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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

CANDI-LEE WEEKS, Plaintiffs, v. BRADLEY F. JOHNSON; BILL DIAL; KRISTI CURTIS; KEVIN CONWAY; SHANE ERICKSON; CHASE GARNER; CHUCK STEARNS; BRIDGER KELCH; JOHN MUHFELD; BILL HILL; and BRIAN CARTER. Defendants.	Cause No: CV-16-161-DLC-JCL BRIEF IN SUPPORT OF MOTION TO DISMISS OF DEFENDANTS JOHNSON, CURTIS, CONWAY, ERICKSON, GARNER, KELCH, STEARNS AND MUHFELD

Table of Contents

INTRODUCTION 1

I. Motion to Dismiss-Standard. 2

II. Discussion and Argument 3

- Plaintiff's Claims Under 18 U.S.C. §§ 241 and 242 Should Be Dismissed Because There Is No Private Cause of Action And No Judicially Cognizable Interest Under Such Statutes. 3

- Plaintiff's Claims Against Defendants Muhfeld and Stearns Should Be Dismissed. There Are No Particular Allegations Against Them, and Plaintiff Has Failed To Plead Sufficient Legal Claims. 3

- The Claims Against Judge Johnson Are Conclusory And Insuffícently Pleaded And, Most Importantly, Are Protected By Judicial Immunity And Should Be Dismissed 6

- The Claims Against City Prosecutor Kristi Curtis Are Also Protected By Prosecutorial Immunity And Should Be Dismissed. 8

- Plaintiff's Claims Against Officers Conway, Erickson, Garner, Kelch Should Be Dismissed 11

  1. The Allegations Asserted Against Officers Conway, Erickson, Garner and Kelch Should be Dismissed 11

  2. The Allegations Asserted Against Officer Erickson Should Be Dismissed 13

  3. The Allegations Asserted Against Officers Garner and Kelch Should be Dismissed 14

- Plaintiff's Claim Concerning Federal Reserve Notes Does Not State A Claim 16

- Plaintiff's Constitutional Claims Are Insufficiently Pleaded. 16

CONCLUSION 19

CERTIFICATE OF COMPLIANCE 19

CERTIFICATE OF SERVICE..20

Table of Authorities

Cases

Aldabe v. Aldabe, 616 F.2d 1089 (9th Cir. 1980) 4

Ashcroft v. Iqbal, 556 U.S. 662 (2007) 2,3,5,6,16

Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007) 2,3

Berkowitz v. U.S., 90 F.2d 881 (8th Cir.1937) 8

Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 20 L.Ed. 646 (1871).........................7

Butz v. Economou, 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978)...........9

City of Salina v. Wisden (Utah 1987), 737 P.2d 981, 983. 8,12

Clynch v. Chapman, 285 F.Supp.2d 213 (D.Conn.2003) 8

Cok v. Cosentino, 876 F.2d 1, 2 (1st Cir. 1989)..4

Coverdell v. Dep't of Soc. & Health Servs., 834 F.2d 758 (9th Cir. 1987).......14
Gordon v. State (1985), 108 Idaho 178, 697 P.2d 1193, appeal dismissed, 474 U.S. 803, 106 S.Ct. 35, L.Ed.2d 29 (1985), reh. denied, 474 U.S. 1097, 106 S.Ct. 874, L.Ed.2d 912 (1986) 12,13,17

Guaranty Trust Co. v. Henwood (1939), 307 U.S. 247, 59 S.Ct. 847, 83 L.Ed. 1266 16

Hallstrom v. City of Garden City, 991 F.2d 1473 (9th Cir.1993)................12,13

Imbler v. Pachtman, 424 U.S. 409, 96 S. Ct. 984, 47 L.Ed.2d 128 (1976)......10

In re Application of Floyd, 413 F.Supp. 574, 575 (D.Nev.1976) 8

Jefferson v. City of Hazlehurst, 936 F.Supp. 382 (S.D.Miss.1995) 8

Jones v. Community Redevelopment Agency of City of Los Angeles, 733 F.2d 646 (9th Cir. 1984) 18

Kwai Fun Wong v. United States, 373 F.3d 952 (9th Cir.2004) 2,5,16

Linda R.S. v. Richard D., 410 U.S. 614 (1973) 4

Mackler v. Alexis (1982), 130 Cal.App.3d 44, 181 Cal.Rptr. 613 13
Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097 (9th Cir. 2008) 3

