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ANGIE SPARKS
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BY D. R. MERRITT
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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

<p>STATE OF MONTANA, Plaintiff, v. DARREN BOOTH, Defendant.</p>	<p>Cause No. <u>DDC-2017-411</u> STATE'S MOTION FOR LEAVE TO FILE INFORMATION AND SUPPORTING AFFIDAVIT JAMES P. REYNOLDS Presiding Judge</p>
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STATE OF MONTANA)
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County of Lewis and Clark)

Mary E. Cochenour, Assistant Attorney General for the State of Montana, moves the Court for leave to file an Information charging the Defendant, Darren Booth, with Employer Misconduct, a felony, as specified in Mont. Code Ann. § 45-7-501(1)(b).

Mary. E. Cochenour, after first being sworn upon oath, deposes and says, based on information and belief, that investigative information developed and provided to her by John Komora, Agent for the Division of Criminal Investigation of the Montana Department of Justice (DCI), and Shane Shaw, Special Investigator for Montana State Fund (State Fund), demonstrates probable cause to believe that the Defendant has committed the offense charged. The investigative information relied upon by affiant to support probable cause is as follows:

With some exceptions, every employer in Montana shall provide workers' compensation insurance to compensate employees if he or she suffers an on-the-job injury or occupational disease. Mont. Code Ann. § 39-71-401. The State Fund, located in Helena, Montana, is a nonprofit, independent public corporation established for the purpose of providing an option for employers to insure their liability for workers' compensation and occupational disease coverage. State Fund is unique to other insurance agencies in that it must insure any employer who requests coverage. Once a policy is issued, an employer pays insurance premiums to State Fund based on the reported number of employees, reported amount of wages earned, and the classification code assigned to the type of work the employee does.

Montana Code Annotated § 45-7-501 provides that a person who is an employer, as defined in Mont. Code Ann. § 39-71-117, commits the offense of Employer Misconduct if the employer knowingly or purposely misrepresents or falsifies employment records or information, including but not limited to understating the amount of payroll or the number of his employees. A person convicted of the offense of Employer Misconduct shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

A person is legally accountable for conduct that is an element of an offense and that, in the name or in behalf of a corporation, the person performs or causes to be performed to the same extent as if the conduct were performed in the person's own name or behalf. Mont. Code Ann. § 45-2-312.

On July 13, 2016, State Fund Fraud Investigation Coordinator John Forsman referred allegations of Employer Misconduct to the DCI. Forsman alleged that Darren Booth, doing business as DB Construction, failed to accurately report payroll by the company in violation of Mont. Code

Ann. § 45-7-501—Employer Misconduct. Forsman indicated that the State Fund investigation revealed Booth intentionally filed payroll reports with State Fund that omitted wages paid to employees and/or that listed wages in class codes with less costly premium rates when they were doing work in areas that carried higher premiums. The policy was cancelled after Booth failed to file a payroll report for the second time.

With the referral, Forsman included a State Fund Special Investigations Unit (SIU) report, payroll report instructions, payroll reports, two State Fund audits, bank statements, policy documentation, and a CD of interviews. DCI Agent John Komora was assigned to investigate the matter. Agent Komora's investigation revealed the following information:

DB Construction was insured by State Fund from February 27, 2014 through November 30, 2015. The company was insured for five job classification codes: sheet metal work, steel building erection, carpentry, roofing and insulation. Premium for the insurance policy is calculated for each job classification code in a specified dollar amount per \$100 of wages paid to employees. Each job classification carried a different premium that reflected the amount of risk associated with the type of work that was being performed.

During the life of the policy, Booth filed seven payroll reports indicating wages of \$33,450 in policy year 2014-2015, and \$4,000 in the abbreviated 2015-2016 policy year. Booth reported no payroll in three of those reports and did report payroll in four of the payroll reports. In one of the four payroll reports that Booth filed, he failed to report which of the five job classification codes of the payroll pertained to each employee. Of the three payroll reports Booth reported the job classification codes of the work conducted, each report

listed the cheapest job code, 5535-Sheet Metal Work, of the five job classification codes he declared for his business.

In June 2015, State Fund received a call from Brad Boster who reported that Booth was paying employees under the table and as a result employees were not covered for work comp and did not have taxes withheld from the paychecks.

