4

years of the calculation, or that is what Plaintiff would propose to a jury should this go to trial, or to the judge should the request for jury not be possible.”, (Complaint, District Court Doc. 1, page 7).

Mr. Carter asserts the fact that the Defendants / Appellees did not answer the complaint timely and that he is entitled to Default Judgement per the Montana Code Annotated Rules, and that the defendants should have been tasked with appealing if they disagreed with Plaintiff / Appellants evaluation of the timeliness of their defense, (Return of Service, District Court Doc. 5, pages 1-7). It undermines the judicial system, Montana Laws, Federal Laws, and plaintiffs’ rights, by not requiring the court to honor long standing Rules and legislative decisions that require answers to complaints, and for the judge to assign his own rules and timelines, persuaded by defense attorneys, and favoring one’s rights over the other. The fact is that there was over six months delay in making this determination by the judge, that there was clear and present evidence that the timing was missed, and the judge still dismissed defendants Julie and Louise within the constructs of the “Order Denying Default Judgements” (Order Denying Default Judgment, District Court Doc. 24, page 1, Order Denying Default Judgment, District Court Doc. 25, page 1, Order Denying Default Judgments, District Court Doc. 26, pages 1-4, and attached), when the court used erroneous

dates to justify the order and unjustifiable reasoning to dismiss defendants Julie Ann Bittick and Louise Carter.

Summary of Argument

Whether MCA Rule 55(a), M.R.Civ.P., takes precedent over MCA Rule 12(a)(1)(A), M.R.Civ.P., the MCA Official Summons Form, MCA Rule 55(b)(1), M.R.Civ.P., and entry of judgement under MCA Rule 21 (A)(8)(a)(1), M.R.Civ.P., as it relates to default Judgement. Whether a judge can manipulate the factual dates in a case and apply his own laws to intentionally create damage to Appellant by delaying entries and not being forthcoming with statements provided in In-Chambers Conferences, waiting over six months so he can use lawfare and delays to make Plaintiff causing further damage by the delays. And rights rejected per the Montana Constitution, sections 3, 16, and 17, and the Montana Code Annotated as stated passim.

Whether a judge can unconstitutionally misdirect a WDEA pleading of wrongful termination under the Blacklisting, MCA §§§ 39-2-801, 39-2-802, 39-2-803, § 39-2-804, § 39-2-904 (a), and § 39-2-904 (c) and convert it to a Workers Compensation Act using “intentional injury cites and MCA §§ 39-71-411; and 39-71-413, stating that the only relief that can be sought in this case must have

intentional torts (e.g. battery), and that blacklisting and a wrongful termination does not qualify under WDEA § 39-2-904 (a), § 39-2-904 (c) as plead in Appellants Complaint. The Order specifically states, “As defined in 39-2-903, “Constructive discharge”, like the elements of wrongful discharge in 39-2-904, are based on the actions of an “employer” not the wrongful conduct of persons in their individual capacity.” Whereas this is contrary to MCA §§§ 39-2-801, 39-2-802, 39-2-803, § 39-2-804 where it states specifically in MCA “§39-2-802 (Protection of discharged employees), it details that “the discharging person is punishable as provided in § 39-2-804 and is liable in punitive damages to the discharged person, to be recovered by civil action.” This specifically identifies the “person[s]” are liable.” Defendants Louise M. Carter and Julie Ann Bittick were dismissed because the district court claims that “only employers” can be liable under WDEA and not “employees” or “persons” which Mr. Carter argues is not true and they should not have been dismissed. Mr. Carter also believes that it amounts to an unconstitutional ruling and deprives Mr. Carter Montana citizens of their constitution right and protection under the Montana Constitution, sections 3, 16, and 17, and the Montana Code Annotated.

That the MCA Rule 12(b)(6), M.R.Civ.P., has been misused / misapplied when a sum made certain is present in this specific complaint, and if this Rule takes precedent over Montana Code Annotated §§§ 39-2-801, 39-2-802, 39-2-803,

and § 39-2-804 when dismissing defendants. Amounting to an unconstitutional ruling and depriving Plaintiff and Montana citizens of their constitution right and protection under the Montana Constitution, sections 3, 16, and 17, and the Montana Code Annotated as stated passim.

