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CLERK DISTRICT COURT

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MICHELLE WRAY
DEPUTY

James E. Brown
THE JAMES BROWN LAW OFFICE, PLLC
30 South Ewing Street, Suite 100
Helena, MT 59601
Telephone: (406) 449-7444
Facsimile: (406) 443-2478
Email: thunderdomelaw@gmail.com

Attorney for Plaintiff, Carol M. Bondy

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY**

CAROL M. BONDY,

Plaintiff,

v.

STATE OF MONTANA, by and through the
Department of Public Health and Human
Services; and Richard Opper, in his official
capacity as Department Director,

Defendants.

Cause No. BDV 2016-851

Judge DEEANN COONEY
PRESIDING JUDGE

**VERIFIED COMPLAINT FOR
WRONGFUL DISCHARGE FROM
EMPLOYMENT IN VIOLATION OF
MONT. CODE ANN. §39-2-904 &
DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, Carol M. Bondy ("Bondy"), and files this Verified Complaint for Wrongful Discharge from Employment in Violation of Mont. Code Ann. §39-2-904 against Defendant the State of Montana, by and through its Department of Public Health and Human Services and its Director, Richard Opper upon information and belief, states and alleges as follows:

Bondy was terminated from her position as DPHHS Audit Bureau Chief by Director Opper without good cause. Bondy was fired because she refused to violate public policy though directed to do so by DPHHS management. Further, Bondy was wrongfully terminated in

retaliation for reporting Department actions which violated public policy. What is more, the process used by DPPHS to wrongfully terminate Bondy was performed in a manner that violated multiple provisions of the Department's and the State's personnel policies. As set forth in more detail below, because of DPPHS' multiple violations of law and policy, Bondy is entitled to an award of lost wages and fringe benefits for the four year statutory period as well as an award of punitive damages.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Carol M. Bondy ("Bondy") is an individual residing in Lewis & Clark County, Montana.
2. Defendant is the State of Montana, which is sued by and through the Department of Public Health and Human Services ("DPHHS") -- a political division of the State of Montana.
3. Richard Opper ("Opper") is Director of the Department of Public Health and Human Services and is an agent for the State of Montana. Opper, at all times relevant to this action, was acting within the course and scope of that relationship. Opper, at all times relevant to this action, gave consent to, ratified, and authorized the violations of law and state policy alleged herein. Opper is sued in his official capacity.
4. Jurisdiction is proper in this Court. Mont. Code Ann. § 25-2-126.
5. Venue is proper in Lewis & Clark County since the State of Montana, by and through its Department of Public Health and Human Services, is named as the Defendant to this action. Mont. Code Ann. § 25-2-126(2).

6. Bondy has exhausted the administrative appeals process, therefore this Court has jurisdiction over Bondy's claims.

FACTUAL AND LEGAL BACKGROUND

7. Until she was wrongfully terminated, Bondy was a loyal and exemplary employee of the State of Montana for the previous 27 years.
8. Prior to being wrongfully terminated by DPHHS, Bondy had been employed by DPHHS for 17 years without a single instance of discipline. Bondy was first hired as a Budget Analyst for Human and Community Services Division and subsequently, because of her strong skill set, hired as the Audit Bureau Chief – a title she held for the last 14 years.
9. At no time during Bondy's employment with the DPHHS had Bondy been the subject of discipline, demotion, or negative performance reviews.
10. Further, Bondy had not previously been disciplined or otherwise alleged to have had unsatisfactory job performance. There is no record of Bondy disrupting Defendants' operations and no evidence of any legitimate business reason which would otherwise lead to a lawful discharge.
11. It was not until August 19, 2015 when Bondy was publicly escorted out of her DPPHS office, and then out of the DPPHS building by the Quality Assurance Division Administrator, Roy Kemp, and the Human Resources Director, Deborah Sloat, and in a manner that was done in front of her fellow colleagues, that she first became aware that she was even being subject to disciplinary action.

12. On that same date, Bondy learned she was being placed on indefinite paid administrative leave and that she could no longer come into the office or interact in any way with her work colleagues.
13. Nearly four months of paid administrative leave passed before Bondy finally heard from DPHHS that she was being terminated. During this four-month period, Bondy's state office was sealed off with tape and her computer subject to multiple searches.
14. Bondy was publicly escorted out of her office in August of 2015 in retaliation for Bondy's refusal to violate public policy.
15. Dating as far back as November 2012, Bondy, as head of auditing, began properly reporting concerns about audit findings to DPHHS management, and in particular to Marie Matthews ("Matthews"), Operations Services Branch Manager, as part of Bondy's required reporting duties.
16. Upon finding that management was refusing to address the misuse of state and federal funds by grantees and contractors, Bondy reported the incidents to the Federal Office of the Inspector General as required by federal regulations and as required by general auditing standards.
17. In particular, Bondy reported fraudulent activity and misuse of federal and state funds with contractor Montana PEAKS following DPHHS remitting approximately \$123,000.00 to the entity after the expiration of its contract.
18. Bondy was then directed via email from the DPHHS Chief Legal Counsel to cease a fourth audit of Montana PEAKS despite receiving previous authority to conduct the audit.

