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S.C. SUPREME COURT

**STATE OF SOUTH CAROLINA**
**In the Supreme Court**

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**APPEAL FROM LANCASTER COUNTY**
**Court of Common Pleas**

Deandrea G. Benjamin, Circuit Court Judge

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**Case. No. 2018-CP-001127**
**Appeal No. 2025-002144**

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**Paul David Hess APRN-BC, Respondent-Petitioner**

**v.**

**Morphis Pediatric Group of Lancaster, PA; Elizabeth J. Morphis M.D; Gregory M. Alexander, CPA; and Moore Beauston and Woodham LLP; Defendants**

**Of Whom, Morphis Pediatric Group of Lancaster, PA and Elizabeth J. Morphis M.D are Petitioner--Respondents**

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# PETITIONER-RESPONDENTS' REPLY BRIEF

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## RESPONSE TO HESS'S FACTUAL BACKGROUND

Hess spends pages of his factual statement accusing Morphis of falsely representing the facts and making dubious conclusions and inferences. The accusations are both unseemly and inaccurate. Nowhere in his return does Hess cite anything specific to prove his accusations. In truth, there are no factual disputes at this point and Hess is simply attempting to confuse and obfuscate the proper legal conclusions to be drawn from the facts. He misunderstands that, simply because a jury found in his favor on certain facts does not mean that those facts support a claim of fraud and the like. *See, e.g., Humana Hosp.-Bayside v. Lightle*, 305 S.C. 214, 217, 407 S.E.2d 637, 638 (1991) ("Instead he relies on a sweeping legal assertion that summary judgment is always improper on the issues of negligence, fraudulent breach of contract, bad faith, and punitive damages, because these are questions of fact for the jury. This is an incorrect proposition. These issues are only proper to present to the jury when there is a genuine issue as to some material fact for the jury to consider."); *Metro. Life Ins. Co. v. Stuckey*, 194 S.C. 469, 10 S.E.2d 3, 6 (1940) (differentiating fraud as a legal conclusion from facts that must be asserted to support the claim); *Towill v. S. Ry. Co.*, 121 S.C. 447, 114 S.E. 416, 420 (1922) (same).

An example in point is that Hess repeatedly raises the strawman assertion that Morphis refused to provide him all the financial information Hess wanted. It is true. Morphis, and her CPA, plainly informed Hess that they would not provide all the information he sought. In fact, in response to his question, "am I getting 50%," he was told that his question was not going to be answered. (R.535, I.50 lines 6-24). Far from helping Hess's case, this refusal should have made plain to him that he might have a claim. In any event, it is not correct that Hess had no financial information. He admitted Morphis gave him some expense information, he had access to the

checking account, and he, in fact, knew Morphis was taking a salary and an automobile expense before profits were calculated. (R.587, I.110 Lines 1-9); (R.547-448, I.62-63, Lines 23-25, Lines 2-7).

Hess particularly decries, as false, the assertion that he "admitted he understood he had a claim" outside the limitations period. That is plainly incorrect. He repeatedly admitted he had formed the belief he wasn't being properly paid outside the limitations period. These admissions are set forth in detail in Morphis's Initial Brief, beginning on page 11, and will not be repeated here. It is particularly remarkable that Hess would try to deny these admissions given that his counsel reaffirmed the admissions in oral argument before the court of appeals:

> Judge Hewitt: I don't think it's disputed, I don't think you would dispute that your client suspected well outside the three-year limitations period that he was not being compensated according to his employment agreement. You would concede that right?
>
> Rothstein: He had suspicions. No question about it.

(Recording of 11/7 Oral Argument, https://media.sccourts.org/COA_Videos/2022-001589.mp4).

Hess emphasizes his allegation that a spreadsheet prepared by Morphis's accountant for Dr. Morphis is a "smoking gun" because it showed she was taking compensation from MPG before his bonus was calculated. (R. 844). This fact is also irrelevant and a strawman because Hess never relied on it and repeatedly admitted he had formed the belief he was improperly paid. This belief is the only relevant issue, not whether or not Morphis, in fact, improperly paid Hess his bonus.

