

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 25-0838

DAN PATRICK MCCAUL,
Plaintiff and Appellant,

VS.

WELLS FARGO BANK, N.A. AND WELLS FARGO & COMPANY; JOY
OTT; MICHAEL CONLON; JENICA HELD; AND RHONDA M.
CEBULSKI; AND JOHN DOES 1-25,
Defendants and Appellees,

ON APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT,
BUTTE-SILVER BOW COUNTY, HON. ROBERT WHELAN PRESIDING
CASE No. DV-47-2023-0000280-FR

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I.

ISSUES FOR REVIEW

1. Did the district court err in granting defendants' motion to dismiss the first amended complaint ("FAC")?
2. Did the district court abuse its discretion in denying leave to amend?

II.

STATEMENT OF THE CASE

Plaintiff Dan Patrick McCaul ("McCaul") filed this action in October 2023 but waited until after filing his FAC in June 2025 before serving defendants Wells Fargo Bank, N.A. ("Wells Fargo"), Wells Fargo & Company ("WFC"), Jenica Held, and Rhonda M. Cebulski.¹ *See* Docs. 6 (FAC), 7-10 (Summonses Returned).

Wells Fargo removed the case to federal court, but that court remanded the case to state court after McCaul voluntarily dismissed all federal claims alleged in the FAC. *See* Docs. 11, 13.

¹ McCaul never served Joy Ott or Michael Conlon ("Conlon"), two other defendants named in the FAC.

Defendants and appellees then moved to dismiss the FAC under Rule 12(b)(6). Docs. 17, 18. McCaul filed an opposition. Doc. 20. Defendants and appellees filed a reply. Doc. 27.

On November 26, 2025, the district court entered its order granting the motion to dismiss with prejudice. Doc. 36. On November 28, 2025, McCaul filed a notice of appeal from that order. Doc. 39.

The district court entered judgment dismissing McCaul's suit on December 15, 2025. Doc. 42. McCaul filed a notice of appeal from the judgment on December 16, 2025. Doc. 46.

III.

STATEMENT OF FACTS

The FAC is long on vague, general, conclusory allegations of wrongdoing and short on supporting facts, which are summarized below.

Between 2010 and 2015, McCaul's companies, M&M Recovery, M&M Repossession and Transport Service LLC, and American Lenders Service Company PLLC, had contracts with Wells Fargo, under which

McCaul or his companies allege they acted as Wells Fargo's independent contractor or agent.² FAC 6, 18.

While acting in that role, McCaul alleges he made three whistleblower complaints to Conlon and Cebulski, a Wells Fargo branch manager.³ FAC, 6. Wells Fargo did not take corrective action, but instead allegedly subjected McCaul or his businesses to blacklisting, retaliation, and coercive measures which resulted in "severe financial losses, reputational harm, and the destruction of long-standing business relationships, effectively eliminating future professional opportunities," forcing McCaul to close his businesses. FAC, 6, 7.

McCaul avers the blacklisting and retaliatory measures included labeling McCaul a troublemaker and whistleblower as well as advising third parties to avoid business dealings with him, leading to the breach or disruption of 283 contracts with McCaul's businesses. FAC, 10.

² The FAC does not disclose the nature of these contracts or their terms. However, a prior opinion of this Court reveals that M&M Repossession & Transport "provide[d] various services, including collection and repossession services for creditors." *M & M Repossession & Transp., LLC v. First Madison Valley Bank*, 2015 MT 197N, ¶ 2, 357 P.3d 335.

³ McCaul claims to have been one of eleven whistleblowers mentioned in the Office of the Controller of Currency's 2013 statistics. FAC, 2 & Ex. 1.

Separately, McCaul asserts Wells Fargo created 13 to 16 unauthorized commercial business checking, savings, and debit/credit card accounts in the name of McCaul or his companies. FAC, 7-9 & Ex. 3. McCaul also claims that Wells Fargo “engaged in unauthorized add-on product charges” with regard to those accounts. FAC, 8 & Ex. 3.

The FAC also avers that Wells Fargo failed to disclose, report, or prevent embezzlement of funds that McCaul’s businesses held in trust for their clients, creditors, and third parties. FAC, 12, 13. Allegedly, Wells Fargo’s “inaction directly contributed to the financial destabilization of [McCaul’s] business, the loss of trust-based client relationships, and the erosion of McCaul’s professional reputation.” FAC, 13.

