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Attorneys for City 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

**CITY DEFENDANTS' BRIEF IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT ON
PLAINTIFF'S FEDERAL CLAIMS**

Defendants Bitterroot Public Library, City of Hamilton, Dr. Robert Brophy, Trista Smith, Nansu Roddy, Jerry Steele, Steve Snavely, Steven Bruner-Murphy, Ryan Oster, Kenneth S. Bell and Jennifer Lint (collectively, “City Defendants”) submit the following brief in support of their Motion for Summary Judgment on Plaintiff’s Federal Claims. The City Defendants request the Court read this brief first, followed by the brief concerning Plaintiff’s state law claims.

BACKGROUND

Plaintiff Michael Spreadbury’s claims against the City Defendants stem from his demand that the Bitterroot Public Library (“Library”) include a letter to President Obama from another local resident in its collection. (City Defendants’ Statement of Undisputed Facts (“SOF”), 1-5.) The letter relates the resident’s belief that widespread government corruption exists in Ravalli County. (SOF 1.) Pursuant to the published criteria in its Collection Management Policy, the Library denied Spreadbury’s request. (SOF 6, 7.) In doing so, it suggested alternatives to Spreadbury to get the material published. (SOF 2, 6.)

Spreadbury was not satisfied. He insisted the Library was obligated to add the letter to its collection. (SOF 2-8, 16.) He complained that he had already posted on his website that the letter would be available at the Library. (SOF 2.) Ultimately, his rude and intimidating treatment of Library employees resulted in

the Library's decision to prohibit Spreadbury from entering the premises. (SOF 2, 8-10, 25.)

Spreadbury ignored the Library's wishes, purported to "reinstate[]" his own library privileges, and unlawfully entered the premises on August 20, 2009. (SOF 21-24.) Law enforcement was called and Spreadbury was again ordered not to enter Library grounds. (SOF 21, 22.) He returned that very day, however, frightening a library patron by demanding her contact information and then filming her when she declined to provide it. (SOF 23, 24.)

Spreadbury was charged with criminal trespass. (SOF 28.) On September 9, 2009 the City Court issued its Conditions of Release, which precluded Spreadbury from entering the Library premises or contacting any witnesses or victims. (SOF 28.)

On November 4, 2009, one day after being defeated in the election for Mayor of Hamilton, Spreadbury confronted librarian Nansu Roddy as she was leaving the Library. (SOF 31.) As Roddy stepped off the curb, Spreadbury pulled his vehicle to a stop and jumped out. (SOF 31.) He was agitated and came at Roddy, demanding she get the trespass charge against him dismissed. (SOF 31.) Spreadbury raised his fists at Roddy several times. (SOF 31.) Roddy ran to her

vehicle and tried to lock herself in. (SOF 31.) When a truck stopped, Plaintiff got in his own vehicle and fled. (SOF 31.)

In the wake of the incident, Roddy applied for an order of protection. (SOF 32.) The order of protection was granted and survived numerous legal challenges from Spreadbury. (SOF 33, 26, 38-39.) It was ultimately upheld by the Montana Supreme Court, which expressly warned Spreadbury that further legal filings against Roddy “may be sanctioned by the imposition of costs, attorney’s fees and/or other monetary or non-monetary penalties under M.R.App.P. 19(5).” (SOF 38.)

After the incident with Roddy, Spreadbury was also investigated and charged with felony intimidation. (SOF 32.) He entered a plea of no contest. (SOF 44.) The Montana Supreme Court denied his subsequent appeal. (SOF 45.)

On February 18, 2010, a city court jury found Spreadbury guilty of trespass. (SOF 30.) Plaintiff appealed to the Ravalli County District Court. (SOF 30.) On August 16, 2010, just after the Montana Supreme Court upheld the order of protection retraining Spreadbury from entering the Library premises for five years, the Hamilton City Attorney voluntarily dismissed the trespass charge. (SOF 37.) According to the City Attorney, “[T]he goal of both the City and the BPL [Library], to protect BPL’s staff and patrons, has been fulfilled, and neither the

City nor the BPL see anything to be accomplished by continuing this prosecution.”
(SOF 37.)