19. Moreover, Bondy reported duplicate Medicaid Waiver expenditures to the Fiscal Operations Bureau in November 2012. Further, Bondy and the Audit Bureau identified financial concerns with contractor Rocky Mountain Development Council during the 2013 fiscal year.
20. In the fall of 2014, Bondy reported to Matthews, in DPPHS management, that she intended to undertake several high risk audits, including undertaking an audit of the contracting process used by the Human and Community Services Division, an audit of the Guardian/Conservator process used by the Adult Protective Services Bureau, an audit of the client intake process used by the Child and Family Services Division, and a cost analysis audit of the Columbia Falls Veteran's Home.
21. Matthews refused to permit the Audit Bureau to perform any of these audit projects in direct violation of the Bureau's fiduciary duty to audit high risk contracts and work processes.
22. Bondy also gave DPPHS management the list of audits the Audit Bureau intended to undertake in 2015. Matthews vetoed approximately 30 proposed audits, which resulted in depriving the Audit Bureau of a full work load for several months.
23. The Department's decision to deprive the Audit Bureau of work prohibited the Bureau from meetings its responsibilities to the public, to partner federal agencies, and to Department contractees and grantees.
24. Starting in the fall of 2014, the Department undertook a pattern of behavior designed to diminish the Audit Bureau's oversight of the Department's internal operations and processes. Further, the Department's management undertook efforts to directly interfere with the independence of the audit bureau.

25. In August of 2015, immediately prior to Bondy being placed on administrative leave, Department management inappropriately requested that Bondy provide management with the names of auditors working on ongoing, sensitive internal audits.
26. When Bondy notified management that it would be a violation of general auditing standards for her to provide information on ongoing, and uncompleted internal audits. Bondy was, in retaliation for notifying management that its demands violated public policy, immediately escorted out of the DPPHS building.
27. As a result of Bondy carrying out her duties as Audit Bureau Chief to report financial concerns and management complicity in making unlawful payments to unqualified grantees, Bondy was wrongfully discharged from her position on December 10, 2015.
28. Bondy was terminated in clear violation of the Department's and the State's written personnel policies.
29. Bondy was never accorded her right to be subject to progressive discipline; was never accorded her right to address the allegations leveled against her prior to being placed on administrative leave, and had her right to privacy violated by management publicly talking about her to fellow employees during the period when Bondy was on paid administrative leave.
30. Bondy has exhausted all her administrative remedies through the grievance process prior to the filing of this Complaint.
31. Bondy has timely filed this Complaint within the one (1) year statute of limitations since her wrongful discharge.

COUNT ONE: WRONGFUL DISCHARGE FROM EMPLOYMENT
IN VIOLATION OF MONT. CONDE ANN. §39-2-904(1)(a)

The State of Montana, by and through the Department of Public Health and Human Services and its Director Richard Opper is in Clear Violation of Montana Statutes which prohibit termination for an employee's refusal to violate public policy or for reporting a violation of public policy.

32. Plaintiff re-alleges Paragraphs 1-31 set forth above and incorporates the same herein.
33. Bondy further alleges Defendants violated Mont. Code Ann. §39-2-904(1)(a) by wrongfully terminating her as Audit Bureau Chief for Bondy's refusal to both violate public policy and for reporting violations of public policy by DPPHS management.
34. Defendants did not have good cause to terminate her employment after Bondy had spent almost 27 years with the State. This is because:
35. Despite management demands she do so, Bondy refused to forego her auditing oversight responsibilities over federal and state programs because doing so would have resulted in violations of multiple laws and accounting standards.
36. When the Department's management prohibited the Audit Bureau from performing approximately 30 Work Plan audits, which such audits were required in order to comply with standard internal auditing requirements, Bondy found alternate audits for the Audit Bureau to conduct. Those sensitive audits reviewed the Department's internal management processes. Bondy was terminated after informing DPPHS management that DPPHS was violating public policy and auditing standards by trying to dictate the direction and outcome of the internal audits.
37. Bondy was also wrongfully terminated after reporting concerns that management was violating public policy by awarding public contracts to persons and entities which were not qualified to receive the contracts, a situation that was resulting in the violation of public laws and policy.

