IN THE SUPREME COURT OF IOWA
No. 23-1794

LINDA BETZ,
Plaintiff-Appellant,

vs.

REBECCA MATHISEN, ERIC MULLER, KELLY RASMUSSEN AND MICHAEL WILSON,
Defendants-Appellees.

On appeal from the District Court for Polk County
The Honorable Patrick Smith

Appellees' Final Brief

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Statement of the issues

1. Iowa law provides a two-year statute of limitations for defamation. *See* Iowa Code § 614.1(2). Linda Betz filed her petition to initiate this action in March 2023, alleging statements made in late 2019 defamed her. In dismissing her claim as time-barred, did the district court somehow err?

Betz v. Fed. Home Loan Bank of Des Moines, 549 F. Supp. 3d 951 (S.D. Iowa 2021)
Friedler v. Equitable Life Assur. Soc. of U.S., 86 F. App'x 50 (6th Cir. 2003)
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Rassier v. Sanner, 996 F.3d 832 (8th Cir. 2021)
Rieff v. Evans, 630 N.W.2d 278 (Iowa 2001)
Stites v. Ogden Newspapers, Inc., No. 00-1975, 2002 WL 663621 (Iowa Ct. App. Apr. 24, 2002)
Iowa Code § 614.1
Iowa R. Civ. P. 1.413

2. The doctrine of claim preclusion provides that a final judgment extinguishes all claims arising from the same set of facts and bars a subsequent action. In an earlier lawsuit, Linda Betz brought ten claims to challenge the termination of her employment from Federal Home Loan Bank of Des Moines and the reasons for the termination decision. After the time to appeal the final judgment in that case had lapsed, Betz initiated this action, again challenging the events precipitating her termination. Does claim preclusion bar this lawsuit?

Andrew v. Hamilton Cnty. Pub. Hosp., 960 N.W.2d 481 (Iowa 2021)
Arnevik v. Univ. of Minn. Bd. of Regents, 642 N.W.2d 315 (Iowa 2002)
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Betz v. Fed. Home Loan Bank of Des Moines, 644 F. Supp. 3d 500 (S.D. Iowa 2022)

Betz v. Fed. Home Loan Bank of Des Moines, No. 4:21-cv-00022-RP-SBJ, 2022 WL 18777439 (S.D. Iowa Sept. 16, 2022)
Betz v. Fed. Home Loan Bank of Des Moines, No. 4:21-cv-00022-RP-SHL, 2022 WL 18777440 (S.D. Iowa July 12, 2022)
Costner v. URS Consultants, Inc., 153 F.3d 667 (8th Cir. 1998)
Criterion 508 Sols., Inc. v. Lockheed Martin Servs., Inc., 806 F. Supp. 2d 1078 (S.D. Iowa 2009)
Daley v. Marriott Int'l, Inc., 415 F.3d 889 (8th Cir. 2005)
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Healy v. Fox, 46 F.4th 739 (8th Cir. 2022)
Jones v. State, 938 N.W.2d 1 (Iowa 2020)
Kearns v. United States, 23 F.4th 807 (8th Cir. 2022)
Kennedy v. Zimmerman, 601 N.W.2d 61 (Iowa 1999)
Leuchtenmacher v. Farm Bureau Mut. Ins. Co., 460 N.W.2d 858 (Iowa 1990)
Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc., 140 S. Ct. 1589 (2020)
Pavone v. Kirke, 807 N.W.2d 828 (Iowa 2011)
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Routing statement

Because the issues presented by this appeal require the application of existing legal principles, this case should be transferred to the Iowa Court of Appeals. *See* Iowa R. App. P. 6.1101(3)(a).

Statement of the case

I. Nature of the case

For less than two years, from March 2018 to January 2020, Plaintiff Linda Betz worked as the Chief Information Security Officer ("CISO") at Federal Home Loan Bank of Des Moines (the "Bank" or "FHLBDM"). (JA.I-9, 11 ¶¶ 9, 39).[1] In the fall of 2019, one of Betz's direct reports lodged an internal complaint to report suspected Sarbanes Oxley Act ("SOX") violations and retaliation by Betz. (JA.I-9 ¶¶ 18-19). During the investigation into the whistleblower complaint, the Bank discovered that Betz had engaged in conduct that demonstrated ethical lapses and raised serious performance concerns. (JA.I-10 ¶ 34). On January 3, 2020, the Bank's then-President and CEO, Michael Wilson, informed Betz that he had decided to terminate her employment. (JA.I-11 ¶ 39). The ensuing litigation has now gone on more than twice as long as her brief employment with the Bank.

Betz previously sued the Bank, its former President, and two of her co-workers in another lawsuit litigated in the United States District Court for the Southern District of Iowa, advancing ten claims to challenge the events leading up to the termination decision, and ultimately, her termination. The

[1] Appellees refer to the Joint Appendix as "JA," followed by the volume and page number; for example, "JA.I-9" is Joint Appendix, Volume I, page 9. The appendix citations correspond with the red "App." numbering on the bottom center of the appendices.

federal court dismissed all of her claims through dispositive motion rulings. *Betz v. Fed. Home Loan Bank of Des Moines*, 644 F. Supp. 3d 500, 513 (S.D. Iowa 2022); *Betz v. Fed. Home Loan Bank of Des Moines*, 549 F. Supp. 3d 951, 958–59 (S.D. Iowa 2021). The court entered judgment for defendants on December 7, 2022, and Betz did not exercise her right to appeal.

Apparently dissatisfied with the outcome in the first case, Betz elected to file a second lawsuit to challenge the events precipitating her termination. She initiated the present action in March 2023, advancing defamation claims against Michael Wilson, the Bank's former President and CEO; Becky Mathisen, the whistleblower who submitted a complaint about Betz; and Kelly Rasmuson and Eric Muller, the auditors charged with investigating Mathisen's complaint. The district court found the two-year statute of limitations in Iowa Code § 614.1(2) barred Betz's defamation claim premised on statements made in late 2019 and entered judgment for defendants. This appeal followed.

II. Procedural history.

More than three years after her employment with the Bank ended, on March 6, 2023, Betz filed a second lawsuit to challenge her termination. (JA.I-7-13). Defendants filed a pre-answer motion to dismiss, or in the alternative, for summary judgment, arguing: (1) claim preclusion barred Betz's attempts to take a "second bite" at recovery; (2) Betz's claims were untimely under the two-year statute of limitations for defamation; and (3) the complained-of

statements were privileged and non-actionable. (JA.I-14-17). Betz resisted, contending her claim was not time-barred because the discovery rule tolled the statute of limitations. (JA.I-121-122).

