

IN THE SUPREME COURT OF IOWA

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SUPREME COURT NO. 23-0300  
Polk County No. LACL153187

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ASHLEY LYNN KOESTER,  
Plaintiff-Appellant,

v.

EYERLY-BALL COMMUNITY MENTAL HEALTH SERVICES,  
REBECCA PARKER, and MONICA VAN HORN,  
Defendants-Appellees.

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APPEAL FROM THE IOWA DISTRICT COURT  
IN AND FOR POLK COUNTY  
THE HONORABLE SAMANTHA GRONEWALD

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**DEFENDANTS-APPELLEES EYERLY-BALL COMMUNITY MENTAL  
HEALTH SERVICES, REBECCA PARKER, AND  
MONICA VAN HORN'S FINAL BRIEF**

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COMMUNITY MENTAL HEALTH  
SERVICES, REBECCA PARKER, and  
MONICA VAN HORN**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....4

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW .....6

ROUTING STATEMENT.....7

STATEMENT OF THE CASE.....7

STATEMENT OF FACTS .....8

ARGUMENT .....9

I. THE DISTRICT COURT CORRECTLY DETERMINED THAT PLAINTIFF CANNOT PURSUE A WRONGFUL DISCHARGE CLAIM BASED ON CHAPTER 91A WHERE PLAINTIFF ADMITS SHE WAS PAID ALL THE WAGES SHE WAS OWED.....9

    A. Error Preservation.....9

    B. Standard of Review. ....10

    C. Argument. ....10

        1. Public policy claims are a narrow exception to the employment at-will doctrine. ....10

        2. Courts have never recognized a public policy under Chapter 91A that protects employees who have been fully paid or overpaid.....11

        3. Plaintiff admits she was not deprived of any wages and is therefore not protected by the public policy in Chapter 91A. ....14

II. THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFF’S CHAPTER 91A STATUTORY CLAIM BECAUSE IT IS BARRED BY THE STATUTE OF LIMITATIONS AND BECAUSE IT FAILS FOR ALL THE SAME REASONS THAT COUNT I FAILS. ....20

A. Error Preservation.....	20
B. Standard of Review. ....	20
C. Argument.....	20
1. Count II is barred by the statute of limitations. ....	21
2. Count II fails for the same reasons that Count I fails. ....	22
CONCLUSION.....	23
REQUEST FOR NON-ORAL SUBMISSION .....	24
CERTIFICATE OF COST.....	24
CERTIFICATE OF COMPLIANCE.....	24
CERTIFICATE OF FILING AND SERVICE .....	25

## TABLE OF AUTHORITIES

### Cases

<i>Berry v. Liberty Holdings, Inc.</i> , 803 N.W.2d 106 (Iowa 2011).....	6, 10, 11, 17
<i>Bjorseth v. Iowa Newspaper Ass’n</i> , No. 15-2121, 2016 WL 6902745 (Iowa Ct. App. Nov. 23, 2016).....	passim
<i>Flex Frac Logistics, L.L.C. v. N.L.R.B.</i> , 746 F.3d 205 (5th Cir. 2014) .....	19
<i>Hussaini v. Gelita USA, Inc.</i> , 749 F. Supp. 2d 909 (N.D. Iowa 2010).....	6, 19
<i>In re Marriage of Thatcher</i> , 864 N.W.2d 533 (Iowa 2015) .....	6, 19
<i>Kakinami v. Kakinami</i> , 260 P.3d 1126 (Haw. 2011) .....	6, 19
<i>Kavanagh v. KLM Royal Dutch Airlines</i> , 566 F. Supp. 242 (N.D. Ill. 1983).....	13
<i>Matter of Guardianship of Radda</i> , 955 N.W.2d 203, 214 (Iowa 2021) .....	19
<i>Meade v. Christie</i> , 974 N.W.2d 770 (Iowa 2022) .....	10, 20
<i>Morris v. Conagra Foods, Inc.</i> , 435 F. Supp. 2d 887 (N.D. Iowa 2005) .....	passim
<i>Myers v. Iowa Bd. of Regents</i> , 594 F. Supp. 3d 1093 (S.D. Iowa 2022).....	6, 11
<i>Nahas v. Polk Cnty.</i> , No. 22-0239, 2023 WL 3906488, at *7 (Iowa June 9, 2023).....	6, 17
<i>NLRB v. Brookshire Grocery Co.</i> , 919 F.2d 359 (5th Cir. 1990).....	19
<i>Phipps v. IASD Health Servs. Corp.</i> , 558 N.W.2d 198 (Iowa 1997).....	10
<i>Shumate v. Drake Univ.</i> , 846 N.W.2d 503 (Iowa 2014).....	8
<i>Tullis v. Merrill</i> , 584 N.W.2d 236 (Iowa 1998).....	passim
<i>Vrban v. Deere &amp; Co.</i> , 129 F.3d 1008 (8th Cir. 1997).....	7, 22
<i>Wandry v. Bull’s Eye Credit Union</i> , 384 N.W.2d 325 (Wis. 1986) .....	18