Miller v. Reed, 176 F.3d 1202, (9th Cir.1999) 12

Mireles v. Waco, 502 U.S. 9, 112 S.Ct. 286 L.Ed.2d 9 (1991) 7

Pareto v. F.D.I.C., 139 F.3d 696 (9th Cir. 1998) 2

Price v. Hawaii, 939 F.2d 702, 708 (9th Cir. 1991) 18

Ronek v. Gallatin Cty., 227 Mont. 514, 740 P.2d 1115 (1987) 10

Sanchez v. Doyle, 254 F.Supp.2d 266 (D.Conn.2003) 8

Simmons v. Sacramento County Superior Court, 318 F.3d 1156(9th Cir. 2003) 18

Smith v. Cox (Utah 1980), 609 P.2d 1332 13

Sprewell v. Golden State Warriors, 266 F.3d 979 (9th Cir. 2001) amended on denial of reh'g, 275 F.3d 1187 (9th Cir. 2001) 2

State ex rel. Dep't of Justice v. Dist. Court of Eighth Judicial Dist. In & For Cascade Cty., 172 Mont. 88, 92, 560 P.2d 1328, 1330 (1976) 10

State v. Coyle (1984), 14 Ohio App.3d 185,470 N.E.2d 457, 14 O.B.R. 203 ... 13

State ex rel. Hielle v. A MotorVehicle, Etc. (N.D. 1980), 299 N.W.2d 557 13

State v. Skurdal, 235 Mont. 291, 296, 767 P.2d 304, 308 (1988) 8,12,13,17

State v. Svendrowski (Mo.App. 1985), 692 S.W.2d 348, 349 12

Steele v. McGregor, 1998 MT 85, 288 Mont. 238, 956 P.2d 1364 9

Texas Dept. of Public Safety v. Schaejbe (Tex. 1985) 687 S.W.2d 727 13

United States v. Gutierrez, 995 F.2d 169 (9th Cir.1993) 13-14,15,17

United States v. Rodriguez–Morales, 929 F.2d 780 (1st Cir.1991) 14,15,17

United States v. Wangrud (9th Cir.), 533 F.2d 495,*cert. denied,* (1976), 429 U.S. 818, 97 S.Ct. 64, 50 L.Ed.2d 79 16

United Steelworkers of Am. v. Phelps Dodge Corp., 865 F.2d 1539, 1540-41 (9th Cir. 1989) 18

Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136 (9th Cir. 2003) 3

Woodrum v. Woodward County, Okl., 866 F.2d 1121 (9th Cir. 1989) 11

Statutes and Rules

Rule 8(a)(2), F.R.Civ.P 2

Rule 12, F.R.Civ.P 2

Rule 12(b)(6), F.R.Civ.P. Rule 12(b)(6), F.R.Civ.P. 2

Montana Admin Rule 23-13-203 5

Oath of Office Article III Section 3 of the Constitution 5

Constitutional rights 1st,4th,5th,6th,7th,8th, 9th and 10th 5

18 U.S.C. § 241 4,16

18 U.S.C. § 242 4,16

42 U.S.C. § 1983 4

43 U.S.C. § 1983 4,16

43 U.S.C. § 1985 4,16

EXHIBITS INDEX

Exhibit #1 Complaint (Doc. 1)

BRIEF IN SUPPORT

COME NOW Defendants Bradley Johnson, Kristi Curtis, Kevin Conway, Shane Erickson, Chase Garner, Chuck Stearns, Bridger Kelch and John Muhfeld and submit the following brief in support of their Motion to Dismiss Plaintiff's claims pursuant to Rule 12, F.R.Civ.P.:

I. Motion to Dismiss-Standard

A motion to dismiss requires a court to determine the sufficiency of the plaintiff's complaint and whether it contains a "short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(a)(2), F.R.Civ.P. Under Rule 12(b)(6), F.R.Civ.P., the United States Supreme Court held that "a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Ashcroft v. Iqbal,* 556 U.S. 662, 676, (2007). A complaint must be dismissed when it "fails to identify what role, if any, each individual defendant had" in the alleged unconstitutional conduct." *Kwai Fun Wong v. United States*, 373 F.3d 952, 960 (9th Cir.2004).