In his brief, Hess alleges Morphis's accountant told him that they "did not think it was fair to Mr. Hess to burden him with the additional legal and accounting expenses involved in [the recent C-Corp to S-Corp] conversion …." (Page 4 of Respondent's Brief). This is a mischaracterization of Hess's testimony on the subject. What he actually said was:

Q. What did he tell you?

A. Pretty much that -- I don't remember if they said they just forgot about it, but because they switched from a S-Corp -- from a C-Corp to an S-Corp, they were just going to pay me the same amount of money as they did the previous year, so I wouldn't get penalized for the conversion from the company.

(R. 527-528, Lines 20-25 and 1-8). Mr. Hess's mischaracterization of the testimony is a blatant attempt to portray the alleged statement of the accountant to make it seem nefarious and to claim he relied on the statement and no longer believed he might have a claim.

In any event, Hess admitted that, after being told about the S-Corp conversion, he did not think the 2013 and 2014 bonuses could be the same because profit and loss could never be the exact same number from year to year. (R.557-558, I.72-73, Lines 19-25 and 1-4). He also, in the same meeting, still asked the CPA if he was getting 50% of the profits and the CPA refused to answer the question. (R. 535, Lines 6-24). He later even talked to his own CPA about whether he was getting 50%. (R. 590, Lines 5-15). And, of course, he knew Morphis was taking a salary and expenses her vehicle. (R.587, I.110 Lines 1-9); (R.547-448, I.62-63, Lines 23-25, Lines 2-7). In other words, he put no reliance on any representation concerning the practice's tax status and he cannot now assert that he did not know, or did not have reason to know, he had a claim.

On page 7 of his Brief, Hess claims Morphis took an additional $196,000 in "pass through income" in additional to her salary from MPG. The citation to the record, however, does not support this claim at all. There was some testimony that Morphis was taxed on amounts different than the compensation she took from MPG but this was not money she actually received.) (R.751, II. p. 333 Lines 6-7). There is no testimony that Dr. Morphis received an "extra" $196,000 in cash from the Lancaster practice over and above the compensation reported on the Profit and Loss statements. Furthermore, Hess did not attempt to add this "extra" amount to his damages spreadsheet (R. 923) that he used throughout the trial as his definitive proof of his

damages. Finally, this allegation is completely outside the issues this court asked the parties to address.

## ARGUMENT

### Hess Mistakes the Proper Legal Standards Regarding the Statute of Limitations

Hess begins by, once again, raising a strawman that, because he got a jury verdict in his favor, the statute of limitations defense cannot be ruled on as a matter of law. As stated above, this is untrue. He also offers the red herring that he, at least at times, blamed the company accountant and not Dr. Morphis for his underpayment. Neither assertion is relevant to the question of whether he knew or should have known he had a claim outside the limitations period. He admitted he did. Morphis will not repeat these many admissions that are already set forth in her primary brief. They include his admissions that he (outside the limitations period) questioned whether he was getting paid 50%, that he knew about the automobile expense and Dr. Morphis's salary before net income, knew his 2013 and 2014 bonuses should not be the same amount, was told he was not going to be given access to all financial information, was told he would get no answer to direct question of whether his bonus was 50% of net income, and admitted he thought he was not getting 50% of net income. (See Initial Brief p. 18 and following).

Hess attempts to distance himself from the admission made in oral argument before the South Carolina Court of appeals as unbinding "argument" by an attorney. However, Hess's counsel's statement was not argument. It was an admission that Hess "had suspicions" "well outside the three-year limitations …." Although arguments are not facts, the admission of attorneys on a factual or legal issue is directly attributable to and binding on the client. *Greenville Income Partners v. Holman*, 308 S.C. 105, 417 S.E.2d 107 (Ct.App.1992); *Matter of Murdaugh*, 436 S.C. 636, 638–39, 875 S.E.2d 58, 59 (2022) ("Respondent is also bound by the

statements his counsel made at the bond hearings in which counsel admitted Respondent staged a suicide attempt to appear as a murder so as to defraud the life insurance company and subsequently filed a false police report to that effect.") (*quoting United States v. Blood*, 806 F.2d 1218, 1221 (4th Cir. 1986) (stating, "a clear and unambiguous admission of fact made by a party's attorney in an opening statement in a civil or criminal case is binding upon the party"); *Meyer v. Berkshire Life Ins. Co.*, 372 F.3d 261, 264–65 (4th Cir. 2004) ("Judicial admissions are not ... limited to affirmative statements that a fact exists. They also include intentional and unambiguous waivers that release the opposing party from its burden to prove the facts necessary to establish the waived conclusion of law.").