38. Despite Bondy's recommendations, DPPHS refused to alter their inadequate contract monitoring practices and failed to update their federal suspended and debarred regulations. DPPHS continued using the AWACS contract system as it could be manipulated to misuse contract payments. Bondy properly reported the failure of management to correct these problems to senior management on numerous occasions, but no corrective action was taken.
39. Bondy was also terminated in violation of Montana law after reporting the Audit Bureau's concerns that the Department had requested audits that served political goals in the 2009 and 2010 fiscal years. Namely, Bondy had reported that the Bureau had concerns that the outcome of the audit of the Little Shell Chippewa Tribe's use of DPHHS Tobacco Use Prevention funding was being used to further a political change in tribal leadership.
40. Additionally, Bondy reported the Audit Bureau's concerns that the Governor's office had directed the Department to pay the contractor, Montana PEAKS, on a contract even though the Audit Bureau had advised management that the contractor was not entitled to payment. Bondy expressed her concerns that the payment was improperly being made because this particular contractor had strong political ties to the Democratic Party. Bondy was improperly terminated for reporting that DPHHS modified rules in favor of certain contractors. For instance, Bondy reported to management that four Human Resources Development Councils ("HRDC") were improperly advanced large sums of money, despite having had cost reimbursement contracts between fiscal years 2012 and 2015. The total amount advanced was \$10.3 million. The HRDC was allowed, in violation of

public policy, to access to DPHHS contracting system (AWACS) to input their invoices which permitted automatic payment.

41. Additionally, Bondy was wrongfully terminated after reporting to management that expenditures being made by tribal agencies were being made without satisfying federal regulations or program rule requirements. Specifically, the unexpended 2014 fiscal year Blackfeet Manpower NEW contract was combined with their 2015 contract to allow the tribe extra time to expend their 2014 contract.
42. The Fort Belknap Indian Community inappropriately received \$107,000.00 in Low Income Energy Assistance Program (LIEAP) funds that were not under contract in the 2013 fiscal year.
43. Further, DPHHS unlawfully contracted with the Rocky Boy Chippewa Tribes to perform Medicaid eligibility despite the State of Montana being the recognized State Medicaid Administrator.
44. After reporting the above-identified problems to management, Bondy was subsequently informed by Matthews during the 2015 fiscal year that the Audit Bureau could no longer audit the Children's Mental Health Program, the Disability Services Program contractors, or the Medicaid Electronic Health Records Incentive Payment Program, which were funded by Medicaid.
45. Further, Matthews prohibited the Audit Bureau from doing approximately 30 of the Bureau's proposed audits in the 2015 audit work plan, a situation that violated public policy. However, Bondy refused to heed this unlawful management directive that the Audit Bureau discontinue its internal auditing work, which the Bureau continued to perform.

46. Bondy further refused to violate public policy and general auditing standards when management attempted to interfere with the independence of those internal audits. As a direct result of this refusal to violate public policy and accounting standards, Bondy was immediately escorted from the DPPHS building and placed on administrative leave in August of 2015. As a proximate result of and in retaliation for Bondy's actions in reporting the Department's misuse of taxpayer funds and lack of proper auditing and accounting practices, Bondy was wrongful discharged from her employment in violation of Mont. Code Ann. §39-2-904(1)(a).
47. Therefore, Bondy is entitled to an award of lost wages and fringe benefits for the statutory period set forth in Mont. Code Ann. §39-2-905.

**COUNT TWO: WRONGFUL DISCHARGE FROM EMPLOYMENT
IN VIOLATION OF MONT. CODE ANN. §39-2-904(1)(b)**

**The State of Montana, by and through the Department of Public
Health and Human Services and its Director Richard Opper is in Clear
Violation of Montana Statute §39-2-904(1)(b) which prohibits discharge
when not for good cause and the employee had completed the
employer's probationary period of employment**

48. Plaintiff re-alleges Paragraphs 1-47 set forth above and incorporates the same herein.
49. Bondy was terminated without good cause after Bondy had completed the State's probationary employment period.
50. Prior to her wrongful discharge, Bondy has been an employee of the State of Montana for the prior 27 years, of which 17 years was spent with DPHHS.
51. Therefore, based on her nearly three decades of experience, Bondy satisfied the State's probationary period of employment.

52. During her tenure at DPHHS, Bondy was never the subject of work discipline. In addition, Bondy never received a negative job performance report during her work tenure. Therefore, the discharge was not for good cause.
53. What is more, following her refusal to violate public policy, Bondy was summarily and inappropriately placed on administrative leave on August 19, 2015.
54. Bondy was placed on administrative leave despite DPHHS having never given Bondy a chance to confer with the Human Resources Department or an opportunity to respond to the unsupported allegations levied against her. Incredibly, the Department's improper actions were compounded by the abrasive content of the paid leave letter, which unnecessarily demanded that Bondy "refrain from retaliating against any complainant or anyone else who may participate in the investigation of the allegations regarding your behavior."
55. Further, Bondy's right to privacy was repeatedly violated by management publicly talking about her and her employment status to fellow employees during the period when Bondy was on paid administrative leave. Such discussions included DPPHS management telling other DPPHS employees, namely Bondy's audit bureau staff, that Bondy 'was never coming back to DPPHS.'
56. The Department's actions have caused Bondy great personal and professional embarrassment.
57. Bondy addressed the allegations of "cause" for termination in letters she provided to the Department, a copy of those letters are attached hereto as Exhibits "1" and "2".
58. Despite definitively showing the Department why the allegations against her were nothing more than post-hoc justifications for the Department's unlawful retaliatory

actions, and after being barred from going to work and being able to speak with her work colleagues for nearly four months, Bondy was terminated on December 10, 2015.