Finally, the FAC claims that McCaul was “subjected to a prolonged pattern of sexual exploitation, harassment, blackmail, and extortion” during and after the period when Cebulski was a branch manager. FAC, 14, 15.

Based on these allegations, the FAC alleges three “counts” for:

1. Breach of “the M&M Recovery, M&M Repossession and Transport Service LLC, and American Lenders Service Company PLLC (‘M&M-ALSCO’) contracts.” FAC, 18.

2. Violation of Montana’s Whistleblower Protection Act (Mont. Code Ann. § 39-2-904) and False Claims Act (Mont. Code Ann. § 17-8-401, *et seq.*). FAC, 18-19.
3. “Abuse, blackmail, extortion, and harassment.” FAC, 20-21.

IV.

STANDARDS OF REVIEW

“This court reviews de novo a district court’s grant or denial of a motion to dismiss for failure to state a claim pursuant to M. R. Civ. P. 12(b)(6).” *Matter of the Estate of Swanberg*, 2020 MT 153, ¶ 6, 400 Mont. 247, 465 P.3d 1165; *Strauser v. RJC Inv., Inc.*, 2019 MT 163, ¶ 5, 396 Mont. 348, 445 P.3d 803.

To survive a motion to dismiss, a complaint must state facts supporting all elements of a cognizable legal claim. *Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 8, 390 Mont. 12, 407 P.3d 692; *Mysse v. Martens*, 279 Mont. 253, 266, 926 P.2d 765 (1996).

The Court reviews a district court’s grant or denial of leave to amend a complaint for abuse of discretion. *Bitterroot Inter. Sys. v. West. Star Trucks*, 2007 MT 48, ¶ 48, 336 Mont. 145, 153 P.3d 627; *Stipe v. First Interstate Bank-Polson*, 2008 MT 239, ¶ 27, 344 Mont. 435, 188 P.3d 1063. A district court is justified in denying leave to amend “for an

apparent reason such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by allowance of the amendment, futility of the amendment, etc.”

Bitterroot Inter. Sys., ¶ 50 (citations and internal quotation marks omitted).

V.

SUMMARY OF ARGUMENT

This Court should affirm for the reasons the district court stated in granting the motion to dismiss.

McCaul is not a lawyer. He cannot represent his business entities in court. He lacks standing to bring claims, in his individual capacity, for breach of those business entities’ contracts or for damages those entities suffered.

The FAC’s first count fails for that reason. It is expressly brought for breach of contracts with McCaul’s business entities. The FAC does not allege that McCaul, individually, was a party to, or a third-party beneficiary of, those contracts. Also, the FAC does not allege facts establishing the essential elements of a breach of contract claim.

The FAC's second count for violation of Montana's Wrongful Discharge from Employment Act ("WDEA"), § 39-2-904, MCA, and False Claims Act, § 17-8-403, MCA, was properly dismissed. The FAC alleges that McCaul was an independent contractor, not an employee protected by the WDEA. The FAC was not filed in compliance with False Claims Act procedure and does not allege any conduct prohibited by that Act.

The FAC's third count for abuse, blackmail, extortion, and harassment states no actionable claim. It avers only conclusions, not any facts. And the wrongs it charges are criminal offenses, not civil claims.

The FAC does not allege facts to support any claim under the many other statutory and common-law labels given passing mention in the portion of the FAC preceding its three counts. Also, those claims are time-barred, being based on conduct between 2010 and 2015.

Finally, McCaul's opening brief is entirely deficient. It does not address any of the defects that the district court found in the FAC. It does not suggest how the FAC could be amended to state a viable claim. It offers only platitudes about due process and liberal construction of pleadings. It thus waives any error and fails to properly present any issue for this Court's review.

For all of these reasons, the Court should affirm the judgment.

VI.

ARGUMENT

A. McCaul, A Non-Lawyer, May Not Sue On Behalf Of His Business Entities Or For Damages They Sustained

The trial court correctly dismissed the FAC insofar as it alleged claims on behalf of his business entities or sought damages that those entities allegedly suffered.