In light of the "very little" that is required to start the clock, Hess's admission that he had suspicions well before the limitations period are, in of themselves, enough to find the limitations period had run.

Hess also continues to misapprehend the caselaw differences regarding tolling, estoppel, and the discovery rule. The statute of limitations begins to run once the requirements of the discovery rule are met, *i.e.*, that a plaintiff knows, or by exercise of reasonable diligence, should have known, he has a claim. *See, e.g., Walbeck v. I'On Co., LLC*, 426 S.C. 494, 519, 827 S.E.2d 348, 361 (Ct. App. 2019). The test is objective and the South Carolina's statute of limitations requires "very little to start the clock." *Roe v. Doe*, 28 F.3d 404, 407 (4th Cir.1994) (applying South Carolina law).

South Carolina did not always have the "discovery rule." Statutes of Limitations once were essentially statutes of repose and they began to run when the tort or breach occurred. *See Santee Portland Cement Co. v. Daniel Int'l Corp.*, 299 S.C. 269, 272, 384 S.E.2d 693, 694 (1989), *overruled by Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors Div. of Unidynamics*

*Corp.*, 319 S.C. 556, 462 S.E.2d 858 (1995). The discovery rule was first applied to some actions statutorily and expanded to other causes by case decisions in the 1970s. Thus, the discovery rule is actually a liberalization in favor of plaintiffs. Hess inappropriately invites this court to eviscerate the discovery rule if there is any evidence of concealment or obfuscation—regardless of whether or not a plaintiff knows, or has reason to know, he may have a claim. And despite the fact that it should take "very little to start the clock."

Concealment of financial data Hess might have found useful to verify his bonus is just not relevant. Hess made plain that he believed he wasn't getting properly paid and that he formed this belief outside the limitations period. Concealment of data, and even providing misleading information regarding his bonus, is just not germane to the discovery rule. "Discovery" is what matters-not the accuracy of what a plaintiff is told regarding the contract payment. Regarding concealment, Hess argues, in particular, that information was withheld from him. As stated above, Morphis and her CPA made plain to Hess that they would not provide the information and answers he sought. Far from tolling the statute, as held by this court and the court of appeals, such refusals put Hess on notice he had a claim. *Kreutner v. David*, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995) (Defendant stonewalled requests for information.); *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998) (the employer's refusal to answer questions about bonus calculations was enough to start the statute of limitations running.).

Hess asserts that "tolling" applies to the statute of limitations if there is any concealment or obfuscation of information. This is confusing the caselaw. The statute begins to run as soon as plaintiff learns, or should have learned, he had a claim. How much was concealed from him is irrelevant to that question. Hess cites *Strong v. Univ. of S.C. Sch. of Med.*, as support for his assertion that obfuscation can toll the statute. 316 S.C. 189, 191, 447 S.E.2d 850, 852 (1994).

However, the *Strong* court held that "acts of deception" only toll the statute when the plaintiff is thereby induced not to believe he has an action and only where there is a duty to disclose.

> The fraudulent concealment defense to the statute of limitations flows from the patient-physician relationship. When the relationship ends, the duty to disclose, which is the basis of fraudulent concealment claim, ceases to exist absent extenuating circumstances such as the withholding[1] or altering of plaintiff's medical records.

*Strong v. Univ. of S.C. Sch. of Med.*, 316 S.C. 189, 191–92, 447 S.E.2d 850, 852 (1994).

Unlike in *Strong*, a business has no duty of disclosure to an employee. *See, In re Hunnicut*, 466 B.R. 797, 801 (Bankr. D.S.C. 2011) ("No trust exists in a simple employer/employee relationship. Such a relationship is merely comprised of an agreement for the employee to perform work and the employer to compensate him for the work he performs.") (citing *Burwell v. S.C. Nat. Bank*, 288 S.C. 34, 340 S.E.2d 786, 790 (1986)). Similarly, a contract, unless it is "intrinsically fiduciary" does not create a duty to disclose. *See, e.g., Jacobson v. Yaschik*, 249 S.C. 577, 155 S.E.2d 601, 605 (1967). Therefore, Morphis did not have an obligation to disclose to Hess and *Strong's* holding does not aid him. *Strong* is the only case Hess has cited for the argument that obfuscation, without inducement not to file a complaint, is grounds to toll the statute. This aspect of *Strong* simply does not apply to Hess.

