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Attorneys for Defendant Bill Dial

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

<p>CANDI-LEE WEEKS,</p> <p>Plaintiffs,</p> <p>v.</p> <p>BRADLEY F. JOHNSON; BILL DIAL; KRISTI CURTIS; KEVIN CONWAY; SHANE ERICKSON; CHASE GARNER; CHUCK STEARNS; BRIDGER KELCH; JOHN MUHFELD; BILL HILL; and BRIAN CARTER.</p> <p>Defendants.</p>	<p>Cause No: CV-16-161-DLC-JCL</p> <p>ANSWER OF DEFENDANT BILL DIAL AND DEMAND FOR TRIAL BY JURY</p>
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Defendant Bill Dial answers the Complaint filed by Plaintiff as follows:

FIRST DEFENSE

1. The Complaint, and the whole thereof, fails to state claims upon which relief may be granted against Defendants.

SECOND DEFENSE

In response to the allegations of Plaintiff's Complaint, Defendant Bill Dial admits, denies and alleges as follows:

1. Denies the allegations of ¶¶1, 17, 19, 20, 21, 22, 23, 24, 26, 28, 29, 30, 31, 36, 39, 40, 41, 42, 43, 44, 45, 47, 51, 52, 54, 56, 57, , 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 71, 74, 76, 78, 79, 80, 82, 84, 85, 86, 87, 88, 89, 91, 93, 95, 96, 97, 98, 100, 101, 102, 103, 104, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123,124, 125, 126, 127 and 128.

2. Admits the allegations of ¶¶2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 92, 94, 133, 134, 135, and 136.

3. Regarding ¶3, admits Plaintiffs and Defendants are citizens and residents of the State of Montana, otherwise denies the remaining allegations contained therein.

4. Regarding ¶16, admits Defendants have taken an oath of office as required; otherwise denies the remaining allegations contained therein.

5. Regarding ¶18, admits Plaintiff was cited for not having a driver's license; otherwise denies the remaining allegations contained therein.

6. Regarding ¶25, ¶27, ¶34 and ¶35, admits Judge Johnson acted appropriately at all times in response to Plaintiff's statements; otherwise denies the remaining allegations contained therein.

7. Regarding ¶37, admits the police department is located in the same building as the City Court; otherwise denies the remaining allegations contained therein.

8. Regarding ¶81, admits Plaintiff was required to pay in U.S. currency; otherwise denies the remaining allegations contained therein.

9. States with respect to ¶4, 32, 33, 38, 46, 48, 49, 53, 55, 69, 72, 73, 75, 77, 83, 90, 99, and 105, he is without sufficient information to answer or respond and therefore denies same for lack of sufficient information.

10. Regarding ¶129, 130, 132, these allegations appear to be a prayer for damages to which non response is required; however, if a response is required, said allegations are denied.

11. Regarding ¶137, 138, 139, 140, states it appears no response is required; but if a response is required, said allegations are denied.

12. Defendant Dial denies each and every allegation contained in the Complaint that has not been expressly admitted herein.

AFFIRMATIVE DEFENSES

Affirmative Defenses

1. Defendant Dial is entitled to qualified immunity on some or all of Plaintiff's claims.
2. Defendant Dial is entitled to be held harmless and indemnified by the City of Whitefish under the facts and circumstances of this case and state or federal law.
3. Under 42 U.S.C. 1988, Defendant Dial is entitled to an award of attorney's fees in defending Plaintiff's claims brought under 42 U.S.C. § 1983.

APPLICABILITY OF AFFIRMATIVE DEFENSES

At this time Defendant Dial is uncertain what affirmative defenses may apply if this case goes to trial. Discovery, trial preparation and the facts of this case may make some affirmative defenses applicable and thus they are raised in this Answer to avoid being waived. Any affirmative defenses that do not appear to be reasonably supported by the facts and/or law will be dismissed. The purpose of raising these affirmative defenses is not to create defenses where none exist. Instead, it is recognition that the pleadings, discovery and trial preparation require an examination and evaluation of evolving facts and law. The decision maker, whether judge or jury, should have available for consideration all defenses that may apply. Finch further reserves the right to amend its answer, if in the course of

discovery, further defenses become apparent under the facts and circumstances of this case. Finch also reserves the right to amend its answer to assert cross-claims, counterclaims or third-party claims, should discovery reveal that such claims be reasonably supported by the facts and/ or law.

WHEREFORE, Defendant Dial prays for relief as follows:

1. Plaintiff's action against Defendant Dial, as alleged in the Complaint, be dismissed in its entirety with prejudice, never to be brought again.
2. Plaintiff takes nothing against Defendant Dial.
3. Judgment be entered in favor of Defendant Dial awarding him his reasonable costs, expenses and attorney fees allowed by 42 U.S.C. § 1988 and/or by other law or contract incurred in defending against the Complaint.
4. Defendant Dial be awarded such additional relief as the Court deems just and appropriate under the circumstances of this action.

DEMAND FOR JURY TRIAL

Defendant Dial demands a trial by jury on all issues so triable.

Dated this 10th day of March, 2017.

HAMMER, QUINN & SHAW, PLLC

/s/ Todd A. Hammer

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PO Box 7310

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Attorneys for Defendant Bill Dial

CERTIFICATE OF SERVICE

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

- CMF/ECF
- Hand delivery
- Mail
- Overnight delivery service
- Fax
- E-mail.

Candi-Lee Weeks
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