

Jeffrey B. Smith
GARLINGTON, LOHN & ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Telephone (406) 523-2500
Telefax (406) 523-2595
jbsmith@garlington.com
Attorneys for Defendant, Lee Enterprises, Inc.

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

MICHAEL E. SPREADBURY,

Plaintiff,

v.

BITTERROOT PUBLIC LIBRARY,
CITY OF HAMILTON, LEE
ENTERPRISES, INC., and BOONE
KARLBERG P.C.,

Defendants.

Cause No. CV-11-064-M-DWM

DEFENDANT LEE ENTERPRISES,
INC.'S STATEMENT OF
UNDISPUTED FACTS IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT ON REMAINING
COUNTS

Pursuant to Local Rule 56.1(a), Defendant, Lee Enterprises, Inc. (“Lee Enterprises”), submits the following Statement of Undisputed Facts in Support of its Motion for Summary Judgment On Remaining Counts.

1. In May or June of 2009, Spreadbury met with Ms. Nansu Roddy (“Roddy”) at the Bitterroot Public Library (“Library”). (2nd Amend. Compl. ¶ 31 (Aug. 10, 2011) (Dkt. 90).

2. The purpose of the meeting was to admit a letter written by another person on the reserve shelf of the library. Dkt. 90 at ¶ 31.
3. Roddy, on behalf of the Library, refused to admit the letter. Dkt. 90 at ¶ 32.
4. After numerous interactions with Library staff, Spreadbury was banned from the Library. Dkt. 90 at ¶¶ 33-35.
5. After being banned from the Library, witnesses reported to local law enforcement that Spreadbury returned to the Library property. Dkt. 90 at ¶¶ 43-46.
6. Spreadbury was subsequently charged with criminal trespass. Dkt. 90 at ¶ 46.
7. The *Ravalli Republic*, a newspaper owned by Lee Enterprises, published articles stemming from the criminal trespass charges. Dkt. 90 at ¶¶ 17, 49, 52.
8. The articles were republished by other Montana newspapers affiliated with Lee Enterprises, including the *Missoulian*. Dkt. 90 at ¶¶ 16, 52.
9. However, none of the articles contained personal opinions from the reporters, but, instead, were based purely on official Ravalli County Court documents. Dkt. 57-1, Ex. A: Aff. Stacey Mueller ¶ 3 (June 20, 2011).
10. Around this same time period, Spreadbury was verbally abusive to *Ravalli Republic* staff at the *Ravalli Republic* offices located at 232 Main Street,

Hamilton, Montana. As a consequence, Spreadbury is not allowed in the *Ravalli Republic* offices. Spreadbury has been personally notified, along with the Sheriff's Department, that he is not allowed in the *Ravalli Republic* offices because of his past abusive behavior. Dkt. 57-1, Ex. A at ¶¶ 4-6; Dkt. 90 at ¶¶ 38-39.

11. On September 10, 2009, the *Ravalli Republic* published an article detailing the trespass charges brought against Spreadbury. Dkt. 90 at ¶ 49; Dkt. 57-1, Ex. B: Sept. 10, 2009, *Ravalli Republic* article.

12. The article was entitled, "Mayoral candidate charged with trespass," and included a picture of Spreadbury. Dkt. 90 at ¶ 49; Dkt. 57-1, Ex. B.

13. The *Ravalli Republic* publishes their articles on its website, and allows readers to make comments on the articles. Dkt. 84-1 at ¶ 3.

14. The September 10, 2009 article was published on the *Ravalli Republic* website. Dkt. 90 at ¶ 50; Dkt. 84-1 at ¶ 5; Foundational Aff. Jeffrey B. Smith, Exs. A-B (Sept. 27, 2011) ("Aff. Smith").

15. A third party on-line reader published a comment on the September 10, 2009 article; stating Spreadbury "suffers serious psychological problems and needs to seek help." Dkt. 90 at ¶ 50; Dkt. 84-1; Aff. Smith, Exs. A-B.

16. A third party on-line reader published another comment on the September 10, 2009 article, stating "Spreadbury is ready for Warm Springs." Dkt. 90 at ¶ 51; Dkt. 84-1 at ¶ 5; Aff. Smith, Exs. A-B.

17. The *Ravalli Republic* did not encourage, create, or otherwise develop the comments. Dkt. 84-1 at ¶ 6.

18. The *Ravalli Republic* has not altered or otherwise edited the comments. Dkt. 84-1 at ¶ 7.

19. While Spreadbury's criminal trespass charges were pending, Spreadbury approached Roddy outside the Library and, as a result of the encounter, Roddy sought and obtained an Order of Protection against Spreadbury. Dkt. 57-1, Ex. D: relevant orders in Ravalli County Cause No. DV-10-93.