*Strong* actually supports Morphis's position. As noted above, the court held that the statute would not begin to run if there was a duty to disclose (in that case, the doctor-patient relationship) plus deliberate deception. However, once a doctor disclosed in the records that Strong had been mistreated, the court held that the statute began to run, even though the disclosure was not full and complete and even though the plaintiff was blind and could not read

[1] It should be noting that the "withholding in Strong would be a secret withholding of the only evidence of the tort. In contrast to this case, where Hess had plenty of evidence to put him on notice of a claim and Morphis's alleged withholding was a clear "cards on the table" "I am not going to give you that information."

the doctor's disclosure. Hess admits he had formed the belief outside the statute of limitation, based on information available to him, that his bonus was not correct and he knew about the salary and car expense that Morphis was taking. *Strong*, therefore supports Morphis's arguments.

Hess attempts to distinguish *Dean v. Ruscon Corp.*, by pointing out that Dean saw troublesome cracks in his building outside the limitations period. *Dean v. Ruscon Corp,* 321 S.C. 360, 365–66, 468 S.E.2d 645, 648 (1996). That is precisely the point. Dean saw cracks caused by the pile driving company, but the real damage didn't happen until later—within the limitations period—when the pile driving company came back and did more work. Dean could not have had a full appreciation of the harm outside the limitations period. Nevertheless, this court found the harm that he was aware of was enough to start the clock. Unlike Dean, Hess had formed the belief he wasn't getting paid correctly and actually knew about the salary and car expense Morphiswas taking. There was no waiting to see if the alleged harm blossomed.

Hess just ignores all the caselaw that holds it takes very little to start the clock, and that full awareness, or the receipt of nearly all information needed, is not a requirement. In *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998) the court held that the employer's refusal to answer questions about bonus calculations was enough to start the statute of limitations running. Hess admitted to far more awareness of his claims than did Maher. *Strong* was similar in that, as soon as a doctor made a medical note that lack of care caused the injury, the clock began to run. The fact that Strong was blind and didn't know of this note until someone read the records for him could not toll the clock. 316 S.C. 189, 191, 447 S.E.2d 850, 852 (1994). *See also, Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996) (The fact an injured party may not comprehend the full extent of the damage is immaterial.). In other words, the discovery rule does not "require absolute certainty [that] a cause of action exists before the

statute of limitations begins to run." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 126, 542 S.E.2d 736, 741 (Ct. App. 2001); *Joubert v. South Carolina,* 341 S.C. 176, 534 S.E.2d 1 (Ct. App. 2000) ("We have interpreted the 'exercise of reasonable diligence' to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist.") (quoting *Dean v. Ruscon Corp.,* 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996)). *See also Burgess v. American Cancer Soc'y,* 300 S.C. 182, 386 S.E.2d 798 (Ct.App.1989) (holding statute starts to run upon discovery of such facts as would have led to knowledge thereof if pursued with reasonable diligence). In fact, constructive receipt of information that should cause a party to conduct an investigation which would lead to knowledge of a claim is all that is required. *See, e.g., Burgess v. Am. Cancer Soc., S.C. Div., Inc.*, 300 S.C. 182, 187, 386 S.E.2d 798, 801 (Ct. App. 1989) (in malpractice action, client's knowledge his attorney was having affair with agent of the defendant "constitutes such knowledge of existing facts which were sufficient to put Burgess on inquiry and had she pursued such inquiry, it would have disclosed the alleged communications [of privileged information from attorney to defendant]."); *see also*, *Walter J. Klein Co. v. Kneece,* 239 S.C. 478, 123 S.E.2d 870 (1962) (all that is needed is information "sufficient to put said party on inquiry which, if developed, will disclose the alleged fraud.") (citing *Tucker v. Weathersbee,* 98 S.C. 402, 82 S.E. 638 (1914)).