A court must (1) construe the complaint in the light most favorable to the plaintiff, and (2) accept all well-pleaded factual allegations as true, as well as all reasonable inferences to be drawn from them. See *Sprewell v. Golden State*

Warriors, 266 F.3d 979, 988 (9th Cir. 2001), amended on denial of reh'g, 275 F.3d 1187 (9th Cir. 2001); *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998).

In order to survive a 12(b)(6) motion to dismiss, the complaint must "contain sufficient factual matter, accepted as true, to `state a claim to relief that is plausible on its face.'" *Ashcroft*, 556 U.S. at 663 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 678. Dismissal is proper if the complaint "lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008); see also *Twombly*, 550 U.S. at 561-63 (dismissal for failure to state a claim does not require the appearance, beyond a doubt, that the plaintiff can prove "no set of facts" in support of its claim that would entitle it to relief).

A complaint does not suffice "if it tenders `naked assertion[s]' devoid of `further factual enhancement.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* The Court need not accept as true "legal conclusions merely because they are cast in the form of factual allegations." *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003).

II. Discussion and Argument

Plaintiff's complaint is disjointed, confusing and involves various inapplicable elements of the law[1]. Despite this, Plaintiff appears to assert claims against Defendants under the First, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth Amendment, 43 U.S.C. §§ 1983, 1985, and 18 U.S.C §§ 241, 242. (Compl. pp. 2- 22). For reasons stated hereafter, Plaintiff's claim should be dismissed.

- **Plaintiff's Claims Under 18 U.S.C §§ 241 and 242 Should Be Dismissed Because There Is No Private Cause of Action And No Judicially Cognizable Interest Under Such Statutes.**

Plaintiff seeks monetary damages against Defendants pursuant to two federal criminal statutes, 18 U.S.C. § 241 ("conspiracy against rights") and 18 U.S.C. § 242 ("deprivation of rights under color of law"). Doc. 1 p. 15.

These statutes, however, do not create or confer a private right of action. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (holding U.S.C. §§ 241 and 242 provide no basis for civil liability). Plaintiff claims are also improper because "[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973). "Only the United States as prosecutor can bring a complaint under 18 U.S.C. §§ 241- 242 (the criminal analogue of 42 U.S.C. § 1983)." *Cok v. Cosentino*, 876 F.2d 1, 2 (1st Cir. 1989). Accordingly, they should be dismissed.

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[1] Although this action does not appear to be a claim involving sales or commercial transactions, Plaintiff appears to argue a contract is involved and the UCC is applicable, which it is not. (Compl. pp. 6, 8-9, 12-13).

- **Plaintiff's Claims Against Defendants Muhfeld and Stearns Should Be Dismissed. There Are No Particular Allegations Against Them, and Plaintiff Has Failed To Plead Sufficient Legal Claims.**

Plaintiff fails to plead any particularly facts in regard to Defendants Muhfeld and Stearns. Muhfelt is the Mayor of Whitefish and Steans is the City Manager. While Plaintiff clearly names these individuals, Plaintiff fails to plead any facts sufficient to state legal claims against them.

In *Ashcroft*, the Supreme Court held that "a plaintiff must plead that each government-official defendant, through the official's own individual actions, has violated the Constitution." *Ashcroft* 556 U.S. at 676. A complaint must be dismissed when it "fails to identify what role, if any, each individual defendant had" in the alleged unconstitutional conduct." *Kwai Fun Wong*, 373 F.3d at 960.

Here, Plaintiff pleads Defendants Muhfeld and Stearns are under oath as public officials to support and defend Constitutional rights:

> By Law, Montana Admin Rule 23-13-203, and Oath of Office Article III Section 3 of the Constitution, State of Montana, Defendants, John Muhfeld, ...Chuck Stearns,... have been required by Oath of affirmation, to support and defend Claimant's Constitutional rights 1st,4th,5th,6th,7th,8th, 9th and 10th.

Doc. 1 at ¶16.

These allegations, however, are insufficient to state a claim or claims. The Complaint fails to identify any particulars, including what role either Muhfeld or

Stearns had or the manner in which any unconstitutional conduct is alleged to have occurred.