McCaul's business entities are limited liability companies. FAC, 18. Under § 35-8-701(1), MCA, property "acquired by a limited liability company becomes property of the limited liability company. A member has no interest in specific limited liability company property." "This statute does not differentiate between sole-owner members and other members." *Couto v. CorVel Enterprises Comp., Inc.*, 793 F. Supp. 3d 1258, 1269 (D. Mont. 2025).

The "shareholder standing rule" applies to limited liability companies barring members of those companies from suing to enforce the companies' rights. *Id.* at 1269-70; see *Cleveland v. Ward*, 2016 MT 10, ¶ 31, 382 Mont. 118, 364 P.3d 1250 ("Generally, a shareholder may not bring a claim that belongs to their corporation.").

McCaul may sue only for injuries he suffered “directly and independently of” his limited liability companies; that is, an injury “‘separate and distinct from that suffered by other’ LLC members, or” an injury from breach of a duty owed to him individually and not as an LLC member. *Couto*, 793 F. Supp. 3d at 1269-70 (*quoting Sax v. World Wide Press, Inc.*, 809 F.2d 610, 614 (9th Cir. 1987)).

Though McCaul’s FAC is anything but clear, many of its allegations concern his business entities’ claims or damages they allegedly suffered. For example, the FAC’s count one avers that:

... Defendants’ breach of the M&M Recovery, M&M Repossession and Transport Service LLC, and American Lenders Service Company PLLC (“M&M-ALSCO”) contracts resulted in actual damages

FAC, 18.⁴

⁴ *See also* FAC, 6 (“McCaul, a business owner for 30 years, was forced to close his business” due to defendants’ acts); 7 (McCaul suffered “the destruction of long-standing business relationships”); 7 (Many “unauthorized commercial business checking, savings, and debit/credit card accounts were unlawfully opened”); 9 (“The mediation process was inappropriate and legally insufficient because it failed to address all of the illegally opened commercial/business accounts”); 10 (“283 Nationwide/Statewide contracts were breached or disrupted due to” Wells Fargo’s conduct); 12 (Wells Fargo “knowingly failed to take appropriate action and willfully neglected their duty to report unlawful activity involving ... McCaul’s commercial/ business checking accounts.”); 12-13

(Fn. cont’d)

McCaul did not join his limited liability companies as plaintiffs in this suit. As the district court correctly recognized, he could not do so because as a non-lawyer pro se litigant, he could not represent his companies in court. *H & H Dev., LLC v. Ramlow*, 2012 MT 51, ¶ 18, 364 Mont. 283, 272 P.3d 657 (“A corporation [or limited liability company] ‘cannot appear on its own behalf through an agent other than an attorney.’”). And, McCaul could not circumvent that rule by suing in his own name on his companies’ claims or for damages they incurred. *Id.*, 2012 MT 51 ¶ 19; *Weaver v. Advanced Refrigeration*, 2011 MT 174, ¶ 15, 361 Mont. 233, 257 P.3d 378.

Thus, the district court correctly dismissed the FAC insofar as it alleged claims that belonged to McCaul’s limited liability companies or damages suffered by those entities.

(“Defendants failed to disclose or prevent the embezzlement of funds belonging to clients, creditors, and third parties—monies that were held on deposit and in trust under Plaintiff’s business operations.”), 13 (“Defendants’ inaction directly contributed to the financial destabilization of Plaintiff’s business, the loss of trust-based client relationships, and the erosion of Plaintiff’s professional reputation.”)

B. Count One For Breach Of Contract Was Properly Dismissed

The district court correctly dismissed the FAC's first count for two reasons.

First, the count is expressly alleged to be for breach of contracts with McCaul's companies, M&M Repossession and Transport Service LLC, and American Lenders Service Company PLLC. FAC, 18. For the reasons already stated, McCaul cannot prosecute his companies' claims for breach of their contracts. *See* pp. 8-10 above.

The FAC does not allege that McCaul was a party to his companies' contracts or that he was a third party beneficiary of them. So, he cannot bring a claim for breach of those contracts in his individual capacity.

A stranger to a contract lacks standing to bring an action for breach of that contract unless he is an intended third-party beneficiary of the contract. . . . A plaintiff cannot assume that he is an intended third-party beneficiary; rather, he must show from the face of the contract that it was intended to benefit him.

Williamson v. Montana Pub. Serv. Comm'n, 2012 MT 32, ¶ 40, 364 Mont. 128, 272 P.3d 71 (citations omitted).

