

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

CANDI-LEE WEEKS,

Plaintiff,

vs.

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.

CV 16-161-M-DLC-JCL

FINDINGS AND
RECOMMENDATION

Before the Court is the Fed. R. Civ. P. 12(b)(6) motion to dismiss filed by Defendants Montana Municipal Court Judge Bradley Johnson, Deputy City Attorney Kristi Curtis, Whitefish, Montana, Mayor John Muhfeld, Whitefish, Montana, City Manager Chuck Stearns, Whitefish, Montana, and Whitefish City Police Officers Kevin Conway, Shane Erickson, Chase Garner, and Bridger Kelch. For the reasons discussed, the Court recommends the motion be granted and Plaintiff Candi-Lee Weeks' claims against these Defendants be dismissed.

I. Background

On September 29, 2016, a Whitefish City Police Officer, Defendant Kevin

Conway, stopped Weeks while she was driving on Highway 93 in Whitefish, Montana, and detained her apparently for an unidentified traffic violation. Weeks alleges Officer Conway “ordered [her] to obtain a Drivers License and an automobile License by threat of arrest and fees.” (Doc. 21 at 4.) Weeks complains, in essence, that Officer Conway violated her constitutional right to travel. In short, Weeks asserts that under the decisional law of the United State Supreme Court she has a fundamental right to travel and “No License [is] necessary to drive [an] Automobile on public roads.” (*Id.* at 4-5.)

Weeks also complains that Officer Conway required her to pay for a “license” with Federal Reserve Notes that are not backed by gold or silver coins as allegedly required under the United States Constitution, Article 1, section 10.

Officer Conway apparently issued Weeks a traffic citation because she describes multiple appearances she made in the Whitefish Municipal Court by “threat and coercion” or “under duress by threat of arrest.” On October 12, 2016, Weeks appeared before Defendant Bradley F. Johnson, the Municipal Court Judge. Judge Johnson allegedly asked Weeks to leave the courtroom when she asserted her rights. She states Judge Johnson displayed anger and bias against her, and did not provide her an opportunity to be heard.

Weeks complains that during her appearance in court Deputy City Attorney

Kristi Curtis, failed to properly prosecute the matter by failing to produce a “Contract or proof of Claim that her [sic] laws apply to” Weeks. (Doc. 21 at 6.) Weeks also contends Deputy Curtis improperly relied on hearsay to prosecute the matter.

Weeks next appeared in municipal court on October 19, 2016. She demanded “proof of Contract”, but Judge Johnson allegedly ignored her. She further argued that she could not receive fair process because the plaintiff in the traffic violation matter was the State of Montana, and both Judge Johnson and Deputy Curtis were employees of the State of Montana. Weeks states again denied her the right to be heard. Instead, she alleges Judge Johnson informed her he was the trier of fact and that he could do anything he wanted to do in his courtroom. Weeks contends Judge Johnson conducted himself as the fact finder and the prosecutor while also providing legal advice. She alleges Judge Johnson’s conduct constituted “fraud, coercion, extortion,” and it he deprived her of her right to liberty by his threat of arrest.

Weeks alleges that when she left the October 19, 2016 court appearance, Whitefish City Chief of Police Bill Dial, Officer Shane Erickson, and three other law enforcement officers detained Weeks in her Ford Taurus vehicle. According to Weeks, Chief Dial attempted to break the window of her vehicle with the intent

to harm she and her family members.

On November 16, 2016, Weeks again appeared in court under threat of arrest by Judge Johnson. Weeks requested “proof of contract” but no such proof was produced. She contends Deputy Curtis failed to “present the injured party or the Nature and cause and its 3 elements[,]” and therefore has failed to prosecute the matter in violation of Weeks’ rights. (Doc. 21 at 9-10.)

During the November 16, 2016 appearance, and apparently due to Weeks’ failure to appear in court on October 26, 2016, Judge Johnson imposed an appearance bond against Weeks in the amount of \$500 in lieu of her arrest which Weeks claims violated her constitutional rights. Weeks asserts Officer Chase Garner threatened to arrest her if she did not post the bond, which she then signed under duress.

Weeks states that after the November 16, 2016 court hearing, Officers Bridger Kelch and Chase Garner detained her in her private vehicle, informing Weeks that Judge Johnson ordered her vehicle impounded. Officers Kelch and Garner, allegedly in collusion with a private towing company, Defendant Bill Hill, Hills Brothers Towing, took possession of Weeks’ vehicle. Hill imposed a fee against Weeks, and required her to license her private auto, or allow it to be towed away. She asserts the towing company acted under color of state law in denying

her right to freely travel in her vehicle and depriving her of her private property.