59. Having gone through the multi-step administrative hearing process, it is apparent that Bondy was wrongfully discharged because she would not go along with the Department's upper management. Further, Bondy was terminated because she refused to have the Audit Bureau used for cover or to hide the Department's improper contracting practices, some of which practices were directed by persons located within the Governor's office. As such, good cause did not and does not exist for DPPHS to have discharged her from employment with the State.
60. The Department's actions have resulted in a wrongful discharge in violation of Mont. Code Ann. §39-2-904(1)(b).
61. As a result of DPHHS' unlawful actions, Bondy is entitled to an award of lost wages and fringe benefits for the statutory period set forth in Mont. Code Ann. §39-2-905.

COUNT THREE: WRONGFUL DISCHARGE FROM EMPLOYMENT IN VIOLATION OF MONT. CODE ANN. §39-2-904(1)(c)

The State of Montana, by and through the Department of Public Health and Human Services is in Clear Violation of Montana Statute §39-2-904(1)(c) which prohibits discharge when an employer violates the express provisions of its own written personnel policy

62. Plaintiff re-alleges Paragraphs 1-61 set forth above and incorporates the same herein.
63. Bondy's termination also violated Mont. Code Ann. §39-2-904(1)(c) in that the Department's actions toward Bondy violated its own and the State's personnel policies.
64. In addition to DPHHS management instructing Bondy and the Audit Bureau to stop auditing certain programs and functions that are required to be audited by federal law, DPHHS violated its written personnel policies by requiring Bondy to identify by name

the name of every auditor working on on-going, sensitive audits. This demand by the Department violates the Department's own regulations which requires that its internal auditors be independent and free from management influence during the course of on-going internal audits.

65. The Department's unreasonable and unlawful demands placed on Bondy also violated the professional auditing standards as set forth in the Generally Accepted Government Auditing Standards §3.14e, which identifies threats to auditor independence:

“Undue Influence Threat – the threat that external influences or pressures will impact an auditor's ability to make independent and objective judgments.” *See*, Generally Accepted Government Auditing Standards §3.14e

66. Per Government Auditing Standards §1.04, "these standards are for the use by auditors of governmental entities and entities that receive governmental awards...." This means DPHHS must follow these standards.

67. The request by Matthews that Bondy provide management the names of auditors working on on-going internal audits, improperly threatened the independence of the auditors and the Audit Bureau in clear violation of §3.14e. This violation of policy was affirmed during the administrative proceedings conducted in this matter.

68. DPPHS also violated the law by denying Bondy the right to access her work records and work files after Bondy was placed on paid administrative leave.

69. Bondy's Paid Administrative Leave, which was signed by Human Resources Director Deborah Sloat, states that Bondy could not

“enter the office for any reason unless you have prior authorization from me [Deborah Sloat, Human Resources Director]. You are not to check your work email or access any information or electronic data system that is maintained by DPHHS. If you need to contact anyone in the

Department for any reason while you are on administrative leave, you are not to do so without prior approval from me.”

70. Such statements by the Defendant DPPHS are in direct violation of the National Labor Relations Board’s Banner Estrella, which such decision holds as a matter of federal labor law that employees have the right to access their employer’s information when an employee is under investigation. *See, Banner Health System d/b/a Banner Estrella Medical Center and James A. Navarro*, Case 28-CA-023438, 358 NLRB No. 93 (to justify a prohibition on an employee discussion of ongoing investigations, an employer must show that it has a legitimate business justification that outweighs employees’ Section 7 rights), *Citing Hyundai America Shipping Agency*, 357 NLRB No. 80, slip. op. at 15 (2011).
71. DPPHS’s refusal to allow Bondy to access her work computer, her work records, and her employment files is an action that was made in clear violation of federal labor law and the Department’s and the State’s personnel policies.
72. In addition, Bondy was never informed of what improvements or corrections she could undertake to remedy the alleged misconduct as required by the State Disciplinary Policy, ARM 2.21.6509
73. Further, Bondy was never given her right to be subject to a progressive course of discipline prior to termination, an action that violates State and Department policy.
74. In light of DPHHS’ blatant violations of state personnel policies, disciplinary procedures and statutes, Bondy was wrongfully discharged in violation of Mont. Code Ann. §39-2-904(1)(c).
75. As a result of DPHHS’ unlawful actions, Bondy is entitled to an award of lost wages and fringe benefits for the statutory period set forth in Mont. Code Ann. §39-2-905.