*Waterman v. Nashua-Plainfield Cmty. Sch. Dist.*, 446 F. Supp. 2d  
1018 (N.D. Iowa 2006)..... 21, 22

*White v. Harkrider*, No. 21-1992, 2023 WL 3395946, at \*1 (Iowa  
May 12, 2023)..... passim

**Statutes**

IOWA CODE SECTION 91A ..... passim

IOWA CODE SECTION 91A.10 .....21

IOWA CODE SECTION 614.1(8)..... 21, 22

IOWA CODE SECTION 91A.3(1).....6, 11

IOWA CODE SECTION 91A.7 .....18

**Other Authorities**

29 U.S.C. § 160(b) .....19

**Rules**

IOWA R. APP. P. 6.1101(3) .....7

IOWA R. CIV. P. 1.421(1)(f).....16

## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

### **I. WHETHER THE DISTRICT COURT CORRECTLY DETERMINED THAT PLAINTIFF CANNOT PURSUE A WRONGFUL DISCHARGE CLAIM BASED ON CHAPTER 91A WHERE PLAINTIFF ADMITS SHE WAS PAID ALL THE WAGES SHE WAS OWED.**

*Berry v. Liberty Holdings, Inc.*, 803 N.W.2d 106 (Iowa 2011)  
*Bjorseth v. Iowa Newspaper Ass'n*, No. 15-2121, 2016 WL 6902745 (Iowa Ct. App. Nov. 23, 2016)  
*Flex Frac Logistics, L.L.C. v. N.L.R.B.*, 746 F.3d 205 (5th Cir. 2014)  
*Hussaini v. Gelita USA, Inc.*, 749 F. Supp. 2d 909 (N.D. Iowa 2010)  
*In re Marriage of Thatcher*, 864 N.W.2d 533 (Iowa 2015)  
*Kakinami v. Kakinami*, 260 P.3d 1126 (Haw. 2011)  
*Kavanagh v. KLM Royal Dutch Airlines*, 566 F. Supp. 242 (N.D. Ill. 1983)  
*Matter of Guardianship of Radda*, 955 N.W.2d 203 (Iowa 2021)  
*Meade v. Christie*, 974 N.W.2d 770 (Iowa 2022)  
*Morris v. Conagra Foods, Inc.*, 435 F. Supp. 2d 887 (N.D. Iowa 2005)  
*Myers v. Iowa Bd. of Regents*, 594 F. Supp. 3d 1093 (S.D. Iowa 2022)  
*Nahas v. Polk Cnty.*, No. 22-0239, 2023 WL 3906488 (Iowa June 9, 2023)  
*NLRB v. Brookshire Grocery Co.*, 919 F.2d 359 (5th Cir. 1990)  
*Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198 (Iowa 1997)  
*Tullis v. Merrill*, 584 N.W.2d 236 (Iowa 1998)  
*White v. Harkrider*, No. 21-1992, 2023 WL 3395946 (Iowa May 12, 2023)

IOWA CODE SECTION 91A

IOWA CODE SECTION 91A.3(1)

IOWA R. CIV. P. 1.421(1)(f)

29 U.S.C. § 160(b)

### **II. WHETHER THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFF'S CHAPTER 91A STATUTORY CLAIM BECAUSE IT IS BARRED BY THE STATUTE OF LIMITATIONS AND BECAUSE IT FAILS FOR ALL THE SAME REASONS THAT COUNT I FAILS.**

*Meade v. Christie*, 974 N.W.2d 770 (Iowa 2022)

*Morris v. Conagra Foods, Inc.*, 435 F. Supp. 2d 887 (N.D. Iowa 2005)

*Waterman v. Nashua-Plainfield Cmty. Sch. Dist.*, 446 F. Supp. 2d 1018 (N.D. Iowa 2006)

*Vrban v. Deere & Co.*, 129 F.3d 1008 (8th Cir. 1997)

*White v. Harkrider*, No. 21-1992, 2023 WL 3395946 (Iowa May 12, 2023)

IOWA CODE SECTION 91A

IOWA CODE SECTION 614.1(8)

### **ROUTING STATEMENT**

This appeal arises from an order of dismissal that applied existing law to the allegations in Plaintiff's pleadings. This appeal does not present any substantial issues of law that would be appropriate for retention by the supreme court. As such, this case should be transferred to the court of appeals. IOWA R. APP. P. 6.1101(3).