On October 6, 2023, the district court granted Defendants' motion to dismiss, finding Betz's defamation claims were untimely based on the two-year statute of limitations under Iowa Code § 614.1(2). (D0043, Motion to Dismiss Ruling (10/06/23)). In its ruling, the district court recognized that the Iowa Supreme Court has never applied the discovery rule to defamation and appropriately declined to do so in the absence of controlling precedent. *Id.* at 8. Applying existing Iowa law, the court observed the limitations period "commenced on the date the statements were published," and because Betz's second lawsuit "was filed more than two years after the last publication," the court held "her claim is barred by the statute of limitations." *Id.* at 9.

Even if the discovery rule did apply to defamation claims, however, the district court found that "it would not save Plaintiff's claim in this case." *Id.* The court noted that in the petition initiating her first lawsuit, filed on November 11, 2020, Betz asserted a claim for defamation (Count V), in which she alleged the Bank and its employees "made additional slanderous and libelous statements regarding [her] ability to perform her job or the surrounding circumstances of her termination." *Id.* at 11. As such, the district court held that Betz was on inquiry notice of the alleged defamation no later

than the date of that filing. *Id.* (quoting *Betz*, 549 F. Supp. 3d at 966, n.6). As the district court explained:

> If Plaintiff was not aware of the likelihood [of] other, as yet undiscovered, defamatory statements had been published in connection with her employment termination, she would have had no basis to so allege in her first lawsuit. *See* Iowa R. Civ. P. 1.413 ("Counsel's signature to every motion, pleading, or other paper shall be deemed a certificate that: …to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact…").
>
> The fact Plaintiff could not have learned about the specific statements and who uttered or wrote them until FHLB produced documents in the first lawsuit does not mean the statute of limitations is tolled until then. *See Mormann* [*v. Iowa Workforce Dev.*], 913 N.W.2d [554, 558 (Iowa 2018)] (evidence was in a sealed deposition transcript and unavailable to the plaintiff until it was unsealed after the limitations period expired). The documents discovered later containing the specific defamatory statements made Plaintiff's claim stronger, *see id.* at 577, but she already had enough facts to put her on notice, and indeed to allege in a lawsuit, that other FHLB employees had defamed her.

(D0043 at 11).

Thus, the district court observed, even if the discovery rule did apply, "it would toll the limitations period only until November 11, 2020," meaning the window "would have expired on November 11, 2022, before Plaintiff filed this lawsuit on March 6, 2023." *Id.* Accordingly, the district court granted the motion to dismiss. *Id.* at 11-12. In light of its holding on the statute of limitations issue, the court found it unnecessary to address the other grounds raised in Defendants' motion. *Id.*

Statement of facts

1. The extensive regulatory regime governing the Bank.

Federal Home Loan Bank of Des Moines is a federal instrumentality organized under the Federal Home Loan Bank Act (the "Act"), 12 U.S.C. §§ 1421, *et seq.* (JA.II-326).[2] Each Federal Home Loan Bank operates as a separate entity, with its own management, employees, and Board of Directors. 12 U.S.C. § 1427. The Act and its implementing regulations establish the powers, duties, and internal governance of Federal Home Loan Banks. *Id.* §§ 1427, 1431, 1432. Upon incorporation, the Bank has the power "to select, employ, and fix the compensation of such officers, employees, attorneys and agents as shall be necessary for the transaction of business… and to *dismiss at pleasure* such officers, employees, attorneys, and agents." *Id.* § 1432(a) (emphasis added). Pursuant to this "dismiss at pleasure" provision and the Bank's bylaws, the President of the Bank may remove any officer at any time with or without case. *Id.*; JA.II-263, 327.

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[2] The court can take judicial notice of the adjudicative facts in *Betz I*. *See* Iowa R. Evid. 5.201; *Rhoades v. State*, 848 N.W.2d 22, 31 (Iowa 2014) (defining an "adjudicative fact" as a fact "that concerns the parties to a judicial or administrative proceeding and that helps the court or agency determine how the law applies to those parties"). Where applicable, Defendants cite to the federal court's findings of fact in the dispositive motion rulings in *Betz I*, which are included in the record, along with other relevant filings. *Hemmingsen v. Mings*, No. 18-0683, 2019 WL 1953706, at *2 n.3 (Iowa Ct. App. May 1, 2019) (citing *In re Adkins*, 298 N.W.2d 273, 278 (Iowa 1980)).

The Federal Housing Finance Agency ("FHFA"), an independent agency of the federal government, regulates and supervises the Banks. (JA.II-326). *See* 12 U.S.C. §§ 1422(1)(B), 4511. With respect to the Banks, FHFA's primary mission is ensuring the Banks operate in a financially safe and sound manner, including through maintenance of adequate capital and internal controls. (JA.II-326-327). *See* 12 U.S.C. §§ 4501, 4511, 4513(a)(1)(B)(i).

The Bank must comply with the filing and reporting obligations imposed by the Securities and Exchange Commission ("SEC") under the Securities and Exchange Act of 1934, 15 U.S.C. §§ 78a, *et seq.*, and the Sarbanes-Oxley Act ("SOX") of 2002. *See* 15 U.S.C. § 78oo. Among other things, the extensive regulatory regime imposes internal control certification requirements, through which Bank officers must affirm that they have evaluated the effectiveness of the internal SOX controls and report any deficiencies or material weaknesses. *See* Pub. L. No. 107-204 § 404, 116 Stat. 789 (codified at 15 U.S.C. § 7262).

Federal regulations also require the Bank to have an audit committee responsible for "the receipt, retention, and treatment" of employee complaints about "accounting, internal accounting controls, or auditing matters" and to establish a procedure for "the confidential, anonymous submission" and handling of such complaints. 15 U.S.C. § 78j-1(m)(4); *see* 17 C.F.R. § 240.10A-3(b)(3). Pursuant to that statutory directive, the Bank established a Complaint Handling and Whistleblower Policy, which governs employee complaints and

related investigations. (JA.II-293-294). The Bank utilizes an independent third-party platform, EthicsPoint, through which employees can confidentially report any suspected violations. *Id.* All complaints are thoroughly investigated, typically by auditors in the Bank's Internal Audit department. *Id.*

2. March 2018: the Bank hires Betz as its Chief Information Security Officer.

In March 2018, the Bank hired Betz as its Chief Information Security Officer ("CISO"). (JA.II-328; JA.I-7 ¶ 2). At that time, Michael Wilson was the Bank's President and CEO. (JA.II-327; JA.I-8 ¶ 6). Betz reported directly to Dusan Stojanovic, Executive Vice President Chief Operating Officer, who in turn reported directly to Wilson. (JA.II-327-328). Stojanovic was responsible for the Information Security ("IS") and Information Technology ("IT") departments. *Id.*

Betz oversaw the IS department, the primary purpose of which was to protect the Banks's computer systems data and sensitive information against internal and external threats. (JA.II-328). She led a team of several employees responsible for ensuring compliance with certain SOX access controls,[3] which they performed using SailPoint IIQ, an access control solution software.