Since his proposed submission to the Library collection was denied, Spreadbury has filed a series of baseless lawsuits against the City Defendants and others. (See SOF 40-43, 51-52.) The history of Spreadbury’s harassment, including his numerous legal filings, is far too extensive to relate in this brief. A portion is set forth in the City Defendants’ Statement of Undisputed Facts, incorporated herein by reference. The City has recently moved the Ravalli County District Court to declare Spreadbury a vexatious litigant. (SOF 52.) As Spreadbury proclaimed in one written public statement directed at the City Defendants: “Get Ready for a constant pummeling in the courts. The hunters will become the hunted. Destroying lives for ego is pricey on budgets.” (SOF 39.)

Under Rule 56, Spreadbury must present more than speculation and conjecture for his claims to survive dismissal. When put to his proof, Spreadbury’s claims, set forth below, fail as a matter of law:¹

¹ As set forth by Spreadbury, the causes of action against the City Defendants are: Count I - Negligence - Brophy and Library; Count II - Abuse of Process - Brophy and Library; Count III - Fourteenth Amendment Procedural Due Process - Brophy and Library; Count IV - Defamation - Brophy and Library; Count V - Misrepresentation - Brophy and Library; Count VI - First Amendment Right to Free Speech and to Petition Government - Roddy and Library; Count VII - Malicious Prosecution - Library and City; Count VIII - Tortious Interference With Prospective Economic Advantage - All Defendants; Count IX - Right to Peaceful Assembly Under Article II, § 6, Montana Constitution and First Amendment, Federal Constitution, and Right of Equal

1. Section 1983 – First, Fifth, and Fourteenth Amendment Violations
2. Violations of the Montana Constitution (Art. II, §§ 4, 6.)
3. Negligence/Negligent Misrepresentation
4. Abuse of Process
5. Malicious Prosecution
6. Tortious Interference With Prospective Economic Advantage
7. Defamation/Defamation Per Se
8. Infliction of Emotional Distress (NIED and IIED)
9. Injunctive Relief
10. Punitive Damages

The above claims have no merit. Summary judgment should be granted to the City Defendants, and Spreadbury's lawsuit should be dismissed with prejudice.

SUMMARY JUDGMENT STANDARD

A party is entitled to summary judgment if it can demonstrate there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Summary judgment is warranted where the documentary evidence produced by the parties permits only one conclusion.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986). Thus, the Court

Protection Under Article II, § 4, Montana Constitution and Fourteenth Amendment, Federal Constitution - Bell; Count X - Liberty Interest Under Fifth and Fourteenth Amendments, Federal Constitution - Oster and City; Count XI - Negligence - City and Bell; Count XII - Negligence - City and Snavelly; Count XIII - Negligence - City and Murphy; Count XIV - Right of Free Speech and Abuse of Power Under First and Fourteenth Amendments, Federal Constitution - Murphy; Count XVII - Defamation - City; Count XX - Intentional Infliction of Emotional Distress - All Defendants; Count XX1 - Negligent Infliction of Emotional Distress - All Defendants; Count XXIV - Injunctive Relief - Library; Count XXV - Injunctive Relief - City; Count XXVI - Punitive Damages - All Defendants.

must determine whether a fair-minded jury could return a verdict for the nonmoving party. *Id.*

The moving party bears the burden of identifying those portions of the pleadings, discovery and affidavits that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the nonmoving party, who “may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 248. Here, no such issues exist – Spreadbury’s claims against the City Defendants fail as a matter of law.

ANALYSIS

I. SPREADBURY’S FEDERAL CIVIL RIGHTS CLAIM FAILS AS A MATTER OF LAW.

A. Spreadbury Cannot Prove an Underlying Violation.

In order to prevail under 42 U.S.C. § 1983, Spreadbury must first establish a violation of his federal constitutional rights. *See Menotti v. City of Seattle*, 409 F.3d 1113, 1147 (9th Cir. 2005). In his complaint, Spreadbury asserts violations of the First, Fifth, and Fourteenth Amendments.