Without further allegations and supporting facts, Plaintiff's Complaint fails to establish any viable cause against Defendants Stearn and Muhfeld. *Ashcroft*, 556 U.S. at 663. Accordingly, Plaintiff's claim against Muhfeld and Sterns should be dismissed.

- **The Claims Against Judge Johnson Are Conclusory And Insufficently Pleaded And, Most Importantly, Are Protected By Judicial Immunity And Should Be Dismissed.**

Plaintiff asserts multiple claims against Judge Bradley Johnson, which Defendants respectfully submit are conclusory, insufficiently pleaded and are protected by the doctrine of judicial immunity.

For example, it is alleged Judge Johnson forced legal appearances, Doc. 1 ¶28, ¶29, and ¶57; asked Plaintiff to leave the Court room, *Id.* at ¶25; displayed anger and bias, *Id.* at ¶27; demanded Plaintiff stop talking, *Id.* at ¶33; ignored Plaintiff, *Id.* at ¶29; represented he was the trier of fact, *Id.* at ¶34; acted as prosecutor and gave legal advice, *Id.* at ¶35; did what he wanted to in his Court, *Id.* at ¶36; required an unnecessary and excessive appearance bond, *Id.* at ¶52; acted in collusion with the prosecutor when the judge suggested a bond, *Id.* at ¶59; ordered that claimants' vehicle be kidnapped (conclusory), *Id.* at ¶ 59; ignored Plaintiff's requests, *Id.* at ¶70; practiced law before the bench by answering most questions

from the prosecutor, *Id.* at ¶71; threatened to force jurisdiction on Plaintiff by forcing a pleading and threatening Plaintiff, *Id.* at ¶76; sent a letter to Moonlighting Bonds, *Id.* at ¶79; forced arraignment and jurisdiction with a bondsman, *Id.* at ¶80; attempted to take away Plaintiff's right to travel, *Id.* at ¶87; attempted to extort a plea, *Id.* at ¶89; demanded a $500.00 bond, *Id.* at ¶95; engaged in extrajudicial behavior (not specified), *Id.* at ¶97; placed Plaintiff under mental stress, *Id.* at ¶102; created an involuntary servitude (conclusory and not specified), *Id.* at ¶106, and conspired with others and acted outside legal duties (conclusory), *Id.* at ¶¶108-110. Plaintiff alleges Judge Johnson engaged in such behavior on the dates Plaintiff apparently appeared in Court: October 12 and 19, 2016; November 16 and 30, 2016; and December 7, 14 and 16, 2016. *Id.* at pp. 6-14.

It is respectfully submitted such allegations are conclusory and insufficient as a matter of law, and perhaps more importantly, well within the protections of the doctrine of judicial immunity. Immunity protects Judge Johnson from exactly these types of allegations and suits.

It is well settled that judges are generally immune from civil liability. *Mireles v. Waco*, 502 U.S. 9, 9-10, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991) (citing long line of cases acknowledging that "generally, a judge is immune from a suit for money damages."). "Although unfairness and injustice to a litigant may result on occasion, 'it is a general principle of the highest importance to the proper

administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.' " Id. at 10, 112 S.Ct. 286 (citing *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347, 20 L.Ed. 646 (1871)). For example, it is well established that "granting bail and fixing its amount are judicial or quasi-judicial functions." *In re Application of Floyd,* 413 F.Supp. 574, 575 (D.Nev.1976) (citing *Berkowitz v. U.S.,* 90 F.2d 881, 883 (8th Cir.1937)); *see also Sanchez v. Doyle,* 254 F.Supp.2d 266, 271 (D.Conn.2003) ("Setting bail is a judicial act."); *Clynch v. Chapman,* 285 F.Supp.2d 213, 221 (D.Conn.2003) (same); *Jefferson v. City of Hazlehurst,* 936 F.Supp. 382, 389–90 (S.D.Miss.1995) ("power to admit to bail, and its accompanying obligation to scrutinize sureties, is clearly a judicial act.").

It appears Plaintiff is following a script, similar to other disgruntled Plaintiffs who have come before Montana Courts.[2]

Without further allegations, it is respectfully submitted Plaintiff's pleading and allegations are insufficient as a matter of law, and further and perhaps more importantly, Judge Johnson is protected by judicial immunity. Accordingly, the claims against Judge Johnson should be dismissed.

