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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
RESPONSE TO PLAINTIFF'S
OBJECTION TO MAGISTRATE'S
FINDINGS AND
RECOMMENDATION

Defendant Brian Carter ("Carter"), by and through his attorney of record,

DEFENDANT BRIAN CARTER'S RESPONSE TO PLAINTIFF'S
OBJECTION TO MAGISTRATE'S FINDINGS AND RECOMMENDATION

hereby files the following response in opposition to Plaintiff's objection to the Magistrate's Findings and Recommendation, dated July 27, 2017 (Doc. 60) ("Mag's Findings").

I. PROCEDURAL ISSUES

Federal Rule of Civil Procedure 72(b)(2) sets forth as follows:

(2) Objections. Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party's objections within 14 days after being served with a copy. Unless the district judge orders otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge considers sufficient.

Local Rule 72.3 further provides:

(a) An objection filed pursuant to 28 U.S.C. § 636(b)(1) must itemize:

(1) each factual finding of the Magistrate Judge to which objection is made, identifying the evidence in the record the party relies on to contradict that finding; and

(2) each recommendation of the Magistrate Judge to which objection is made, setting forth the authority the party relies on to contradict that recommendation.

Plaintiff has filed "Response to Documents 59 & 60," August 1, 2017 (Doc. 61), which appears to be an objection to the Magistrate's Findings and Recommendations. If construed as such, while this document is timely filed pursuant to Federal Rule of Civil Procedure 72(b)(2), Plaintiff does not appear to have taken any efforts to promptly arrange for transcribing the record, and thereby

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her right to review is waived. Furthermore, Plaintiff's ostensible objection does not comply with the requirements set forth in Local Rule 72.3. It is notable that although Plaintiff apparently objects to the Findings and Recommendations as they pertain to Defendant Carter, she does not explain the basis for her objection in any way, or even mention Carter by name. For all the foregoing reasons, Carter submits that Plaintiff has waived her right to review.

II. ON THE MERITS

Even assuming Plaintiff can overcome the foregoing procedural hurdle, her claims against Carter fail on the merits. The Magistrate issued his Findings & Recommendations regarding Plaintiff's claims against Brian Carter on July 27, 2017. The Magistrate accepted all facts as alleged by Plaintiff as true and construed them most favorably to her. Plaintiff claims she was deprived of certain constitutional rights and these are properly construed under the rigors of 42 U.S.C. § 1983. To state a claim under 42 U.S.C § 1983 (2017), a plaintiff must allege the defendant was acting under color of state law. Plaintiff's allegations identify Carter was acting at all relevant times as a bail bondsman. Hence, Plaintiff fails to allege Carter was acting under the color of law. The Findings and Recommendations properly recognize a Ninth Circuit Court of Appeals case finding that an individual like Carter who merely posts a bond is not acting under the color of state law, citing *Ouzts v. Maryland Nat'l Ins. Co.*, 505 F.2d 547, 555

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(9th Cir. 1974). *See* Mag's Findings, 4. Thus, without an allegation that Carter was acting under color of law in the actions at issue, Plaintiff's claims for a deprivation of constitutional rights must fail.

III. CONCLUSION

Plaintiff has failed to establish a claim against Carter for which relief could be granted. Thus, Carter respectfully requests for the Court to issue an order recognizing the Findings and Recommendations are correct, and granting Carter's Motion to Dismiss.

DATED this 15th day of August, 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 BRIAN CARTER'S RESPONSE TO PLAINTIFF'S OBJECTION TO MAGISTRATE'S FINDINGS AND RECOMMENDATIONS 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 578 words long, excluding Caption, Certificate of Service and Certificate of Compliance.

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

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2017, a copy of the foregoing document was served on the following persons by the following means:

_____ Hand Delivery
_____ 1 Mail
_____ Overnight Delivery Service
_____ Fax (include fax number in address)
_____ E-Mail (include email in address)

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