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Attorneys for Defendants Johnson, Dial, Curtis, Conway, Erickson, Garner,
Stearns, Kelch and Muhfeld

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

CANDI-LEE WEEKS,

Plaintiffs,

v.

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.

Cause No: CV-16-161-DLC-JCL

PRELIMINARY PRETRIAL
STATEMENT OF DEFENDANTS
JOHNSON, DIAL, CURTIS,
CONWAY, ERICKSON,
GARNER, KELCH, STEARNS
AND MUHFELD

In accordance with Local Rule 16.2(b)(1), Defendants Johnson, Dial, Curtis,
Conway, Erickson, Garner, Stearns, Kelch and Muhfeld submit their Preliminary

Pretrial Statement as follows:

FACTUAL OUTLINE OF CASE

This matter pertains to an initial incident occurring on September 29, 2016 when plaintiff was cited by Officer Kevin Conway for three citations: expired license plates, fictitious plates, and no driver's license. It also pertains to another incident that occurred on October 19, 2016. Detective Erickson was leaving the emergency services building in his vehicle and observed a passenger vehicle bearing Texas plate number BRN 8327 in front of them. Officer Erickson did not have a mobile data terminal in his vehicle so he requested dispatch run a registration check on the vehicle. Officer Erickson followed the vehicle as it turned southbound onto Highway 93 South. Dispatch informed officer Erickson that the registration on the vehicle was currently expired. Officer Erickson activated his emergency lights in an attempt to make a traffic stop, and the vehicle yielded to the side of the road in the vicinity of the Hampton Inn. Officer Erickson exited his vehicle and made contact with the driver of the vehicle. Officer Erickson identified himself as a detective with the Whitefish Police Department and the reason for the traffic stop. Officer Erickson immediately observed the driver would only lower his window approximately one inch, making any form of verbal communication very difficult. Officer Erickson again advised the driver of the reason for the stop and requested his drivers' license, registration, and proof of

insurance. Officer Erickson observed the male driver later identified by his Nevada drivers' license as Brooks Alan Weeks with only slightly turned his head in Officer Erickson's direction and mumble a few words. Officer Erickson asked Mr. Weeks if he could please lower his window so they could converse is there was an extreme amount of traffic noise along the highway, making any form of verbal communication difficult and almost impossible with the window only being cracked. Mr. Weeks motion to Officer Erickson he would not roll down his window by shaking his head from side to side indicating to Officer Erickson that Mr. weeks was not willing to do this. Officer Erickson continued to explain the reason for the traffic stop and asked on several locations for Mr. Weeks to produce some form of identification or to identify himself. Officer Erickson was professional in communicating with Mr. Weeks and advised him of the lawn Montana and that he was required to have a valid registration on his vehicle as well as produce some form of identification.

During the time Officer Erickson was attempting to communicate with Mr. Weeks, Officer Erickson observed a female in the passenger seat later identified as Plaintiff. Officer Erickson also observed a male in the rear passenger seat directly behind the driver seat. Plaintiff advised Officer Erickson they were just "traveling" and did not have a valid registration or produce any form of identification. Officer Erickson advised Plaintiff driving in Montana was a privilege and not a right and

with that privilege a valid driver's license would be needed to be produced by Mr. Weeks. Plaintiff advised Officer Erickson they were "traveling and he did not need a valid driver's license to travel. Officer Erickson again requested the window be lowered in an attempt to make the process and communications between the parties that are. Again, Mr. Weeks refused to lower the window. At that point, Plaintiff wrote something down on a piece of paper and presented a paper to Officer Erickson which had on it Plaintiff's personal information. Officer Erickson thanks plaintiff for the information but again advised her that Mr. Brook was currently in physical control of the vehicle, and Officer Erickson needed the information. Officer Erickson again asked Mr. Weeks for the information, and he continued to look straight ahead and shook his head from side to side indicating he was not going to produce it. Officer Erickson asked Mr. Weeks several times to produce any form of identification and if he did not, he would be placed under arrest and they would use whatever means necessary to remove him from the vehicle.

