William L. Crowley
Natasha Prinzing Jones
Thomas J. Leonard
BOONE KARLBERG P.C.
201 West Main, Suite 300
P.O. Box 9199
Missoula, MT 59807-9199
Telephone: (406)543-6646
Facsimile: (406) 549-6804
bcrowley@boonekarlberg.com
npjones@boonekarlberg.com
tleonard@boonekarlberg.com

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 STATE LAW CLAIMS**

This brief supports the Motion for Summary Judgment on Plaintiff's State Law Claims filed by 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"). As many of the issues overlap, the City Defendants request the Court read their brief concerning Plaintiff's federal claims first.

BACKGROUND

The factual background pertinent to the City Defendants' motion is set forth in their Statement of Undisputed Facts ("SOF"), incorporated herein by reference.

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). 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 v. Liberty Lobby, Inc.,* 477 U.S. 242, 251-52 (1986). Here, no such

issues exist – Spreadbury's claims against the City Defendants fail as a matter of law.

ANALYSIS

I. SPREADBURY'S STATE CONSTITUTIONAL CLAIMS FAIL AS A MATTER OF LAW.

Spreadbury alleges his rights under the Montana Constitution were violated. Specifically, he alleges his right to peaceably assemble (Art. II, § 6) and to equal protection (Art. II, § 4) were violated when the City prosecuted him for criminal trespass.

The right to peaceably assemble under Article II, Section 6 is construed in accordance with the First Amendment of the U.S. Constitution. *See Gehring v. All Members of State 1993 Legis.*, 889 P.2d 1164, 1166 (Mont. 1995). In this regard, First Amendment protection does <u>not</u> assure a citizen's activities are beyond restriction, as "the First Amendment does not prohibit all regulation of expressive activities." *Dorn v. Bd. of Trustees of Billings Sch. Dist. No. 2*, 661 P.2d 426, 431-32 (Mont. 1983). Rather, "the state has the power to substantially restrict or even prohibit exercise of First Amendment rights on property owned by the government to preserve the property under its control for the use to which it is lawfully dedicated." *Id.(citing Adderley v. Florida*, 385 U.S. 39, 47 (1966) (criminal

trespass convictions upheld where demonstration on jailhouse grounds obstructed jail driveway)). In other words, contrary to Spreadbury's interpretation, government ownership or control of a facility does not guarantee the public absolute and unrestricted access for the purpose of exercising First Amendment liberties. *Id.* (citing cases).

As discussed in the City Defendants' summary judgment brief on Plaintiff's federal claims, incorporated by reference, a library is a limited public forum. *E.g., Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, 1261-62 (3d Cir. 1992). The undisputed facts demonstrate Spreadbury was banned from the Library because his behavior substantially interfered with "the use to which it [the library] is lawfully dedicated." *See Dorn*, 661 P.2d at 431-32. Because there is no shred of evidence suggesting the City Defendants were substantially motivated by a desire to chill or deter Spreadbury's speech, there was no violation of Article II, Section 6. *See Mendocino Envtl. Ctr. v. Mendocino County,* 192 F.3d 1283, 1300 (9th Cir.1999).

Next, a party claiming violation of the right to equal protection under the Montana Constitution must first demonstrate that the law at issue discriminates by impermissibly classifying individuals and treating them differently based on that classification. *State v. Ellis*, 167 P.3d 896, 900-01 (Mont. 2007); *Satterlee v.*

Lumberman's Mutual Cas. Co., 222 P.3d 566 (Mont. 2009) ("Once the classification has been identified and it has been established that members of the different classes are similarly situated, the court must determine the appropriate level of scrutiny to apply.") Thus, an equal protection claim does not lie where the claimant fails to identify similarly-situated classes which were treated differently. *See State v. Davison,* 67 P.3d 203, ¶¶ 10, 17 (Mont. 2003) (no equal protection analysis required because plaintiff did not establish that individuals convicted under two different statutes were similarly situated). Here too, Spreadbury has not identified a classification warranting equal protection analysis. *See, e.g., Blehm v. St. John's Lutheran Hosp.*, 246 P.3d 1024, 1028-29 (Mont. 2010). In sum, his Montana constitutional claims have no merit and should be dismissed.