Standard of Review

In this case Petitioner / Appellant argues that the district court got the facts wrong and ruled with clear error as it applies to this case. It is clear in the statutes that a wrongful discharge has the elements of the following, which in this case appellant / plaintiff argues it did, in *Mysse v. Martens*, 279 Mont. 253, 261-62 (Mont. 1996) (“Did the District Court err in dismissing Mysse's wrongful discharge claim under the Montana Wrongful Discharge Act?

A discharge is wrongful under the Act only if:

(1) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;

(2) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; or

(3) the employer violated the express provisions of its own written personnel policy.”).

While Mr. Carter argues that this is at the core of his argument, which he argues this is the method in which he was terminated, and it does lay out what Section § 39-2-904 defines, it does not address the incorporated “Blacklisting”, “Person”, or “Individual” that Mr. Carter argues he was subject to, and the cases detailing blacklisting are thin and difficult to identify as case study in Montana Supreme Court rulings. However, the Montana Supreme Court has observed that a 12(b)(6), in *Fennessy v. Dorrington*, 306 Mont. 307, 309 (Mont. 2001) (“A motion to dismiss is viewed with disfavor and rarely granted. *Steele v. MacGregor*, 1998 MT 85, ¶ 9, 288 Mont. 238, ¶ 9, 956 P.2d 1364, ¶ 9. *See also Varco-Pruden v. Nelson* (1979), 181 Mont. 252, 593 P.2d 48. Dismissal of an action is justified only when the allegations of the complaint clearly demonstrate that the plaintiff does not have a claim. *Buttrel v. McBride Land Livestock* (1976), 170 Mont. 296, 298, 553 P.2d 407, 408. Courts are required to construe the complaint in the light most favorable to the plaintiff and may not dismiss it unless it appears that the plaintiff is not entitled to relief under any set of facts that could be proved in support of his claims. *General Contractors Inc. v. Chewculator, Inc.*, 2001 MT 54, ¶ 17, 304 Mont. 319, ¶ 17, 21 P.3d 604, ¶ 17.”).

Mysse v. Martens, 279 Mont. 253, 265-66 (Mont. 1996) (“Did Mysse raise any valid tort claims or a valid claim for breach of the covenant of good faith and fair dealing? Mysse alleges that the District Court erred by failing to consider or

decide other claims and torts alleged by her in her amended complaint. Mysse claims that her complaint sets forth various tort claims including breach of the covenant of good faith and fair dealing, emotional stress, harassment, humiliation, impairment of reputation, pain and suffering, and punitive damages.”). And, *Mysse v. Martens*, 279 Mont. 253, 266 (Mont. 1996) (“While this Court follows the general rule that complaints are to be construed in a light most favorable to the plaintiff, *Kleinhesselink v. Chevron, U.S.A.* (1996), 277 Mont. 158, 920 P.2d 108, 110, this Court also recognizes that:

a complaint must state something more than facts which, at most, would breed only a suspicion that plaintiffs have a right to relief. Liberality does not go so far as to excuse omission of that which is material and necessary in order to entitle relief.

Treutel v. Jacobs (1989), 240 Mont. 405, 407, 784 P.2d 915, 916. Mysse's amended complaint alleged the following violations:

procedural and substantive due process rights as guaranteed by the Fourteenth Amendment of the United States Constitution, the Constitution of the State of Montana as contained in Article II, § 3, Inalienable Rights, § 4 Individual Dignity, and § 17 Due Process of Law.”).