### **STATEMENT OF THE CASE**

This appeal arises from the dismissal of a wrongful discharge claim based on Chapter 91A where the plaintiff admits she was paid all the wages she was owed. The problem for Plaintiff is that Chapter 91A and its public policy provide no protection for employees who are fully paid.

Plaintiff Ashley Koester originally asserted one claim for relief—a common law claim of wrongful discharge in violation of public policy. App. 6-16 (Original petition). The purported public policy on which Plaintiff relied is Iowa Code Chapter 91A, the Iowa Wage Payment Collection Act. App. 6-16 (Original petition). Defendants filed a motion to dismiss, App. 17-25 (Motion to dismiss original petition), and Plaintiff amended her pleading to add a second claim—a statutory

claim of retaliatory discharge under Chapter 91A. App. 35-51 (Amended petition). The statutory claim relied on the same facts at issue in the common law claim.

In both claims for relief, Plaintiff alleged she raised complaints about overtime wages. App. 42 (Amended petition at ¶ 74). Critically, however, Plaintiff also admitted in her pleadings that she was paid all the wages she was owed. *See, e.g.*, App. 43 (Amended petition at ¶ 91) (“Plaintiff engaged in a protected activity of requesting her payment and getting paid her payment under Iowa Code 91A., and this conduct was the reason the Plaintiff was terminated.”). Courts have found that the public policy of Chapter 91A does not protect an employee who has received all the wages they are owed. *See Bjorseth v. Iowa Newspaper Ass’n*, No. 15-2121, 2016 WL 6902745 (Iowa Ct. App. Nov. 23, 2016); *Morris v. Conagra Foods, Inc.*, 435 F. Supp. 2d 887 (N.D. Iowa 2005). As a result, the district court correctly granted Defendants’ motion to dismiss the amended petition. App. 156-63 (Order of Dismissal). Plaintiff appealed from that order of dismissal.

### **STATEMENT OF FACTS**

At the motion to dismiss stage, all well-pleaded allegations of the petition are accepted as true. *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014). Defendants therefore base their statement of facts on the allegations of the amended petition.

Plaintiff is a former employee of Eyerly-Ball. She began her employment on July 22, 2019 as a PRN (as needed) nurse. App. 35 (Amended petition at ¶¶ 8, 11). Plaintiff's position was non-exempt, meaning she was eligible to receive overtime pay. App. 35 (Amended petition at ¶ 11). Plaintiff specifically alleged that she "always received her overtime pay for the hours she worked." App. 39 (Amended petition at ¶ 44). In other words, Plaintiff makes clear she was paid all the wages she was owed. App. 41-43 (Amended petition at ¶¶ 73, 77, 78, 83, 91). She claims, however, that her coworkers were not receiving overtime pay. App. 39 (Amended petition at ¶ 45). She therefore contends she discussed the issue of overtime pay with Eyerly-Ball. App. 42 (Amended petition at ¶ 74). Plaintiff claims she was then terminated on January 7, 2020 "for receiving overtime payments." App. 42 (Amended petition at ¶¶ 75, 78). Plaintiff filed this action on June 2, 2022. App. 6-16 (Original petition).

## ARGUMENT

### **I. THE DISTRICT COURT CORRECTLY DETERMINED THAT PLAINTIFF CANNOT PURSUE A WRONGFUL DISCHARGE CLAIM BASED ON CHAPTER 91A WHERE PLAINTIFF ADMITS SHE WAS PAID ALL THE WAGES SHE WAS OWED.**

#### **A. Error Preservation.**

The first issue on appeal is whether the district court correctly determined that Plaintiff cannot pursue a common law wrongful discharge claim based on Iowa Code Chapter 91A where Plaintiff admits she was paid all the wages she was owed.