Officer Erickson then advised Mr. Weeks if he did not produce any form of identification he would be arrested for obstruction of justice. Mr. Weeks did not respond. Officer Erickson and then attempted to open the driver's door and found it was locked. Police Chief Bill Dial was present during the whole conversation with Mr. Weeks. Officer Erickson advised Chief Dial that Mr. weeks would not

produce any form of identification, roll down the window, or exit the vehicle.

Officer Erickson further advised Chief Dial the driver side door was locked as well. Chief Dial returned to his patrol vehicle and retrieved a flashlight. Chief Dial attempted to break out the rear passenger side window by striking it two to three times with a flashlight with negative results. At this point, a tow truck which was requested arrived on scene and backed up directly in front of the vehicle.

Officer Erickson again made contact with Mr. Weeks at the driver side door, and Mr. Weeks indicated he was willing at this point to provide Officer Erickson with identification. Mr. Weeks was not able to produce a tangible identification but verbally advised Officer Erickson regarding his name, date of birth, and state of his driver's license. Officer Erickson had Officer Stahlberg contact dispatch with this information. Officer Stahlberg advised Officer Erickson that Mr. Week's had a valid driver's license from Nevada. Officer Erickson instructed Officer Stahlberg to issue Mr. Weeks a citation for operating a vehicle with expired registration.

Officer Erickson thanked Mr. Weeks for providing his identification and advised him he would be getting a citation for expired registration and then would be on his way. Officer Erickson also advised Mr. Weeks whole process could have been avoided if Mr. Weeks would have produced his identification when first asked by Officer Erickson. Officer Erickson then issued Mr. Weeks his citation

and advised him he was free to leave.

The matters were then litigated in Whitefish City Court. Judge Bradley Johnson is the Judge in that court, and Kristi Curtis is the City Prosecutor.

JURISDICTION AND VENUE

The Court has jurisdiction over the asserted Constitutional claims of Plaintiff. Also, if Plaintiff's Complaint is interpreted to include claims under state law, this Court would have jurisdiction over those claims. In this regard, venue is proper.

DEFENSES, LEGAL THEORIES AND FACT BASIS

These Defendants contends as follows:

A. Any Violation of Federal Civil Rights:

1. Pursuant to Rule 12 (b)(6), F.R.Civ.P., any federal claims against Defendants Johnson, Curtis, Conway, Erickson, Garner, Stearns, Kelch and Muhfeld should be dismissed for failure to state a claim. The claims against Judge Johnson should be dismissed by reason of judicial immunity. The claims against City Prosecutor Kristi Curtis should be dismissed by reason of prosecutorial immunity. All other claims should be dismissed for failure to state or allege matters to constitute legally cognizable claims.

a. Fact Basis:

The allegations against these Defendants do not state legally cognizable

claims. See Brief in Support of these Defendants' Motion to Dismiss.

2. No act or omission of Garcia caused a violation of Plaintiff's federal civil rights. *Jones v. Williams*, 297 F.3d 930, 936 (9th Cir. 2002); *Harry A. v. Duncan*, 351 F. Supp. 2d 1060, 1072 (D. Mont. 2005).

a. Fact Basis:

These Defendants did not do any affirmative act, participate in another's affirmative act or omit to perform an act that he was legally required to do that caused a deprivation of Plaintiff's federal civil rights.

3. These Defendants are entitled to qualified immunity on each of Plaintiff's civil rights claims against them. *Siegert v. Gilly*, 500 U.S. 226 (1991).

a. Fact Basis:

As to each of the civil rights claims against these Defendants, the circumstances do not amount to a violation of Plaintiff's civil rights. See prior Statement of Facts. Next, the acts or omissions, if any, of these Defendants did not violate any clearly established law. Reasonable officers and employees standing in the shoes of these Defendants could reasonably believe that their acts or omissions, if any, did not violate any federal constitutional rights.

B. Any Alleged Violation of State Laws And Constitutional Rights:

1. No act or omission of Garcia violated Plaintiff's state Constitutional rights. *Dorwart v. Caraway*, 58 P.3d 128, 136, ¶ 44 (Mont. 2002).

a. Fact Basis:

See Facts within this Preliminary Pretrial Statement.