II. SPREADBURY'S NEGLIGENCE CLAIMS FAIL AS A MATTER OF LAW.

To prevail on negligence, including his claim for negligent misrepresentation, Spreadbury must prove duty, breach, causation and damages. *Detert v. Lake County* 674 P.2d 1097, 1100 (Mont. 1984). The question of whether a legal duty exists is a question of law. *Stratemeyer v. Lincoln County,* 915 P.2d 175, 182 (Mont. 1996). Spreadbury has failed to identify any evidence

suggesting the City Defendants owed him an actionable duty in tort. To the contrary, his allegations are aimed at those performing public functions.

It is hornbook tort law that there is no common law duty to act. *See LaTray v. City of Havre*, 999 P.2d 1010, ¶ 21 (Mont. 2000). This same principle is extended to public officials through the public duty doctrine. *See Nelson v. Driscoll*, 983 P.2d 972, ¶ 21 (Mont. 1999). Under the public duty doctrine, a government employee or unit performing duties for the public owes no duty of protection to any particular individual. *E.g., Phillips v. City of Billings* 758 P.2d 772, 775 (Mont. 1998); *Massee v. Thompson*, 90 P.3d 394, ¶ 41 (Mont. 2004).

As explained by the Montana Supreme Court, the public duty doctrine "derives from the practical conclusion that a municipality would be mired hopelessly in civil lawsuits if it were held responsible for every infraction of the law." *Prosser v. Kennedy Enterprises, Inc.*,179 P.3d 1178, ¶ 18 (Mont. 2008). The doctrine "prevents individual members of the public from using tort liability to constrain unduly a municipality's discretion to use its limited resources to promote the general welfare." *Id.* Here, the maintenance of the library was clearly a *public* function, and did not give rise to an actionable tort duty to Spreadbury.

There is one exception to the public duty doctrine: In some cases, a duty exists where the plaintiff proves a special relationship. *See Nelson v. State of*

Montana, 195 P.3d 293, ¶ 36 (Mont. 2008). A special relationship can be established in one of four ways: (1) by a statute intended to protect a specific class of persons, of which the plaintiff is a member, from a specific kind of harm; (2) by a government agent undertaking specific action to protect the plaintiff or the plaintiff's property; (3) by government actions that reasonably induce detrimental reliance by the plaintiff; and (4) by a state agent having actual custody of the plaintiff or a third person who harms the plaintiff. *Id.*

Here, the record establishes no special relationship existed between the Spreadbury and the City Defendants. First, no statute exists that was intended to protect people like Spreadbury from the specific kind of harm claimed in this lawsuit. Second, no City Defendant undertook specific action to protect Spreadbury. Third, the City Defendants made no assurances to Spreadbury inducing detrimental reliance. Last, there is no allegation the City Defendants had actual custody of Spreadbury when he was harmed, or of a third person who harmed Spreadbury. Because it is undisputed that no special relationship existed, the City Defendants owed no actionable tort duty to Spreadbury.

III. SPREADBURY'S ABUSE OF PROCESS CLAIM FAILS AS A MATTER OF LAW.

To prevail on abuse of process, Spreadbury must prove "an ulterior purpose" and "a willful act in the use of the process not proper in the regular conduct of the proceeding." *Seltzer v. Morton*, 154 P.3d 561, ¶ 57 (Mont. 2007). Spreadbury must prove an attempt to use process to coerce him to do some collateral thing which he could not be legally and regularly compelled to do." *Brault v. Smith,* 679 P.2d 236, 240 (Mont. 1984). However, the undisputed facts establish the City Defendants appropriately used process to deter criminal conduct and protect Library staff, patrons and operations. There is no evidence of an ulterior purpose.

IV. SPREADBURY'S MALICIOUS PROSECUTION CLAIM FAILS AS A MATTER OF LAW.

In a civil action for malicious prosecution, the plaintiffs burden is to introduce proof sufficient to allow reasonable jurors to find each of the following six elements:

(1) a judicial proceeding was commenced and prosecuted against the plaintiff;

(2) the defendant was responsible for instigating, prosecuting or continuing such proceeding;

(3) there was a lack of probable cause for the defendant's acts;

(4) the defendant was actuated by malice;

(5) the judicial proceeding terminated favorably for plaintiff; and

(6) the plaintiff suffered damage.

Plouffe v. Montana Dept. of Pub. Health and Human Services, 45 P.3d 10, ¶ 16 (Mont. 2002); *Vehrs v. Piquette* 684 P.2d 476, 478 (Mont. 1984). If one of these elements is not proven by *prima facie* evidence, judgment as a matter of law may be entered for the defendant. *Plouffe,* ¶ 16 (citing *Orser v. State*, 582 P.2d 1227, 1232 (Mont. 1978).)