[3] SOX access controls are "physical and electronic controls that prevent unauthorized users from viewing sensitive financial information." *Sarbanes Oxley Audit Requirements*, Sarbanes Oxley 101, *available at* https://www.sarbanes-oxley-101.com/sarbanes-oxley-audits.htm (last updated June 4, 2024).

(JA.II-25 ¶¶ 24-25, 159-160 [Betz 59:4-16; 66:19-67:6], 328; JA.III-43-47).

3. Summer 2019: Betz's team conducts a risk assessment of SOX controls.

In May 2019, the Bank brought in an independent contractor, Information Security Consultant Paul Crosthwaite, to assist Betz's team with a risk assessment involving SOX controls. (JA.II-328). During the assessment, Crosthwaite and one of Betz's direct reports, Rebecca "Becky" Mathisen, identified gaps in the controls. (JA.II-328; JA.II-205, 207-208 [Mathisen 16:13-21, 22:2-25, 30:5-20]; JA.III-25-27, 48-51). Specifically, they discovered that certain SOX controls were not being performed, other controls were not effective, and there appeared to be a breakdown in management understanding of the controls. (JA.II-328; JA.II-182-183 [Crosthwaite 32:25-33:11, 36:10-14], 186 [Crosthwaite 66:8-20]; JA.III-48-49; JA.I-26 ¶ 30). As Crosthwaite explained:

> In SOX, there are evaluations of both design, does it do what it's intended to do? And effectiveness, is it being done well? The issues that we were finding were not we have processes in place and they're not so great. It was we legit don't have controls that have previously been reported to be in place in place. So that… means management had been working off of incorrect information previously. So that kind of information is important to disclose. Whether the SOX committee decides it's material is a whole different conversation.

(JA.II-328-329, 185-186 [Crosthwaite 65:22-66:7]). Crosthwaite and Mathisen informed Betz of these issues. (JA.II-329, 207 [Mathisen 22:2-25]; JA.III-48-

51). On July 21, 2019, Crosthwaite sent an email to Betz, cautioning: "**do not attest to these controls being in place and effective in [the] Q2 SOX Control Certification**." (JA.II-328; JA.III-49 (emphasis original)).

On August 5, 2019, Mathisen had a conversation with Mike Masiello, Vice President Manager of Financial Controls, which she interpreted as him instructing her to change certain controls to "effective" in the certification report. (JA.II-329). Mathisen similarly interpreted a note from Betz as asking her to change the internal control certification. *Id.*

4. August 2019: Mathisen submits whistleblower complaints.

Shortly after the team completed the assessment, on August 7, 2019, Betz emailed Mathisen to suggest that Crosthwaite's contract with the Bank should be terminated. (JA.II-329; JA.III-42). Sensing that Betz intended to terminate his contract, Crosthwaite resigned instead. (JA.II-329; JA.III-55, 61). He told Mathisen that he was an "easy target" for the revelation that certain SOX controls were not being performed. (JA.II-329; JA.III-42, 55).

That same day, Mathisen submitted whistleblower complaints through EthicsPoint, which stated in relevant part:

> *I feel I am being retaliated against* for filing accurate information of current state SOX controls.…
>
> A risk assessment was conducted to identify risks in the logical access area. During the assessment there were some gaps identified which impact SOX controls. Multiple meetings were [held] with Linda [Betz] to disclose these issues, during which time it was stated that they were not as bad as being reported. *When the SOX 404 certification was issued for logical access controls I certified them as not effective given the information I had. Linda certified hers as effective; even though she was advised not to* by Paul [Crosthwaite], a contractor who was brought in to assist with the risk assessment and review of SOX controls. After that there were multiple meetings on the certification where people [were] involved to change the current statement that the controls are ineffective. I was then asked to re-certify the controls as effective. *I now feel that I am being retaliated against for providing a honest certification that didn't match my managers*. I feel as if I will be let go this Friday, 8/9. The contractor working for us is being used as a scapegoat and I have proof he will be let go this Friday and the information as to why is not true.

(JA.III-28-29 (emphasis denotes statements that Betz contends are defamatory, JA.I-9 ¶¶ 18-19)); JA.II-329; JA.II-285, 292-293).[4]

[4] Mathisen was not the first employee to voice concerns about Betz. In October 2018, the Bank received a complaint alleging several employees, including Betz, were not candid and transparent with FHFA examiners. (JA.III-14-19).

5. September 2019: Internal Audit investigates the whistleblower complaint and issues its interim report.

Consistent with federal regulations and Bank policy, the Internal Audit department investigated the allegations in Mathisen's complaint. (JA.II-330, 293-295; JA.I-30 ¶ 50). *See also* 15 U.S.C. § 78j-1(m)(4). Kelly Rasmuson led the investigation, and Eric Muller assisted. (JA.I-30 ¶¶ 51-52). The two auditors conducted interviews and reviewed emails, SOX control certifications, and Disclosure Committee sub-certifications. (JA.II-330, 204 [Mathisen 11:25-12:2], JA.III-40-41, 55, 70; JA.I-30 ¶¶ 52-55). On September 4, 2019, they issued an interim investigation report, summarizing the allegations and the focus of their investigation as:

- Conceal the problem - some individuals instructed the Reporting Party not to report control deficiencies
- Control certifications did not reflect deficiencies
- Retaliation - concern about termination and other actions (e.g., discrediting work performed)
- Contractor used as a scapegoat

(JA.III-61; *see also* JA.III-105). The auditors noted they had "not seen any evidence where [Betz] filed a certification that conflict[ed] with [Mathisen]'s" but observed that Betz had a "steep learning curve" with internal controls. (JA.II-331; JA.III-61, 64-65). The report further detailed that Crosthwaite had provided "good advice on how to improve controls, risk assessments, and the

Bank's long-term resolution of [material weaknesses]" and that he had resigned, knowing Betz intended to terminate his contract. (JA.II-331; JA.III-61).