In *Grigg v. Coil*, DA 21-0651, 4-5 (Mont. 2022) (“We construe a complaint in the light most favorable to the plaintiffs when reviewing an order dismissing a

complaint under M. R. Civ. P. 12(b)(6). *McKinnon v. Western Sugar Coop. Corp.*, 2010 MT 24, ¶ 12, 355 Mont. 120, 225 P.3d 1221 (citing *Jones v. Mont. Univ. Sys.*, 2007 MT 82, ¶ 15, 337 Mont. 1, 155 P.3d 1247). "A claim is subject to M. R. Civ. P. 12(b)(6) dismissal only if it either fails to state a cognizable legal theory for relief or states an otherwise valid legal claim but fails to state sufficient facts that, if true, would entitle the claimant to relief under that claim." *Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 8, 390 Mont. 12, 407 P.3d 692 (collecting cases)."). Appellant argues that he has stated a valid claim, sufficient facts that are true and entitled Mr. Carter to relief under the claim. This standard of review is equal to what occurred in his scenario and should be considered under the Montana Supreme Court standard of review in his case as it applies to dismissing Louise and Julie.

Appellant adds that the standard of review on Motions to dismiss are, *Grigg v. Coil*, DA 21-0651, 7 (Mont. 2022) ("Motions to dismiss are "viewed with disfavor and rarely granted." *Fennessy v. Dorrington*, 2001 MT 204, ¶ 9, 306 Mont. 307, 32 P.3d 1250. "Dismissal of an action is justified only when the allegations of the complaint clearly demonstrate that the plaintiff does not have a claim." *Fennessy*, ¶ 9 (citing *Buttrell v. McBride Land & Livestock*, 170 Mont. 296, 298, 553 P.2d 407, 408 (1976)). "). Mr. Carter does have a claim that is clear and present.

However, there are instances where there are some parallel case rulings, as in: “After hearing the evidence, the court concluded that Tonack was terminated from her employment in violation of both the Montana Wrongful Discharge From Employment Act (Wrongful Discharge Act), §§ 39-2-901 to 914, MCA, and the federal Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621-634. It awarded Tonack damages under the Wrongful Discharge Act for four years of future lost wages and benefits. In addition, the court awarded damages under the ADEA, calculating those damages from the last date of damages awarded under the Wrongful Discharge Act to Tonack's expected date of retirement.”

Tonack v. Montana Bank of Billings, 258 Mont. 247, 251 (Mont. 1993).

Tonack v. Montana Bank of Billings, 258 Mont. 247, 255 (Mont. 1993) (“Whether a discharge will ultimately be "subject to any other state or federal statute that provides a procedure or remedy for contesting the dispute" is not immediately known when a claim is filed. This must be determined before it is known whether the Wrongful Discharge Act may be applied. It is established only when a finder of fact has made that determination or when judgment on the claim has otherwise been entered. Therefore, we conclude that claims may be filed concurrently under the Wrongful Discharge Act and other state or federal statutes described in § 39-2-912, MCA, but if an affirmative determination of the claim is obtained under such other statutes, the Wrongful Discharge Act may no longer be

applied. To the extent that this conclusion modifies our holding in Deeds, that opinion is so modified.”).

Also in the dissenting part, “Tonack v. Montana Bank of Billings, 258 Mont. 247, 256 (Mont. 1993) (“The majority relies on § 39-2-912, MCA, of Montana's Wrongful Discharge From Employment Act which provides: This part does not apply to a discharge:

(1) that is subject to any other state or federal statute that provides a procedure or remedy for contesting the dispute.

In this case, plaintiff alleged two separate and independent reasons why her termination from employment was unlawful. She alleged that she was terminated because of age discrimination which was a violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 through 634. However, she also alleged that she was terminated in violation of her employer's own written supervisor's manual which included the company policies regarding termination. That policy required oral warnings, a written reprimand, and supervised probation. The District Court, in its Finding of Fact No. 36, specifically found that “[d]efendant Bank's termination of Ms. Tonack was also in violation of its written personnel policy set forth within the ‘supervisor's manual.’ ”). Mr. Carter asserts that the Defendants terminated him contrary to their policy Magris Code of Conduct.

In the Human Rights portion of the Montana Code Annotated § 49-2-301, it is reinforced by Statute that: Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because the individual has opposed any practices forbidden under this chapter or because the individual has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter. Plaintiff / Appellant believes this standard would be relevant as it details the prohibited violation of retaliation and Mr. Carter argues that he was retaliated against and thereafter terminated in violation of the Magris written policies, and that the WDEA contains parallel reasons for retaliation as it relates to persons and blacklisting.