Second, as the district court stated, count one “fails to set forth any facts establishing the essential elements of a breach of contract claim.” Doc. 36, p. 2. “The essential elements of a breach of contract claim are: (1) a valid and enforceable contract; (2) breach of an express or implied contract duty or obligation; and (3) resulting contract damages.” *Kostelecky v. Peas in a Pod LLC*, 2022 MT 195, ¶ 41, 410 Mont. 239, 518 P.3d 840 (fn. & citations omitted).

The FAC does not allege anything about McCaul’s companies’ contracts. No contract term is set forth. The FAC does not even identify which of the defendants was a party to the contracts.⁵ While the FAC avers a wide variety of wrongs that defendants purportedly committed, it does not state which of them breached any contractual obligation. Because no breach is properly alleged, the FAC also fails to show any damage that resulted from a breach of contract rather than from some other type of wrongdoing.

⁵ Just as a non-party may not sue for breach of contract, a defendant cannot be sued for breach of a contract to which it was not a party. *Kinion v. Design Sys., Inc.*, 197 Mont. 177, 181, 641 P.2d 472 (1982). The FAC indiscriminately names individual Wells Fargo employees as well as Wells Fargo’s parent holding company—none of whom would likely have entered into a contract with McCaul’s companies.

For both of these reasons, count one was properly dismissed.

C. Count Two Alleged No Viable Statutory Claim

Count two of the FAC is purportedly brought for violation of Montana's False Claims Act and Montana's law protecting whistleblowers from retaliation.⁶ FAC, 19. The district court correctly dismissed the count, finding it did not allege facts showing a violation of either of those statutes. Doc. 36, p. 2.

The WDEA is Montana's law protecting whistleblowers. *See* § 39-2-904, MCA. It deems a discharge to be wrongful if "it was in retaliation for the *employee's* refusal to violate public policy or for reporting a violation of public policy." § 39-2-904(1)(a), MCA (emphasis added). An independent contractor is not an "employee" for WDEA purposes. § 39-2-903(3), MCA ("The term [employee] does not include a person who is an independent contractor.").

The FAC alleges that between 2010 and 2015, "McCaul, *acting as an Independent Contractor*/Agent for Wells Fargo Bank, N.A. and

⁶ The FAC also mentions federal laws protecting whistleblowers from retaliation, but as already noted, McCaul voluntarily dismissed any claim under federal law in order to secure a remand of this case to state court.

Wells Fargo & Company, submitted three separate, time and date-stamped whistleblower disclosures” to defendants. FAC, 6 (emphasis added). Since McCaul alleges he was an independent contractor, he was not an employee and was not protected by the WDEA from retaliation. The district court correctly dismissed McCaul’s whistleblower retaliation claim for that reason. Doc. 36, p. 2.

Like its federal counterpart, Montana’s False Claims Act prohibits making a false or fraudulent request or demand for money to a government entity⁷ or its officer, employee, contractor, or grantee. §§ 17-8-402(1), 17-8-403(1), MCA. A private person may bring a civil action for violation of that statutory prohibition. § 17-8-406(1), MCA.

The Act prescribes special procedures for such a civil action. It “must be brought in the name of the governmental entity.” § 17-8-406(1), MCA. The plaintiff must serve the complaint and all material information on the appropriate government attorney. § 17-8-406(2), MCA. The complaint must be filed under seal and may not be served on the defendant until the court orders that it be served. *Id.*

⁷ “Government entity” is defined to mean the State of Montana, its political subdivisions, or a unit of the Montana university system. § 17-8-402(3).

As the district court correctly held, McCaul has not brought “a False Claims Act case on behalf of the government.” Doc. 36, p. 2. The FAC does not allege that any defendant submitted a false claim to a Montana governmental entity or did any of the other acts that the False Claims Act proscribes. Instead, the FAC alleges only wrongs purportedly committed against McCaul or his business entities. Also, the FAC alleges only damages supposedly suffered by McCaul or his entities, not any damage to a Montana governmental entity.

Furthermore, McCaul has not followed any of the special procedures for private civil actions under the False Claims Act. His FAC is not brought in the name of any government entity. It does not allege service on a government attorney. It was not filed under seal. It was served on defendants without a prior court order allowing service.