Wilson received a copy of the interim report and "interpreted it as raising ethical lapses and serious performance concerns." (JA.II-243 ¶ 5). Based on those concerns, he decided to terminate the employment of three individuals: Dusan Stojanovic, Mike Masiello, and Linda Betz. (JA.II-331, 243 ¶ 5; JA.I-32 ¶¶ 63, 66). Consistent with that determination, the Bank terminated Masiello and Stojanovic in September 2019. (JA.II-331, 243 ¶¶ 6, 8; JA.III-60). The Bank eliminated Stojanovic's position and created a new position, Chief Information Officer, in its place. (JA.II-331). Wilson had previously announced his retirement, so the Bank hired an independent contractor, Zeeshan Kazmi, to fill the role on an interim basis until the incoming CEO could hire a replacement. *Id.*

6. October 2019: Internal Audit issues the final investigation report.

Shortly after receiving the interim report, Wilson relayed his termination decision to Internal Audit and the Bank's Board of Directors (the "Board"), saying that he'd "come to the conclusion that it is time for the Bank to part ways with Linda Betz," and explained:

> Over the last year, there have been three complaints (two written, one verbal) accusing Linda of retaliating against employees in her area. None was completely substantiated, but there is a pattern of behavior that is worrisome. One of her direct reports, who is responsible for access controls and has accused Linda of retaliation, is so bothered by Linda's behavior that she will likely leave the Bank.

(JA.III-67).[5] He also noted concerns with Betz's "lack [of] SOX control expertise" and the "botched implementation of SailPoint IIQ." *Id.*

By October 2019, Internal Audit had completed its investigation. (JA.III-103-110). In the final report, issued on October 19, 2019, the auditors indicated:

> As we assessed Becky's claim that Linda retaliated against her for raising control concerns, we evaluated the potential drivers behind this retaliation claim (i.e., raising control concerns). *We observed a pattern in Linda's behavior that, in our view, exhibits a blend of potential retaliation, a lack of listening to others that flag concerns, and a lack of depth with awareness/knowledge of controls* (or leaving an impression related to the importance/priority of controls).

(JA.III-72 (emphasis denotes the statements that Betz contends are defamatory, JA.I-10-11 ¶ 35); JA.II-332). The report also incorporated Wilson's decisions on personnel changes:

[5] Betz also alleges unspecified statements by Wilson to the Board in communicating the termination decision were defamatory. (JA.I-11 ¶ 37).

> President and CEO [Wilson] has determined that *Ms. Betz should be terminated because of actions described in the complaint and also because of the ineffective implementation of SailPoint IIQ that she oversaw and her questionable prioritization of information security (IS) projects*. Target date [of November 30, 2019] is driven by a desire not to terminate her during the FHFA exam and to provide time to develop a plan for restructuring the IS function after her departure.

(JA.III-74 (emphasis denotes the statements that Betz contends are defamatory, JA.I-10 ¶¶ 33-34); JA.II-332).

7. January 2020: Wilson informs Betz of the termination decision.

As indicated in the auditors' report, the timing of Betz's termination remained an open question due to a number of considerations, including Wilson's upcoming retirement and an ongoing FHFA examination. (JA.III-74). On January 3, 2020—after the FHFA completed its examination and shortly before his retirement—Wilson informed Betz of the termination decision. (JA.II-306, 332; JA.III-92-98). Pursuant to its reporting obligations under federal law, the Bank filed a Form 8-K with the SEC regarding Betz's termination, which read:

> On January 3, 2020 the Federal Home Loan Bank of Des Moines (the "Bank") provided a notice of termination of employment to Linda N. Betz, the Bank's current Chief Information Security Officer ("CISO"). The effective date of Ms. Betz's separation from the Bank will be January 24, 2020. Ms. Betz served as the Bank's CISO since March 2018.

(JA.II-45).[6]

8. November 2020: Betz sues.

After the Bank exercised its statutory right to "dismiss at pleasure"[7] and terminated Betz's employment, she sued. On November 11, 2020, she filed a petition in the Iowa District Court for Polk County against the Bank, former President and CEO Wilson, and two individuals she worked with at the Bank, Sunil Mohandas and Zeeshan Kazmi. (JA.II-10-35). Defendants removed the case to federal court, *Betz v. Federal Home Loan Bank of Des Moines, et al.*, No. 4:21-cv-00022 (S.D. Iowa 2021-2022) ("*Betz I*"). (JA.II-332-333). In her amended petition, Betz asserted ten claims arising from the Bank's decision to terminate her employment and the events leading up to that decision: (1) sex discrimination/harassment in violation of the Iowa Civil Rights Act ("ICRA"); (2) sex discrimination/harassment in violation of Title VII; (3) retaliation in violation of the ICRA; (4) retaliation in violation of Title VII; (5) defamation; (6) false light invasion of privacy; (7) blacklisting in violation of Iowa Code Chapter 730; (8) tortious interference with employment rights; (9) civil

[6] SEC Filings, Federal Home Loan Bank of Des Moines, Form 8-K (Jan. 3, 2020), *available at* https://www.sec.gov/Archives/edgar/data/1325814/000132581420000002/q12020officerchange.htm (last visited April 3, 2024).

[7] 12 U.S.C. § 1432.

conspiracy; and (10) wrongful termination in violation of public policy. (JA.II-10-35).

Relevant here, in Count V, Betz alleged that the Form 8-K filed with the SEC to report her termination was defamatory because the Bank did not specify that her termination was "without cause," thus implying that the termination was "for cause." (JA.II-24-25 ¶¶ 100-103, 60-61).[8] She further alleged the Bank and its employees made "additional slanderous and libelous statements regarding [her] ability to perform her job or surrounding the circumstances of her termination, which include, but are not limited to statements made to the Bank's regulator," the FHFA. (JA.II-25 ¶ 105).

9. July 2021: the federal court dismisses Betz's state law claims.

In its July 19, 2021 ruling, the federal court dismissed Betz's claims for intentional interference with employment rights and wrongful termination as preempted by the "dismiss at pleasure" provision in the Bank's enabling statute, 12 U.S.C. § 1432(a), and held her ICRA claims were preempted to the extent the claims conflicted with Title VII. *Betz v. Fed. Home Loan Bank of Des Moines*, 549 F. Supp. 3d 951, 958–59 (S.D. Iowa 2021); JA.II-60-64. The court further found that Betz failed to state an actionable claim for defamation

[8] Betz also based her false light invasion of privacy and blacklisting claims on the Form 8-K. (JA.II-27-28 ¶¶ 110, 118-119). *Betz I*, 549 F. Supp. 3d at 967.

because the challenged statements were not capable of a defamatory meaning and dismissed her defamation claim based on other unidentified statements related to her termination. *Betz I*, 549 F. Supp. 3d at 961, n.6 & 966; JA.II-67, 75. The court also dismissed Betz's claims for false light invasion of privacy, blacklisting, and civil conspiracy for failure to state a claim upon which relief could be granted. *Betz I*, 549 F. Supp. 3d at 967-68; JA.II-76-79.