Weeks had several subsequent appearances in Municipal Court pertaining to the traffic citation issued to her. The appearances were on November 30, 2016, December 7, 14, and 16, 2016. She complains that throughout those appearances Judge Johnson and Deputy Curtis continued to unlawfully force jurisdiction over her, and Deputy Curtis continued to prosecute the matter allegedly without proper authority, but with Judge Johnson's approval. Weeks asserts Judge Johnson was "practicing law from the bench" by answering Deputy Curtis's questions.

During the December 16, 2016 court appearance, Judge Johnson had the bailiff, Officer Erickson, remove Weeks from the courtroom. Judge Johnson then deemed Weeks to have failed to appear on December 16, 2016, and he ordered her appearance bond forfeited.

Weeks complains that Judge Johnson and Deputy Curtis unlawfully denied her right to travel, and they have forced her to make 7 appearances in court allegedly without jurisdiction over her and, therefore, in violation of her Due Process rights. She alleges Judge Johnson and Deputy Curtis "are attempting to extort a plea and remove [her] rights." (Doc. 21 at 15.)

Weeks' claims are premised upon the assertion that she possesses absolute or inalienable rights to travel, which includes her right to drive her private vehicle

without either a driver's license or a vehicle license plate. From this premise Weeks argues that all Defendants, acting together and under color of state law, through the course of the criminal prosecution against her, are depriving her of rights guaranteed her by the Constitutions of the United States and Montana, as well as the statutory and common law of Montana.

Weeks requests several forms of relief in this action. She seeks an award of compensatory and punitive damages. She also apparently seeks declaratory and injunctive relief in that she demands a "Notice of Violation of [Weeks'] Constitutional Rights" and that the Court order Defendants to "Cease and Desist[.]" (Doc. 21 at 22.)

II. Applicable Law - Fed. R. Civ. P. 12(b)(6) and Pro Se Pleadings

A motion to dismiss under Fed. R. Civ. P. 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 Department*, 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*

Services, Inc., 622 F.3d 1035, 1041 (9th Cir. 2010). The court accepts all factual allegations in the complaint as true and construes the pleadings in the light most favorable to the plaintiff. *Knieval v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). Conclusory allegations and unwarranted inferences, however, are insufficient to defeat a motion to dismiss. *Johnson v. Lucent Techs. Inc.*, 653 F.3d 1000, 1010 (9th Cir. 2011).

Because Weeks is proceeding pro se the Court must construe her pleading liberally, and the pleading, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers[.]” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citation omitted). *See also Neitzke v. Williams*, 490 U.S. 319, 330 n.9 (1989).

III. Discussion

Weeks’ pleading asserts claims against all Defendants for alleged violations of her Constitutional rights committed by Defendants while acting under color of state law. Liberally construed, the Court concludes Weeks’ claims could be cognizable under 42 U.S.C. § 1983. Therefore, her claims “aris[e] under the Constitution”, and the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

Additionally, Weeks refers to rights and claims cognizable under Montana

law. Weeks' state-law claims fall within the Court's supplemental jurisdiction provided in 28 U.S.C. § 1367.

A. Bradley Johnson - Judicial Immunity

Judge Johnson moves to dismiss Weeks' claims against him on the basis that he is immune from liability under the doctrine of judicial immunity. Weeks identifies Judge Johnson as a judge in the municipal court in Whitefish, Montana. For the reasons stated, the Court agrees Judge Johnson is immune from liability.

Judges are "absolutely immune for judicial acts." *Simmons v. Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003). *See also Mireles v. Waco*, 502 U.S. 9, 11-12 (1991). The doctrine of judicial immunity provides an immunity from suit, not just from an assessment of damages. *Mireles*, 502 U.S. at 11. Judicial immunity "reflects the long-standing '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.'" *Olsen v. Idaho State Bd. of Medicine*, 363 F.3d 916, 922 (9th Cir. 2004) (quoting *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347 (1871)).