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[2] Similar arguments were made in *State v. Skurdal*, 235 Mont. 291, 296, 767 P.2d 304, 308 (1988) where the Montana Supreme Court stated: We reject Skurdal's argument that he is a "free man" exempt from the laws because he has "no contracts" with either the state or federal governments. Skurdal is a "person" as defined by section 61–1–307, MCA, and bound by the statutes in Montana which he violated. Consent to laws is not a prerequisite to their enforceability against individuals. *City of Salina,* 737 P.2d at 983. No persons in Montana may exempt themselves from any law simply by declaring they do not consent to it applying to them. We must all abide by valid laws, even the ones with which we do not agree, or justice will be served against us for the violation. Accepting Skurdal's assertion of exempt status is an invitation to anarchy. We decline that invitation. *State v. Skurdal*, 235 Mont. 291, 296, 767 P.2d 304, 308 (1988).

- **<u>The Claims Against City Prosecutor Kristi Curtis Are Also Protected By Prosecutorial Immunity And Should Be Dismissed.</u>**

Similar to Judge Johnson, Defendant Kristi Curtis is also entitled to dismissal of the claims asserted against her. Again, Plaintiff's allegations are insufficient as a matter of law, conclusory in many respects, and perhaps most importantly, within the purview and protection of prosecutorial immunity. Ms. Curtis is the Deputy City Attorney for the City of Whitefish.

It is alleged, for example, she failed to properly prosecute Plaintiff, Doc. 1 at ¶26, ¶30, ¶51; made claims she was employed by the State of Montana and received revenue for claimants guilt, *Id.* at ¶31; refused to present with the nature and cause and its 3 elements, *Id.* at ¶50; acted in collusion with Judge Johnson when a $500 bond was suggested, *Id.* at ¶58; failed to submit a "Contract" or proof of claim (unspecified), *Id.* at ¶69, ¶70, ¶73, and ¶75; denied claimants liberty to travel, *Id.* at ¶88; attempted to exort a plea (unspecified), *Id.* at ¶89; and conspired in concert with other Defendants, *Id.* at ¶109.

Regarding the doctrine of prosecutorial immunity, "the doctrine of immunity evolved to protect not only judges, but also certain participants in the judicial process whose functions are closely associated with those of judicial officers." *Steele v. McGregor,* 1998 MT 85, ¶ 25, 288 Mont. 238, ¶ 25, 956 P.2d 1364, ¶ 25. Prosecutors are entitled to absolute immunity as "quasi-judicial officers" when their judgments and conduct are functionally comparable to those implemented by

judges. *Steele,* ¶ 25, citing *Butz v. Economou,* 438 U.S. 478, 512, 98 S.Ct. 2894, 2913, 57 L.Ed.2d 895 (1978). In *Steele,* ¶ 26, the Montana Supreme Court held:

> Like judicial immunity, quasi-judicial immunity benefits the public—not the person being sued—by ensuring that quasi-judicial officers exercise their functions unfettered by fear of legal consequences; also like judicial immunity, quasi-judicial immunity extends only to acts within the scope of the actor's jurisdiction and with the authorization of law.... To be protected by quasi-judicial immunity, the person asserting the immunity must have acted in a quasi-judicial capacity.

Id. [Internal citations omitted.]

In the case of *Imbler v. Pachtman,* 424 U.S. 409, 423, 96 S. Ct. 984, 991, 47 L.Ed.2d 128 (1976), the United States Supreme Court stated:

> "The common law immunity of a prosecutor is based upon the same consideration that underline the common law immunities of judges and grand juries acting within the scope of their duties. These include concern that harassment founded by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties, and the possibility that he would shade his decisions instead of exercising the independence of judgment required by his public trust. * * *"

Prosecutorial immunity protects a prosecutor from allegations such as those alleged by Plaintiffs. Filing and maintaining criminal charges are among the many duties of a prosecutor. When a prosecutor acts within the scope of these duties, a prosecutor is absolutely immune from civil liability, regardless of negligence or lack of probable cause. *State ex rel. Dep't of Justice v. Dist. Court of Eighth Judicial Dist. In & For Cascade Cty.,* 172 Mont. 88, 92, 560 P.2d 1328, 1330

(1976); *Ronek v. Gallatin Cty.*, 227 Mont. 514, 518-519, 740 P.2d 1115, 1118 (1987).