In short, the district court properly dismissed count two of the FAC because it did not allege any viable claim under either the WDEA or the False Claims Act.

D. Count Three Alleged Crimes, Not Any Civil Claim

The FAC's third count is for "abuse, blackmail, extortion, and harassment." FAC, 20. As the district court observed, "these are not civil causes of action under Montana law." Doc. 36, p. 2.

Instead, the FAC appears to name various crimes. Criminal statutes that do not expressly provide for civil liability do not give rise to a civil cause of action. Hence, "there is no private right of action under federal law for assault, bank fraud, robbery, theft, blackmail, extortion, mail fraud, or wire fraud." *Anderson v. Bitterroot Health Hospice*, 2024 WL 1132187, at *4 (D. Mont. Mar. 15, 2024), *appeal dismissed sub nom. Anderson v. Ravalli Cnty. Sheriff*, 2024 WL 4490615 (9th Cir. May 20, 2024); *see also Strauser*, 2019 MT 163, at ¶ 8 ("[A] party is not entitled to obtain private enforcement of a regulatory statute that is not intended by the legislature to be enforceable by private parties.").

The FAC also fails to allege any facts to support its conclusory averments of abuse, blackmail, extortion, and harassment. At worst, it suggests that Wells Fargo labeled McCaul a troublemaker and whistleblower, telling third parties to avoid business dealings with him. FAC,

10. That is not abuse, blackmail, extortion, or harassment or any other type of actionable wrong. *See Anderson v. City of Troy*, 2003 MT 128, ¶¶ 15-18, 316 Mont. 39, 68 P.3d 805 (calling plaintiff a “gang banger” was not defamatory); *Czajkowski v. Meyers*, 2007 MT 292, ¶ 30, 339 Mont. 503, 172 P.3d 94 (extreme and outrageous conduct required for intentional infliction of emotional distress).

E. Other Claims Are Improperly Alleged And Are Time-Barred

In the pages preceding count one, the FAC mentions a number of other types of claims such as fraudulent inducement, unjust enrichment, constructive fraud, tortious interference, Montana Consumer Protection Act, fraud, mail fraud, and breach of the duty of good faith. FAC, 10, 15-17.

Aside from reciting the names of these possible claims, the FAC offers only a conclusory sentence or two about each, never pausing to allege facts supporting any, let alone all, elements of the named claims. This style of pleading is plainly inadequate. “While Montana adheres to the notice pleading requirements of ‘a short and plain statement of the claim showing that the pleader is entitled to relief ...’ (Rule 8(a), M.R. Civ.P.), the claim must give notice to the other party of the facts which

the pleader expects to prove, and the facts must disclose the presence of all the elements necessary to make out a claim.” *Mysse*, 279 Mont. at 266. The FAC fails even more clearly to satisfy rule 9(b) standards for pleading fraud claims. *See Fossen v. Fossen*, 2013 MT 299, ¶¶ 9-13, 372 Mont. 175, 311 P.3d 743.

Moreover, as the district court found, all of these named, but unsupported claims are time-barred. Doc. 36, p. 2. The claims appear to stem from transactions or whistleblower complaints made between 2010 and 2015. FAC, 6. This suit was filed on October 31, 2023. Doc. 1; Doc. 36, p. 2. That was well outside of most—if not all—of the applicable statutes of limitations for the types of claims mentioned in the pages preceding the FAC’s three counts.⁸

⁸ Montana Consumer Protection Act—two years. § 27-2-211(1)(c), MCA; *Osterman v. Sears, Roebuck & Co.*, 2003 MT 327, ¶ 23, 318 Mont. 342, 349, 80 P.3d 435, 441. Fraud, mail fraud, fraudulent inducement, and constructive fraud—two years. *Id.* 2003 MT 327, ¶ 20; *Fleming v. Fleming Farms, Inc.*, 221 Mont. 237, 243, 717 P.2d 1103, 1107 (1986). Unjust enrichment—three years. *Christian v. Atl. Richfield Co.*, 2015 MT 255, ¶ 14, 380 Mont. 495, 358 P.3d 131 (citing § 27-2-202, MCA). Breach of the implied covenant of good faith—eight years. *Doll v. Little Big Warm Ranch, LLC*, 2024 MT 179, ¶¶ 66, 71-72, 417 Mont. 493, 554 P.3d 175.