2. Any acts or omissions of these Defendants were privileged.

Restatement (Second) of Torts, § 591; *Wolf v. Williamson*, 889 P.2d 1177, 1179 (1995).

a. Fact Basis:

See Facts within this Preliminary Pretrial Statement. Any acts or omissions of these Defendants were done in the performance of their jobs or as private citizens, and they were justified.

3. Pursuant to Rule 12 (b)(6), F.R.Civ.P., any state claims, including common law claims, against Defendants Johnson, Curtis, Conway, Erickson, Garner, Stearns, Kelch and Muhfeld should be dismissed for failure to state a claim. The claims against Judge Johnson should be dismissed by reason of judicial immunity. The claims against City Prosecutor Kristi Curtis should be dismissed by reason of prosecutorial immunity. All other claims should be dismissed for failure to state or allege matters to constitute legally cognizable claims.

a. Fact Basis:

See Facts within this Preliminary Pretrial Statement. The allegations against these Defendants do not state legally cognizable claims. See also facts in Brief in Support of these Defendants' Motion to Dismiss.

4. Plaintiff does not have a claim for an alleged violation of a state Constitutional right to seek recourse. *Dorwart v. Caraway*, 58 P.3d 128, ¶¶ 39, 44 (Mont. 2002); *Meech v. Hillhaven West, Inc.*, 776 P.2d 488, 491 (Mont. 1989).

a. Fact Basis:

The matter presents questions of law. Plaintiff alleges a denial of a state Constitutional right to seek recourse. Any alleged right to seek recourse does not involve a self-executing Constitutional provision.

5. Under MCA § 2-9-305(4), these Defendants are entitled to indemnity by the Defendant City of Whitefish, if it is made a party to these proceedings, for any money judgment or legal expenses, including attorney's fees, either incurred by them or awarded to Plaintiff.

a. Fact Basis:

The question is a legal question. If the City of Whitefish is made a party Defendant, these Defendants are entitled to immunity, and none of the exclusions provided in MCA § 2-9-305(6) apply.

6. Regarding any claims of negligence, these Defendants did not owe Plaintiff the legal duties alleged.

a. Fact Basis:

See Facts within this Preliminary Pretrial Statement. The Officers acted reasonably and with due care under the facts and circumstances of this case and as

set forth above. *Meng v. Eliason*, 458 P.2d 777, 780 (Mont. 1969). The officers also acted according to the public duty doctrine.

7. No act or omission of the Officers breached a legal duty of care to Plaintiff or caused Plaintiff damages. *Meng v. Eliason*, 458 P.2d 777, 780 (Mont. 1969).

a. Fact Basis:

See Facts within this Preliminary Pretrial Statement. Reasonable cause existed to respond to Plaintiff's conduct in the manner and fashion that the Officers did.

8. If negligent claims are asserted, Plaintiff's own negligent or wrongful acts or omissions caused her damage or injuries. *Green v. Hagele*, 595 P.2d 1159, 1161 (Mont. 1979).

a. Fact Basis:

See Facts within this Preliminary Pretrial Statement. Plaintiff acted unreasonably under the facts and circumstances. She violated the law in regard to the offenses for which she was cited, and she resisted the attempts by Officer to investigate.

C. Compensatory Damages:

1. Plaintiff may only recover those damages measured by actual detriment or actual injury and not by principle or the value or importance of a

Constitutional right. *See Farrar v. Hobby*, 113 S. Ct. 566, 573 (1992); MCA § 27-1-201.

a. Fact Basis:

These matters involve questions of law. Plaintiff separately seeks damages to compensate her for “deprivation of his constitutional rights.”

2. Plaintiff has not been damaged or injured in the manner or to the extent claimed. *See* MCA § 27-1-201; *Farrar v. Hobby*, 113 S. Ct. 566, 573 (1992).

a. Fact Basis:

See Facts within this Preliminary Pretrial Statement.

3. No act or omission or statement of Garcia caused Plaintiff damages or injuries. *See* MCA § 27-1-202; *Memphis Community School Dist. v. Stachura*, 106 S. Ct. 2537, 2542-43 (1986).

a. Fact Basis:

See Facts within this Preliminary Pretrial Statement.