1. First Amendment

Spreadbury contends his First Amendment rights were violated by the library's refusal to place certain materials into its collection, and by being prosecuted for criminal trespass when in fact he was engaging in "peaceful assembly on public property." Spreadbury is wrong.

First, it is well established that an individual has no constitutional right to require inclusion of materials of his/her choosing in a municipal library collection. *See U.S. v. American Library Assoc., Inc.*, 539 U.S. 194, 210, n. 4 (2003) ("[A] public library does not have an obligation to add materials to its collection simply because the material is constitutionally protected.") The U.S. Supreme Court has recognized that "[t]o fulfill their traditional missions, public libraries must have broad discretion to decide what material to provide to their patrons." *Id.*

Here, Spreadbury sought inclusion of a letter to the President with a private citizen's musings about alleged corruption in Ravalli County. Spreadbury was politely and correctly told the letter did not meet the criteria set forth in the Library's Collection Management Policy. These criteria were provided to Spreadbury. They do not discriminate on the basis of the author's viewpoint. They include, *inter alia*, "authoritativeness, reputation or qualifications of the

author”; “accuracy, objectivity, clarity and logic of presentation”; and “extent of publicity or critical review.” (SOF 6, 7.)

Next, the evidence does not support Spreadbury’s argument that he was prosecuted for a “peaceful assembly.” Instead, the undisputed facts show Spreadbury was prosecuted for trespass because he disregarded the Library’s wishes and continued to come to the Library to harass staff, patrons, and disrupt operations. (SOF 9-16, 19-25.)

Moreover, even assuming Spreadbury was engaged in constitutionally-protected conduct, the First Amendment’s right to assembly does not mean that everyone with opinions to express may assemble and speak at any public place and at any time. *E.g., Cox v. State of Louisiana*, 379 U.S. 536 (1965). Similarly, whereas the Third Circuit has concluded the First Amendment “includes the right to some level of access to a public library, the quintessential locus of the receipt of information,” it is uniformly held that a library is a limited public forum and reasonable time, place and manner restrictions may be imposed on its use.

Kreimer v. Bureau of Police for Town of Morristown, 958 F.2d 1242, 1261-62 (3d Cir. 1992). As the *Kreimer* court held, a library’s “very purpose is to aid in the acquisition of knowledge through reading, writing and quiet contemplation.” *Id.*; *see also Brown v. Louisiana*, 383 U.S. 131, 142 (1966) (“A library is a place

dedicated to quiet, to knowledge, and to beauty.”); *Armstrong v. Dist. of Columbia Pub. Lib.*, 154 F. Supp. 2d 67, 75, 77 (D.D.C. 2001) (holding reasonable rules regulating conduct of library patrons do not offend the First Amendment.) In this regard, the rules contained in Library Operations Policy, which allow the Library to ban individuals who demonstrate disruptive behavior, are reasonable, narrowly-tailored, and content neutral.

In addition, “[i]n order to demonstrate a First Amendment violation, a plaintiff must provide evidence showing that ‘by his actions [the defendant] deterred or chilled [the plaintiff’s] political speech and such deterrence was a substantial or motivating factor in [the defendant’s] conduct.’ ” *See Mendocino Envtl. Ctr. v. Mendocino County*, 192 F.3d 1283, 1300 (9th Cir.1999) (quoting *Sloman v. Tadlock*, 21 F.3d 1462, 1469 (9th Cir.1994)). In other words, Spreadbury must demonstrate the City was motivated by a desire to interfere with his First Amendment rights, and not by some permissible reason. *See id.*; *see also Barney v. City of Eugene*, 20 Fed. Appx. 683, 685 (9th Cir. 2001) (dismissing protestor’s claim for violation of right to assemble because she presented no evidence that “deterrence or chilling of First Amendment activity was a substantial and motivating factor for the defendants’ conduct.”)

There is no evidence to suggest this was the case. The undisputed facts demonstrate the Library's conduct was motivated by its desire to protect staff, patrons, and ensure its operations were not disrupted. As Library Board Chairman Dr. Robert Brophy affirmed: "The decision was made pursuant to the Library Operations Policy and was not based on the substantive content of Spreadbury's speech. At no point did the Library seek to chill or deter Spreadbury's speech. In fact, on more than one occasion Library staff suggested alternative ways to Spreadbury to publicize his opinions." Despite his disagreement with the Library's decision, there is simply no evidence to suggest the Library was motivated by a desire to violate Spreadbury's First Amendment rights.