Defendants agree that Plaintiff preserved error on this issue by resisting the motion to dismiss, filing a motion to reconsider, and filing a notice of appeal.<sup>1</sup>

**B. Standard of Review.**

An appellate court “review[s] a district court’s ruling on a motion to dismiss for the correction of legal error.” *White v. Harkrider*, No. 21-1992, 2023 WL 3395946, at \*1 (Iowa May 12, 2023) (citing *Meade v. Christie*, 974 N.W.2d 770, 774-75 (Iowa 2022)).

**C. Argument.**

**1. Public policy claims are a narrow exception to the employment at-will doctrine.**

Employment relationships in Iowa are presumptively at will, meaning an employer “may discharge an employee at any time, for any reason, or no reason at all.” *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 202 (Iowa 1997). One exception to this rule is when an employee’s discharge violates a “well-recognized and defined public policy” of the State of Iowa. *Id.* But to prevail on a wrongful discharge claim, an employee must prove—among other things—“the existence of a clearly defined and well-recognized public policy that protects the employee’s activity.” *Berry v. Liberty Holdings, Inc.*, 803 N.W.2d 106, 109-10 (Iowa 2011). The

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<sup>1</sup> Plaintiff divides this issue into two separate issues in argument sections I and II of her brief. Defendants believe this is more appropriately characterized as a single issue, so argument section I responds to both sections I and II of Plaintiff’s brief.

simple existence of a statute (such as Chapter 91A) does not necessarily mean there is a public policy that would support a wrongful discharge claim. *Id.* at 110 (“Even if an employee identifies a statute as an alleged source of public policy, it does not necessarily follow that the statute supports a wrongful discharge claim.”).

**2. Courts have never recognized a public policy under Chapter 91A that protects employees who have been fully paid or overpaid.**

In Count I, Plaintiff asserted a claim of wrongful discharge in violation of public policy. She identified Iowa Code Chapter 91A, the Iowa Wage Payment Collection Law, as the purported source of public policy in support of this claim. Chapter 91A requires an employer to “pay all wages due its employees,” and establishes statutory deadlines for the payment of wages. *Myers v. Iowa Bd. of Regents*, 594 F. Supp. 3d 1093, 1099 (S.D. Iowa 2022) (citing IOWA CODE § 91A.3(1)). Thus, Chapter 91A is intended to “facilitate collection of wages owed to employees.” *Myers*, 594 F. Supp. 3d at 1099.

The Iowa Supreme Court addressed the public policy behind Chapter 91A in *Tullis v. Merrill*, 584 N.W.2d 236 (Iowa 1998). In *Tullis*, the plaintiff alleged his employer promised that the plaintiff would be entitled to health insurance at the employer’s expense. *Id.* at 237. The employer subsequently began charging the plaintiff for health insurance premiums and the plaintiff complained to the employer about it. *Id.* at 237-38. The employer then allegedly terminated the plaintiff for his

complaint. *Id.* at 238. The plaintiff filed a wrongful discharge claim based on the public policy in Chapter 91A. *Id.*

In *Tullis*, the Iowa Supreme Court found that Chapter 91A “articulates a public policy prohibiting the firing of an employee *in response to a demand for wages due under an agreement with the employer.*” *Id.* at 239 (emphasis added). The court therefore concluded the plaintiff’s claim was actionable, because he alleged he was fired for complaining that he was deprived health benefits promised by his employer. *Id.* at 238-39.

*Tullis*, however, has its limitations. In *Morris v. Conagra Foods, Inc.*, 435 F. Supp. 2d 887 (N.D. Iowa 2005), the employer inadvertently overpaid the plaintiff approximately \$13,000 in wages. *Id.* at 893. The employer requested that the plaintiff repay the overpayment, and the plaintiff subsequently informed the employer he would not be returning to work because of what he alleged was a racially hostile work environment. *Id.* at 894-95. The plaintiff then filed suit for, among other things, an alleged retaliatory discharge under Chapter 91A. *Id.* at 895.

In *Morris*, the court recognized that *Tullis* articulated a public policy that prohibits the termination of an employee in response to a demand for wages due. *Id.* at 912. However, that was not the issue in *Morris*. *Id.* “Although at first blush it appears *Tullis* supports Morris’s argument, the case lends no credence to Morris’s arguments because in *Tullis* and the cases referenced therein, *the employers actually*

*withheld wages from their employee's paychecks.*" *Id.* (emphasis added) Drawing from an Illinois case with similar facts,<sup>2</sup> the *Morris* court further stated:

[T]his court concludes the nexus between Morris's discharge and the Iowa Wage Payment Collection law is too attenuated. Like the complainant in *Kavanagh*, Morris essentially is asking this court to find an at-will employee cannot be terminated because of *any* dispute concerning wages, even if the employee has been fully paid, or, as in Morris's case, overpaid. Such a holding would undermine the concept of the employment-at-will doctrine, which [provides] an employee at will is "subject to discharge at any time, for any reason, or for no reason at all."