10. December 2022: the federal court grants summary judgment on Betz's remaining claims.

Following months of extensive discovery, Defendants moved for summary judgment on Betz's remaining claims, sex discrimination/harassment and retaliation under Title VII and the ICRA. *Betz v. Fed. Home Loan Bank of Des Moines*, 644 F. Supp. 3d 500, 507 (S.D. Iowa 2022); JA.II-333, 125, 130; *see also* JA.II-116 ¶ 3. In her resistance, Betz voluntarily dismissed the sex discrimination/harassment claims. *Betz I*, 644 F. Supp. 3d at 507; JA.II-333, 37. She insisted, however, that the reasons for Wilson's termination decision—namely, the concerns raised by Mathisen's complaint and Internal Audit's investigation—were mere pretext for retaliation because "Mathisen's complaints were false and the internal investigation was incomplete." *Betz I*, 644 F. Supp. 3d at 511; JA.II-341, 324. In its December 6, 2022 ruling, the federal court summarized Betz's resistance arguments as:

> Plaintiff contends that Defendant Wilson did not really rely on the asserted reasons for her discharge and that these reasons were pretext. She argues Wilson could not have relied on Mathisen's complaints because they were false and Mathisen submitted them to save her own job.… Plaintiff relies on the same evidence to demonstrate a fact question as to whether Defendants' stated reasons for terminating her employment were pretextual that she relied on to make a prima facie showing. Plaintiff contends that Mathisen's complaints were false and the internal investigation into them was incomplete. Plaintiff asserts the auditors looked only for evidence to confirm Mathisen's allegations and did not interview Plaintiff, [Dusan] Stojanovic, or [Mike] Masiello to attempt to determine the validity of Mathisen's allegations.

Betz I, 644 F. Supp. 3d at 507; JA.II-340-341.

The court went on to recognize, even if Mathisen's complaint was "based on her incorrect belief that Plaintiff had certified the controls differently," record evidence established that "Wilson believed the allegations in Mathisen's complaints and relied on them in making the termination decision." *Betz I*, 644 F. Supp. 3d at 512; JA.II-342. It observed that the "appropriate scope of an internal investigation… is a business judgment." *Betz I*, 644 F. Supp. 3d at 511 (quoting *Pulczinski v. Trinity Structural Towers, Inc.*, 691 F.3d 996, 1005 (8th Cir. 2012)); JA.II-341. "Indeed, shortcomings in an investigation alone are not enough to make a submissible case. Employers are allowed to make even hasty business decisions, so long as they do not discriminate or retaliate unlawfully." *Betz I*, 644 F. Supp. 3d at 510 (internal quotation marks and alterations omitted); JA.II-341. The court accordingly granted summary judgment on the remaining claims and entered judgment for

the Defendants. *Betz I*, 644 F. Supp. 3d at 513; JA.II-344-345. Betz did not appeal the judgment. The 30-day window to file a notice of appeal lapsed on January 5, 2023. *See* Fed. R. App. P. 4(a)(1).

Less than two months later, on March 6, 2023, Betz initiated the present action, once again advancing claims arising from the events precipitating her termination from the Bank.

Argument

I. The district court did not err in dismissing Betz's defamation claim as time-barred.

A. Preservation of error.

Defendants agree that Betz preserved error with respect to the district court's ruling dismissing her defamation claim.

B. Standard of review.

Defendants agree that the district court's ruling on their motion to dismiss is reviewed for correction of errors at law and should be affirmed "if the petition shows no right of recovery under any state of facts." *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001) (citation omitted).

C. Betz's defamation claim is barred by the statute of limitations.

Under Iowa law, claims "founded on injuries to the person or reputation," such as those for defamation, must be brought within two years. Iowa Code § 614.1(2). The statute of limitations for defamation claims "begins to run on the date of publication." *Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 13 (Iowa 1990); *Stites v. Ogden Newspapers, Inc.*, No. 00-1975, 2002 WL 663621, at *2 (Iowa Ct. App. Apr. 24, 2002).

Betz alleges that she was defamed through statements contained in Mathisen's whistleblower complaint (submitted August 7, 2019), the interim and final investigation reports by Rasmuson and Muller (issued on September 4, 2019, and October 19, 2019, respectively), and Wilson's comments to the Board regarding his decision to terminate Betz's employment (on October 4, 2019)—all of which occurred prior to her January 3, 2020 termination. (JA.I-3-5 ¶¶ 18, 28-29, 33-34, 37, 39). The limitations period for each of the statements at issue began to run at the time of publication and expired two years later, in the fall 2021—well before Betz filed this lawsuit on March 6, 2023. *See* Iowa Code § 614.1(2). The district court thus correctly found the defamation claims were untimely. (D0043 at 8).

Attempting to circumvent the statute of limitations, Betz urged the district court to apply the discovery rule and allow her claims to proceed. (JA.I-

141-142; *see also* Appellant Br., 16-23). Recognizing the Iowa Supreme Court has not applied the discovery rule to defamation claims,[9] the district court correctly declined to extend the discovery rule to Betz's claims and held the statute of limitations began to run at the time of publication. (D0043 at 8-9). Because all of the complained-of statements were published more than two years before she filed suit, Betz's claims are time-barred. *Id.*; Iowa Code § 614.1(2).

D. Even if the discovery rule applies to defamation, the district court did not err in finding Betz was on inquiry notice no later than November 11, 2020.

Even if the discovery rule applies to defamation claims, it would not change the outcome in this case. As the district court astutely observed, Betz was aware no later than November 11, 2020—the day she filed her petition in *Betz I*—that Bank employees may have "made additional slanderous and libelous statements regarding [her] ability to perform her job or the surrounding circumstances of her termination," and in fact, she advanced a defamation claim premised on those very statements. (D0043 at 10-11 (quoting

[9] *See Linn v. Montgomery*, 903 N.W.2d 337, 343 n.3 (Iowa 2017). Though omitted from Betz's general discussion of cases considering the issue (Appellant Br., p. 16-23), several courts have declined to extend the discovery rule to defamation. *E.g.*, *Friedler v. Equitable Life Assur. Soc. of U.S.*, 86 F. App'x 50, 53 (6th Cir. 2003) (holding limitations period "begins to run when the allegedly defamatory words are first spoken or published regardless of the aggrieved party's knowledge of them"); *accord Rassier v. Sanner*, 996 F.3d 832, 838 (8th Cir. 2021).