2. Fifth Amendment

Fifth Amendment due process applies to federal actors or entities. *See, e.g., Public Utilities Commission of District of Columbia v. Pollak*, 343 U.S. 451, 461 (1952); *American Bankers Mortg. v. Federal Home Loan Mortg.*, 75 F.3d 1401, 1406 (9th Cir. 1996). None of the City Defendants are federal actors or entities. As this Court has already ruled, "Mr. Spreadbury does not have a Fifth Amendment Claim." (Doc. 121, p. 6.)

3. Fourteenth Amendment

The Due Process Clause of the Fourteenth Amendment protects individuals against governmental deprivations of life, liberty, and property without due process of law. The Amendment affords substantive due process protection against the illegitimate exercise of state power, and a procedural due process guarantee of fundamental fairness. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998). Here, Spreadbury cannot establish an invasion of either of these protected interests.

First, with respect to the prosecution of Spreadbury, Section 1983 “is not itself a source of substantive rights,” but merely provides “a method for vindicating federal rights elsewhere conferred.” *Baker v. McCollan*, 443 U.S. 137, 144, n. 3 (1979). In this regard, there is no substantive due process right to be free from prosecution without probable cause. *See Albright v. Oliver*, 510 U.S. 266, 271 (1994). Also, as set forth above, Spreadbury has not established the violation of any other constitutional right – such as the First Amendment right to free speech – in connection with his prosecution. *See Mendocino*, 192 F.3d at 1300.

With respect to the ban from the Library premises, Spreadbury alleges a procedural due process violation. As a threshold requirement for a procedural due process claim, however, Spreadbury must first show a liberty or property interest

in access to the library that is protected by the Constitution. *See Wedges/Ledges of California, Inc. v. City of Phoenix*, 24 F.3d 56, 62 (9th Cir. 1994). Such an interest may arise from the Due Process Clause itself, or from state laws or regulations deemed to have created a property interest cognizable as a civil right. *Meachum v. Fano*, 427 U.S. 215, 224-27 (1976); *Smith v. Sumner*, 994 F.2d 1401, 1405-06 (9th Cir.1993).

As this Court recently noted, “[w]hether the privilege to visit a library constitutes a property interest under the Fourteenth Amendment has not been decided by the Ninth Circuit. . .”. (Doc. 121, p. 8.) The question is whether Spreadbury enjoys a “legitimate claim of entitlement” protected by the Fourteenth Amendment. *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 756-57 (2005); *see also Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982). Similarly, to create a liberty interest, the state law “must set forth ‘substantive predicates’ to govern official decision making and . . . it must contain ‘explicitly mandatory language,’ *i.e.*, a specific directive to the decisionmaker that mandates a particular outcome if the substantive predicates have been met.” *Valdez v. Rosenbaum*, 302 F.3d 1039, 1044 (9th Cir. 2002) (citation and quotations omitted).

Here, the applicable state statute, Mont. Code Ann. § 22-1-311, does not contain a mandatory directive to the decisionmaker if substantive predicates are met. Nor does it create a legitimate claim of entitlement to one who wilfully violates the library's rules. Although state law does provide that a public library shall be open to the public, "the State explicitly permits each library board to establish rules for the library and to exclude anyone who willfully violates those rules." (Doc. 121, p. 9.)

In this case, the undisputed facts demonstrate Spreadbury willfully violated the Library Operations Policy with his rude and threatening behavior toward Library staff. Pursuant to that policy, patron behavior that becomes disruptive to library users and staff or is a public nuisance is not allowed, and the Library reserves the right to refuse service to anyone who is not complying with library policy. (SOF 6, 7.) Thus, Spreadbury had no liberty or property interest in entering the Library premises. *See also Paul v. Davis*, 424 U.S. 693, 701 (1976) (finding one must prove "some more tangible interest such as employment" to invoke the procedural protection of the Due Process Clause.)