*Id.* at 912-13 (internal citation omitted) (emphasis in original). The court therefore found the plaintiff had failed to state a claim under Chapter 91A. *Id.* at 913.

The Iowa Court of Appeals has reached a similar conclusion as well. *See Bjorseth v. Iowa Newspaper Ass'n*, No. 15-2121, 2016 WL 6902745 (Iowa Ct. App. Nov. 23, 2016). In *Bjorseth*, the plaintiff exhausted her personal leave and then asked for another day off from work. *Id.* at \*1. The employer informed her that if she took the day off, then eight hours of pay would be deducted from her paycheck. *Id.* The plaintiff consulted with someone from the state government and was informed her employer could not deduct anything from her paycheck. *Id.* The plaintiff shared this information with her supervisor. *Id.* However, the plaintiff ultimately decided to not take the day off, and nothing was ever deducted from her wages. *Id.* The plaintiff

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<sup>2</sup> *Kavanagh v. KLM Royal Dutch Airlines*, 566 F. Supp. 242 (N.D. Ill. 1983).

was subsequently terminated for poor performance. *Id.* She then filed a statutory claim under Chapter 91A and a claim of wrongful discharge in violation of public policy based on Chapter 91A. *Id.*

In *Bjorseth*, the district court dismissed both of the plaintiff's claims because she was never deprived of any wages. Reciting the district court's reasoning with approval, the court of appeals stated:

Chapter 91A is not a rule prohibiting an employee's termination in response to a wage dispute. Instead, it is a rule prohibiting an employee's termination in response to a wage dispute *where an employee has not been fully paid*. The parties in this case agree that no wages were withheld at any point. Chapter 91A and the associated public policy thus do not afford Bjorseth protection.

*Id.* at \*2 (emphasis added). Thus, Iowa's state and federal courts have made clear that Chapter 91A does not protect employees who have received all the wages they are owed.

**3. Plaintiff admits she was not deprived of any wages and is therefore not protected by the public policy in Chapter 91A.**

In both district court and on appeal, Plaintiff has made clear she is *not* claiming she was terminated for requesting wages she was owed. Instead, Plaintiff claims she was terminated for actually *receiving* overtime pay. In the amended petition, Plaintiff's allegations include:

- "Plaintiff was receiving overtime payments for the hours she worked" (App. 41 (Amended Petition at ¶ 73));

- “Plaintiff was wrongfully terminated after her overtime work requests were approved” (App. 42 (Amended Petition at ¶ 77));
- “Plaintiff was wrongfully terminated for receiving overtime payments in accordance with State, wage, and hour restriction laws” (App. 42 (Amended Petition at ¶ 78));
- “[Plaintiff] requested payment of her money and then obtained that payment” (App. 42 (Amended Petition at ¶ 83));
- “Plaintiff engaged in a protected activity of requesting her payment and getting paid her payment under Iowa Code §91A., and this conduct was the reason the Plaintiff was terminated” (App. 43 (Amended Petition at ¶ 91)).

Plaintiff reaffirms this position in her appellate brief, in which she repeatedly states she was paid all the wages she was owed. *See, e.g.*, Pl. Br. at 21 (“Plaintiff was wrongfully terminated for receiving overtime payments in accordance with the Federal and State wage and hour restriction laws. Plaintiff was wrongfully terminated after her overtime work requests were approved.”) (internal citation omitted); Pl. Br. at 22 (“She requested payment of her money and then obtained that payment.”). Plaintiff reiterates this point throughout her brief.<sup>3</sup>

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<sup>3</sup> Plaintiff also confirmed elsewhere that she was paid all the wages she was owed. On September 12, 2022, Defendants filed a motion to dismiss the original petition. Plaintiff filed a resistance on September 28, 2022. In that resistance, Plaintiff stated that “In the current case, in a wrongful termination sense, the plaintiff alleges that she requested overtime, was provided overtime, and then was *fired* for obtaining overtime, and this discharge is in violation of law.” App. 28 (Pl. Resistance dated 9/26/2022 at ¶ 14) (emphasis in original). She also stated “[t]he Plaintiff is not requesting overtime but instead is claiming she was wrongfully discharged after she requested and then received her payment (overtime or otherwise), where the Defendants claimed by doing so, she was stealing.” App. 28 (Pl. Resistance dated

Thus, Plaintiff clearly admits she was paid all the wages she was owed. This case therefore falls outside the public policy articulated in *Tullis*, and instead demands the same result as *Morris* and *Bjorseth*. Plaintiff is not alleging she was terminated for demanding wages that were owed to her. Instead, she specifically alleges she was paid all the wages she complained about. As the courts explained in *Morris* and *Bjorseth*, the public policy articulated in *Tullis* in no way prevents an employer from terminating an employee who is fully paid. Plaintiff's wrongful termination claim in Count I therefore fails as a matter of law.