Betz, 549 F. Supp. 3d at 966, n.6); JA.II-25 ¶ 105). The court reasoned, had she not been aware of the possibility that allegedly defamatory statements had been published in connection with her termination, "she would have had no basis to so allege in her first lawsuit." (D0043 at 11 (citing Iowa R. Civ. P. 1.413)). While Betz may have later learned additional details about these statements through discovery, at the time she filed her petition in November 2020, the district court correctly held that "she already had enough facts to put her on notice, and indeed to allege in a lawsuit, that other Bank employees had defamed her." (D0043 at 11).

Calculated from the date Betz filed her first petition on November 11, 2020 (as opposed to the date of publication), the limitations window expired on November 11, 2022—before Betz initiated this action in March 2023. *Id.* at 11-12; *see* Iowa Code § 614.1(2). Thus, even assuming the discovery rule applies to defamation, the district court correctly concluded the result here would be the same. (D0043 at 11). This Court should affirm the district court's well-reasoned order dismissing Betz's time-barred claims.

II. Alternatively, claim preclusion bars Betz's attempts to relitigate claims arising from her termination.

Even assuming Betz's claim in this case could be considered timely, the doctrine of claim preclusion forecloses her attempts to relitigate the events surrounding her termination. Defendants moved to dismiss or for summary judgment on claim preclusion grounds, but in light of its finding on the statute of limitations, the district court did not reach the issue. (JA.I-14-17; D0043 at 12). Here, claim preclusion provides an independent and equally-compelling reason to affirm dismissal. *See Jones v. State*, 938 N.W.2d 1, 2 (Iowa 2020) (stating an appellate court can affirm "on any ground argued below and urged on appeal by the appellee, even if the court below did not reach that issue").

A. Claim preclusion prevents litigants like Betz from later asserting claims that could have been raised in an earlier action.

Res judicata encompasses both claim preclusion and issue preclusion. *Pavone v. Kirke*, 807 N.W.2d 828, 835 (Iowa 2011). Claim preclusion precludes further litigation of the same claim or cause of action, whereas issue preclusion precludes further litigation on the same issue. *Leuchtenmacher v. Farm Bureau Mut. Ins. Co.*, 460 N.W.2d 858, 859–60 (Iowa 1990); *Bennett v. MC #619, Inc.*, 586 N.W.2d 512, 516 (Iowa 1998). The general rule of claim preclusion holds that "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that

action." *Shumaker v. Iowa Dep't of Transp.*, 541 N.W.2d 850, 852 (Iowa 1995); *accord Dorsey v. State*, 975 N.W.2d 356, 361 (Iowa 2022). The doctrine "prevents parties from raising issues that could have been raised and decided in a prior action—even if they were not actually litigated." *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 140 S. Ct. 1589, 1594–95 (2020). That is, a judgment in an earlier suit prevents further litigation on any grounds for recovery "regardless of whether they were asserted or determined in the prior proceeding." *Id.* (citation omitted).

The straightforward rationale underlying claim preclusion is that a "plaintiff is not entitled to a second day in court by alleging a new ground of recovery for the same wrong." *Arnevik v. Univ. of Minn. Bd. of Regents*, 642 N.W.2d 315, 319 (Iowa 2002); *see also Shumaker*, 541 N.W.2d at 852 (agreeing the doctrine "is based on the principle that a party may not split or try [her] claim piecemeal, but must put in issue and try [her] entire claim"). "A second claim is likely to be barred by claim preclusion where the 'acts complained of, and the recovery demanded are the same or where the same evidence will support both actions.'" *Pavone*, 807 N.W.2d at 836 (citation omitted). Claim preclusion applies to bar a subsequent suit where: "(1) the parties in the first and second action are the same parties or parties in privity, (2) there was a final judgment on the merits in the first action, and (3) the claim in the second suit could have been fully and fairly adjudicated in the prior case (*i.e.*, both suits

involve the same cause of action)." *Id.*; *accord* Restatement (Second) of Judgments § 25.[10] Here, all elements are easily met.[11]

B. The parties in *Betz I* are the same parties as, or parties in privity with, the parties to this lawsuit.

First, the parties to this action are the same parties as, or in privity with, the parties to *Betz I*. The plaintiff in both cases, Linda Betz, is the same and has been represented by the same counsel throughout both proceedings. Betz named the Bank's former President and CEO, Mike Wilson, as a defendant in both lawsuits. (JA.II-10; JA.I-7-13). He and the rest of the individually-named defendants to this action—Mathisen, Muller, and Rasmuson—are employees of and parties in privity with the Bank, a defendant named in Betz's earlier suit. (JA.I-7-8 ¶¶ 3-6).

Claim preclusion has "special applicability in suits against a principal or agent." *Peppmeier v. Murphy*, 708 N.W.2d 57, 63 (Iowa 2005). The doctrine extends to parties who should have been joined in the original action, as well as

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[10] Because a federal court rendered the judgment in *Betz I*, federal law controls in determining the judgment's preclusive effect. *Poe v. John Deere Co.*, 695 F.2d 1103, 1105 (8th Cir. 1982). The result is the same whether analyzed under Iowa law or federal law, as both closely follow the Restatement (Second) of Judgments. *Shumaker*, 541 N.W.2d at 852 (collecting cases).

[11] Betz concedes, as she must, that the dispositive motion rulings in *Betz I* were final judgments on the merits. (JA.I-135). *See also Dicken v. Ashcroft*, 972 F.2d 231, 233 n.5 (8th Cir. 1992) (describing the rule as "well established"). As such, Defendants address only the first and third elements.

to those whose relationship is so close that their addition cannot avoid the reach of res judicata. *See, e.g., Elbert v. Carter*, 903 F.3d 779, 783 (8th Cir. 2018); *Criterion 508 Sols., Inc. v. Lockheed Martin Servs., Inc.*, 806 F. Supp. 2d 1078, 1093 (S.D. Iowa 2009); *Shivers v. Hertz Farm Mgmt., Inc.*, 595 N.W.2d 476, 481 (Iowa 1999). A judgment in favor of either the principal or agent is "accepted as conclusive against the plaintiff's right of action against the other, or as to any issues decided in the prior action." *Peppmeier*, 708 N.W.2d at 63 (quotation omitted). This rule applies regardless of "whether the actions are separate or the principal and agent are joined in the same action." *Id.*

In her first lawsuit, Betz sued the Bank and three of its agents, Zeeshan Kazmi (Interim Chief Information Officer), Sunil Mohandas (Chief Risk Officer), and Michael Wilson (President and CEO). (JA.II-11 ¶¶ 3-6). In this lawsuit, Betz has again named Wilson as a defendant, along with three other Bank employees: Becky Mathisen (Manager of Information Security), Eric Muller (Vice President of Internal Audit), and Kelly Rasmuson (Chief Audit Executive). (JA.I-7-8 ¶¶ 3-6). Courts have consistently found the employee-employer relationship sufficient to invoke the protections of claim preclusion. *See, e.g., Elbert*, 903 F.3d at 783; *Peppmeier*, 708 N.W.2d at 66; *Shivers*, 595 N.W.2d at 481.

