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Attorneys for City and Library Defendants

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., BOONE
KARLBERG P.C., DR. ROBERT
BROPHY, TRISTA SMITH, NANSU
RODDY, JERRY STEELE, STEVE
SNAVELY, STEVEN BRUNER-
MURPHY, RYAN OSTER,
KENNETH S. BELL, and JENNIFER
LINT,

Defendants.

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

**CITY AND LIBRARY
DEFENDANTS' BRIEF IN
OPPOSITION TO PLAINTIFF'S
RULE 11 MOTIONS**

INTRODUCTION

This opposes Plaintiff's motions, dated November 4, 2011, for an award of sanctions under Rule 11, Fed. R. Civ. P. [See Docs. 137 and 138.] The motions should be denied. They are not supported by the law or the record.

DISCUSSION

A. The Use of Subpoenas Does Not Support Rule 11 Sanctions:

Plaintiff is not an inexperienced pro se litigant. On his "Linked in" site for professional networking, Plaintiff lists himself as the "Chief Barrister at Spreadbury Law." [Exhibit A.] In fact, Plaintiff has been involved in a number of lawsuits in Montana. While not exhaustive, Plaintiff has litigated in Montana Federal Court in *Spreadbury v. Hoffman, et al.*, Cause No. CV-10-49-M-DWM, and *Spreadbury v. U.S. Department of Health and Human Services*, Cause No. CV-10-81-M-DWM. He has also litigated many cases in State District Court, Ravalli County, Montana. These include *Spreadbury v. Wetzsteon and Corn*, Cause No. DV-10-222, *Spreadbury v. Bell*, Cause No. DV-10-223, *Spreadbury v. Roddy*, Cause No. DV-10-224, *Spreadbury v. City of Hamilton and Bell*, Cause No. DV-10-639, and *Spreadbury v. Mahar, City of Hamilton and Boone Karlberg P.C.*, Cause No. DV-11-535. In addition, Plaintiff pursued a Chapter 7 bankruptcy in *In re Michael Edward Spreadbury*, Cause No. 98-BK-33234, U.S. Bankruptcy Court, District of Montana, and copies of court documents have been requested in

Spreadbury v. Buckeye Union High, et al., Cause No. CV-04-255, United States District Court, District of Arizona. Finally, Plaintiff has been involved in judicial proceedings in at least three criminal matters. In summary, Plaintiff has sued a minimum of 53 individuals and entities, many multiple times. He is well versed in litigation standards and procedures.

Based on his litigation experience, Plaintiff knows that fundamental elements need to be proven concerning both liability and damages. As to damages, this includes the nature, extent and cause of the alleged damages. A party cannot rest on mere allegations to carry the burden of proof. *See, generally, Southern Pac. Transp. Co. v. U.S.*, 456 F. Supp. 931, 940 (E.D. Cal. 1978).

Plaintiff condemns subpoenas and accompanying letters issued to Lehigh University, FEMA and Riverfront Mental Health Center. [Exhibits A-C to Doc. 137.] Other subpoenas were sent to the University of Montana Registrar, the Montana Education Licensure (Certification) Program, RLK Hydro, Inc. and Group Delta Consultants and Geotechnics, Inc. Those who received subpoenas were not randomly selected. The subpoenas were issued because of Plaintiff's allegations and discovery answers in this lawsuit. In other words, the subpoenas serve a proper purpose. Also, they are not frivolous, legally unreasonable or without foundation. Rule 11(b), Fed. R. Civ. P.

Plaintiff seeks \$2.2 million in damages for lost earnings. He seeks somewhere between \$1 million and \$3 million in damages for emotional distress. [Doc. 10, p. 29.] According to Plaintiff, a state vocational specialist has documented that Plaintiff is unable to seek or maintain gainful employment due to the acts of the Defendants, and Plaintiff was awarded a favorable social security disability benefit decision. [Doc. 16, pp. 2-3; Doc. 136, p. 4, ¶ 14; Doc. 136-1.] At the same time, Plaintiff's "Linked in" site states that he has been the principal geologist at Windriver Geosciences from January 1996 to the present. [Exh. A.] Also, in the past, Plaintiff has said that a prosecution by the Ravalli County Attorney's Office caused him to lose his "FEMA" career. [Exhibit B, p. 1, last para. (Email by Plaintiff, 9/23/10).]