Judges are entitled to immunity "for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or

corruptly.” *Stump v. Sparkman*, 435 U.S. 349, 356 (1978) (quoting *Bradley*, 80 U.S. at 351). *See also Mireles*, 502 U.S. at 11 (“judicial immunity is not overcome by allegations of bad faith or malice”). The necessary inquiry is whether the judge had jurisdiction over the subject matter of the action pending before the judge. *Stump*, 435 U.S. at 356. Judicial immunity is broadly construed, and a “judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the ‘clear absence of all jurisdiction.’” *Stump*, 435 U.S. at 356-57 (quoting *Bradley*, 80 U.S. at 351). Even “grave procedural errors” do not deprive a judge of immunity. *Ashelman v. Page*, 793 F.2d 1072, 1077 (9th Cir. 1986) (citing *Stump*, 435 U.S. at 359)).

Weeks’ allegations refer to her several appearances in the Whitefish municipal court before Judge Johnson. Weeks’ allegations suggest that all of her appearances were as a result of traffic citations or violation notices issued to her by Officer Conway on September 29, 2016, for driving without a valid driver’s license and failing to have a valid license plate on the automobile she was operating. Alternatively, some of Weeks’ court appearances may have been due to other traffic citations issued to her by other law enforcement officers at other times. In any event, all of Weeks’ allegations against Judge Johnson stem from

his conduct as the presiding judge during Weeks' court appearances. In substance, Weeks' was dissatisfied with Judge Johnson's orders, directives and requirements he imposed upon her in his role as the presiding judge during her court appearances.

Johnson, as a municipal court judge, has jurisdiction over all motor vehicle offenses, including the statutory requirement for all drivers to possess a license. Mont. Code Ann. §§ 3-6-103, 3-10-303, and 61-5-102. Therefore, Judge Johnson had jurisdiction over the traffic citation or citations issued to Weeks, and all of his conduct as alleged by Weeks was conduct committed while acting in his judicial capacity presiding over Weeks' court appearances. Therefore, Judge Johnson is entitled to judicial immunity against Weeks' federal claims, and all of Weeks' federal claims should be dismissed.

Additionally, under Montana law “[j]udicial immunity applies with no stated limitation, and judges are absolutely immune from suit for civil damages for acts performed in their judicial capacities.” *Hartsoe v. Christopher*, 296 P3d 1186, 1188 (Mont. 2013). See Mont. Code Ann. § 2-9-112(2). Therefore, Judge Johnson is also entitled to judicial immunity against liability on Weeks' claims advanced under Montana law, and all of those claims should be dismissed.

B. Kristi Curtis - Prosecutorial Immunity

Deputy Curtis moves to dismiss Weeks' complaint against her on the ground she is entitled to prosecutorial immunity for the conduct she is alleged to have committed. The Court agrees.

With respect to federal claims under section 1983, the scope of absolute prosecutorial immunity is broad and extends to all prosecutorial actions that are "intimately associated with the judicial phase of the criminal process." *Van de Kamp v. Goldstein*, 555 U.S. 335, 341 (2009) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)). Even if the prosecutor violates a plaintiff's constitutional rights during the commission of an act "intimately associated with the judicial phase of the criminal process," the prosecutor is entitled to absolute immunity. *Genzler v. Longanbach*, 410 F.3d 630, 637 (9th Cir. 2005).

To determine whether a prosecutor's conduct was prosecutorial in nature and, thus, entitled to absolute immunity, the courts follow a "functional approach" and look at "the nature of the function performed, not the identity of the actor who performed it." *Kalina v. Fletcher*, 522 U.S. 118, 127 (1997). *al-Kidd*, 580 F.3d at 958 (citing *Buckley*, 509 U.S. at 269). Undisputedly, prosecutorial immunity applies to a prosecutor's conduct for his or her "role in judicial proceedings," (*Burns v. Reed*, 500 U.S. 478, 494 (1991)), and presenting information to a court.

Kalina v. Fletcher, 522 U.S. 118, 130 (1997).

All of Weeks' allegations against Deputy Curtis for her conduct in prosecuting a criminal offense against Weeks arise from Deputy Curtis's conduct while representing the State in court at the time of Weeks' appearances before Judge Johnson. Thus all of Weeks' claims identify conduct in which Deputy Curtis engaged during the judicial phase of the criminal process fulfilling her role in the judicial proceedings. Therefore, Weeks is entitled to prosecutorial immunity against liability on Weeks' federal claims, and all of Weeks' federal claims against Deputy Curtis should be dismissed.