Before the district court, Betz acknowledged that parties to a vicarious-liability relationship are "parties in privity" for purposes of claim

preclusion. (JA.II-136-137). Attempting to avoid the preclusive effects of the earlier judgment, however, she argued res judicata should not apply with respect to Mathisen, Rasmuson, or Muller because the allegedly defamatory statements somehow "fell outside the scope" of their employment. (JA.II-138).[12] But the sole tie any of the named defendants have to this case (and to Betz) is through their work at the Bank—as is made clear by Betz's allegations that "at all times material" to her claims, she and the defendants were employees of the Bank. (JA.I-7-8 ¶¶ 2-6). Each and every allegation in Betz's petition centers on matters concerning their employment, all of which occurred in the workplace. *See generally*, JA.I-7-13.

More fundamentally, each of the so-called defamatory statements fell explicitly within the scope of the speaker's employment. Betz claims she was defamed by the whistleblower complaint, in which Mathisen reported her suspicions about SOX violations and fears of retaliation by Betz. (JA.I-8-9 ¶¶ 12-13, 18-26). As an employee of the Bank, Mathisen was obligated to share her concerns; the Bank's Code of Ethics and Complaint Handling and Whistleblower Policy required her to promptly report suspected wrongdoing. (JA.II-285-286, 289-295). *See also* 15 U.S.C. § 78j-1(m)(4); 17 C.F.R. §

[12] Betz conceded, "the same Mike Wilson was a defendant in both actions." (JA.I-136).

240.10A-3(b)(3).[13] And critically, the concerns Mathisen reported were solely ones that arose by virtue of her employment. (JA.III-28-29). *See Goodman v. Performance Contractors, Inc.*, 363 F. Supp. 3d 946, 968 (N.D. Iowa 2019) ("The key here is the employee is speaking with a purpose to serve the employer."); *Shivers*, 595 N.W.2d at 481.

Similarly, Betz's claims against Rasmuson and Muller arise exclusively from their roles as auditors for the Bank, as investigating internal complaints is a chief function of the Internal Audit department. (JA.I-7-8, 10-11 ¶¶ 4-5, 30, 33-35; JA.II-220 [Muller 70:16-71:20], 223-224[Rasmuson 7:24-9:20, 12:16-13:21], 293-294; JA.III-40-41). In drafting the investigative reports that Betz now claims defamed her, the auditors were acting within the course and scope of their duties at the Bank. *Kearns v. United States*, 23 F.4th 807, 812 (8th Cir. 2022) (observing conduct falls within the scope of employment if it is "of the same general nature as that authorized or incidental to the conduct authorized") (quoting *Godar v. Edwards*, 588 N.W.2d 701, 705-06 (Iowa 1999)).

Because the complained-of statements were made within the scope of each speaker's employment with the Bank, the judgment in *Betz I* is conclusive

[13] As the complained-of statements were made in the course of employment and pursuant to requirements imposed by federal law, Betz's claims fail for the additional reason that the statements are absolutely or qualifiedly privileged. (JA.I-106-117, 169-170). *See Andrew v. Hamilton Cnty. Pub. Hosp.*, 960 N.W.2d 481, 489 (Iowa 2021); *Kennedy v. Zimmerman*, 601 N.W.2d 61, 64 (Iowa 1999).

as to all defendants named in this action. *Peppmeier*, 708 N.W.2d at 66. If Betz wanted to assert claims against additional defendants (or another claim against Wilson), then she needed to bring those claims in the first suit. Her window of opportunity to do so closed when the court dismissed her case.

C. Betz already litigated and lost claims arising from the same set of facts.

Finally, because Betz's claim in this case could have been fully and fairly adjudicated in the prior case, the third and final element is satisfied. *See Pavone*, 807 N.W.2d at 836. For claim preclusion purposes, the term "cause of action" has been given a "more practical construction" than the strict construction it was given at common law. *Daley v. Marriott Int'l, Inc.*, 415 F.3d 889, 896 (8th Cir. 2005). "[W]hether a second lawsuit is precluded turns on whether its claims arise out of the 'same nucleus of operative facts as the prior claim.'" *Costner v. URS Consultants, Inc.*, 153 F.3d 667, 673 (8th Cir. 1998); *accord Pavone*, 807 N.W.2d at 837; Restatement (Second) of Judgment § 24, cmt. b. Here, there can be no dispute that the defamation claim in *Betz II* arises out of the same nucleus of operative facts as those giving rise to the claims in *Betz I*.

In considering "whether the facts are so woven together as to constitute a single claim," courts look to factors such as "their relatedness in time, space, origin, or motivation, and whether, taken together, they form a convenient unit for trial purposes." *Pavone*, 807 N.W.2d at 837 (citation omitted). While "no

single factor is determinative," the trial convenience factor considers to what extent the "witnesses or proofs in the second action would tend to overlap the witnesses or proofs relevant to the first." *Id.* "If there is a substantial overlap, the second action should ordinarily be held precluded. But the opposite does not hold true; even when there is not a substantial overlap, the second action may be precluded if it stems from the same transaction or series." *Id.* (quoting Restatement (Second) of Judgments § 24, cmt. b). Thus, "a party must litigate all matters growing out of the claim, and claim preclusion will apply 'not only to matters actually determined in an earlier action but to all relevant matters that could have been determined.'" *Penn v. Iowa State Bd. of Regents*, 577 N.W.2d 393, 398 (Iowa 1998) (citation omitted).

In this case, as she did in her earlier lawsuit, Betz sought redress for perceived wrongs arising out of Mathisen's complaint, Internal Audit's investigation, and ultimately, Wilson's decision to terminate her employment. *Compare* JA.I-7-13, *with* JA.II-10-35. At the heart of both cases are the events leading up to, and the reasons for, the termination decision. Upon filing the petition to initiate her first action, Betz "was required to allege all theories of recovery to support the alleged wrong against her." *Woods v. Young*, 732 N.W.2d 39, 41 (Iowa 2007). She asserted—and the federal court dismissed—ten causes of action stemming from her termination from the Bank, and thus, claim preclusion bars her claims in this case, which "emerge from the same

transaction and share precisely the same nucleus of operative facts." *Poe*, 695 F.2d at 1106 (affirming summary judgment on claims in second suit arising from plaintiff's employment termination).