Again, Plaintiff's allegations are insufficient as a matter of law and conclusory in many respects. Most importantly, however, Plaintiff's claims are within the purview and protection of prosecutorial immunity, and accordingly, Plaintiff's claims against Prosecutor Curtis should be dismissed.

- **Plaintiff's Claims Against Officers Conway, Erickson, Garner, Kelch Should Be Dismissed.**

This Court should also dismiss Plaintiff's claims or causes of action against Officers Conway, Erickson, Garner and Kelch.

Plaintiff's allegations against these Officers are conclusory and/or fail to establish the deprivation of any Constitutional right. See *Woodrum v. Woodward County, Okl.*, 866 F.2d 1121, 1126 (9th Cir. 1989) (failure to allege any actual deprivation of constitutional rights, and conclusory allegations of conspiracy, do not give rise to liability under § 1983). Further, the facts, as pleaded, are insufficient as a matter of law.

1. The Allegations Asserted Against Officers Conway, Erickson, Garner and Kelch Should Be Dismissed. First, Plaintiff's claims against Officer Conway should be dismissed.

Plaintiff asserts Officer Conway allegedly violated Plaintiff's Constitutional rights by detaining her and requiring her to obtain drivers' license. Doc. 1 at ¶18. Plaintiff apparently asserts Officer Conway in this fashion "denied and disparaged" her. *Id.* at ¶19. She asserts, for example, referring to a driver's license, no state can convert a right into a privilege and charge a fee for a driver's license. *Id.* at ¶20. She asserts one Court has held there is no license necessary to drive an automobile on public roads. *Id.*

However, such allegations do not give rise to a cognizable legal claim, particularly a Constitutional claim. *See Hallstrom v. City of Garden City,* 991 F.2d 1473, 1477 (9th Cir.1993). (finding no constitutional violation where valid Idaho law required driver's license, and plaintiff was detained for not having one).

Plaintiff appears to be following some sort of script, such as the Plaintiff asserted in *Skurdahl.* In *Skurdahl,* Plaintiff made similar arguments regarding the right to travel. Those arguments were rejected by both the Montana Supreme Court and other Courts. *State v. Skurdal*, 235 Mont. 291, 294, 767 P.2d 304, 306 (1988); *Gordon v. State* (1985), 108 Idaho 178, 697 P.2d 1192, 1193, appeal dismissed, 474 U.S. 803, 106 S.Ct. 35, 88 L.Ed.2d 29 (1985), reh. denied, 474 U.S. 1097, 106 S.Ct. 874, 88 L.Ed.2d 912 (1986). *Miller v. Reed,*176 F.3d 1202, 1205-06 (9th Cir.1999) (holding that there is no "fundamental right to drive" and affirming dismissal of complaint based on state's refusal to renew citizen's driver's

license); *Hallstrom,* 991 F.2d at 1477 (finding no constitutional violation where valid Idaho law required driver's license, and plaintiff was detained for not having one).

Skurdal provides a thorough analysis of the same arguments Plaintiff asserts in this case. In *Skurdal*, the Court held:

> The ability to drive a motor vehicle on a public highway is not a fundamental right; it is a revocable privilege that is granted upon compliance with statutory licensing procedures. *City of Salina,* 737 P.2d at 983; *State v. Svendrowski* (Mo.App. 1985), 692 S.W.2d 348, 349; *Texas Dept. of Public Safety v. Schaejbe* (Tex. 1985), 687 S.W.2d 727, 728; *State v. Coyle* (1984), 14 Ohio App.3d 185,470 N.E.2d 457, 458, 14 O.B.R. 203; *Mackler v. Alexis* (1982), 130 Cal.App.3d 44, 181 Cal.Rptr. 613, 622-623; *State ex rel. Hielle v. A MotorVehicle, Etc.* (N.D. 1980), 299 N.W.2d 557, 562; *Smith v. Cox* (Utah 1980), 609 P.2d 1332, 1333.
>
> Whether it is termed a right or a privilege, one's ability to travel on public highways is always subject to reasonable regulation by the state in the valid exercise of its police power. *Gordon v. State* (1985), 108 Idaho 178, 697 P.2d 1192, 1193, *appeal dismissed,* 474 U.S. 803, 106 S.Ct. 35, 88 L.Ed.2d 29 (1985), *reh. denied,* 474 U.S. 1097. 106 S.Ct. 874. 88 L.Ed.2d 912 (1986).

