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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

REPLY BRIEF IN SUPPORT OF  
MOTION TO DISMISS OF  
DEFENDANTS JOHNSON,  
CURTIS, CONWAY, ERICKSON,  
GARNER, KELCH, STEARNS  
AND MUHLFELD

COME NOW Defendants Bradley Johnson, Kristi Curtis, Kevin Conway, Shane Erickson, Chase Garner, Chuck Stearns, Bridger Kelch and John Muhlfeld and submit the following Reply Brief in support of their Motion to Dismiss:

**Discussion and Argument**

It is respectfully submitted the claims set forth in Plaintiff's Amended Complaint must be dismissed against these Defendants based upon authorities and arguments set forth in the brief of these Defendants in Support of their Motion to Dismiss. (Doc. 10). Plaintiff has amended her Complaint, and the allegations of the Amended Complaint are not materially different than the original Complaint. (Doc. 21).

The full text of the arguments and authorities set forth in these Defendants' Brief in Support of their Motion to Dismiss will not be repeated except very briefly.

First, the claim or claims against Whitefish City Judge Bradley F. Johnson should be dismissed on grounds of judicial immunity. *Mireles v. Waco*, 502 U.S. 9, 9-10, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991); *In re Application of Floyd*, 413 F.Supp. 574, 575 (D.Nev.1976); *Berkowitz v. U.S.*, 90 F.2d 881, 883 (8th Cir.1937); *Sanchez v. Doyle*, 254 F.Supp.2d 266, 271 (D.Conn.2003); *Clynch v. Chapman*, 285 F.Supp.2d 213, 221 (D.Conn.2003); and *Jefferson v. City of Hazlehurst*, 936 F.Supp. 382, 389-90 (S.D.Miss.1995). The Affidavits filed by

Plaintiff do not change the material facts. (Docs. 23-13 through 23-29). The authorities cited by Plaintiff do not change the law on judicial immunity. (Doc. 23-1, pp. 5-23).

Second, the claims against Whitefish City Prosecutor Kristi Curtis should be dismissed on grounds of quasi-judicial immunity. *Steele v. McGregor*, 1998 MT 85, ¶ 25, 288 Mont. 238, ¶ 25, 956 P.2d 1364, ¶ 25; *Butz v. Economou*, 438 U.S. 478, 512, 98 S.Ct. 2894, 2913, 57 L.Ed.2d 895 (1978); *Imbler v. Pachtman*, 424 U.S. 409, 423, 96 S. Ct. 984, 991, 47 L.Ed.2d 128 (1976); *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). The Affidavits filed by Plaintiff do not change the material facts. (Docs. 23-13 through 23-29). The authorities cited by Plaintiff do not change the law on quasi-judicial or prosecutorial immunity. (Doc. 23-1, pp. 5-23).

Third, the claims against Chuck Stearns and John Muhlfeld should be dismissed because Plaintiff's Amended Complaint fails to plead any particular facts regarding them. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009).

Fourth, the claims against Officers Conway, Erickson, Garner and Kelch should be dismissed. As set forth in the Amended Complaint, Plaintiff's allegations are conclusory and/or fail to establish the deprivation of any

Constitutional right. *Woodrum v. Woodward County, Okl.*, 866 F.2d 1121, 1126 (9th Cir. 1989). The allegations do not give rise to legally cognizable claims, particularly Constitutional claims. *See Hallstrom v. City of Garden City*, 991 F.2d 1473, 1477 (9th Cir.1993); *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); *Hallstrom*, 991 F.2d at 1477 (1993); *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); *Guaranty Trust Co. v. Henwood* (1939), 307 U.S. 247, 59 S.Ct. 847, 83 L.Ed. 1266. The Affidavits filed by Plaintiff do not change the material facts (Docs. 23-13 through 23-29), and the authorities cited by Plaintiff do not change the law. (Doc. 23-1, pp. 5-23). None of the cases cited by Plaintiff change or affect the authorities cited by these Defendants. (Doc. 23-1, pp. 5-23).

### **Conclusion**

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

Dated this 17th day of March, 2017.

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/s/ Todd A. Hammer

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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 689 words, excluding the caption, certificates of service and compliance. The word count function of the word-processing system used to prepare this brief was relied up on in this calculation.

DATED this 17th day of March, 2017.

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CERTIFICATE OF SERVICE

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

- CMF/ECF
- Hand delivery
- Mail
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- E-mail.

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