Similarly, under Montana law, prosecutorial immunity protects "participants in the judicial process whose functions are closely associated with those of judicial officers." *Rosenthal v. County of Madison*, 170 P.3d 493, 499 (Mont. 2007) (quoting *Steele v. McGregor*, 956 P.2d 1364, 1369 (Mont. 1998)). Thus, prosecutors are entitled to absolute immunity "when their judgments and conduct are functionally comparable to those implemented by judges." *Id.* The doctrine of immunity protects a person's actions taken in his or her quasi-judicial capacity. *Id.* In determining whether a prosecutor's actions were taken in his or her quasi-judicial or prosecutorial capacity, the Montana Supreme Court follows a functional approach similar to the that of the United States Supreme Court.

Kelman v. Losleben, 894 P.2d 955, 957 (Mont. 1995). A prosecutor's conduct in filing and maintaining criminal charges falls within the duties of a prosecutor entitling the prosecutor to absolute immunity from civil liability, regardless of any negligence. *Rosenthal*, 170 P.3d at 499 (citing *State ex rel Department of Justice v. District Court of the Eighth Judicial District*, 560 P.2d 1328, 1330 (Mont. 1976)).

Based on the foregoing, and in the context of all of the allegations Weeks asserts against Deputy Curtis, the Court finds that Deputy Curtis is entitled to prosecutorial immunity against liability for Weeks' claims advanced under Montana law. Those claims should be dismissed.

C. Officer Conway

1. Right to Travel

Officer Conway stopped Weeks while she was operating a motor vehicle on Highway 93 in Whitefish, Montana, and detained her apparently for not having a license plate on her vehicle, and for not possessing a driver's license. Weeks complains Officer Conway's conduct violated her fundamental or constitutional rights to travel, and she believes she is not required to possess a driver's license in view of her right to travel.

Officer Conway moves to dismiss Weeks' claims against him. For the

reasons stated, the Court agrees.

The United States Supreme Court has recognized citizens have a fundamental right of interstate travel under the United States Constitution. *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 901-902 (1986). But the recognized right does not translate into an inalienable and unconditional right to operate a motor vehicle on public highways without a drivers' license as required by the governing state authorities.

The right to travel is legally subject to certain burdens and limitations. For example, burdens such as gasoline taxes and toll roads do not violate the constitutional right to travel. *Miller v. Reed*, 176 F.3d 1202, 1205 (9th Cir. 1999). Burdens imposed on a specific mode of travel also do not implicate the right to interstate travel. *Id.* A right to operate, drive, or travel in a motor vehicle on public highways does not rise to the level of a fundamental right of interstate travel as the right to travel does not guarantee any specific mode of travel. *Id.* at 1206. Thus a citizen does not have a fundamental right to drive or operate a motor vehicle on public highways without complying with laws and regulations imposed upon drivers or operators of motor vehicles. *Id.*

Montana statutory law imposes various requirements upon individuals who drive or operate a motor vehicle on Montana's public roads. Montana law

prohibits a person from operating a motor vehicle on the public highways unless the vehicle is properly registered and the proper license plate is displayed on the vehicle. Mont. Code Ann. § 61-3-301(1). Furthermore, a person may not operate a motor vehicle upon a highway in Montana unless the person has a valid Montana driver's license. Mont. Code Ann. § 61-5-102. Under federal law as discussed, these licensing requirements imposed by Montana law are still valid and enforceable notwithstanding a citizen's constitutional right to travel.

Based on the foregoing, Weeks' assertion that her constitutional right to travel permits her to operate a motor vehicle in Montana without obtaining a driver's license and without obtaining a proper license plate for her vehicle is without merit. Officer Conway's conduct in enforcing Montana's driver's license and license plate laws did not violate Weeks' constitutional right to travel, and the contention fails to state a cognizable federal claim for relief. Thus, Officer Conway's motion to dismiss should be granted in this respect.

To the extent Weeks' allegations against Officer Conway further assert that his conduct in enforcing Montana licensing laws violated her rights under the Montana Constitution and Montana law, the assertion similarly fails. Montana courts and decisional law recognize "the power of the State to regulate licensing of drivers in the interests of public safety." *State v. Skurdal*, 767 P.2d 304, 306

(Mont. 1988) (citation and quotation omitted). The state’s police power in that regard is valid even when the regulations infringe upon individual rights. *Id.* Very few, if any, constitutional rights are always absolute and inalienable. *Id.*

An individual’s right to travel is separate from the right or privilege to operate a motor vehicle on Montana’s public highways. *Skurdal*, 767 P.2d at 307. The right to travel recognized under both the state and federal constitutions does not permit a citizen to ignore laws governing the use of public roads in Montana. *Id.* A person’s ability to operate a motor vehicle on Montana’s highways is not a fundamental right, but is instead “a revocable privilege that is granted upon compliance with statutory licensing procedures[]” imposed under state law. *Id.* (citations omitted). “[O]ne’s ability to travel on public highways is always subject to reasonable regulation by the state in the valid exercise of its police power.” *Id.* (citations omitted). In the end analysis, “it is a proper exercise of the State’s police power to require a valid driver’s license before one may operate a motor vehicle on the public highways in Montana[,]” and none of Weeks’ Montana constitutional rights or rights under Montana statutory or common law were violated by Officer Conway’s enforcement of the licensing laws.