The substantial overlap in witnesses and evidence in both cases underscores this conclusion. The whistleblower complaint and investigation quickly emerged as a central focus of the earlier litigation, to which Betz devoted much of her attention and discovery efforts. (*E.g.,* JA.II-92, 102-103). She deposed nearly twenty current and former Bank employees—including Mathisen (twice), Rasmuson, Muller, and Wilson. (*E.g.,* JA.II-83, 92, 152-153).[14] Before the district court, Betz attempted to characterize Mathisen's complaint as a "collateral" issue in her first lawsuit (JA.I-141), but her extensive discovery efforts related to the complaint and investigation—including multiple motions to compel personal text messages and requests for privileged documents from the FHFA—are clear evidence to the contrary. (JA.II-92, 101-104, 122; JA.III-

[14] During those depositions, Betz's counsel questioned the witnesses extensively on the facts giving rise to her claims in this case. (JA.II-184-85 [Crosthwaithe 60:4-61:10, 62:11-65:13], 204-205 [Mathisen 11:6-17:6], 208-211 [Mathisen 33:16-25, 62:20-70:14], 219 [Muller 14:13-15:25], 224-225 [Rasmuson 12:16-13:24, 33:8-22], 235-238 [Wilson 10:5-12:20, 13:20-25:25], 240 [Wilson 58:7-61:22]); JA.III-160 [Mathisen 54:9-61:12], 167-177 [Muller 14:13-29:25, 34:15-64:22], 183-187 [Rasmuson 34:5-45:25, 59:4-65:53], 208-214 [Wilson 39:24-41:8, 50:1-56:23, 62:6-73:19]; *see also* JA.II-198-200 [Masiello 27:1-29:12, 40:19-25, 43:6-21]; JA.III-136-137 [Escamilla 11:6-12:14, 17:7-13], 197 [Stojanovic 43:4-47:5]).

312-314). *See also Betz v. Federal Home Loan Bank of Des Moines*, 4:21-cv-00022-RP-SHL, 2022 WL 18777440, at *1 (July 12, 2022); *Betz v. Home Loan Bank of Des Moines*, No. 4:21-CV-00022-RP-SBJ, 2022 WL 18777439, at *5 (Sept. 16, 2022).[15] Without question, there is significant overlap of the witnesses, evidence, and series of events giving rise to the claims in each suit. *See Pavone*, 807 N.W.2d at 837.

Indeed, the court need not look any further than the facts Betz relied on in resisting summary judgment in *Betz I*, as those are the exact facts that now form basis of her defamation claims in this action—she simply styled them as retaliation in her earlier suit. While those claims may facially seem dissimilar, Betz's arguments are virtually identical.

Moving for summary judgment in *Betz I*, Defendants established that Wilson had legitimate, non-retaliatory reasons for his decision to terminate Betz's employment; he relied on the complaint, investigation report, and performance concerns. *Betz I*, 644 F. Supp. 3d at 510-11. In her resistance, Betz insisted that there was a genuine fact issue as to pretext, which required her to both "discredit [the Bank's] proffered reasons for the alleged retaliatory action and show that the circumstances permit drawing a reasonable inference that

[15] In *Betz I*, Betz served subpoenas duces tecum on Mathisen and Crosthwaite to obtain their personal text messages, which were the subject of two motions to compel. (JA.II-105-112, 122-123, 315-322). *Betz I*, 2022 WL 18777439, at *1.

retaliation was the real reason." *Id.* (quoting *Sellars v. CRST Expedited, Inc.*, 13 F.4th 681, 694 (8th Cir. 2021)). Betz's primary argument was that Wilson's reasons for the termination decision—namely, the concerns raised by Mathisen's complaint and uncovered in the investigation—were false, and thus, mere pretext for retaliation. (JA.III-324-328). The court rejected her argument, finding "[n]o reasonable juror could draw the inference that Mathisen's complaints and the ensuing investigation were fabricated as a way to retaliate against [Betz]," and consequently, granted summary judgment. *Betz I*, 644 F. Supp. 3d at 512; JA.II-342.

Clearly, the whistleblower complaint and investigation were central issues to Betz's earlier action; the federal court found them dispositive. *Betz I*, 644 F. Supp. 3d at 512; JA.II-342. And while all that is required for claim preclusion is that the claims in the second suit "could have been raised in that action," the very facts giving rise to Betz's latest defamation claims were, in fact, raised and litigated in her first lawsuit. *See Shumaker*, 541 N.W.2d at 852. Indeed, she already litigated and lost a defamation claim arising out of the same facts. *Betz I*, 549 F. Supp. 3d at 961, n.6 & 966 (quoting JA.II-25 ¶ 105). That lawsuit was Betz's sole opportunity to advance claims arising out of the events leading up to her termination from the Bank. *See Arnevik*, 642 N.W.2d at 320. Permitting her "a second chance at recovery" premised on the same set of facts "would open the courts to untold cases as claimants merely assert ignorance

and pursue subsequent inventive causes of action." *Id.*; *Healy v. Fox*, 46 F.4th 739, 745–46 (8th Cir. 2022) ("[N]ewly-discovered evidence does not provide an exception to res judicata."). This is precisely what the doctrine of claim preclusion seeks to prevent.

Betz already had an opportunity to challenge Mathisen's whistleblower complaint, the Bank's investigation, and Wilson's termination decision. In fact, she did just that (albeit unsuccessfully) in arguing Mathisen's complaint was false, and thus, Wilson's reliance on it and the investigation in deciding to terminate her employment was mere pretext for retaliation. (*Compare* JA.I-7-13 *with* JA.II-10-35). *See also Betz I*, 644 F. Supp. 3d at 511-12. Betz is "not entitled to a second day in court by alleging a new ground of recovery for the same wrong." *Arnevik*, 642 N.W.2d at 319. As a matter of law, claim preclusion operates to bar her attempts to assert another defamation claim based on the same set of facts. For this additional and independent reason, this court should affirm dismissal and judgment for defendants.

Conclusion

For the foregoing reasons, Defendants Michael Wilson, Rebecca Mathisen, Kelly Rasmuson, and Eric Muller respectfully request that the court affirm the judgment of the district court.

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Request for non-oral submission

As this case involves the application of settled legal principles, Defendants believe oral argument is unnecessary. Should the court grant oral argument, however, Defendants request equal time to be heard.

Certificate of costs

I certify that there were no costs to reproduce copies of the appellees' brief because the appeal is being filed exclusively in the appellate EDMS system.

/s/ Haley Hermanson

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I hereby certify that on June 4, 2024, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel below:

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