On June 26, 2016, State Fund Investigator Shane Shaw conducted a recorded interview of Darren Booth. Booth told Shaw he understood the difference in the cost of premiums for his various job codes but said he used the 5535 code (sheet metal work) on his payroll reports because it was simpler. It should be noted that this job code was the cheapest premium for his company's work. Booth added that he could not stay in business if he had to pay the costs for the more expensive codes but that he did not know he could be prosecuted for falsifying the payroll reports.

On April 27, 2017, Agent Komora conducted a recorded interview of Brad Boster who worked for Darren Booth, dba DB Construction. Boster stated that Booth would complain about the premiums and stated he reported all wages as "wall work." It was clear to Boster that Booth was "screwing the system" and was not withholding social security from workers' checks. Boster stated that hours worked were never recorded and Booth paid workers whatever they felt they were owed. Boster was paid \$20/hour and often worked 6-7 days a week. Boster felt that he was not paid the appropriate amount for his work. Boster estimated Booth paid him \$8,000 in checks and \$4,000 in cash. Agent Komora asked Boster about the amount of cash Booth was withdrawing from the bank. Boster stated Booth spent a lot of money in bars and casinos, at times spending \$800-\$900 into video gaming

machines on a particular night. Boster opined that Booth had a gambling problem.

Agent Komora analyzed Booth's 2014 bank records obtained via a subpoena and Booth's 2015 records given to State Fund by Booth and observed a number of checks written to known employees. Agent Komora observed a number of checks written to employees during the policy as follows:

- Brad Boster 7 checks totaling \$15,328.40
- Chance Boster 5 checks totaling \$8,208.10
- Nick Gunsch 5 checks totaling \$8,417.50
- John Sincavage 2 checks totaling \$1,950
- Elizabeth Bezanson 6 checks totaling \$7,145.99
- David Harris 8 checks totaling \$6,864.04
- Devon Lundin 5 checks totaling \$5,796.04
- Ryan McGuire 2 checks totaling \$2,671.30

These checks to employees during the life of the policy total \$56,381.37 which is \$18,931.37 more than the \$37,450 Booth reported on his payroll reports. The \$56,381.37 paid to employees does not include cash payments Booth made to the employees. Agent Komora noted that during the length of the policy of February 27, 2014 to November 30, 2015, Booth withdrew \$62,545, with which he could have paid employees wages as stated by Boster.

State Fund conducted two audits on Booth's State Fund policy. The audits determined in the two policy years Booth underreported his wages by \$4,708 in the first year, and by \$23,521 in the second year. In review of the interviews conducted in this investigation, it appears that virtually all the work done by DB Construction would fall into the job code of Iron/Steel Erection (5059). **When calculating the unpaid premiums under this code the figure is \$10,395.29.** In addition, Booth failed to report to State

Fund that he had paid the following employees: Elizabeth Bezanson, David Harris, John Kirby, Devon Lundin, Ryan McGuire, and John Sincavage.

Based on these facts, the affiant believes probable cause exists that the Defendant committed the offense of Employer Misconduct between February 27, 2014, through November 30, 2015, by knowingly misrepresenting to State Fund the number of employees he hired to work and the job code classifications of the employees he had reported to State Fund, all so that he would not have to pay the higher premiums on his worker's compensation insurance policy. The estimated loss of premiums to State Fund for the Defendant's misrepresentations and omissions is approximately \$10,395.29

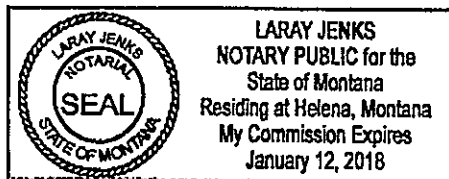
Accordingly, the affiant moves the Court for leave to file the requested Information.

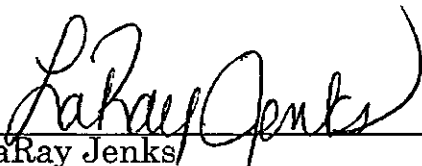
Respectfully submitted this 3rd day of October, 2017.



MARY E. COCHENOUR
Assistant Attorney General

SUBSCRIBED AND SWORN TO before me this 3rd day of October, 2017.