20. Based upon Spreadbury's encounter with Roddy, felony intimidation charges were brought against Spreadbury. Both the *Missoulian* newspaper and the *Ravalli Republic* published articles regarding the intimidation charges brought against Spreadbury. Dkt. 57-1, Ex. E: Nov. 10, 2009, *Missoulian* article, Ex. F: Nov. 11, 2009, *Ravalli Republic* article.

21. Subsequently, the *Missoulian* and the *Ravalli Republic* published articles regarding Spreadbury's initial appearance for the intimidation charges. Dkt. 57-1, Ex. G: Dec. 3, 2009, *Missoulian* article, Ex. H: Dec. 4, 2009, *Ravalli Republic* article.

22. On February 18, 2010, based on proof beyond a reasonable doubt, a jury in the City Court for the City of Hamilton found Spreadbury guilty of criminal trespass. Spreadbury appealed the conviction. Dkt. 57-1, Ex. I: Feb. 18, 2010,

City Court, City of Hamilton Verdict & Feb. 18, 2010, Sentencing Or.

23. On February 22, 2010, the *Ravalli Republic* published an article regarding Spreadbury being found guilty of the criminal trespass charges. Dkt. 57-1, Ex. J: Feb. 22, 2010, *Ravalli Republic* articles.

24. In May 2010, Spreadbury filed amended Complaints in separate suits against Roddy, a Library employee, Angela Wetzsteon, and George Corn, employees for Ravalli County, and Kenneth Bell, employee for the City of Hamilton. Dkt. 12-2: Ex. B: Amend. Compl., Cause No. DV-10-224; Dkt. 12-3: Ex. C: Amend. Compl., Cause No. DV-10-223; Aff. Smith, Ex. C: Amend. Compl., Cause No. DV-10-222.

25. The Defendants filed separate Motions for Summary Judgment and Judge Larson heard oral argument regarding the motions on August 6, 2010. Aff. Smith, Ex. D: Transcr. Proceedings, Cause No. DV-10-222 (Aug. 6, 2010); Ex. E: Transcr. Proceedings, Cause No. DV-10-223 (Aug. 6, 2010); Ex. F: Transcr. Proceedings, Cause No. DV-10-224 (Aug. 6, 2010).

26. During the hearing on the County's Motion for Summary Judgment, the County's attorney argued, among other things, that Spreadbury's claim of emotional distress was without merit because the Defendant had prosecutorial immunity. Aff. Smith, Ex. D at 3:16.

27. In response, Spreadbury argued prosecutorial immunity did not cover

the County attorneys because of the nature of the office's actions, stating "I don't see how George Corn is entitled to any immunity whatsoever." Spreadbury also argued immunity was not proper because the case against him was tried by an unsupervised law student. Aff. Smith, Ex. D at 7:9-10.

28. During the hearing on the City's Motion for Summary Judgment Spreadbury argued Bell had no authority to try a prior case against him. Spreadbury claimed the City's actions were "outrageous", that Bell is "lost in space," and "it would be another year of fun" if Bell wanted to charge him with trespassing in the Courtroom. Aff. Smith, Ex. E at 5:24-25, 7:1-2.

29. Also, on August 6, 2010, the Ravalli District Court had a pretrial conference for Spreadbury's appeal from his conviction of criminal trespass. Aff. Smith, Ex. G: Or. Setting Hrg. (Aug. 6, 2010).

30. On August 9, 2010, the *Ravalli Republic* published an article regarding the August 6, 2010 hearings. The August 9, 2010 article correctly noted Spreadbury was previously charged and convicted of criminal trespass, and the Court held a pretrial conference on August 6, 2010, concerning Spreadbury's appeal from the conviction. Aff. Smith, Ex. H: *Ravalli Republic* article (Aug. 9, 2010).

31. The August 9, 2010 article summarizes the arguments made in the hearings held on August 6, 2010, and details comments made by Spreadbury

during the hearings. Aff. Smith, Ex. H.

32. On August 17, 2010, the criminal trespass charges against Spreadbury were dropped. Aff. Smith, Ex. I: Or. Dismissal, Cause No. DC-10-26 (Aug. 17, 2010).

33. Later, Spreadbury asked that the *Ravalli Republic* make a correction to the August 9, 2010 article. Dkt. 90 at ¶ 90.