As to Plaintiff's income and emotional damage claims, Plaintiff has not answered the Library's Interrogatory No. 4 addressed to his emotional distress, including the identity of people with knowledge and material documents. Likewise, his response to the Library's Interrogatories Nos. 6 and 7 did not identify any healthcare professionals who have examined or treated him. Next, Snavelly's Interrogatory No. 6 sought information about Plaintiff's work or employment history. Plaintiff's response reads, "I am not applying for a position. I am redressing injury caused by Defendants, including Defendant law firm, Boone Karlberg. Information is irrelevant to this case: If the defense can

establish relevancy with respect to sitting on public property, I will discovery the information.” At the same time, this Court has ordered Plaintiff twice to answer the discovery. [Docs. 68 and 100.] In this connection, a protective order was proposed to and firmly rejected by Plaintiff. [Exhibit C (Plaintiff Emails, 8/1/11 and 8/4/11).]

A subpoena was issued to Lehigh University. Plaintiff’s “Linked in” site states that he received a Bachelors Earth and Environmental Science, Engineering, Geology degree from Lehigh University after attending from 1989 to 1993. [Exhibit A.] A Westlaw computer search located an address for Plaintiff at Lehigh University Building 97 in Bethlehem, Pennsylvania, for the two-month period of December 23, 1996, to February 25, 1997. No other addresses in Bethlehem, Pennsylvania, were revealed, including for the period 1989 to 1993, the period of Plaintiff’s alleged attendance at Lehigh University. Instead, Plaintiff’s addresses for this period suggest he lived in California.

A subpoena was issued to the University of Montana. Plaintiff’s “Linked in” site states that he received a Bachelors, Geology-Secondary Science degree in 1994 from “Lehigh University University of Montana.” It states that Plaintiff has had “science teaching jobs - University of Montana School of Education” “at public, private and specialty schools throughout the US, and an American School in Mexico” during the period August 1997 to June 2006. [Exhibit A.] A Westlaw

computer search revealed addresses for Plaintiff during this period in East Burke, Vermont, Litchfield Park, Arizona, Buckeye, Arizona, Nogales, Arizona, Tolleson, Arizona, Goodyear, Arizona, Arondale, Arizona, El Cajon, California, San Diego, California, Herron, Montana, Fort Shaw, Montana, Big Fork, Montana, Missoula, Montana and Hamilton, Montana.

A subpoena was issued to RLK Hydro, Inc. and to Geotechnics, Inc. Plaintiff's "Linked in" site states that he was a geologist for one year (1996-1997) at RLK Hydro, Inc., a staff geologist for one year (1995-1996) at Geotechnics, Inc., and a hydrologist for the US Geological Survey in 1995-1996. [Exh. A.] A Westlaw computer search reveals addresses for this period of time in Bethlehem, Pennsylvania, San Diego, California, Big Fork, Montana and Kalispell, Montana. RLK Hydro, Inc., is in Kalispell, Montana. However, the Kalispell address was first reported in April 1997, and the "Linked in" site indicates Plaintiff began teaching in August 1997. [Exh. A.] Also, Geotechnics, Inc. has responded to the subpoena by stating that it has no record of Plaintiff ever being an employee at the company.

A subpoena was issued to the Montana Education Licensure (Certification) Program. In connection with Cause Nos. DV-10-639 and DV-11-535, Plaintiff stated in April 2011 that he was a licensed physics teacher.

A subpoena was issued to the Riverfront Mental Health Center in Hamilton, Montana. This subpoena relates to Plaintiff's emotional damage claims. It also relates to liability. Plaintiff alleges Mayor Steele defamed him in connection with Plaintiff's mental health status. According to Mayor Steele, the circumstances of the comment have no relationship to a defamatory meaning. In any event, truth is a defense.

Within this context, the subpoenas do not violate the law. For example, although not raised by Plaintiff, Rule 5.2(a), Fed. R. Civ. P., has not been violated. The birth date and social security numbers were used as identifiers to identify the documents sought. The City and Library Defendants have not filed the information with the Court. If they are, the information will be redacted. *See Primus Automotive Financial Services, Inc. v. Batarse*, 115 F.3d 644, 648 (9th Cir. 1997) (Rule 11 governs only papers filed with the Court). In this connection, *Myles v. Dirberg's Markets, Inc.*, 2009 WL3414903*2 n. 2 (E.D. Mo. 2009) reads:

There is no prohibition against plaintiff's inclusion of Social Security numbers on the attachments to his Rule 45 subpoenas, and such inclusion may be necessary in order to obtain the documents requested. Such information should not be filed with the Court, however, unless it has first been redacted. The Clerk of the Court has redacted the personal data information from the documents attached to plaintiff's motion for leave.