Plaintiff's argument that she should have survived a motion to dismiss because she "satisfied notice pleading" misses the mark. *See* Pl. Br. at 28. The issue is not whether she put Defendants on notice of her claims, but whether she has failed to state a claim on which relief can be granted. IOWA R. CIV. P. 1.421(1)(f); *White v. Harkrider*, No. 21-1992, 2023 WL 3395946, at \*1 (Iowa May 12, 2023) (A motion to dismiss should be granted "if the petition shows the claim or claims are legally deficient and the plaintiff has no right to recovery as a matter of law."). Here, it is clear from the pleadings that Plaintiff has failed to state a claim because she was paid all the wages she was owed.

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9/26/2022 at ¶ 15). Two days later, Plaintiff filed an amended petition. Although the amended petition renders the original petition moot, Plaintiff's statements in her briefing still illustrate the nature of her claim. Specifically, Plaintiff has acknowledged to the Court at every juncture that she was paid all the wages she was owed.

Plaintiff also tries to evade dismissal by arguing she is protected by “other well-known public policy as the evidence will demonstrate.” Pl. Br. at 30. That is insufficient. A plaintiff who asserts a wrongful discharge claim must identify “the existence of a clearly defined and well-recognized public policy that protects the employee’s activity.” *Berry*, 803 N.W.2d at 109-10 (emphasis added). It is not enough for a plaintiff to make a vague allegation that there may be some “other” public policy that supports her claim. *Nahas v. Polk Cnty.*, No. 22-0239, 2023 WL 3906488, at \*7 (Iowa June 9, 2023) (finding district court erred in denying motion to dismiss wrongful discharge claim where plaintiff failed to cite acceptable sources of public policy); *Berry*, 803 N.W.2d at 110 (“[W]e have consistently refused to recognize the existence of alleged public policies based in general and vague concepts of socially desirable conduct, internal employment policies, or private interests”). Here, the only public policy Plaintiff has attempted to identify is that expressed in Chapter 91A. As discussed above, that public policy does not support her claim.

Further, Plaintiff’s argument that “deprivation [of wages] is not required” is just plain wrong. *See* Pl. Br. at 35-36. As the court recognized in *Morris*, “[a]lthough the Iowa Supreme Court has stated ‘Iowa Code chapter 91A plainly articulates a public policy prohibiting the firing of an employee in response to a demand for *wages due*,’ the state court has never extended the public policy to encompass every

wage dispute an employee has with an employer, and this court refuses to do so as well.” *Morris*, 435 F. Supp. 2d at 913, n.14 (emphasis in original) (cleaned up). Plaintiff’s attempt to distinguish *Morris* therefore fails.

Plaintiff’s attempt to distinguish *Bjorseth* is similarly unavailing. Plaintiff argues that “[i]n *Bjorseth*[,] the Iowa Court of Appeals said Chapter 91A and the *Tullis* public policy tort are not a rule prohibiting employees’ termination in response to wage disputes. However, that is in fact what Iowa Code §91A.7 and *Tullis* are.” Pl. Br. at 38. Plaintiff misunderstands the court’s decision in *Bjorseth*. The *Bjorseth* court explained that Chapter 91A does not regulate any and all wage disputes between employers and employees—it only requires employers to pay employees the wages they are owed. *Bjorseth*, 2016 WL 6902745, at \*2 (“The statute itself is designed to facilitate recollection of wages owed to employees. The purpose of the law would not be furthered by providing protection in employment disputes that do not result in withheld wages.”).<sup>4</sup>

Finally, Plaintiff contends that the dismissal of her case reflects a “loophole” in Chapter 91A’s public policy because employers could pay an employee’s wages and then terminate them. Pl. Br. at 30. This is an argument that is more appropriately