4. Plaintiff may not recover an award of attorney’s fees for an alleged violation of State Constitutional or other rights. *See Dorwart v. Caraway*, 58 P.3d 128, ¶¶ 73-74 (Mont. 2002); *Montanans for Responsible Use of School Trust v. State*, 989 P.2d 800, ¶ 66 (Mont. 1999); MCA § 2-9-314(4).

a. Fact Basis:

No statute or contract provides for an award of attorney's fees for an alleged violation of Plaintiff's state constitutional or other rights. Further, the circumstances do not give rise to an ability to recover attorney's fees under a private attorney general theory.

COMPUTATION OF DAMAGES

These Defendants are not seeking recovery of compensatory damages against Plaintiff, although they reserve the right to proceed with costs and/or attorney's fees from Plaintiff.

EARLY NEUTRAL EVALUATION

These Defendants' counsel understands the early neutral evaluation procedure, has spoken to their clients about it, and has carefully considered it. Settlement does not appear likely. These Defendants do not believe they are liable to Plaintiff. These Defendants' acts or omissions were reasonable.

RELATED STATE AND FEDERAL LITIGATION

None to the best of these Defendants' knowledge.

PROPOSED STIPULATION OF LAW OR FACT

None.

PROPOSED DEADLINE FOR ADDING PARTIES AND AMENDING PLEADINGS

These Defendants respectfully suggest 60 days from the filing of this document as an appropriate deadline for adding parties or amending pleadings.

**CONTROLLING ISSUES OF LAW SUITABLE FOR
PRETRIAL DISPOSITION**

These Defendants respectfully suggest the following matters are suitable for pretrial disposition:

1. Judge Johnson is immune from Plaintiff's claims by reason of judicial immunity.
2. City Prosecutor Kristi Curtis is immune from Plaintiff's claim by reason of prosecutorial immunity.
3. The Officers are protected by qualified immunity.
4. Whether the claims against these Defendants should be dismissed for failure to state claims under Rule 12 (b)(6), F.R.Civ.P.
5. Whether Plaintiff may recover attorney's fees in connection with his state law claims.

PEOPLE WITH KNOWLEDGE OR INFORMATION

Those people currently believed to have material knowledge or information include the following:

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

Information pertaining to the incidents
2. Bradley F. Johnson
c/o Hammer, Quinn & Shaw, PLLC
P.O. Box 7310

Kalispell, MT 59901
(406) 755-2225

Information pertaining to the incidents.

3. Bill Dial
c/o Hammer, Quinn & Shaw, PLLC
P.O. Box 7310
Kalispell, MT 59901
(406) 755-2225

Information pertaining to the incidents.

4. Kristi Curtis
c/o Hammer, Quinn & Shaw, PLLC
P.O. Box 7310
Kalispell, MT 59901
(406) 755-2225

Information pertaining to the incidents.

5. Kevin Conway
c/o Hammer, Quinn & Shaw, PLLC
P.O. Box 7310
Kalispell, MT 59901
(406) 755-2225

Information pertaining to the incidents.

6. Shane Erickson
c/o Hammer, Quinn & Shaw, PLLC
P.O. Box 7310
Kalispell, MT 59901
(406) 755-2225

Information pertaining to the incidents.

7. Chase Garner
c/o Hammer, Quinn & Shaw, PLLC
P.O. Box 7310
Kalispell, MT 59901

(406) 755-2225

Information pertaining to the incidents.

8. Chuck Stearns
c/o Hammer, Quinn & Shaw, PLLC
P.O. Box 7310
Kalispell, MT 59901
(406) 755-2225

Information pertaining to the incidents.

9. Bridger Kelch
c/o Hammer, Quinn & Shaw, PLLC
P.O. Box 7310
Kalispell, MT 59901
(406) 755-2225

Information pertaining to the incidents.

10. John Muhfeld
c/o Hammer, Quinn & Shaw, PLLC
P.O. Box 7310
Kalispell, MT 59901
(406) 755-2225

Information pertaining to the incidents.

11. Bill Hill
Hill Brothers Towing
5845 US 93
Whitefish, Montana 59937

Information pertaining to the incidents.