Skurdal, 767 P.2d at 307.

There is no cognizable legal claim, much less a Constitutional claim, against a police officer, such as Officer Conway for detaining an individual like Plaintiff for not providing a valid driver's license while operating a vehicle, pursuant to MCA § 61-3-212. Officer Conway did not violate any of the Plaintiff's

Constitutional claims, and accordingly, Plaintiff's claims against Officer Conway should be dismissed.

2. **The Allegations Asserted Against Officer Erickson Should Be Dismissed.** Similarly, Plaintiff asserts Officer Erickson allegedly violated her constitutional rights by detaining her when she travelled in her automobile without a license and by converting her right to travel into a privilege and charging a fee for it. Doc. 1 at ¶38 and ¶43. Such an action is not unconstitutional as previously discussed. *See Hallstrom,* 991 F.2d at 1477; *United States v. Gutierrez,* 995 F.2d 169, 171 (9th Cir.1993); and *United States v. Rodriguez–Morales,* 929 F.2d 780, 785 (1st Cir.1991).

Plaintiff further pleads Officer Erickson as Judge Johnson's bailiff violated Plaintiff's Constitutional rights by escorting her from the courthouse on the orders of Judge Johnson. Doc. 1 at ¶78. Escorting someone from a courthouse is not an unconstitutional act, nor is it a Constitutional claim or a legally cognizable civil claim. Further, and most importantly, acts in further of Judge's Johnson orders, such as escorting Plaintiff from the Courthouse, would clearly fall within quasi-judicial immunity. The 9th Circuit has previously held that absolute immunity does protect those "who faithfully execute valid court orders." *Coverdell v. Dep't of Soc. & Health Servs.*, 834 F.2d 758, 764 (9th Cir. 1987).

Accordingly, the claims asserted against Officer Erickson should be dismissed.

3. <u>The Allegations Asserted Against Officers Garner and Kelch Should Be Dismissed</u>. Here, in conclusory fashion, Plaintiff pleads she was "stalked from the court hearing" and her private auto was "kidnapped" as "claimant traveled away from the courthouse." Doc. 1 at ¶59. She asserts Officers Garner and Kelch violated her Constitutional rights when her vehicle was "confiscated" and "stolen." *Id.* at ¶62 and ¶63. Presumably, this relates to her driving her automobile without a valid driver's license as required by law. This claim does not amount to a Constitutional claim or a legally cognizable civil claim, however. Impoundment is proper under the community caretaking doctrine if the driver's violation of a vehicle regulation prevents the driver from lawfully operating the vehicle, and also if it is necessary to remove the vehicle from an exposed or public location. *See Gutierrez,* 995 F.2d at 171 ("After determining that neither Gutierrez nor Cervantes possessed a valid driver's license, the officers advised them that they were free to go, but that they could not drive the Cadillac."); *Rodriguez–Morales,* 929 F.2d at 785 ("Upon ascertaining that neither occupant was properly licensed to drive, the decision not to let the vehicle continue on its journey was quintessentially reasonable.").

Plaintiff also asserts Officer Garner followed her in the building where the City Court is located and told her, if she left the building, she would be arrested after the Judge ordered her bond. Doc. 1 at ¶54. Such an action is not unconstitutional nor does it amount to a legally cognizable, civil claim. Communicating requirements of bail is not an unconstitutional act, much less a civil claim.

Accordingly, Plaintiff's claim against Officers Garner and Kelch should be dismissed.

- **Plaintiff's Claim Concerning Federal Reserve Notes Does Not State A Claim.**

Plaintiff's claims regarding being forced to pay a ticket in U.S. currency verses gold or silver are equally meritless. Doc. 1 at ¶¶81-83.

These claims have been rejected by the Courts. The legality of paper money has consistently been upheld. *Guaranty Trust Co. v. Henwood* (1939), 307 U.S. 247, 59 S.Ct. 847, 83 L.Ed. 1266; *United States v. Wangrud* (9th Cir.), 533 F.2d 495,*cert. denied,* (1976), 429 U.S. 818, 97 S.Ct. 64, 50 L.Ed.2d 79.

Accordingly, this claim should be dismissed.