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<sup>4</sup> Plaintiff also discusses *Wandry v. Bull’s Eye Credit Union*, 384 N.W.2d 325 (Wis. 1986). Pl. Br. at 39. *Wandry* is a 1986 decision by the Supreme Court of Wisconsin and contains no discussion of Chapter 91A. It therefore has no persuasive value in this case.

directed to the legislature, not the courts. *See Matter of Guardianship of Radda*, 955 N.W.2d 203, 214 (Iowa 2021) (“Policy arguments to amend the statute should be directed to the legislature.”); *In re Marriage of Thatcher*, 864 N.W.2d 533, 546 (Iowa 2015) (“[I]t is not the role of the court to alter a statutory requirement in order to effect policy considerations that are vested in the legislature.”) (quoting *Kakinami v. Kakinami*, 260 P.3d 1126, 1133 (Haw. 2011)).<sup>5</sup>

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<sup>5</sup> In passing, Plaintiff claims there were “times she did not get paid to drive to meetings and trainings.” Pl. Br. at 42. But as the district court correctly determined, Plaintiff “failed to state that she ever made a demand for such wages and was fired in response to that demand.” App. (Dismissal Order at 4). In other words, Plaintiff never alleged that she actually complained to Eyerly-Ball that she was not paid to drive to meetings and trainings, or that she was terminated for raising such a complaint. This lone allegation therefore does not create a cause of action for wrongful termination in violation of public policy.

Plaintiff also makes a passing reference to an allegation that she was terminated “for discussing wages with her coworkers and giving them the idea for additional wages as well.” Pl. Br. at 42. Plaintiff has identified no cognizable legal theory to support a recovery based on this allegation. It is certainly not protected by Chapter 91A. To the extent Plaintiff wishes to pursue this allegation, it is preempted by the National Labor Relations Act (NLRA). *See Hussaini v. Gelita USA, Inc.*, 749 F. Supp. 2d 909, 921 (N.D. Iowa 2010) (finding that claim of wrongful discharge in violation of public policy was preempted by NLRA where claim involved activity that was either “actually or arguably prohibited by the NLRA”); *Flex Frac Logistics, L.L.C. v. N.L.R.B.*, 746 F.3d 205, 208 (5th Cir. 2014) (“A ‘workplace rule that forbids the discussion of confidential wage information between employees patently violates section 8(a)(1) [of the NLRA].” (quoting *NLRB v. Brookshire Grocery Co.*, 919 F.2d 359, 363 (5th Cir. 1990))) (cleaned up). Further, if Plaintiff wished to pursue a claim under the NLRA, any such claim would be time-barred. 29 U.S.C. § 160(b).

There is no public policy that would be undermined by Plaintiff's discharge from employment. As such, the district court correctly determined that Count I must be dismissed.

**II. THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFF'S CHAPTER 91A STATUTORY CLAIM BECAUSE IT IS BARRED BY THE STATUTE OF LIMITATIONS AND BECAUSE IT FAILS FOR ALL THE SAME REASONS THAT COUNT I FAILS.**

**A. Error Preservation.**

The second issue on appeal is whether the district court correctly dismissed Plaintiff's Chapter 91A statutory claim because it is barred by the statute of limitations and because it fails for all the same reasons that Count I fails. Defendants agree that Plaintiff preserved error on this issue by resisting the motion to dismiss, filing a motion to reconsider, and filing a notice of appeal.

**B. Standard of Review.**

An appellate court "review[s] a district court's ruling on a motion to dismiss for the correction of legal error." *White v. Harkrider*, No. 21-1992, 2023 WL 3395946, at \*1 (Iowa May 12, 2023) (citing *Meade v. Christie*, 974 N.W.2d 770, 774-75 (Iowa 2022)).

**C. Argument.**

The original petition asserted only one claim for relief—the common law wrongful discharge claim discussed above in Section I. When Defendants filed a

motion to dismiss, Plaintiff amended her pleading to add a statutory claim of retaliatory discharge under Chapter 91A.10. That section makes it unlawful for an employer to fire an employee because the employee has filed a complaint under Chapter 91A. But as the district court correctly determined, this claim: (1) is barred by the statute of limitations, and (2) fails for all the same reasons that Count I fails.

**1. Count II is barred by the statute of limitations.**

The statute of limitations on a claim under Chapter 91A is two years. IOWA CODE § 614.1(8) (“Those founded on claims for wages or for a liability or penalty for failure to pay wages, within two years.”); *Waterman v. Nashua-Plainfield Cmty. Sch. Dist.*, 446 F. Supp. 2d 1018, 1027 (N.D. Iowa 2006) (“The statute of limitations for [a Chapter 91A] action is two years from the time the action accrues.”).