Also, there is no evidence to suggest Spreadbury was not afforded the requisite amount of process under the circumstances. *See, e.g., Gilbert v. Homar*, 520 U.S. 924, 930 (1997). The fact is, Spreadbury was provided notice and an

opportunity to be heard: He submitted a number of letters and a “reconsideration form” to the Library, and also spoke to Library staff regarding the denial of his proposed submission and his banning from the premises. As set forth in the City Defendants’ Statement of Undisputed Facts and the Affidavit of Library Board Chairman Dr. Robert Brophy, these submissions were all considered by the Library, though they did not change its position. (SOF 12-16, 19, 25-26, 31, Ex. __.) There is simply no evidence to suggest a hearing or other additional process would reduce the risk of an erroneous decision under the circumstances presented, particularly in light of the library’s interest in maintaining order and providing a safe environment for staff and patrons. *See Matthews v. Eldridge*, 424 U.S. 319, 332 (1976).

Finally, no constitutional right was invaded when Hamilton police told Spreadbury to honor the wishes of the *Ravalli Republic* and not to enter its offices in Hamilton, Montana. The *Ravalli Republic* made this decision on the basis of its interactions with Spreadbury and simply called for law enforcement protection when it informed Spreadbury of the decision. Needless to say, Spreadbury has no constitutional right to access another’s private place of business.

B. Spreadbury Has Not Established a *Monell* Claim.

The U.S. Supreme Court has “consistently refused to hold municipalities liable under a theory of *respondeat superior*.” *Bd. of County Comm’rs of Bryan County, Ok. v. Brown*, 520 U.S. 397, 403 (1997). A municipality is not liable under § 1983 simply because it employs a tortfeasor. *See also Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 689 (1979). Rather, “liability may attach to a municipality only where the municipality *itself* causes the constitutional violation through execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy.” *Menotti v. City of Seattle*, 409 F.3d 1113, 1147 (9th Cir. 2005) (emphasis added).

The existence of a municipal policy or custom may be proven in one of three ways: (1) by showing a longstanding practice or custom which amounts to the standard operating procedure of the City; (2) by showing a decision-making official was, as a matter of state law, a final policymaking authority whose edicts or acts may fairly be said to represent official policy in the area of decision; or (3) by showing the official with the final policymaking authority either delegated that authority to, or ratified the decision of, a subordinate. *See Menotti*, 409 F.3d at 1147.

Plaintiff was specifically asked in discovery to “[i]dentify and describe those policies, customs, or practices” that violated his federal rights. (SOF 57, 61.) In response, he identified the following: “The Bitterroot Public Library policies in 2009, the associated American Library Association (ALA) policies adopted by the Bitterroot Public Library, as well as the request for reconsideration form from the Bitterroot Public Library. . .”. (SOF 61.) While it is true a deficient written policy may be sufficient to support a *Monell* claim, Spreadbury has not and cannot identify any deficiency in the referenced policies, let alone a deficiency that led to a violation of his constitutional rights. This dooms his civil rights claim against the City.

The record demonstrates that none of the written policies referenced by Spreadbury led to a violation of his rights. The record demonstrates the individual City Defendants with whom Spreadbury interacted were not final policymakers, and policymaking authority had not been delegated to them. *See Trevino v. Gates*, 99 F.3d 911, 921 (9th Cir. 1996).² Also, even assuming a constitutional violation, there is no evidence of “a longstanding practice or custom.” *See Menotti*, 409

²Though unrelated to the library policies identified by Spreadbury, a potential exception would be Police Chief Ryan Oster. Spreadbury had limited interaction with Oster on July 9, 2009, when police were called to respond to the *Ravalli Republic*. During that call, *Ravalli Republic* Editor John Cramer informed Spreadbury he was no longer permitted to enter the newspaper’s place of business. Oster’s role during that incident is discussed in Part C(2), *infra*.