Argument

Plaintiff / Appellant argues that the court erred in its decision not to award Mr. Carter Default Judgement, as requested in his motions, as the defendants did not timely answer as required by Montana Rules MCA Rule 12(a)(1)(A), M.R.Civ.P., the MCA Official Summons Form-1 stating 21 days after service, MCA Rule 55(b)(1), M.R.Civ.P., and entry of judgement under MCA Rule 21 (A)(8)(a)(1), M.R.Civ.P., as it relates to default Judgement. Instead, the court produced erroneous dates in its order of when the defendants did submit their

answers or defenses which the time for such had already passed (Orders Denying Default Judgement November 14, 2024, and Order Denying Default Judgements, November 19, 2024). The court, apparently purposely, delayed the decision on the motions for default judgement for over six months, after detailing in an In-Chambers hearing that the decisions would be forthcoming within a reasonable time so the case could proceed.

Montana and Federal Law is specific in its required timeline for answering or lodging complaints, and if Plaintiff / Appellant had not timely entered his complaint, it certainly would have been dismissed or disputed under the same laws and standards. Even this Court holds to the standards of time, that Plaintiff / Appellant is held to, Rule 55(a) M.R.Civ.P., simply states “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.”, with an emphasis on “must” enter the party’s default. Here the court has determined that it not only can diminish Mr. Carters rights with delays, but that his rights are less worthy under the law to equal that the defendants and that he is required to appeal these decisions as opposed to the defendants who were overdue, shifting the burden to the victim of the circumstance, and ultimately dismissing defendants under the guise of the default judgements. It is true and undisputed that the responses of the defendants were untimely, and there was no

excusable neglect present. In *DeTienne v. Sandroock*, 388 Mont. 179, 190-91 (Mont. 2017) (“As we noted in *Paxson*, procrastination by counsel resulting in untimely responses “is a type of neglect which is properly attributable to a client.” *Paxson*, 217 Mont. at 525, 706 P.2d at 126. In *Paxson*, the Paxsons sued contractor Rice for breach of contract, breach of the implied warranty of habitability, negligent construction, and bad faith. Rice's attorney filed a motion to dismiss the complaint that was subsequently denied. Despite repeated efforts by Paxsons' counsel to prompt opposing counsel to file an answer to the complaint, Rice failed to file an answer. A default was issued and eight days later, Rice's counsel moved to have the default set aside. He asserted that he was leaving his law firm during this time and his inattention was excusable neglect and a mistake. *Paxson*, 217 Mont. at 523, 706 P.2d at 124. The district court disagreed and we held the court did not abuse its discretion in ruling that counsel's actions did not constitute “excusable neglect.” *Paxson*, 217 Mont. at 526, 706 P.2d at 126.”). In Mr. Carters case the excuse was that there was miscommunication between the servers of the complaint on all three defendants, one of them being the Vice President over legal affairs for Magris, Scott Bergen, claiming he thought he was served at a different time, however the delay of Julie and Louise came in the form of Motions to dismiss. None of these claims are credible or believable, as they did the same to Mr. Carter when he tried to get an answer from them about

appealing his discharge (Complaint, District Court Doc. 1, page 31), and the Montana Department of Labor & Industry, Unemployment Insurance Division Adjudication Unit, (Complaint, District Court Doc. 1, page 45) where they found that Mr. Carter was not discharged for misconduct under MCA §39-51-201(19) and §39-51-2303, Mr. Carter contends that the delays were intentional torts. This portion of the argument is rooted in the question of whether MCA Rule 55(a), M.R.Civ.P., as interpreted by the District Court Judge, takes precedent over MCA Rule 12(a)(1)(A), M.R.Civ.P., the MCA Official Summons Form-1 which states "If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.", MCA Rule 55(b)(1), M.R.Civ.P., which states "By the Clerk. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk -- on the plaintiff's request, with an affidavit showing the amount due -- must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person., which Plaintiff / Appellant did provide an affidavit showing the amount due in a sum that was certain, (Plaintiffs Motion for Default Judgement on Magris Talc, USA Inc., District Court Doc. 9, Plaintiffs Motion for Default Judgement on Julie Ann Bittick, District Court Doc. 12, and Plaintiffs Motion for Default Judgement on Louise M. Carter, District Court Doc. 13). Mr. Carter also provided his verification of his performance review by the General

Manger Giorgio LaMotta of all of Magris Talc in his initial brief, (Complaint, District Court Doc. 1, page 31).

