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Attorneys for Defendant Brian Carter

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

CANDI-LEE WEEKS,

Plaintiff,

v.

BRADLEY F. JOHNSON, BILL
DIAL, KRISTI CURTIS, KEVIN
CONWAY, SHANE ERICKSON,
CHASE GARNER, CHUCK
STEARNS, BRIDGER KELCH, JOHN
MUHFELD, BILL HILL (aka) HILLS
BROTHERS TOWING, BRIAN
CARTER (aka) MOONLIGHTING
BAIL BONDS,

Defendants.

CV16-161-M-DLC-JCL

DEFENDANT BRIAN CARTER'S
PRELIMINARY PRETRIAL
STATEMENT

Defendant, Brian Carter ("Carter"), hereby files his Preliminary Pretrial Statement, in accord with Local Rule 16.2(b)(1) and the Court's Order of March

13, 2017.

A. Brief Factual Outline of the Case

Carter's involvement in factual background of this case is limited. Plaintiff called Moonlighting Bail Bonds at its office in Kalispell, Montana, on November 16, 2016 and spoke with Carter. During that phone conversation, Plaintiff stated that she needed a \$500 bond for a matter in the Whitefish Municipal Court. Carter told her that it would cost Plaintiff \$125, to which Plaintiff agreed. Carter then immediately left the office, and met Plaintiff in the lobby of the Whitefish Municipal Courthouse twenty minutes later.

Carter presented the bond application to Plaintiff, and she was in the middle of filling it out when a judicial clerk asked Carter and Plaintiff to enter the courtroom of Whitefish Municipal Court Judge Bradley Johnson. Carter then confirmed to Judge Johnson that he would be posting a bond for Plaintiff, and then Carter and Plaintiff went back into the lobby to complete the application. Towards the end of the application process, Plaintiff asked Carter what would happen if she did not agree to sign the application. Carter responded that he would be unable to post the bond without her signature. Plaintiff then freely signed the application, but then wrote in the words "under duress threat coercion" on the signature line. Plaintiff then paid Carter for the bond in case, and left the Courthouse.

During the application process, Carter witnessed a Whitefish police officer

inform Plaintiff that she was not allowed to move her vehicle, because it was not registered. Carter later witnessed Plaintiff drive away in the car while pursued by Whitefish Police, and have her car towed.

On or around December 16, 2016, Plaintiff contacted Carter at work, and asked him what would happen if she were to not show up to her court date on December 16, 2016. Carter informed her that if the court forfeited her bond, then there could be a warrant issued for her arrest. That phone call marked the last time that Carter spoke with Plaintiff.

On December 16, 2016 Carter received notice from a Whitefish Municipal Court clerk, who informed Carter that Plaintiff had appeared at her court date, but was so uncooperative that she was told to leave and considered a “no-show.” Moonlighting Bail Bonds then received a written notice of Plaintiff’s non-appearance, signed by Judge Johnson.

B. Basis for Jurisdiction and Venue

This Court has jurisdiction over the asserted constitutional claims of Plaintiff. Venue is proper with this Court as the matter giving rise to the litigation occurred in Flathead County, Montana. No issues appear to exist regarding jurisdiction or venue.

C. Factual Basis for Each Claim or Defense

The basic ground facts are set forth in Paragraph A, above. Defendant Carter believes that Plaintiff has failed to state a claim against him for which relief can be granted. The defenses to the various constitutional claims made against Defendant Carter focus on: failure to establish proximate cause; failure to mitigate damages, if any; the fact that Defendant Carter is not a state actor, and even if he was, he would have qualified immunity; and any damages were caused by persons or entities other than Defendant Carter and over whom it has no control.

D. Legal Theory Underlying Each Claim or Defense

1. Plaintiff's Complaint fails to state a cause of action against Defendant Carter upon which relief can be granted.

Federal Rule of Civil Procedure 12(b)(6).

2. Any conduct by Defendant Carter as alleged in the Complaint was not the proximate cause of Plaintiff's claimed injuries and damages.

If a defendant's act was not the proximate cause of the party's damages, then the chain of causation is broken. *Fisher v. Swift Transp. Co.*, 2008 MT 105, ¶ 39, 342 Mont. 335, 181 P.3d 601.