34. On August 24, 2010, the *Ravalli Republic* published a correction to the August 9, 2010 article, noting the City had subsequently dropped the charges of criminal trespass against Spreadbury. Aff. Smith, Ex. J: *Ravalli Republic* correction (Aug. 24, 2010).

35. Both the *Missoulian* and the *Ravalli Republic* published articles regarding the City dropping the charges. Dkt. 14; 57-1, Ex. K: *Missoulian* article (Aug. 18, 2010), Ex. L: *Ravalli Republic* article (Aug. 19, 2010).

36. Finally, Spreadbury pled guilty to the felony intimidation charges. Subsequently, both the *Missoulian* and the *Ravalli Republic* published articles regarding Spreadbury pleading guilty to the felony intimidation charges. Dkt. 57-1, Ex. M: *Missoulian* article (Oct. 15, 2010), Ex. N: *Ravalli Republic* article (Oct. 15, 2010), Ex. O: *Ravalli Republic* article (Oct. 17, 2010).

37. The current matter is brought against the Library, City of Hamilton, Lee Enterprises, and the law firm of Boone Karlberg, P.C. Regarding Lee

Enterprises, Spreadbury alleges: Count 8 – Tortious Interference With Prospective Economic Advantage; Count 18 – Negligence/Negligence Per Se; Count 19 – Defamation, Defamation Per Se; Count 20 – Intentional Infliction of Emotional Distress; Count 21 – Negligent Infliction of Emotional Distress; Count 23 – Injunctive Relief; and Count 26 – Punitive Damages. Dkt. 90 at 25-26, 34-40, 42.

38. On July 28, 2011, the U.S. Magistrate Judge entered Findings and Recommendations (Dkt. 75) regarding Lee Enterprises' Federal Rule of Civil Procedure 12(b)(6) motion to dismiss Spreadbury's Amended Complaint (Dkt 1-1) for failure to state a claim upon which relief can be granted, and Findings and Recommendations regarding Spreadbury's Motion for Partial Summary Judgment against Lee Enterprises.

39. The U.S. Magistrate recommended Lee Enterprises' Motion to Dismiss be granted in part, and denied in all other respects. Specifically, the Court recommended dismissal of Spreadbury's defamation claim with respect to the articles published by Lee Enterprises, dismissal of Spreadbury's defamation per se claim, dismissal of Spreadbury's 42 U.S.C. § 1983 claim, and dismissal of Spreadbury's claim of negligence per se. Dkt. 75.

40. On August 10, 2011, the U.S. Magistrate granted Spreadbury's request to amend his pleadings with respect to his claim against Lee Enterprises stemming

from the *Ravalli Republic*'s August 9, 2010 article, alleging Lee Enterprises published false information. Dkt. 85.

41. In particular, Spreadbury alleges the August 9, 2010 article contains false information about his criminal behavior, prior lawsuits filed, and comments made by him in oral arguments before Judge Larson in the 21st Judicial District Court. Dkt. 90 at ¶ 89.

42. Accordingly, the following issues in Spreadbury's Second Amended Complaint remain: Count 8, Tortious Interference With Prospective Economic Advantage; Count 18, Negligence, as to the comments published by Lee Enterprises, and for the alleged false statements made in the August 9, 2010 *Ravalli Republic* article; Count 19, Defamation, as to the comments published by Lee Enterprises, and for the alleged false statements made in the August 9, 2010 *Ravalli Republic* article; Count 20, Intentional Infliction of Emotional Distress, as to the comments published by Lee Enterprises, and for the alleged false statements made in the August 9, 2010 *Ravalli Republic* article; Count 21, Negligent Infliction of Emotional Distress; Count 23, Injunctive Relief, as to the comments published by Lee Enterprises, and for the alleged false statements made in the August 9, 2010

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Ravalli Republic article; and Count 26, Punitive Damages.

DATED this 28th day of September, 2011.

/s/ Jeffrey B. Smith
Attorneys for Defendant, Lee Enterprises, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of September, 2011, a copy of the foregoing document was served on the following persons by the following means:

<u>1, 3</u>	CM/ECF
_____	Hand Delivery
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_____	E-Mail

1. Clerk, U.S. District Court
2. Michael E. Spreadbury
P.O. Box 416
Hamilton, MT 59840
Pro Se Plaintiff
3. William L. Crowley
Natasha Prinzing Jones
Thomas J. Leonard
bcrowley@boonekarlberg.com
npjones@boonekarlberg.com
tleonard@boonekarlberg.com
Attorneys for Defendants Bitterroot Public Library, City of Hamilton, and Boone Karlberg P.C.

/s/ Jeffrey B. Smith
Attorneys for Defendant, Lee Enterprises, Inc.