It is true that tolling (a separate concept from the discovery rule) can stop the statute from running but only if the fraud is to forestall a plaintiff from filing—such as agreeing to settle or to pay the amount due. Hess misapplies tolling by claiming that the statute is stopped anytime there is some evidence of concealment of information or obfuscation. *Strong,* and the cases cited above, prove the opposite. As soon as there was enough disclosure to put the plaintiff on notice

of a claim, the courts hold that the statute is running. *See, also, Hopkins v. Floyd's Wholesale,* 299 S.C. 127, 382 S.E.2d 907 (1989) (plaintiff promised claim would be paid).

> **("[E]quitable tolling is a doctrine that should be used sparingly** and only when the interests of justice compel its use."); *Kelly v. Logan, Jolley, & Smith, L.L.P.,* 383 S.C. 626, 639, 682 S.E.2d 1, 8 (Ct.App.2009) **("[F]or equitable estoppel to apply, a plaintiff must be *aware* that a claim might exist prior to the expiration of the statute of limitations, but due to some conduct or representation by the defendant, the plaintiff is induced ... to delay in filing suit**." (alteration in original) (internal quotation marks omitted)).

*Campbell v. Guignard*, No. 2015-UP-293, 2015 WL 3819059, at *1 (S.C. Ct. App. June 17, 2015) (emphasis added).

Because there is no assertion Morphis tried to induce Hess not to file suit, tolling does not apply to this case.

Hess tries to make much of the fact that he was told in the May 2015 meeting that there was a change from C-Corp to S-Corp status. Hess's counsel argues that this was a "plausible" explanation why his 2013 and 2014 bonuses were exactly the same. Setting aside all his other admissions and that tolling based on representations has not been applied to stop a limitations period from running, Hess did not place any reliance on this representation. First, he never testified that he accepted the communication as a plausible explanation. His testimony was as follows:

> Q: What did he tell you?
>
> A: Pretty much that -- I don't remember if they said they just forgot about it, but because they switched from a S-Corp -- from a C-Corp to an S-Corp, they were just going to pay me the same amount of money as they did the previous year, so I wouldn't get penalized for the conversion from the company.
>
> Q: Based on what Mr. Alexander told you, did you believe that the profitability of Lancaster had decreased based on the switched from a C-Corp to an S-Corp?
>
> A: I was trying to figure out what was going on -- I know it was because the S-Corp was a pass, it represents an LLC, which I actually have an LLC, so I could have understood that. I wasn't sure exactly what was going and they weren't providing any information.

(R. 527-528, Lines 20-25 and 1-8).

So, despite counsel's leading question, there actually was no testimony that Hess placed any reliance on the CPA's communication. In fact, the above testimony shows he did not. In addition, Hess asked, in the same meeting, if he got 50% of the profits and the CPA responded that he wasn't going to answer that question. If Hess had relied on the S-Corp statement, he would not have asked the question. Furthermore, Hess went to his own CPA after the meeting and discussed with his CPA his doubt he got 50%. (R.590, I.113 Lines 5-15). Therefore, the only evidence is that Hess did not rely on the S-Corp statement nor could he have done so.

**There is No Civil Remedy for a Notice Violation**

Hess argues that the *Barton* case is not binding on this court. This is both true and irrelevant. It does not change the fact that it is persuasive authority as the only published decision on the remedies provided by § 41-10-30. The South Carolina appellate courts have not ruled on this issue in a published decision, although they have done so in an unpublished decision. In any event, *Barton* is persuasive and clearly ruled that the only remedy for a 41-10-30 violation is a penalty from the Department of Labor. *Barton v. House of Raeford Farms, Inc.*, 745 F.3d 95, 108 (4th Cir. 2014). It is incorrect that the decision on this point was mere dicta. It was an alternative holding which is more than dicta. Judith M. Stinson, Why Dicta Becomes Holding and Why It Matters, 76 Brook. L. Rev. 219, 264 (2010) ("most courts recognize alternative rulings as binding holdings, not dicta."). In any event, even dicta is regarded as persuasive authority where, as here, the issue is squarely examined and ruled upon. *City of Columbia v. Pearman*, 180 S.C. 296, 185 S.E. 747 (1936) ("What he said in this respect was dicta, but his reasoning is persuasive.").