**COUNT FOUR: BONDY IS ENTITLED TO AN AWARD OF PUNITIVE DAMAGES
BECAUSE THE DEPARTMENT ENGAGED IN ACTUAL MALICE
WHEN WRONGFULLY DISCHARGING BONDY IN VIOLATION OF
MONT. CODE ANN. §39-2-904(1)(a)**

**The State of Montana, by and through the Department of Public
Health and Human Services engaged in actual malice by
discharging Bondy for complying with her duties under Article II,
Section 9 of the Montana Constitution**

76. Plaintiff re-alleges Paragraphs 1-75 set forth above and incorporates the same herein.

77. Montana State Constitution, Article II, Section 9 states:

Right to know. No person shall be deprived of the right to examine documents or to observe deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

78. Under the just recited Montana constitutional provision, state employees and the agencies for which they work are required to provide public information to members of the public and/or members of the legislature when such information is requested.

79. Prior to her termination, the Audit Bureau responded to a request for public information submitted by members of the Montana Legislature.

80. However, the Audit Bureau became aware that some of the public information compiled by the Bureau in response to the legislative public information request was withheld by DPPHS senior management, which such being related to the financial performance of the Medicaid program.

81. Additionally, Representative Burnett requested the list of audits during the 2015 Legislative Session; however, only a partial list of audits was forwarded by Matthews.

82. An employee of the Audit Bureau provided the withheld public information directly to the legislators at their request. The employee was subsequently fired for sending Legislator Bob Keenan a spreadsheet that analyzed the DPHHS budget changes, namely the Batman Memo.
83. Upon learning that the information they had withheld from the Legislature had been provided to the requesting legislators in response to their public information request, senior management at DPPHS terminated Bondy on the pretext she had failed to properly supervise one of her employees by prohibiting that employee from providing public information to members of the Legislature.
84. The Department's actions in this regard violated clear and established public policy and the Department's actions were made with actual malice in that Bondy's termination was done in retribution for informing legislators that the Department was improperly withholding public information.
85. Further, the Departments' own policies make clear that it is each employees' individual responsibility to comply with the rules and regulations of the Department.
86. The Department's actions in terminating Bondy for the actions taken by another one of the Department's employees to respond to a public information request submitted under Article II, Section 9 of the Montana Constitution amount to actual malice in Bondy's discharge in violation of Mont. Code Ann. §39-2-904(1)(a).
87. The reporting of public information to members of the Montana Legislature who requested that public information was done in compliance with the Montana State Constitution. As a result Bondy's termination was inappropriate, unjustified, and done with actual malice.

88. What is more, the Department's actual malice toward Bondy is shown by the fact that DPPHS supervisors were inappropriately and unlawfully openly discussing Bondy's work status with other employees during the period when Bondy was on paid leave status, and prior to her wrongful discharge.
89. As a result, Bondy is entitled to an award of punitive damages pursuant to Mont. Code Ann. §39-2-904(1)(a).

DEMAND FOR JURY TRIAL

90. Plaintiff demands trial by jury of the following issues in this action: amount and type of damages to which she is entitled as a result of Defendants State of Montana, by and through the Department of Public Health and Human Services and Director Richard Opper.

REQUEST FOR RELIEF


Wherefore, for the Reasons set forth Above, Plaintiff Prays for the Following Relief:

1. For an order determining that State of Montana, by and through the Department of Public Health and Human Services and Director Richard Opper, wrongfully discharged Bondy in violation of Mont. Code Ann. §39-2-904(1)(a);
2. For an order determining that State of Montana, by and through the Department of Public Health and Human Services and Director Richard Opper, wrongfully discharged Bondy in violation of Mont. Code Ann. §39-2-904(1)(b);

3. For an order determining that State of Montana, by and through the Department of Public Health and Human Services and Director Richard Opper, wrongfully discharged Bondy in violation of Mont. Code Ann. §39-2-904(1)(c);
4. For an order awarding Bondy her lost wages and fringe benefits for a period not to exceed four (4) years from the date of discharge, together with interest on those lost wages and fringe benefits.
5. For an order of punitive damages pursuant to Mont. Code Ann. §39-2-904(1)(a) due to the clear and convincing evidence that the State of Montana, by and through the Department of Public Health and Human Services and Director Opper engaged in actual malice when wrongfully discharging Bondy from her position as Chief of the DPPHS Audit Bureau;
6. For an award of attorney's fees and costs incurred as a result of bringing this legal Action; and
7. Any and all other relief this Court deems just and equitable.

DATED this 18th day of October, 2016.

THE JAMES BROWN LAW OFFICE, PLLC



James E. Brown
Attorney for Plaintiff Carol M. Bundy

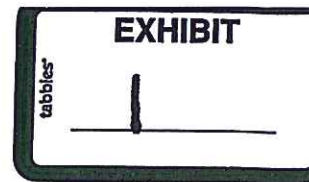
MONT. R. CIV. PRO. RULE 33 CERTIFICATION

I, the undersigned, do hereby declare under penalty of perjury that I have read the foregoing *Verified Complaint for Wrongful Discharge from Employment in Violation of Mont. Code Ann. §39-2-904 & Demand for Jury Trial* and that the facts and matters contained therein are true, accurate, and complete to the best of my knowledge and belief.

Signed this 18th day of the month of October, 2016,

at Helena, Montana.