F.3d at 1147. In this regard, “[a] plaintiff cannot demonstrate the existence of a municipal policy or custom based solely on a single occurrence of unconstitutional action by a non-policymaking employee.” *McDade v. West*, 223 F.3d. 1135, 1141 (9th Cir. 2000). “Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of *sufficient duration, frequency and consistency* that the conduct has become a traditional method of carrying out policy.” *Trevino*, 99 F.3d at 918 (emphasis added).

Further, even assuming Spreadbury could identify a policy or custom that caused him injury, the undisputed facts show the City is not culpable under § 1983. To be culpable, an authorized policymaker must be deliberately indifferent to the risk of a violation of the particular constitutional rights at issue. *Bd. of County Commissioners of Bryan County, Okl. v. Brown*, 520 U.S. 397, 403-04 (1997). In other words, the authorized policymaker must have made a deliberate choice to follow a particular course of action from among various alternatives. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481-84 (1986). In addition, the need for a different approach must be so obvious and the inadequacy of the existing policy or custom so likely to result in a constitutional violation that the authorized policy maker can be said to be indifferent to the need. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 390 (1989). Here, there is simply *no*

evidence to support a conclusion that the City was deliberately indifferent to Spreadbury's constitutional rights.

Finally, even if Spreadbury could show a deficient policy or custom and that the City acted with deliberate indifference, he must also prove the policy or custom *caused* his injuries. *See Monell*, 436 U.S. at 694. To show causation, the policy or custom must be the “moving force” behind the violation. *Brown*, 520 U.S. at 408-09. The mere fact that a policy or custom *might* lead to a constitutional violation is not sufficient proof. *City of Canton*, 489 U.S. at 390-92. As set forth above, there is no evidence the City's policies or customs caused a constitutional violation. In sum, having failed to meet all three prongs of *Monell* liability, Plaintiff's civil rights claim against the City fails as a matter of law.

C. The Individual City Defendants Are Entitled to Qualified Immunity.

Government officials performing discretionary functions are generally shielded from liability for civil damages so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). “Qualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield

officials from harassment, distraction, and liability when they perform their duties reasonably.” *Pearson v. Callahan*, 555 U.S. 223, 243 (2009). The doctrine stems from the acknowledgment that “reasonable mistakes can be made as to the legal constraints on particular police conduct.” *Saucier v. Katz*, 533 U.S. 194, 205 (2001). In other words, it is often difficult for government officials to determine how a particular legal doctrine will apply to a given factual situation, but “[i]f the officer’s mistake as to what the law requires is reasonable . . . the officer is entitled to the immunity defense.” *Id.*

Because qualified immunity is an immunity from suit, rather than a mere defense to liability, the U.S. Supreme Court has “stressed the importance of resolving immunity questions at the earliest possible stage in litigation.” *Hunter v. Bryant*, 502 U.S. 224, 227 (1991). In this connection, the Ninth Circuit has held that when a motion for summary judgment on qualified immunity is denied on the basis of disputed issues of fact, the court must “spell out the triable issues and why they preclude immunity before trial.” *Maropulos v. County of Los Angeles*, 560 F.3d 974, 976 (9th Cir. 2009).

The test for qualified immunity is: (1) identification of the specific right being violated; (2) determination of whether the right was so clearly established as to alert a reasonable officer to its constitutional parameters; and (3) a

determination whether a reasonable officer would have believed that the policy or decision in question was lawful. *McDade*, 223 F.3d at 1142. Recently, the U.S. Supreme Court held it is no longer necessary to first identify the right being violated before proceeding with the rest of the qualified immunity analysis. *Pearson*, 555 U.S. at 243. In other words, how and in what order the analysis is conducted is within the Court's sound discretion. *See id.*; *see also Rodis v. City of San Francisco*, 558 F.3d 964, 968 (9th Cir. 2009).

Still, in most cases, the first inquiry will be whether the individual violated a constitutional right. *See id.* In this regard, it is important to note that “[I]iability under § 1983 must be based on the *personal involvement of the defendant.*” *McDade*, 223 F.3d at 1142 (emphasis added).