Next, Plaintiff has not produced any evidence that the statutes identified in his Notice of Continued Unlawful Activity have been violated. [Doc. 137, pp.

2-3.] The plain language of a statute controls its interpretation. *Burton v. Stevedoring Services of America*, 196 F.3d 1070, 1073 (9th Cir. 1999). Concerning 42 UCC 408(a)(1)(8), there is no evidence Plaintiff's social security number was used for the purpose of causing a social security payment to be made or to cause an increase in any payment authorized under the Social Security Act. Likewise, concerning 18 U.S.C. § 1341, there is no evidence that Plaintiff's social security number or birth date were used to implement or execute any scheme to defraud anyone. *Pereira v. U.S.*, 347 US 1, 8-9 (1954). Concerning 18 U.S.C. § 1342, Plaintiff has not demonstrated that a false name or address was used in any mailing. *See, e.g., U.S. v. Halbert*, 640 F.2d 1000, 1009 (9th Cir. 1981). Finally, concerning 18 U.S.C. § 1700, Plaintiff has not demonstrated that Boone Karlberg P.C. has quited, deserted or tampered with his mail. Certainly, Plaintiff has argued in State Court that Boone Karlberg P.C. has torn envelopes addressed to him. However, the law firm has found no evidence to support the claim.

Plaintiff also refers to 42 U.S.C. § 405. [Doc. 137, pp. 2-3.] However, Plaintiff has not identified what information the City is alleged to have disclosed to its attorneys or how 42 U.S.C. § 405 applies to his Rule 11 motions. If he is alleging a social security determination, if any, is binding on the Defendants in this action, the Defendants were not parties to Plaintiff's social security matter. In

any event, administrative *res judicata* is not absolute. *Thompson v. Schweiker*, 665 F.2d 936, 940-41 (9th Cir. 1982).

In summary, the subpoenas were necessary given Plaintiff's allegations and unresponsive discovery answers in this action. They do not violate the statutes identified by Plaintiff, and they are not intended to serve an improper purpose. They are reasonably based on the information known about Plaintiff and his allegations in this action. They do not violate Rule 11(b), Fed. R. Civ. P.

B. The Use of Police Reports Does Not Support Rule 11 Sanctions:

Plaintiff's motions are directed, in part, at the City Defendants' motions to file police reports under seal. [Doc. 138, pp. 1-3; Doc. 137, pp. 3-4.] Contrary to Plaintiff's arguments, the City Defendants' motion is well founded. The City Defendants' Statement of Undisputed Facts as drafted refers to and attaches a number of police reports. They are confidential criminal justice information. A voluntary dissemination of confidential justice information is prohibited by state statute. MCA § 44-5-303. Plaintiff, himself, knows that the police reports are confidential criminal justice information. [Doc. 135-1, pp. 5 n. 1, 8, 16-17, 23 (Order, Cause No. DV-10-639, Ravalli County District Court).]

Next, the City motion and use of the police reports does not serve an improper purpose. Rule 11(b), Fed. R. Civ. P. That is, the City Defendants' attorneys are not exhibiting bad faith or attempting to discredit, defame, harass or

deprive Plaintiff of his rights. [Doc. 138, pp. 2-3.] The police reports are intended to support the City Defendants' summary judgment motion. In this connection, *Sudbury v. Arizona*, 2010 WL1654140*4 (D. Ariz. 2010), reads as follows:

. . . Law enforcement records setting forth 'factual findings resulting from an investigation made pursuant to authority granted by law' may be admissible under the public records exception to the general exclusion of hearsay 'unless the sources of information or other circumstances indicate lack of trustworthiness.' *United States v. Sims*, 617 F.2d 1371, 1377 (9th Cir. 1980); . . .

In part, Plaintiff argues the police reports are defamatory and irrelevant. [Doc. 138, pp. 1-2; Doc. 137, pp. 3-4.] However, Plaintiff provides no evidence supporting the allegations. The reports are summarized in Doc. 128, pp. 4-6. In any event, the reports have not been filed with the Court, and Plaintiff's argument goes beyond the scope of Rule 11, Fed. R. Civ. P. *Primus Automotive, supra*. Therefore, the argument should be rejected.

