

Robert C. Lukes
Tessa A. Keller
GARLINGTON, LOHN & ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Telephone (406) 523-2500
Telefax (406) 523-2595
rclukes@garlington.com
takeller@garlington.com

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
BRIEF IN SUPPORT OF
MOTION TO DISMISS

Defendant Brian Carter ("Carter"), by and through his attorney of record,
hereby files the following brief in support of his motion to dismiss.

I. FACTUAL BACKGROUND

Although unnecessary for a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), Carter provides a general statement as to the underlying background of the claim for the general edification of the Court. This lawsuit arises out of citations that Plaintiff received after a traffic stop for driving with expired license plates, using fictitious license plates, and failure to have a driver's license pursuant to Montana Code Annotated §§ 61-3-312, 61-3-301, and 61-5-102. Carter was not involved in the traffic stop and has very limited direct knowledge of Plaintiff's related court appearances. Following the traffic stop, Plaintiff contacted Carter, a bail bondsman for Moonlighting Bail, on November 16, 2016, seeking a \$500 bond for a matter in Whitefish Municipal Court. That same day Carter met Plaintiff and explained the bond process to her, and presented her with a bond 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 wrote in the words "under duress threat coercion" on the signature line. Next, Plaintiff paid Carter for the bond and left the courthouse. Later, Carter received notice that Plaintiff had failed to appear at her scheduled court date. *See generally* Def. Brian Carter's Prelim. Pretrial State. 2-3, Apr. 26, 2017.

As best as Carter can decipher, Plaintiff's Amended Complaint alleges that he violated a number of her constitutional rights, namely, the right to private property, liberty and the right to travel freely. (*See* Am. Compl., pp. at 4, 14, 18, March 28, 2017.)

II. LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted “tests the legal sufficiency of a claim.” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A dismissal for failure to state a claim under Rule 12(b)(6) is proper if there is a “lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To survive a motion to dismiss, a plaintiff's complaint must have sufficient facts “to state a facially plausible claim to relief.” *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010). The court must accept all factual allegations in the complaint as true, and construe the pleading in the light most favorable to the plaintiff. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).

III. ARGUMENT

Plaintiff's claims against Carter are not enumerated and rather difficult to decipher. With that said, Plaintiff complains that the requirement for her to have a

valid driver's license and valid license plates on her vehicle is an impermissible violation of her constitutional rights. As part of her claim, she blames Carter for this deprivation of rights. This assertion fails to state a claim for a number of reasons.

The 10th Amendment of the United States Constitution states that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” It is well-established that the states have the right to regulate the use of state roads, and that such regulation does not violate the federal constitution. The Supreme Court explained in *Hendrick v. Maryland*, 235 U.S. 610, 618 (1915):

In the absence of national legislation covering the subject, a state may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles -- those moving in interstate commerce as well as others. And to this end it may require the registration of such vehicles and the licensing of their drivers, charging therefor reasonable fees graduated according to the horse-power of the engines -- a practical measure of size, speed, and difficulty of control. This is but an exercise of the police power uniformly recognized as belonging to the states and essential to the preservation of the health, safety, and comfort of their citizens; and it does not constitute a direct and material burden on interstate commerce.

See also Bell v. Burson, 402 U.S. 535, 539 (1971) (rejecting constitutional challenge to statute barring the issuance of licenses to all motorists who do not carry liability insurance or post security); *Reitz v. Mealey*, 314 U.S. 33, 36 (1941)

overruled on other grounds, Perez v. Campbell, 402 U.S. 637 (1971) (noting the necessity of licensing laws as a “form of protecting against damage to the public.”). Here, Plaintiff’s claim that driving regulations are unconstitutional directly conflicts with this well-established law. Further, it is abundantly clear that Carter has not or does not enact, enforce, or implement the laws that Plaintiff asserts violate her constitutional rights. Thus, Plaintiff’s claims against Carter are misplaced.

Even assuming the laws at issue are unconstitutional, Plaintiff’s claim fails because Carter, as a private actor, cannot be held liable for a deprivation of her constitutional rights. In order to establish a claim under 42 U.S.C. § 1983, a plaintiff must prove: (1) “that the defendant has deprived him of a right secured by the Constitution and laws of the United States” and (2) “that the defendant deprived him of this constitutional right under color of any statute, ordinance, regulation, custom, or usage, of any state or territory.” *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 146 (1970). In other words, this second element requires that the plaintiff show the party charged with the deprivation be a person who may fairly be said to be a state actor. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 923 (1982). Action done by a private individual or private company is generally not done “under color of state law.” *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). The Ninth Circuit recognizes that bounty hunters and bail bond agents are not state

actors acting under color of state law for purposes of § 1983. *Ouzts v. Maryland Nat'l Ins. Co.*, 505 F.2d 547, 555 (9th Cir. 1974) (en banc); *see also Landry v. Able Bonding, Inc.*, 75 F.3d 200, 204-205 (5th Cir.1996) (“[T]he mere possession of an arrest warrant does not render a bail bondsman a state actor under § 1983, where he neither purports to act pursuant to the warrant, nor enlists the assistance of law enforcement officials in executing the warrant.”).

In the present case, based on the analysis above, there is no legal basis for Plaintiff to complain that Carter deprived her of a constitutional right. The legal theory relied upon by Plaintiff is inapplicable to Carter. Furthermore, it is undisputed that Carter is a private citizen who entered into a contractual relationship with Plaintiff related to her bond. Carter neither arrested Plaintiff, nor did he seek the assistance of any governmental official at any time. Accordingly, Plaintiff's claim also must fail on the basis that a § 1983 claim against Carter is impermissible under these circumstances. Without a cognizable legal theory, Plaintiff's claim fails as a matter of law.

IV. CONCLUSION

Plaintiff's Amended Complaint fails on multiple levels. Even accepting all the factual allegations in Plaintiff's Amended Complaint as true, her claims against Carter fail to state a cause upon which relief may be granted. *See Fed. R. Civ. P.* 12(b)(6). Based on the foregoing, Carter respectfully requests that the Court grant

his motion to dismiss.

DATED this 30th day of May, 2017.

/s/ Robert C. Lukes
Attorneys for Defendant Brian Carter

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2)(E), I certify that this DEFENDANT CARTER'S BRIEF IN SUPPORT OF MOTION TO DISMISS is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office Word 2010, is 1,279 words long, excluding Caption, Certificate of Service and Certificate of Compliance.

/s/ Robert C. Lukes
Attorneys for Defendant Brian Carter