Rule 12(a)(1)(A) defines this as, “A defendant must serve an answer within 21 days after being served with the summons and complaint, unless the court orders otherwise under Rule 4(c)(2)(C), M.R.Civ.P., Mr. Carter contends there was no such order, and entry of judgement under MCA Rule 21 (A)(8)(a)(1), M.R.Civ.P., as it relates to default Judgement states, “When a party against whom a judgment for affirmative relief is sought has failed to answer or reply as provided by these rules upon written motion by the plaintiff or counterclaiming defendant, the judge or clerk must enter the default against such party.”. Mr. Carter contends that he was not afforded any consideration of his Montana Constitutional Rights (Sections 3, 16, and 17) with the judges’ actions of dismissing defendants Louise and Julie also deprived him of his rights under the Montana Code Annotated, and the decision to uphold the defendants blacklisting of Mr. Carter and dismissing Julie and Louise, has dealt Mr. Carters career an unrecoverable blow, and has exacted great harm. Mr. Carter believes he has demonstrated that Julie Ann Bittick and Louise M. Carter, with the participation of Scott Bergen, not only wrongfully discharged him, but conspired to and did blacklist him and has been the cause of his inability to secure employment because of the blacklisting. In *Hill v. Big Horn Cnty. Elementary Sch. Dist. 2*, CV 20-42-BLG-SPW-TJC, 20 (D. Mont. Feb. 16,

2021) (“The statute is codified in Mont. Code Ann. § 39-2-803 and reads: If a company or corporation in this state authorizes or allows any of its agents to blacklist or if a person does blacklist any discharged employee or attempts by word or writing or any other means to prevent any discharged employee or any employee who may have voluntarily left the company's service from obtaining employment with another person, except as provided for in 39-2-802, the company, corporation, or person is liable in punitive damages to the employee prevented from obtaining employment, to be recovered in a civil action, and is also punishable as provided in 39-2-804.”) Although “Hill's allegations fail to plead sufficient factual matter to state a claim under Montana's blacklisting statute.” *Hill v. Big Horn Cnty. Elementary Sch. Dist. 2*, CV 20-42-BLG-SPW-TJC, 20 (D. Mont. Feb. 16, 2021), Mr. Carter argues that he does have sufficient factual matters to state a claim. Using the statute as a guideline and the evidence provided in Mr. Carters pleadings, it is obvious that the District Court should not have dismissed defendants Julie Ann Bittick and Louise M. Carter. As evidenced by the Montana Unemployment Insurance Adjudication Unit found that Magris would not respond (Complaint, District Court Doc. 1, page 45), and the subsequent job searches that Mr. Carter attempted gain employment with, which were over 30 companies, they all refused to employ Mr. Carter. Mr. Carter argues that with the termination looming over his head and a falsified document (PIP) constructed by

Louise and Julie, which the two conjured up in the form of a Personal Improvement Plan (PIP), it can only be assumed that they were either refusing to get back with employers about his employment, or they were detailing their fabricated / falsified information to Mr. Carters perspective employers. In most instances the perspective employers required the prior employers contact information to check what the employment experience was, most perspective employers would simply not call back after receiving the resume with that information. As a hiring manager for most of his career, Mr. Carter knows exactly what scenario occurred with the checks on previous employment by perspective employers, and it is called "Blacklisting" as the Performance Improvement Plan demonstrates, and the Employment Termination reinforces, (Magris Talc USA Inc.'s Response in Opposition to Motion for Default Judgement, District Court Doc. 10, pages 19-23).