Based on the foregoing, Weeks’ allegations against Officer Conway fail to state any cognizable claims for relief under Montana law. Weeks’ claims against

Officer Conway under Montana law are subject to dismissal.

2. Federal Reserve Notes

Officer Conway further moves to dismiss Weeks' claim that he unconstitutionally required her to pay a fee for a license with Federal Reserve Notes that are not backed by gold or silver coins. Federal Reserve Notes are "on an equal basis with other coins and currencies of the United States, [and] shall be legal tender for all debts, public and private[.]" *United States v. Wangrud*, 533 F.2d 495, 495-96 (9th Cir. 1976). Therefore, Officer Conway's conduct in requiring Weeks to pay with Federal Reserve Notes did not violate any of Weeks' rights, and the claim should be dismissed.

D. Officer Erickson

Officer Erickson participated in a traffic stop involving Weeks on October 19, 2016, at which time he sought to enforce Montana's licensing laws upon Weeks. She complains Officer Erickson's conduct unlawfully converted her fundamental right to travel into a mere privilege.

Officer Erickson moves to dismiss Weeks' claim that he violated her right to travel. For the reasons already discussed, the Court finds Officer Erickson's conduct in enforcing Montana motor vehicle laws against Weeks did not violate her rights, and Weeks complaint fails to state a claim for relief against Officer

Erickson in this regard.

Weeks further complains that during a court hearing on December 16, 2016, Officer Erickson, serving as a court bailiff, removed her from the courtroom as directed by Judge Johnson. Officer Erickson moves to dismiss this claim.

The doctrine of absolute quasi-judicial immunity extends to “persons who faithfully execute valid court orders [thereby immunizing them] from liability for damages in civil rights actions challenging conduct authorized by the order.”

Coverdell v. Dept. of Social and Health Services, 834 F.2d 758, 764-65 (9th Cir.

1987) (citations omitted). A bailiff who acts at the direction of a judge is

obligated to comply with those directions during the course of judicial

proceedings and, consequently, the bailiff is entitled to the protection of judicial

immunity for his or her conduct committed in compliance with the judge’s orders.

Haldane v. Chagnon, 345 F.2d 601, 604 (9th Cir. 1965).

Weeks asserts Officer Erickson removed her from the courtroom as ordered by Judge Johnson. Therefore, Officer Erickson is entitled to quasi-judicial immunity against Weeks’ claim, and the claim should be dismissed.

E. Officers Garner and Kelch

Weeks alleges that on November 16, 2016, Officers Garner and Kelch stopped Weeks in her motor vehicle. She says they informed her that Judge

Johnson ordered them to impound her vehicle. They proceeded to remove Weeks and her family from the vehicle, and they took possession of Weeks' vehicle. Officers Garner and Kelch move to dismiss this claim, and the Court agrees it is subject to dismissal.

Weeks' allegations establish that Officers Garner and Kelch are entitled to quasi-judicial immunity for their conduct in taking possession of her vehicle. Her allegations assert Officers Garner and Kelch acted in compliance with Judge Johnson's order to impound the vehicle. Therefore, in accordance with *Coverdell*, supra, Officers Garner and Kelch are entitled to immunity against Weeks' claim, and their motion to dismiss should be granted in this respect.

Weeks further alleges that on November 16, 2016, after Judge Johnson ordered Weeks to post a bond for her release Officer Garner informed or threatened Weeks that he would arrest her if she attempted to leave the courthouse without posting a bond. Officer Garner moves to dismiss this claim on the basis the allegations do not describe an unconstitutional act. The Court agrees.

Weeks' allegations establish that Judge Johnson ordered her to post a bond. Officer Garner's subsequent conduct merely communicated his authority, in compliance with Judge Johnson's decision, to enforce the municipal court's imposition of a bond. Officer Garner's conduct in this regard did not violate any

constitutional right, and the claim is subject to dismissal for failure to state a claim on which relief could be granted. Officer Garner's motion should be granted in this respect.