1. Library Officials (Brophy, Roddy, Smith)

Spreadbury alleges Library Board Chairman Dr. Robert Brophy, Adult Services Librarian Nansu Roddy, and current Library Director Trista Smith are individually liable under § 1983. As set forth above, the undisputed facts demonstrate that Spreadbury's constitutional rights were not violated by anything the Library did nor did not do. But even if a constitutional violation did occur, these individuals are entitled to immunity.

To the extent Spreadbury had a cognizable liberty interest in access to the library, it was not a clearly established one, particularly in light of the fact that the same state statute allowing access to the Library allows the Library to exclude individuals for violating the rules. *See* Mont. Code Ann. § 22-1-311. That is exactly what the Library did, pursuant to its Library Operations Policy. Further, a library's status as a limited public forum whose purpose is to provide patrons with a venue for reading, writing, and quiet contemplation is well established. *E.g.*, *Kreimer*, 958 F.2d at 1261-62. Thus, a reasonable person in the position of Brophy, Roddy, or Smith would have believed the decision in question was lawful. *See McDade*, 223 F.3d at 1142.

Similarly, to the extent Spreadbury will continue to argue he had a right to place materials of his choosing in the Library, it was not a clearly established right. *See American Library Assoc., Inc.*, 539 U.S. at 210. Again, it was reasonable for the library officials to believe the refusal of Spreadbury's submission was lawful, pursuant to the Library's Collection Management Policy.

Finally, Trista Smith should be dismissed for yet another reason. The undisputed facts demonstrate she was not even employed at the Library at the pertinent time and did not participate in any fashion with the Library's decisions regarding Spreadbury. (SOF 56.) Plaintiff's own discovery responses

demonstrate that Smith committed no acts or omissions which could have led to violations of Plaintiff's constitutional rights. Curiously, she is named as "successor" of Defendant Gloria Langstaff, the previous Library Director. (SOF 61.) Of course, Smith is not individually liable for the employee who preceded her.

2. Hamilton Police Department (Snavelly, Bruner-Murphy, Oster)

The individually-named members of the Hamilton Police Department are also entitled to qualified immunity. The first of these is Officer Steve Snavelly. When asked to identify the acts or omissions of Snavelly in discovery, Spreadbury answered that Snavelly's offending conduct was "[a]ccusing Plaintiff of crime of criminal trespass as peacefully assembled on public property." (SOF 61.) However, Snavelly merely responded to Library's call on August 20, 2009. He conducted an investigation, prepared a report, and submitted the report to the City Attorney. (SOF 21, 22.) Spreadbury cannot identify a single statement in Snavelly's report that is untrue. Further, it was the City Attorney, not Snavelly, who filed criminal charges against Spreadbury for trespass. (SOF 28.)

Moreover, to the extent Plaintiff had a right to enter library grounds after being banned therefrom, and to continue harassing staff and patrons, it was not a

clearly established right. As set forth above, the library is a limited public forum and state law expressly allows the library to exclude members of the public under certain conditions. As such, a reasonable officer in the position of Snavely would have believed Spreadbury was trespassing. *See McDade*, 223 F.3d at 1142.

Next, as to Officer Bruner-Murphy, Spreadbury's claims are wholly unclear. In discovery, Spreadbury stated his claims against Bruner-Murphy were raised because Bruner-Murphy "did investigate, and send up a report to Defendant Bell for 'stalking' an actual crime MCA 45-4-220 . . .". (SOF 61.) The fact is, Bruner-Murphy was asked to take a report from Library Director Gloria Langstaff on July 15, 2009, which he did. (SOF 19, 20.) Langstaff apparently characterized the report as a "stalking" report, but Spreadbury was never charged with that crime. (SOF 19, 20.) Bruner-Murphy did not accuse Plaintiff of any crime and certainly did not charge him with one. He took a statement and filed his report. Again, Spreadbury cannot point to a single portion of Bruner-Murphy's report that is untrue, nor can he articulate how the report could have led to a violation of his constitutional rights.