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FILED Oct 4 2017
ANGIE SPARKS, Clerk of District Court
By JAMES P. REYNOLDS Deputy

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

STATE OF MONTANA, Plaintiff, v. DARREN BOOTH, Defendant.	Cause No. <u>DDC-2017-411</u> ORDER GRANTING STATE'S MOTION FOR LEAVE TO FILE INFORMATION JAMES P. REYNOLDS Presiding Judge
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Based on the State's Motion for Leave to File Information and Supporting Affidavit, the Court finds probable cause to believe the above-named Defendant has committed the alleged offense of Count 1: Employer Misconduct, a felony, as specified in Mont. Code. Ann. § 45-7-501(1)(b).

Accordingly, **IT IS ORDERED** that the State's motion for leave to file an Information is granted.

Dated this 4 day of October, 2017.

JAMES P. REYNOLDS

DISTRICT JUDGE

MARY E. COCHENOUR
Assistant Attorney General
P.O. Box 201401
Helena, MT 59620-1401
Telephone: (406) 444-2026

COUNSEL FOR STATE

OCT 4 2017
SPARKS, Clerk of District Court
DARREN BOOTH

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

STATE OF MONTANA, Plaintiff, v. DARREN BOOTH, Defendant.	Cause No. <u>DDC-2017-411</u> INFORMATION JAMES P. REYNOLDS Presiding Judge
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Mary E. Cochenour, Assistant Attorney General, alleges that the Defendant, Darren Booth, has committed, in Lewis and Clark County, the offense of Employer Misconduct, a felony, as specified in Mont. Code Ann. § 45-7-501(1)(b). A person convicted of Employer Misconduct is subject to a term of imprisonment in the state prison not to exceed 10 years, or to a fine not to exceed \$50,000, or to both such imprisonment and fine.

The facts constituting the offense of Employer Misconduct are as follows:

On or about and between February 27, 2014 through November 30, 2015, the Defendant purposely or knowingly misrepresented the number of employees and their wages, and misrepresented or falsified employment records that were sent to Montana State Fund, located in Lewis and Clark County, Montana, to avoid paying a higher rate of premiums on his workers' compensation insurance policy. The misrepresentations and/or falsified

documents sent by the Defendant resulted in a loss of insurance premiums owed to Montana State Fund of at least \$10,395.29.

A list of the possible witnesses for the State now known to the prosecution is as follows:

1. Agent John Komora, Division of Criminal Investigation, Helena, MT;
2. Shane Shaw, Montana State Fund, Helena, MT;
3. Elizabeth Bezanson, Hamilton, MT;
4. Brad Boster, East Helena, MT;
5. Chance Boster, East Helena, MT;
6. Clyde Brandt, Havre, MT;
7. Kim Grafel, Fairfield, MT;
8. Kathleen Graybeal, Fairfield, MT;
9. Nick Gunsuch, East Helena, MT;
10. David Harris, East Helena, MT;
11. Jamie Kurtz, Helena MT;
12. David Lundin, Helena, MT;
13. John Sincavage, East Helena, MT; and
14. Custodian of Records, Valley Bank.

Respectfully submitted this 3rd day of October, 2017.



MARY E. COCHENOUR
Assistant Attorney General

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

STATE OF MONTANA, Plaintiff, v. DARREN BOOTH, Defendant.	Cause No. <u>DDC-2017-411</u> SUMMONS JAMES P. REYNOLDS Presiding Judge
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THE STATE OF MONTANA TO: DARREN BOOTH
3110 Smitty Court
Helena, MT 59602

An Information has been filed against you in District Court, alleging that you committed, in Lewis and Clark County, the offense of Count 1: Employer Misconduct, a felony, as specified in Mont. Code. Ann. § 45-7-501(1)(b). A person convicted of felony Employer Misconduct is subject to incarceration in the state prison for a period of 10 years and a \$50,000 fine.

You are hereby summoned to appear before this Court on the 25 day of October, 2017, at the hour of 8:30 (a.m./p.m.), for an initial appearance, at the Lewis and Clark County Courthouse in Helena, Montana. **You are further directed to present yourself at the Lewis and Clark County Sheriff's Department, immediately prior to or following this hearing, for the purpose of being fingerprinted, photographed, and booked.** Failure to personally appear before this Court at said date and time, with or

without counsel, will result in the issuance of a warrant for your arrest and may result in the suspension of your driver's license.

Dated this 4 day of October, 2017.

JAMES P. REYNOLDS

DISTRICT COURT JUDGE