F. Remaining Unspecified/Vague Claims

Defendants move to dismiss all remaining claims Weeks may attempt to assert in her pleading. Defendants argue that although Weeks' allegations reference other legal claims, the allegations are deficient. Weeks fails to include any specific facts supporting her simple references to various rights. Her allegations do not explain how any other referenced legal claims are even implicated, and the allegations fail to include specific facts describing what each individual did, or how each individual's conduct constitutes a violation of such referenced claims. The Court agrees.

A plaintiff in a civil action under 42 U.S.C. § 1983 must plead sufficient facts which describe what specific acts or omissions each individual defendant committed and demonstrate how each individual defendant's own conduct violated the constitution. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009). A pleading is subject to dismissal if the allegations fail to identify "what role, if any, each individual defendant had" in any alleged constitutional violation." *Kwai Fun Wong v. United States*, 373 F.3d 952, 966-67 (9th Cir. 2004). The allegations must

describe each defendants' specific conduct and describe how the conduct caused a constitutional deprivation. *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988).

As Defendants note, and by way of example, at various points in Weeks' pleading she alleges, without specificity, that Defendants are liable for "[v]iolating the 5th, 6th, 8th, 9th civil [rights,]" that Defendants have not provided due process as "guaranteed by the [sic] both the 5th and 14th amendments[,]" that she has been subject to cruel and unusual punishment in violation of the "8th Amendment[,]" that her obligation to appear in court denied her "1st, 5th, 6th, 7th, 8th, and 9th Amendment Rights[,]" and that she is protected against "peonage and involuntary servitude" under the 13th Amendment, but Defendants have apparently imposed those conditions or circumstances on her. (Doc. 21 at ¶¶ 82, 93, 94, 101 and 104.) Weeks' pleading contains these assertions without describing any specific conduct of any individual Defendant which caused the referenced violations. The Court, therefore, finds Weeks allegations are deficient.

By Order entered May 4, 2017, the Court ordered Weeks to file a brief in response to Defendants' motion to dismiss on or before May 15, 2017. (Doc. 32 at 2.) Weeks did not file any document or brief in this case by May 15, 2017. From May 31, 2017, through June 8, 2017, Weeks filed numerous documents with the Court. But none of those documents include any response to the specific

substance of Defendants' arguments asserted in their motion to dismiss. Thus, Weeks has not provided clarifying arguments suggesting how her pleading alleges sufficient facts against each individual Defendant for purposes of stating claims for relief under any of the numerous constitutional violations to which she refers in her pleading. Therefore, based on the foregoing, the Court finds Weeks' allegations fail to state any claim for relief against any moving Defendant under the various constitutional provisions she lists in her pleading, and those claims are subject to dismissal.

IV. Conclusion

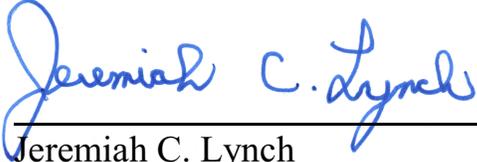
Based on the foregoing, IT IS HEREBY RECOMMENDED that the Fed. R. Civ. P. 12(b)(6) motion to dismiss filed by Judge Johnson, Deputy Curtis, Mayor Muhfeld, City Manager Stearns, and Whitefish City Police Officers Conway, Erickson, Garner, and Kelch be GRANTED, and all of Weeks' claims against these Defendants be DISMISSED.

Ordinarily, “[d]ismissal of a pro se complaint without leave to amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.” *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007) (quoting *Schucker v. Rockwood*, 846 F.2d 1202, 1203-04 (9th Cir. 1988)).

Here, the Court finds the applicable law relative to the right to travel, and

the legal doctrines of immunity discussed in this recommendation are sufficiently broad that Weeks could not plead additional facts in an amendment to save her claims from dismissal under the law discussed. Furthermore, the fundamental underlying legal theory on which Weeks' entire case is predicated is her contention that the constitutional right to travel affords her the right to drive or operate a motor vehicle on Montana's public highways without obtaining a drivers' license or a vehicle license plate as required by law. But because that underlying theory is wholly frivolous, the Court finds Weeks could not plead additional facts to support her other vague claims under various referenced rights. Therefore, IT IS RECOMMENDED the dismissal of the claims discussed in this recommendation be without leave to amend.

DATED this 26th day of July, 2017.



Jeremiah C. Lynch
United States Magistrate Judge