Hess also attempts to distinguish *Barton* on the grounds that the dispute in that case was a failure to notify employees how hours of work were counted (line time versus clock time) whereas his dispute is over a change in his bonus formula. This is a distinction without meaning. Both claims were based on the 41-10-30 notice requirements. Although the *Barton* court expressed doubt that the notice provision applied to a dispute over whether preparation time was counted as compensable hours, it analyzed the claim as if 41-10-30 did apply. Therefore, this is not a factor upon which the case may be distinguished.

41-10-80(A) clearly provides that the only remedy for a 41-10-30 violation is a penalty imposed by the Department of Labor. Only in a separate provision at 41-10-80(B) (which governs Hess's claims for the years 2010 through 2014) does the Act provide an employee the right to bring a civil action for failure to pay wages due. If the legislature had intended to impose any consequences for violation of section 41-10-30 in addition to those imposed by section 41-10-80(A), it would have expressly provided for them, and there is no provision in the Act other than section 41-10-80(A) addressing the failure of an employer to comply with the notice requirement of section 41-10-30(A). It is simply clear that the only consequences the legislature intended to impose for a violation was a fine by the Department of Labor.

Hess argues that Morphis should not be allowed to cite *Gould v. Worldwide* because such a cite constitutes a new argument not made before. *Gould v. Worldwide Apparel LLC*, 2019 WL 3216893 (S.C. Ct. App. 2016) (unpublished).[2] Although it is correct that a party may not make a new argument for the first time on appeal, there is no rule of exclusion about citing additional caselaw in support of an argument. Morphis has consistently argued, at all stages of this appeal,

[2] The omission of *Gould* from the Table of Authorities was entirely accidental. Hess implies some nefarious intent in the omission but that makes no sense because the case is clearly cited and extensively discussed in the body of Appellant's Brief.

and before the trial court, that the legislative provision of only an administrative fine for notice violations precludes the availability of full civil remedies. It is true that Morphis cited the unpublished *Gould* decision only after the Court of Appeals made a decision in this case that was inconsistent with *Gould*. Normally, unpublished decisions may not be cited, however, once inconsistent case law was created, Morphis's counsel believes he was under a duty to point this out.

Hess's attempts to distinguish *Gould* are unavailing. The facts may be different, but the plain and clear holding of *Gould* is that when the legislature provided only one type of remedy for a violation of 41-10-30 then it precluded grafting a complete different type of remedy onto the statute. The provision of one thing means the exclusion of others. This is particularly true when the legislature did explicitly provide full civil remedies for other types of Wage Payment Act violations.

**Hess's Argument that His Theory of Recovery does not Rely on Notice Provisions of the Act is Both Incorrect and Improper**

Hess argues that his theory for recovery of a bonus in 2015 does not rely on the Notice provision of the Wage Payment Act. Instead, he argues that because 41-10-30(A) (the notice provision for the Act) precludes a wage change from becoming effective until seven days after the change and, because he was paid before the effective date of his new contract (December 31, 2015), the change was not effective.

First, this argument is outside the questions upon which certiorari was granted. This court did not ask Hess if he had a theory of recovery for his 2015 wage claim outside the Act's notice provision. The argument is improper.

Second, Hess's argument is pure sophistry. He is just trying to rely on the notice provision of 41-10-30(A) (which requires seven days advance notice) without saying he is

relying on 41-10-30(A). No matter how he frames his theory, Hess is relying on 41-10-30(A)'s seven-day notice requirement to argue that his 2010 contract was still in effect at the time he was paid his 2015 bonus. In other words, he is claiming a 41-10-30 violation no matter how he wants to word it.

Finally, before the trial court, Hess did explicitly base his theory of recovery for his 2015 damages on a violation of 41-10-30. In post-trial motion arguments, his counsel stated:

> I'll read the statute 41-10-30(a). Every employer shall notify each employee in writing at the time of hiring of the normal hours and wages agreed upon … Any changes in these terms must be made in writing at least seven calendar days before they can become effective. … It couldn't be more clear. Statute says that to be an effective change, that has to be given to the employe[e] in writing. If you're going to change the employee's pay, give them more money, you have to give it to them in writing seven days before it becomes effective.

(R. 253-255). Hess, therefore admitted at trial that he was basing his theory on a violation of 41-10-30(A), the only remedy for which is a fine.

## CONCLUSION

For all the foregoing reasons, the decision of the court of appeals should be reversed.

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Dated this 16th day of March 2026