Thus, the district court correctly dismissed the claims mentioned but not supported in the FAC's first 17 pages.

F. McCaul's Opening Brief Fails To Show Any Error

"[A] district court's decision is presumed correct, and it is the appellant who bears the burden of establishing error by that court." *In re Marriage of McMahon*, 2002 MT 198, ¶ 7, 311 Mont. 175, 53 P.3d 1266.

McCaul's opening brief does not satisfy that burden. The brief does not address the substance of the district court's order—that is, the defects the district court found in the FAC—or develop an argument with legal support to show that the FAC alleged facts supporting each element of any claim. "[I]t is not this Court's job to conduct legal research on a party's behalf, to guess as to a party's precise position, or to develop legal analysis that may lend support to that position."

Griffith v. Butte Sch. Dist. No. 1, 2010 MT 246, ¶ 42, 358 Mont. 193, 244 P.3d 321 (quotations and citations omitted); M. R. App. P 12(g). Thus, there is no need to "reach the merits of the claims that the District Court dismissed under Rule 12(b)(6)." *Netzer, Krautter & Brown, P.C. v. State by & through Knudsen*, 2025 MT 249, ¶ 23, 578 P.3d 899 (fn. omitted).

Instead, McCaul argues that the district court was required to “accept all [of the FAC’s] factual allegations as true and construe them in the light most favorable to” him. AOB, 3-4, 4-5. This Court answered a similar argument 30 years ago.

While this Court follows the general rule that complaints are to be construed in a light most favorable to the plaintiff, 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.

Mysse, 279 Mont. at 266, 926 P.2d at 773 (citations omitted).

McCaul has not shown that the FAC alleged all that was material and necessary to entitle him to relief on any of his claims. So, his general invocation of construction in the light most favorable to him fails to show that the district court erred in dismissing his claims.

McCaul also argues that “Montana law disfavors dismissal with prejudice absent futility.” AOB, 3, 4. While rule 15(a) is interpreted liberally, leave to amend may be denied if amendment would be futile, as McCaul concedes. *Skurdal v. Walker*, 2025 MT 174, ¶ 36, 423 Mont.

282, 573 P.3d 762. Leave to amend would be futile if the complaint, as further amended, would be subject to dismissal. *Walstad v. Norwest Bank of Great Falls*, 240 Mont. 322, 324, 783 P.2d 1325 (1989).

As the burden is on McCaul to show error, it is not sufficient for him to simply mouth the general rule of liberality of amendment. He must also show that he could amend his complaint in a manner that cures the defects that led to dismissal of his FAC so that a second amended complaint would not be subject to dismissal, just as the FAC was.⁹ McCaul has not done so.

Finally, McCaul argues that dismissal of his FAC with prejudice denies him due process. AOB, 4, 5. The argument is frivolous and, not surprisingly, unsupported by any citation to authority. McCaul was given notice and an opportunity to be heard on the motion to dismiss. Due process guarantees him nothing more. Due process “does not

⁹ To paraphrase a recent Ninth Circuit decision affirming denial of leave to amend, “Neither before the district court nor on appeal has [McCaul] articulated any factual allegation or legal theory [he] would advance in a [second] complaint that would cure the deficiencies found by the district court or articulated here—nor has [he] explained why any such allegations or theories would have been previously unavailable to [him].” *Election Integrity Project California, Inc. v. Weber*, 113 F.4th 1072, 1099-1100 (9th Cir. 2024).

unlock the doors of discovery[, let alone trial,] for a plaintiff armed with nothing more than conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

In short, there is no merit to McCaul’s appeal. The judgment should be affirmed.

VII.

CONCLUSION

For the reasons stated above, the Court should affirm the judgment dismissing McCaul’s claims.

Respectfully submitted this 20th of February, 2026.

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Certificate Of Compliance

Pursuant to Montana Rules of Appellate Procedure 11(4)(e), I certify that the foregoing brief is double-spaced, apart from titles, footnotes, and quotations, is proportionately spaced in 14 point Century Schoolbook typeface and contains 4235 words, as shown by the word count function of the computer program used to prepare the brief.

Dated: February 20, 2026.

/s/ W. Scott Mitchell
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CERTIFICATE OF SERVICE

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