- **Plaintiff's Constitutional Claims Are Insufficiently Pleaded.**

Plaintiff asserts claims under the First, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth Amendment, 43 U.S.C. §§ 1983, 1985, and 18 U.S.C §§ 241, 242. (Compl. pp. 2- 22). For such claims to survive, they must be adequately pleaded.

In *Ashcroft*, the Supreme Court held that "a plaintiff must plead that each government-official defendant, through the official's own individual actions, has violated the Constitution." *Ashcroft* 556 U.S. at 676. A complaint must be dismissed when it "fails to identify what role, if any, each individual defendant had" in the alleged unconstitutional conduct." *Kwai Fun Wong*, 373 F.3d at 960.

It is respectfully submitted Plaintiff's claims are insufficient as a matter of law.

First, Petitioner's right to travel under the circumstances pleaded is not a violation of the First, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Amendments. See Doc. 1 at ¶17, ¶104; *Skurdal,* 767 P.2d at 307. One's ability to travel on public highways is always subject to reasonable regulation by the state in the valid exercise of its police power. *Gordon* , 697 P.2d at 1193.

Second, it is also not a Constitutional violation to arrest or detain or to "order" a party, such as Plaintiff, "to obtain a driver's license and an automobile license." Doc. 1 at ¶18. This is not actionable under the Fifth, Sixth or Ninth Amendments, regardless of Plaintiff's characterizations these Amendments were created to protect people from tyranny. *Id.* at ¶19.

Third, it is not a Constitutional violation, particularly a First Amended violation, for the City Judge or the City Prosecutor to be employed by the City of Whitefish, or for that matter, a subdivision of the State of Montana, and to hold or

participate in Court proceedings involving traffic citations. *Id.* at ¶32 and ¶33. Those matters are entrusted to the judiciary. It is also not a Constitutional violation for a court, in the exercise of proper judicial discretion, to place limits or constraints on speech in the course of judicial proceedings.

Fourth, it is not a due process violation under the Fifth Amendment to impound vehicles where drivers such as Plaintiff do not have driver's licenses. *Id.* at ¶61; *Gutierrez,* 995 F.2d at 171 and *Rodriguez–Morales,* 929 F.2d at 785.

Assuming as true Defendants had some participation or role in holding Court proceedings relating to these matters or impounding Plaintiff's vehicle, this does not amount to a deprivation of due process or a Constitutional violation of the Fifth, Sixth, Eighth and Ninth Amendments. Doc. 1 at ¶82. It is not a "denial or rights obtained by the people." *Id.* at ¶89. It is not a violation of the people's guaranteed rights protected by the Fifth and Fourteenth Amendments. *Id.* at ¶92 and ¶93. Nor is it cruel and unusual punishment to set bond or require parties like Plaintiff to attend Court proceedings. *Id.* at ¶¶95-99. Nor is a violation of the First, Fifth, Sixth, Seventh, Eighth, and Ninth Amendments to require parties such as Plaintiff to respond to summons. *Id.* at ¶101. These acts do not amount to "peonage" or "involuntary servitude" under the Thirteenth Amendment. *Id.* at ¶106. The Sherman Anti-Trust Act or Uniform Commercial Code has no application to Plaintiff's claims, as pleaded. *Id.* at ¶88 and ¶107. Nor do these acts

amount to a conspiracy establishing "an agreement or meeting of the minds to violate constitutional rights. *United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540-41 (9th Cir. 1989). Mere conclusory allegations are insufficient to state a claim of conspiracy. *See Simmons v. Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003); *Price v. Hawaii*, 939 F.2d 702, 708 (9th Cir. 1991); *Jones v. Community Redevelopment Agency of City of Los Angeles*, 733 F.2d 646, 649 (9th Cir. 1984).

Conclusion

For the above reasons, the Motion to Dismiss should be granted.

Dated this 10th day of March, 2017.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies this brief in support complies with LR 7.1(d)(2)(A). This brief contains 4,033 words, excluding the caption, certificates of service and compliance, table of contents and authorities and exhibit index. The word count function of the word-processing system used to prepare this brief was relied up on in this calculation.

DATED this 10th day of March, 2017.

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CERTIFICATE OF SERVICE

I certify that on March 10th, 2017, a copy of the foregoing document was served on the following persons by the following means:

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