Here, Plaintiff was terminated on January 7, 2020. App. 45 (Amended Petition at ¶ 113). To be timely, Plaintiff would have needed to file a Chapter 91A claim on or before January 7, 2022. Plaintiff, however, did not file this lawsuit until June 2, 2022. App. 6-16 (Original Petition). She did not file her Chapter 91A statutory claim until she filed her amended petition on September 28, 2022. App. 35-51 (Amended Petition). Either way, Plaintiff filed her Chapter 91A statutory claim more than two years after her termination and her claim is barred.

Plaintiff argues that Count II should fall under Iowa Code Section 614.1(4) (“Unwritten contracts—injuries to property—fraud—other actions”). Pl. Br. at 48.

In support of this position, Plaintiff relies on *Vrban v. Deere & Co.*, 129 F.3d 1008, 1010-11 (8th Cir. 1997). *Vrban* addressed a common law wrongful discharge claim like the one Plaintiff asserts in Count I. It therefore has no bearing on the statute of limitations applicable to Plaintiff's statutory claim in Count II.

On the other hand, the court in *Vrban* actually noted that "Section 614.1(8) provides a two-year limitation period for actions 'founded on claims for wages or for a liability or penalty for failure to pay wages.'" *Id.* (quoting Iowa Code § 614.1(8)). As discussed in Section I, the purpose of Chapter 91A is to facilitate the payment of wages owed to employees. Courts have therefore found that Chapter 91A claims carry a two-year limitations period. *Waterman*, 446 F. Supp. 2d at 1027 ("The statute of limitations for [a Chapter 91A] action is two years from the time the action accrues."). Plaintiff cites no cases in which courts have found that a five-year limitations period applies to Section 91A.10 claim, and Defendants are not aware of any. Thus, the district court correctly determined that Count II is barred by the statute of limitations.

## **2. Count II fails for the same reasons that Count I fails.**

Even if Count II were not time-barred, it would still fail for all the reasons that Count I fails. Specifically, Plaintiff cannot succeed on a statutory retaliatory discharge claim under Chapter 91A where she admits she was fully paid. This issue was addressed by the court in *Morris*. There, the plaintiff pled a statutory retaliatory

discharge claim under Chapter 91A, just like Plaintiff asserted in Count II here. *See Morris*, 435 F. Supp. 2d at 895 (“In count three of his complaint, Morris asserts a claim under Iowa Code Chapter 91A, arguing Conagra illegally retaliated against him for disputing the amount of his wages.”). Still, the court in *Morris* found the plaintiff’s Chapter 91A retaliatory discharge claim failed as a matter of law because the employer never withheld wages from the plaintiff. *Id.* at 913. The court relied upon the same reasons that a plaintiff cannot pursue a common law claim for wrongful discharge in violation of public policy based on Chapter 91A when the employee is not deprived of any wages she is owed. *Id.* at 912-13.

Here, Count II is based on the same allegations at issue in Count I. App. 46 (Amended Petition at ¶ 117) (“Plaintiff was retaliated against [and] wrongfully terminated for receiving overtime payments in accordance with State, wage, and hour restriction laws.”). As the court found in *Morris*, a plaintiff cannot succeed on a statutory claim under Section 91A.10 when the plaintiff was not deprived of any wages. Therefore, Count II fails for the same reasons that Count I fails.

### **CONCLUSION**

There is no cause of action under Iowa law for wrongful termination—whether arising in statute or common law—based on an employee’s receipt of all the wages they are owed. Yet that is exactly what Plaintiff is alleging here. The

district court correctly determined that Plaintiff failed to state a claim for relief, and the order of dismissal should be affirmed.

**REQUEST FOR NON-ORAL SUBMISSION**

Defendants do not believe oral argument is necessary. IOWA R. APP. P. 6.903(2)(i).

**CERTIFICATE OF COST**

I, Ryan Stefani, certify that there were no costs to reproduce copies of Defendant-Appellees' Brief because the appeal is being filed exclusively in the Appellate EDMS system.

*/s/ Ryan Stefani*

August 16, 2023

**CERTIFICATE OF COMPLIANCE**

This brief complies with the typeface requirements and type-volume limitation of IOWA RS. APP. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

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*/s/ Ryan Stefani*

August 16, 2023

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on August 16, 2023, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the EDMS which will send notification of such filing to the following:

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