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

Information pertaining to the incidents.

10. Other witnesses divulged during discovery.

MATERIAL DOCUMENTS

Those documents or other tangible items believed to be material to the claims or defenses in this action include the following:

1. Notice of Initial Appearance.
2. Second Notice of Initial Appearance.
3. Notice of Order to Show Cause.
4. Notice of Status Hearing.
5. Notice of Hearing on Motion.
6. Notice of Arraignment.
7. Affidavit of Appearance.
8. Statement of Candi Weeks 12/16/16.
9. Statement of Brooke Cric Weeks 12/23/16.
10. Statement of Brooke Anthony Weeks II 12/16/16.
11. Second Statement of Brooke Anthony Weeks II 12/23/16.
12. Statement of Brooke Cas Weeks 12/23/16.
13. Statement of Brooke Col Weeks 12/23/16.
14. Certificate of Discharged Bond.
15. Ruling on Defendant's Motions 12/16/16.

16. Certified Notice of Mistake.
17. List of Exhibits
18. Police Case Report.
19. List of Exhibits
20. Notice of Discovery and Disclosure of Witnesses and Exhibits in case of *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305 with Citation E13967 attached.
21. Patrol Video for Whitefish Police Department 2016-10917.
22. 10/12/16 Recorded Hearing in *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305.
23. 10/19/16 Recorded Hearing in *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305.
24. 10/19/16 Documents filed by Ms. Weeks in *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305.
25. Notice of Discovery and Disclosure of Witnesses and Exhibits in case of *City of Whitefish v. Brooke Anthony Weeks*, Whitefish Municipal Court Case TK-16-2428 with Citation E15366 and Whitefish Police Department Case Report 2016-11593 attached.

26. 11/16/16 Motion for Extension of Appearance filed by Ms. Weeks in *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305.
27. 11/16/16 recorded hearing in *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305.
28. 11/30/16 recorded hearing in *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305.
29. 12/7/16 recorded hearing in *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305.
30. 12/7/16 Motion for Dismissal filed by Ms. Weeks in *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305.
31. 12/8/16 Motion to Strike Scandalous Material filed by Ms. Weeks in *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305.
32. 12/14/16 City's Opposition to Defendant's motions filed and served in *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305.
33. 12/14/16 recorded hearing in *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305.

34. 12/16/16 recorded hearing where Ms. Weeks failed to appear in *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305.
35. 12/20 Court's Ruling on Defendant's Motions in *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305.
36. 12/16/16 letter to bondsman in *City of Whitefish v. Candi L. Weeks*, Whitefish Municipal Court Case TK-16-2305.
37. Currently unidentified exhibits necessary for foundation, rebuttal or impeachment.

DEFENSE AND INDEMNITY AGREEMENT

Defense and indemnity concerning Plaintiff's claims against these Defendants are being provided by the Montana Municipal Interlocal Authority ("MMIA") under the terms and conditions of its memoranda of coverage with the City of Ronan. MMIA, an inter-governmental authority, is a group self-insurance plan created under the authority of MCA §§ 2-9-211 and 7-11-101, *et seq.* The City of Ronan (and its officers and employees) is a pool member in the risk protection program. A copy of the applicable MMIA memoranda of coverage will be provided to Plaintiff's attorneys.

PROSPECT FOR SETTLEMENT

A settlement conference at this early stage is not likely to be successful.

Discovery is required to further evaluate liability and damages. From these Defendants' perspectives, they did not do anything wrong.

SUITABILITY FOR SPECIAL PROCEDURES

No special procedures are known at this time.

Dated this 10th day of March, 2017.

HAMMER, QUINN & SHAW, PLLC

/s/ Todd A. Hammer _____

Todd A. Hammer

PO Box 7310

Kalispell, MT 59904-0310

Attorneys for Defendants Johnson, Dial, Curtis,
Conway, Erickson, Garner, Stearns, Kelch and
Muhfeld James Garcia

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
175 Hutton Ranch Rd #103-231
Kalispell, MT 59901

HAMMER, QUINN & SHAW, PLLC

/s/ Todd A. Hammer
Todd A. Hammer
PO Box 7310
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Muhfeld James Garcia