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## IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF MONTANA

## GREAT FALLS DIVISION

LISA A. RACINE,

Plaintiff,

No. CV-10-37-GF-SEH

vs.

MEMORANDUM  
AND ORDERKATHLEEN SEBELIUS,  
SECRETARY OF THE UNITED  
STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

Defendant.

INTRODUCTION

Plaintiff, Lisa A. Racine, brought this action against Defendant, Kathleen Sebelius, Secretary of the United States Department of Health and Human Services, for damages under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, and the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 *et seq.* Answer was filed on December 20, 2010. On April 8, 2011, Plaintiff filed a Motion for a Jury Trial under Fed. R. Civ. P. 39(b). The motion is opposed.

## DISCUSSION

No right to a jury trial exists for the ADEA claim. Lehman v. Nakshian, 453 U.S. 156, 162-69 (1981). The jury demand for the Title VII claim is not timely<sup>1</sup> and the Court may not appropriately exercise its discretion to extend the time period for making the demand. Craig v. Atlantic Richfield Company, 19 F.3d 472, 477 (9<sup>th</sup> Cir. 1994); Russ v. Standard Insurance Company, 120 F.3d 988, 989 (9<sup>th</sup> Cir. 1997); Bell v. Cameron Meadows Land Company, 669 F.2d 1278, 1285 (9<sup>th</sup> Cir. 1982).

## ORDER

Plaintiff's Rule 39(b) Motion for a Jury Trial<sup>2</sup> is DENIED.

DATED this 2<sup>nd</sup> day of May, 2011.

  
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SAM E. HADDON  
United States District Judge

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<sup>1</sup> Fed. R. Civ. P. 38(b) provides, in pertinent part, that "[o]n any issue triable of right by a jury, a party may demand a jury trial by: (1) serving the other parties with a written demand – which may be included in a pleading – no later than 14 days after the last pleading directed to the issue is served . . ." Rule 38(d) provides, in pertinent part, that "[a] party waives a jury trial unless its demand is properly served and filed."

<sup>2</sup> Document No. 17