Carol Bondy



October 27, 2015

Ms. Marie Matthews, Operations Services Branch Manager
Montana Department of Public Health and Human Services

Ms. Matthews;

As of October 19, I am in receipt of your disappointing letter of October 16, 2015. This constitutes my response to the unsupported allegations raised in your letter. I categorically deny that I have been insubordinate or that I have failed to meet the performance requirements of my position as Bureau Chief of the Audit Bureau.

To this end, I have retained James Brown, of the James Brown Law Office, as my attorney in this proceeding. It is my understanding that Mr. Brown has spoken with Vicki Knudsen and that the response date for this letter has been moved from October 21 to October 27th. Thus, this letter is timely submitted.

Prior to responding to each of the three allegations made against me, let me start by noting that I have been a knowledgeable, dedicated, and loyal DPHHS employee for the last 17 years.

I served as a Budget Analyst in the Human and Community Services Division for three years. I have been the DPHHS Internal Auditor and Audit Bureau Chief for the last 14 years. I have contributed to DPHHS by doing an excellent job of my assigned duties and volunteering for extra duties when necessary.

Absolutely no disciplinary action has ever been taken against me in those 17 years I have worked for the Department. I have never been given a performance evaluation, and no performance plan was every imposed on me during my work for the State of Montana. This is because I have performed all my job duties as required, and have done so because I have enjoyed my work on behalf of the citizens of Montana.

As such, it was a complete shock to me when my supervisor, Roy Kemp, and the Human Resources Director, Deb Sloat, came into my office the afternoon of August 19, 2015 without any notice or warning and delivered a letter to me that stated I would be placed on paid Administrative Leave immediately. Although I was given a short amount of time to gather my personal belongings, I was, much to my embarrassment and humiliation, ushered out of the building by Mr. Kemp and Ms. Sloat. Such action was done in front of my work colleagues and, more critically, in front of those employees I supervise.

I have never received any form of progressive discipline. I never received any notice of your intention to place me on paid Administrative Leave. Consequently, I have never been accorded any notice of any alleged work or performance deficiencies prior to your letter of October 16, 2015.

Further, for almost two months, I heard nothing from any DPHHS employees until October 19, 2015 when I received your letter. This letter states the letter was sent as Certified Mail, but it was not. I also notice the letter has not been ccd to any member of Human Resources and has not been ccd to my current supervisor Mr. Kemp.

Turning back to addressing the meritless allegations of your letter, my response is limited by the fact that I am not privy to some of the information you reference in your letter – such as where you obtain the numbers contained in allegation 1 and the memo referenced in allegation 3. In addition, this is the first time I have ever seen and reviewed the Employee Conduct Policy attached to your letter, though such policy was apparently effective as February 11, 2014.

1) Allocation of Audit Time:

I absolutely deny that I improperly allocated Audit Bureau time during March, April and June of 2015. I used the cost allocation process to properly allocate audit hours to more than one funding source. This was necessary because of changes made to the FY 2015 audit work plan – changes you, Marie Matthews, directed.

During the fall of 2014, you, Marie Matthews, told me that you did not want the Audit Bureau to perform the 13 Disability Services Division contractor audits that were scheduled in the Audit Bureau's 2015 audit work plan on the pretext that those audits did not add value for the Disability Services Division. Further, you, Marie Matthews, stated that the audits took up time that could be spent doing audits for other divisions.

I made a presentation to the Disability Services Division Administrator, Fiscal Bureau Chief and the Developmental Disability Program Manager in September of 2014 that explained the value of those audits including data on the Disability Services contractors' costs, their service utilization and financial status. This audit data had been useful for program management in prior years.

Yet, I received an e-mail in January of 2015 from the Disability Services Division Fiscal Bureau Chief stating that the Audit Bureau should not perform any of the Disability Services contractor audits that were scheduled for February through May. We complied and did not perform any of the Disability Services contractor audits.

In addition, in the fall of 2014, the Audit Bureau conducted the audit exit conference for the eight (8) Children's Mental Health rates analysis audits we performed in FY 2014. We planned to perform about seven (7) more Children's Mental Health rates analysis audits in FY 2015. However, you said the Audit Bureau was not to perform any more rates analysis audits for the Children's Mental Health Bureau. We complied with your directive.

By my estimation, the Audit Bureau lost about 20 audit projects during FY 2015 due to the decisions that you made directing that we not conduct the Disability Services contractor audits and the Children's Mental Health audits.

Further, in accordance with your directions, I submitted alternate audits to you in October of 2014 based on the Audit Bureau's risk assessment that these auditees posed a high risk to DPHHS. These alternate audits were also not approved by you as audit projects for FY 2015.

Due to the significant reduction in the number of external audits and failure to approve of additional suggested audits, the audit bureau held meetings in January and February of 2015 to determine high risk DPHHS internal work processes.