The court should reverse the motion to dismiss. Mr. Carter argues that dismissing Julie and Louise by the district court was accomplished first by manipulation of the factual dates in the case, orders that were produced that deny the default judgement and judgements, had dates affixed that that they entered motions to dismiss and late answers to the complaint, when in fact the dates provided in the orders were erroneous and not reflective of the dates they were served the summons, and answered which was beyond the 21 days in all cases. Mr.

Carter argues that nowhere in the statutes does it state when you can enter a default judgement against defendants, but it does describe when the belated answer is considered in default, which is when a defendant goes beyond the required response date, it is a default. To unilaterally decide what a default is beyond what the law says, is making your own laws. Here the district court judge applied his own dates and law interpretation to intentionally create financial damage to Appellant, presumably because Mr. Carter is Pro Se, then by delaying said order entries for over six months to maximize the financial pain on Mr. Carter. This judge is not being truthful as it relates to the statements provided in the In-Chambers Conferences where he advised he would rule on the motions so the case could move forward and then wait over six months so he can leverage the lawfare, and delays to make Plaintiff / Appellant be further financially damaged by the delays.

It appears to Mr. Carter, through these orders, that the judge is restricting his access to the courts, by waiting so long to produce the damaging orders, dismissing two key defendants, all while Mr. Carter is suffering from a zero-income due to the blacklisting of Mr. Carter by the two defendants. In *Grigg v. Coil*, DA 21-0651, 4-5 (Mont. 2022) (“We construe a complaint in the light most favorable to the plaintiffs when reviewing an order dismissing a complaint under M. R. Civ. P. 12(b)(6). *McKinnon v. Western Sugar Coop. Corp.*, 2010 MT 24, ¶ 12, 355 Mont.

120, 225 P.3d 1221 (citing *Jones v. Mont. Univ. Sys.*, 2007 MT 82, ¶ 15, 337 Mont. 1, 155 P.3d 1247). "A claim is subject to M. R. Civ. P. 12(b)(6) dismissal only if it either fails to state a cognizable legal theory for relief or states an otherwise valid legal claim but fails to state sufficient facts that, if true, would entitle the claimant to relief under that claim." *Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 8, 390 Mont. 12, 407 P.3d 692 (collecting cases)."). One can look squarely on the Montana codes, Montana Constitution Sections 3, 16 & 17, and the United States Constitution and see that the dismissing of the defendants, and how the order was arrived at, is a miscarriage of justice.

Mr. Carter argues that his WDEA pleading of wrongful termination relates directly to Mr. Carters pleading under the Blacklisting as described in his initial complaint. Mr. Carter argues of whether a judge can unconstitutionally misdirect a WDEA pleading of wrongful termination while ignoring the Blacklisting provision, MCA §§ 39-2-801, 39-2-802, 39-2-803, § 39-2-804, § 39-2-904 (a), and § 39-2-904 (c) and convert the case to a Workers Compensation Act using "intentional injury cites and MCA §§ 39-71-411; and 39-71-413 stating that the only relief that can be sought in this case must have intentional torts (e.g. battery) as the judge applies, and that blacklisting and wrongful termination does not qualify under WDEA § 39-2-904 (a), § 39-2-904 (c) as plead in Appellants Complaint. The Order specifically states, "As defined in 39-2-903, "Constructive

discharge”, like the elements of wrongful discharge in 39-2-904, are based on the actions of an “employer” not the wrongful conduct of persons in their individual capacity.”, (see attached orders). Whereas this is contrary to MCA §§§ 39-2-801, 39-2-802, 39-2-803, & § 39-2-804 where it states specifically in MCA “§39-2-802 (Protection of discharged employees), it details that “the discharging person is punishable as provided in 39-2-804 and is liable in punitive damages to the discharged person, to be recovered by civil action.” This specifically identifies the “person[s]” are liable.” Again, it amounts to an unconstitutional ruling and depriving Montana citizens of their constitution right and protection under the Montana Constitution and the Montana Code Annotated, Montana Constitution, sections 3, 16, and 17, and the Montana Code Annotated as stated passim.