3. Plaintiff failed to mitigate her alleged damages, if any.

A plaintiff has a positive duty to reduce or mitigate damages. *Diede v. Davis*, 203 Mont. 205, 214-215, 661 P.2d 838, 843 (1983).

- 4. Defendant Carter is not a state actor, and therefore cannot be held liable for claims of constitutional violations. Even if he were to be considered a state actor, he would have qualified immunity.**

Plaintiff's constitutional claims can only be interpreted as a claim under 42 U.S.C. § 1983. Section 1983 liability attaches to a private actor only if the alleged constitutional deprivation is fairly attributable to the State. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 935 (1982). Private parties who are alleged to have violated individual civil rights are not subject to § 1983 liability. *Nat'l Collegiate Athletic Ass'n v. Tarkanian*, 488 U.S. 179, 191 (1988).

- 5. Plaintiff's damages, if any, were caused by persons or entities other than Defendant Carter and over whom it has no control.**

Estoppel prevents a party from taking positions that are inconsistent from declarations made in the past. *Cowan v. Cowan*, 2004 MT 97, ¶ 15, 321 Mont. 13, 89 P.3d 6; Fed. R. Civ. P. 8(c)

E. Computation of Damages

Defendant Carter is not currently seeking damages. Defendant Carter reserves the right to recover costs and/or attorney's fees from Plaintiff.

F. Pendency or Disposition of Related Litigation

Defendant Carter is unaware of any related litigation.

G. Proposed Stipulation of Facts and Parties' Understanding of Applicable Law

Defendant Carter hereby proposes the following stipulations of fact:

1. Defendant Carter is an employee of Moonlighting Bail Bonds, in

Kalispell, Montana.

2. Plaintiff first contacted Defendant Carter at Moonlighting Bail Bonds, on November 16, 2016, to request bail bonds services for charges originating in Whitefish Municipal Court.

3. Defendant Carter met Plaintiff at the Whitefish Municipal Court on November 16, 2016, where he explained the role and process of a bail bondsman, and presented Plaintiff with a contract to engage in the services of Moonlighting Bail Bonds.

4. Thereafter, Plaintiff signed the bond contract, and paid Defendant Carter \$125 in cash.

5. On December 16, 2016, Defendant Carter received notice that Plaintiff had failed to appear at her court date scheduled that same day.

H. Proposed Deadlines for Joinder of Parties/Amendment of Pleadings

Defendant Carter respectfully suggests June 1, 2017 as the appropriate deadline for adding parties or amending pleadings.

I. Identification of Controlling Issues of Law for Pretrial Disposition

Defendant Carter believes that all claims that Plaintiff has asserted against him are suitable for pretrial disposition on the basis that they are constitutional claims against a private individual.

J. Witnesses with Knowledge or Information

Individuals currently believed to have material knowledge or information of the incidents alleged in Plaintiff's Amended Complaint include the following:

Candi-Lee Weeks
175 Hutton Ranch Rd. #103-231
Kalispell, MT 59901

Ms. Weeks has knowledge of the incidents alleged in her Amended Complaint.

Brian Carter
Moonlighting Bail Bonds
P.O. Box 3122
Kalispell, MT 59903

Mr. Carter has knowledge of the incidents related to securing Plaintiff's bond.

Bill Hill
Hill Brothers Towing
5845 US 93
Whitefish MT 59937

Mr. Hill is believed to have knowledge of the incidents related to towing Plaintiff's vehicle.

The following individuals are believed to have knowledge relating to Plaintiff's interactions with law enforcement and court appearances:

Bill Dial
c/o Hammer, Quinn & Shaw, PLLC
P.O. Box 7310
Kalispell, MT 59904
(406) 755-2225

Kristi Curtis
c/o Hammer, Quinn & Shaw, PLLC
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John Muhfeld
c/o Hammer, Quinn & Shaw, PLLC
P.O. Box 7310
Kalispell, MT 59904
(406) 755-2225

K. Substance of Any Insurance Agreement

To Defendant Carter's knowledge there is no insurance agreement that applies to this litigation.

L. Status of Settlement Discussions and Prospects for Compromise

There have been no settlement discussions to date. Settlement appears highly unlikely, as Defendant Carter does not believe he is liable to Plaintiff.

M. Suitability of Special Procedures

No special procedures are known at this time.

DATED this 26th day of April, 2017.

/s/ Robert C. Lukes

Attorneys for Defendant Brian Carter