C. Alleged Unlawful Entry Does Not Support Rule 11 Sanctions:

In part, Plaintiff complains that Police Chief Oster made an unlawful entry into Plaintiff's residence on October 4, 2011. [Doc. 138, p. 2.] Even if true, the argument goes beyond the scope of Rule 11, Fed. R. Civ. P. The argument is not addressed to the papers presented to the Court. *See, e.g., Primus Automotive, supra*.

In any event, the evidence does not support Plaintiff's contentions. Plaintiff is on felony probation. *State v. Spreadbury*, 257 P.3d 392 ¶¶ 3-5 (Mont. 2011). With this in mind, on October 4, 2011, two City police officers, including Chief Oster, went to Plaintiff's home to assist Plaintiff's probation officer. There was no unlawful entry, and certainly if Plaintiff wants to inject his felony probation into this action, the City will address the issue further. In any event, the matter has nothing to do with a motion under Rule 11, Fed. R. Civ. P. It also does not involve papers presented to the Court. *Primus Automotive, supra*.

D. City Defendants' Motion to Strike:

The City Defendants filed a motion (Doc. 130) to strike exhibit B (Doc. 130-2) to Plaintiff's Notice of National Security Clearance, filed October 26, 2011. From the City's perspective, Plaintiff's use of Exhibit B (Doc. 130-2) violates the terms of a state district court order, the terms of Plaintiff's probationary criminal sentence and Montana statutes. In support of his Rule 11 motions, Plaintiff argues (1) the motion to strike violates his right to speech, (2) the police report is not confidential criminal justice information, and (3) the state district judge is protecting his ex-wife.¹ These matters will be addressed in the City's reply brief in support of the motion to strike. The motion to strike does not

¹ The state district judge offered to recuse himself because his former wife was involved in the police reports sought by Plaintiff in the state district court. Plaintiff declined the offer.

serve an improper purpose. It is not frivolous, legally unreasonable or without foundation. Rule 11(b), Fed. R. Civ. P. Simply put, Plaintiff should not be permitted to ignore Montana statutes and State District Court Orders because he does not agree with them.

E. Alleged Intimidation of Plaintiff's Employer:

Plaintiff alleges the City intimidated his employer after "the February 13, 2009" report. [Doc. 137, p. 4.] However, no evidence is or has been provided by Plaintiff. Therefore, it is difficult if not impossible to respond. In any event, the argument does not appear to address papers presented to the Court, and it is beyond the scope of Rule 11, Fed. R. Civ. P. *Primus Automotive, supra*.

CONCLUSION

Plaintiff's motions for sanctions under Rule 11, Fed. R. Civ. P., should be denied. They are not supported by the law or the record. Indeed, groundless motions for sanctions are themselves sanctionable. *See Alliance to End Repression v. City of Chicago*, 899 F.2d 582, 583-84 (7th Cir. 1990).

People leave tracks or imprints. However, there are little or no tracks or imprints which correlate to Plaintiff's recitation of his personal history. Further, Plaintiff is fighting awfully hard to conceal or limit access to information relating to that personal history and Plaintiff's damage claims in this action. One is left asking, "Why?" According to Plaintiff's "Linked in" site, "These are the largest

civil rights suits seen in the state of Montana.” If so, one would think Plaintiff would want material evidence to come out.

DATED this 14th day of November, 2011.

/s/ William L. Crowley
William L. Crowley
BOONE KARLBERG P.C.
Attorneys for Defendants
Bitterroot Public Library, City of
Hamilton and Boone Karlberg P.C.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7(d)(2)(E), Local Rules of the United States District Court, District of Montana, I hereby certify that the textual portion of the foregoing brief uses a proportionally spaced Times New Roman typeface of 14 point; is double spaced; and contains approximately 2,598 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 14th day of November, 2011.

/s/ William L. Crowley
William L. Crowley
BOONE KARLBERG P.C.
*Attorneys for Defendants Bitterroot
Public Library, City of Hamilton and
Boone Karlberg P.C.*

CERTIFICATE OF SERVICE

I hereby certify that, on the 14th day of November, 2011, a copy of the foregoing document was served on the following persons by the following means:

- 1 CM/ECF
- Hand Delivery
- 2 Mail
- Overnight Delivery Service
- Fax
- E-Mail

1. Clerk, U.S. District Court
2. Michael E. Spreadbury
700 South Fourth Street
Hamilton, MT 59840

/s/ William L. Crowley
William L. Crowley
BOONE KARLBERG P.C.
*Attorneys for Defendants Bitterroot Public
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