Did the District Court abuse its discretion when it decided that MCA Rule 12(b)(6), M.R.Civ.P., did not apply. Has this court misused / misapplied the standard when a sum made certain is present and is specific in a complaint, when it has been detailed for certain what the losses that have occurred and what would make Appellant / Plaintiff whole as a result of this injustice executed by the Defendants / Appellees. Does this Rule, as applied, take precedent over Montana Code Annotated §§§ 39-2-801, 39-2-802, 39-2-803, and § 39-2-804 when dismissing defendants from the case. If so, this amounts to an unconstitutional ruling and depriving Plaintiff and Montana citizens of their U.S. Constitutional

Rights, protection under the Montana Constitution, and the Montana Code Annotated. Plaintiff / Appellants argues this nullifies his Rights under the Montana Constitution and the Montana Code Annotated, Montana Constitution, sections 3, 16, and 17, and the Montana Code Annotated, and should be reversed.

Conclusion

Austin Roger Carter, Plaintiff / Appellant, requests that this Court reverse the lower court's decision denying the default judgement(s), reverse the order dismissing Louise M. Carter and Julie Ann Bittick, and award him the sum made certain in the initial complaint on Louise M. Carter, Julie Ann Bittick, and Magris Talc USA, Inc., as required by Montana Laws MCA Rule 12(a)(1)(A), M.R.Civ.P., the MCA Official Summons Form, MCA Rule 55(b)(1), M.R.Civ.P., and entry of judgement under MCA Rule 21 (A)(8)(a)(1), M.R.Civ.P., as it relates to default Judgement for Magris Talc USA, Inc., Louise M. Carter, Julie Ann Bittick.

Mr. Carter has clearly demonstrated that the court erred on the issues of wrongful termination and blacklisting as it pertains to persons or individuals in a WDEA case, and the record reflects that there is blacklisting present as it relates to Mr. Carters' case and he has clearly demonstrated that individuals or persons can be sued in a civil case for blacklisting, as is consistent with the Montana Code Annotated, and that Mr. Carter has been clearly subjected to the blacklisting in addition to the wrongful termination. Mr. Carter also prays that this Court will

award him the default judgment requested in his motions as the defendants / appellees did not comply with answering the complaint timely, the law is clear in its language that if a complaint is not answered timely, the court and the clerk must, shall, and will enter the default judgement. In this case Mr. Carter has been prejudiced by the district court through burden shifting and undue delays and ultimately denied him justice. At a minimum this Court should reverse the order dismissing defendants Julie Ann Bittick and Louise M. Carter so that they can stand trial so that Mr. Carter can become whole for the actions taken against him. Finding them in default for failure to give a timely answer, in the amount requested in the initial Complaint, would also make Mr. Carter whole. The two individuals or persons are liable for "blacklisting" and as required by MCA §§§ 39-2-801, 39-2-802, 39-2-803, and § 39-2-804, should at a minimum, face the civil trial, or have the case remanded to the district court for a trial on the merits as it relates to Julie Ann Bittick and Louise M. Carter. Magris Talc USA, Inc., however, should be held responsible for not answering the complaint and this Court should require that the District Court enter default judgement against them as required by law.

The image shows two instances of a handwritten signature in cursive script. The top signature is written in black ink and is slightly faded. The bottom signature is written in a darker ink and is more legible. Both signatures appear to read "Austin Roger Carter".

Austin Roger Carter, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing with the Clerk of the Montana Supreme Court, Helena Montana, hand delivered on January 14, 2025, and to the following via United States first class mail on January 14, 2025:

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The image shows two handwritten signatures of Austin R. Carter. The top signature is in cursive and appears to be a first attempt or a less formal version. The bottom signature is also in cursive but is more legible and consistent in style. A horizontal line is drawn under the bottom signature.

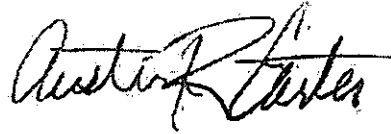
Austin R. Carter

Pro Se

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is proportionally spaced, with a typeface of 14 points, and does not exceed 10,000 words.

January 14, 2025,



Date

Signature