Based on those meeting discussions, we selected several of these internal work processes as audit projects for the period of February through April of 2015. The position descriptions for the auditors and for my position as the Audit Bureau Chief specifically direct us and authorize the Bureau to perform internal audits of DPHHS work processes. I was also specifically authorized by the former DPHHS Deputy Director to select internal audits of work processes based on the risk to DPHHS. Based on that authority, in February, March and April of 2015, we performed internal audits of DPHHS work processes. In May, we performed the scheduled audits for the Child and Adult Care Food Program; and in June and July we worked on the internal audits once again. All this work was proper, justified, and benefited the Department, its programs, and its employees.

The internal work processes we were auditing benefitted many funding sources and Administration is allocated across many state and federal funding sources. Further, I worked with Cost Allocation employees to make sure the Child and Adult Care Food Program was not charged more than our normal hourly audit rate.

Thus, contrary to what your letter asserts, I performed my job functions properly. And, I will continue to perform the functions of the position of Bureau Chief when I am allowed to return to work and assume my duties.

2) Audit Work Assignments

I also deny being insubordinate as you allege.

I received your e-mail requesting audit work assignments and the projects each auditor worked on at 5:12 PM Friday, August 14, 2015. I met the deadline you set forth in the e-mail to provide this information by August 19, 2015. Specifically, I provided:

- a. The current work assignments and their expected completion date;
- b. The audits/reviews planned to be completed in the next 3 months;
- c. Projects worked on for the last year.

As I explained in my response memo of August 19 to you, I could not satisfy your request for me to give you the audit assignments for each auditor because, as previously stated, this would violate the Audit Bureau's independence and each auditor's objectivity in performing audits. The Government Auditing Standards identifies the threat to audit independence of:

"Undue Influence threat - the threat that external influences or pressures will impact an auditor's ability to make independent and objective judgments".

As part of my job duties and professional obligations, I must follow proper auditing standards in conducting the business of the Audit Bureau.

You state in the October 16, 2015 letter, "Your refusal to provide the requested information constitutes insubordination." Insubordination is defined in MCA 39-51-201(19)(A) as, "showing a deliberate, willful, or purposeful refusal to follow the reasonable directions, processes, or instructions of the employer;" Applying this legal standard, I followed your instructions/directions by providing answers to the questions posed in your e-mail of August 14, 2015. And, contrary to what you assert, I did not refuse to provide you requested information. Rather, as noted in my answer(s) of that date, I am obligated to avoid violating Government Auditing Standards by jeopardizing auditor independence and objectivity. Thus, I have not deliberately or willfully refused to answer any question you have posed.

You also state in the October 16, 2015 letter that you are my supervisor for the purposes of reporting financial irregularities within the Department. Further, you assert you are responsible for the proper functioning of the Audit Bureau. As I have explained in more than one meeting with you, I report audits to the Operations Services Branch Manager, your position. However, for other functions, such as reporting financial irregularities, I am under the management of and supervision by the Quality Assurance Division. The Audit Bureau is located within the Quality Assurance Division. That is the structure that was established with the inception of the Audit Bureau in FY 2003, and that was the explanation given to me when I became the Audit Bureau Chief in FY 2003. Thus, your position does not directly supervise me as you have alleged; and, thus, your allegations of insubordination are not supported by your incorrect factual assertions.

As required by my job position, when allowed to return to work, I have and will continue to answer questions you pose and report to you as to the Audit Bureau's activities so long as those answers do not conflict with my professional obligations and responsibilities, such as my duty to abide by civil laws, DPHHS policies, and to track and, possibly report, circumstances or concerns, such as fraudulent, illegal, or unethical behavior, that impact the Department and its employees.

3) Regarding Audit Concerns

This allegation appears to be based on nothing more than speculation and unsupported assumption. I reported as required. I deny your assertion that I was using state resources for improper or personal purposes.

During the Montana PEAKS audits conducted in FY 2010, FY 2011 and FY 2012, I made many attempts to report audit concerns to DPHHS management -- including the Department Director, the Operations Services Branch Manager, the Economic Security Branch Manager, Chief Legal Counsel, the Human and Community Services Division Administrator, the Human and Community Services Fiscal Bureau Chief, and the Quality Assurance Division Administrator. The auditors who conducted that audit and I met several times with these DPHHS managers to update them on the audit concerns during February, March and April of FY 2010. As of May 2010, more meetings were held regarding Montana PEAKS, but I was not invited. In July of 2011, the former Operations Services Branch Manager requested that I give Jessica Rhodes, the Governor's Policy Advisor for Health and Human Services, access to the Audit Bureau's SharePoint website, so she could view our audit reports. Though unusual, I complied with this request.

In November of 2012, we reported to Bill Alger, the Business Operations Bureau Chief within the Business and Financial Services Division, that we found duplicate vouchers for 8 Disability Services contractors. We were told our query of the SABHRS system was wrong. We never received a detailed explanation of how the duplicates happened.