Finally, Spreadbury alleges Police Chief Ryan Oster made a "policy or custom" that Plaintiff should not enter Lee Enterprises place of business. Thus, it is unclear whether the claim against Oster is in his official capacity only (in which

case he is personally immune) or in his individual capacity as well. Regardless, Spreadbury has no constitutional right to access another's private place of business. Oster merely tried to explain this to Spreadbury on July 9, 2009, after members of the *Ravalli Republic* called police for assistance. (SOF 17.) On that day, *Ravalli Republic* Editor John Cramer informed Plaintiff, in the presence of Hamilton police officers, that he was no longer permitted to enter the newspaper's place of business, and Hamilton police simply told Plaintiff to heed the *Ravalli Republic's* request. (SOF 17.) A reasonable police chief in Oster's position would have believed the decision was lawful, which it was.

3. City Attorneys (Bell, Lint)

Ken Bell was the Hamilton City Attorney at the pertinent time. Jennifer Lint was a Deputy City Attorney. Spreadbury contends they are personally liable for prosecuting Spreadbury on behalf of the City. For the reasons set forth above, it was reasonable to conclude that Spreadbury committed the crimes of which he was accused and prosecuted. He plead no contest to one charge, and was found guilty by a jury of the other (though the trespass charge was later voluntarily dismissed for reasons of economy). In other words, the City Attorneys are entitled to qualified immunity. Perhaps more importantly, they are also entitled to absolute prosecutorial immunity. *See Imbler v. Pachtman*, 424 U.S. 409, 427 (1976)

(prosecutors are entitled to absolute immunity from liability for damages under § 1983); *Kalina v. Fletcher*, 522 U.S. 118 (1997); *Ybarra v. Reno Thunderbird Mobile Home Village*, 723 F.2d 675, 678 (9th Cir.1984).

4. Hamilton Mayor Jerry Steele

Spreadbury claims Mayor Steele is personally liable because he allegedly made statements regarding Plaintiff's mental health to two of Spreadbury's friends, Lorraine Crotty and Dick White, during a private conversation in the Mayor's office. (SOF 53-55.) Even assuming the statements were defamatory – and they were not – the undisputed facts demonstrate Spreadbury's federal claim fails. Spreadbury does not have a right under the U.S. Constitution to be free from defamatory statements. *See Johnson v. Barker*, 799 F.2d 1396, 1399 (9th Cir.1986) (simply because a statement is defamatory does not mean that it rises to the level of a constitutional tort). In order for a tort such as defamation “to achieve constitutional import, there must be a deprivation of a [constitutionally] protected interest.” *Id.* The deprivation of a constitutionally protected interest is the “plus” portion of a § 1983 deprivation-plus claim. *See Cooper v. Dupnik*, 924 F.2d 1520, 1532 n. 22 (9th Cir.1991).

The substantive merits of Spreadbury's defamation claim against Mayor Steele are addressed in the City Defendants' brief on Plaintiff's state law claims,

incorporated herein by reference. For purposes of his federal claim, however, Mayor Steele's statements did not deny a right specifically secured by the Bill of Rights, or deny a state-created property or liberty interest. *Id.* As such, there is no federal claim. *Crowe v. County of San Diego*, 242 F. Supp. 2d 740, 748 (S.D. Cal. 2003). Regardless, it was reasonable for a person in Mayor Steele's shoes to conclude the statements about Spreadbury's inconsistent behavior were lawful, entitling Mayor Steele to qualified immunity.

II. Plaintiff's Punitive Damages Claim Under § 1983 Fails As a Matter of Law.

Although a municipality may be liable for compensatory damages under § 1983, it is immune from punitive damages under the statute. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981). In this regard, "[a] suit against a governmental officer in his official capacity is equivalent to a suit against the governmental entity itself." *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir.1991).

Although punitive damages are available in an individual capacity suit against a government official, the plaintiff must prove reckless or callous disregard for his rights or intentional violations of federal law. *Smith v. Wade*, 461 U.S. 30, 35 (1983). As set forth above, the undisputed facts demonstrate that

Spreadbury cannot make this finding against any of the individual City Defendants.

CONCLUSION

For the reasons stated, Spreadbury's federal claims against the City Defendants should be dismissed as a matter of law.

DATED this 17th day of November, 2011.

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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 5,679 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 17th day of November, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that, on the 17th day of November, 2011, a copy of the foregoing document was served on the following persons by the following means:

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