In February of FY 2013, I requested a meeting with the new DPHHS Director, Richard Opper, to inform him about the Montana PEAKS audits. He agreed and the auditor who performed the Montana PEAKS audits and I met with him and two attorneys from the Governor's Office, Andrew Huff and James Mallory. Mr. Opper agreed that we should continue to audit the payments made to Montana PEAKS after their FY 2010 contract ended. But later I was told by the Quality Assurance Division Administrator to stop that audit and give our audit work papers to the Office of Legal Affairs. I complied with this directive.

In the summer of 2014, I gave you, Marie Matthews, the summary and the backup documents for the Fort Belknap/Mountain Home Montana accounting issue.

I collected information in order to report high risk audits to you. I gave you a list of potential audits that posed a high risk for DPHHS in October of 2014. These audit projects were not approved as audits for the Audit Bureau to pursue.

August 19, 2015, I reported to you the current audit work assignments and their expected completion date, the audits and reviews expected to be completed during the next 3 months, and the audit projects worked on last year.

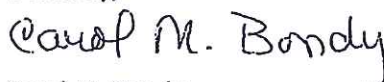
I did not have regular meetings with the new Operations Services Branch Manager, then you, until the fall of 2014. These meetings were not held while the 2015 Legislature was in session, and they were not resumed until August of 2015.

Regarding the purported memo on my work computer describing concerns about DPHHS lack of financial controls and ways to fix these problems: you do not specifically describe the memo, including the date, so I cannot respond specifically as to the same. However, it is my job as the DPHHS Audit Bureau Chief to analyze and describe DPHHS internal controls and financial work processes. My position description directs me to perform such audits. Everything I have done has been done during work hours and within the scope of my employment. Further, such work has been work related and authorized by my job duties and responsibilities. Nothing I have done has been for personal use, contrary to what you assert.

I have performed my job as the Audit Bureau Chief since FY 2003 according to my position description, Generally Accepted Accounting Principles, Generally Accepted Auditing Standards, state and federal laws, and state and DPHHS policies. When I return to work, I will continue to perform my work on behalf of the citizens of Montana in the same faithful manner as I was performing before I was summarily put on paid administrative leave, and will continue to operate under the same ethical standards I was operating under prior to August 19, 2015.

Thank you for your time and consideration of my response. I would appreciate this letter being shared with human resources and having the same placed in my personnel file.

Sincerely,



Carol M. Bondy
Audit Bureau Chief

Cc: James Brown, attorney at law

November 19, 2015

Department of Public Health and Human Services
Operations Services Branch Manager
111 N. Sanders
Helena, MT. 59620

Dear Ms. Matthews

As of November 17, 2015, I am in receipt of your letter of November 13, 2015, in which you accuse me, once again, of wrongdoing. After reading your letter, it is has become clear to me that you decided to terminate my employment on August 19th and have spent the last three months fishing for a reason, any reason, to do so. Apparently, Mr. Hansen's "Affidavit" is the newest pretext for doing so.

As I noted in my previous letter to you, I have been a faithful state employee for many years, and have served the Department and the Public's interest. Up until the ambush meeting in my office of that date, I had never been subject to any reprimand or discipline during my 17 year career with the Department. Despite the poor treatment I have received over the last several months, and despite being subject to repeated allegations of wrongdoing, I have been ready, willing, and able to return to work since August 19th. And, to this end, I am looking forward to assuming the duties of my position.

Turning now to the three questions of substance of your November 13, 2015 letter:

1. Provide information to legislators and a private citizen without informing me that this information had been shared.

I was aware that Mr. Hansen was responding to questions asked by legislators. Montana law requires Mr. Hansen and other state employees to respond to a citizen's request for public information. MCA Section 2-6-102. I was not aware of the 'batman' memo referenced prior to its apparent creation and was not aware it was sent to two legislators and a private citizen as you alleged.

As I referenced and discussed in my previous response to your first 'due process letter', I would not ordinarily inform you of this type of public information request because you are not my direct supervisor and nothing in my job description requires I inform you of such a request. As clearly outlined in the reorganization done by the Department in 2002, my position as the Audit Bureau Chief is part of the Quality Assurance Division. As such, under this chain of command structure, I provide you with audit reports and desk review memos of A-133 audits only, which I have done.

2. Provide protected information to these people upon request.

I'm not sure what you mean by "protected information". That is a vague term that has not been defined. However, protected Health Information is a concrete term that has a specific definition in the Healthcare Information Portability and Accountability Act (HIPAA). During my tenure, the Audit Bureau has followed the requirements of the HIPAA law.

3. Approve Mr. Hanson's storing of thousands of records of protected health information on his home computer as he claimed in his affidavit.

I was aware that Mr. Hansen had work files on his home computer in order to perform his audit work. That is allowable under state law. Mr. Hansen was to use those files for work-related purposes only.

As I noted to you in my previous letter, I have retained James Brown of the James Brown Law Office to represent me on this matter. I request that any further communications be directed to his office located at 30 S. Ewing, Suite 100. Helena, Montana 59601. Please also send a copy of such correspondence to me.

Sincerely,

Carol M. Bondy
Carol M. Bondy



*Dear Jim
Thanks for delivering
this letter.
Carol Bondy*