A. Probable Cause

The burden to prove lack of probable cause is "heavy" because malicious prosecution claims are disfavored in Montana. *See Reece v. Pierce Flooring*, 634 P.2d 640, 643 (Mont. 1981) (noting malicious prosecution claims discourage legitimate prosecution of claims and disturb settled litigation). Under Montana law, probable cause exists if one reasonably believes in the existence of the facts upon which the claim is based and reasonably believes that under those facts the claim may be valid under the applicable law. *Hughes v. Lynch*, 164 P.3d 913 ¶ 12 (Mont. 2007) (citing Restatement (Second) of Torts § 675 (1977)).

In Montana, one commits the crime of trespass if he knowingly enters or remains unlawfully on another's property. *See* Mont. Code Ann. § 45-6-203. It is undisputed that Spreadbury was banned from the library. It is undisputed that he was aware of the ban when he entered library property. It is also undisputed that Spreadbury was convicted by a jury based on proof beyond a reasonable doubt. Certainly, these facts establish, at the very least, that one could reasonably believe Spreadbury had committed the crime of trespass. *See Hughes*, ¶ 12.

B. Malice

Malice can be proven with evidence of intentional ill will, or it can be inferred when want of probable cause for the underlying action is proven by the facts. *Plouffe*, ¶¶ 17-18 (citing *Miller v. Watkins,* 653 P.2d 126, 131 (Mont. 1982)). As set forth above, probable cause existed as a matter of law. In addition, There is no evidence of any kind suggesting the prosecution of Spreadbury was motivated by intentional ill will.

C. Favorable Termination

Perhaps the most obvious failure of Spreadbury's claim concerns the lack of a favorable termination. For the termination to be deemed favorable to the person alleging malicious prosecution, it "must reflect on the merits of the underlying action." *Sacco v. High Country Independent Press*, 896 P.2d 411, 432 (Mont.

1995). This encompasses "the natural assumption that one does not simply abandon a meritorious action once instituted." *Id.* (failure to prosecute within statute of limitations reflects favorably for defendant); *O'Fallon v. Farmers Ins. Exchange*, 859 P.2d 1008, 1013 (Mont. 1993). That presumption, however, is rebutable with competent evidence. *Plouffe,* ¶ 35.

An action for criminal trespass was instigated against Spreadbury. A jury found him guilty of criminal trespass, based on proof beyond a reasonable doubt. Spreadbury appealed to the Ravalli County District Court. When the appeal was pending, the Hamilton City Attorney voluntarily dismissed the trespass charge, but made clear the dismissal had nothing to do with the merits:

> In light of the Montana Supreme Court's Order of August 10, 2010, upholding an Order of the District Court in Cause No. DV 10-93; the Order of Protection issued to Ms. Nansu Roddy has been confirmed, and the Defendant is restrained from entering the Bitterroot Public Library ("BPL") premises for five (5) years from May 20, 2010. Thus, the goal of both the City and the BPL, 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.) In sum, the undisputed facts demonstrate the proceeding did not terminate favorably on the merits. Spreadbury's malicious prosecution claim fails.

V. SPREADBURY'S INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE CLAIM FAILS AS A MATTER OF LAW.

The tort of intentional interference with prospective economic advantage requires acts that are: (1) intentional and willful; (2) calculated to cause damage to the plaintiff's business; (3) done with the unlawful purpose of causing damage or loss, without right or justifiable cause on the part of the actor; and (4) result in actual damages. *Pospisil v. First Natl. Bank of Lewistown*, 37 P.3d 704, ¶ 13 (Mont. 2001).

The City Defendants, to this day, remain unaware of "plaintiff's business," if any. Although he is seeking millions of dollars in lost earnings, he has refused in discovery to disclose what his business is or where his earnings come from. (SOF 57-66.) Given the fact that the City Defendants are <u>still</u> unaware of Plaintiff's business, it is impossible that any of them intentionally acted to cause damage to his business. Moreover, since Plaintiff has refused to provide the information in discovery, he should be precluded from arguing that he sustained any kind of business loss as a result of the City Defendants' conduct. Fed. R. Civ. P. 37(b).

VI. SPREADBURY'S DEFAMATION CLAIMS FAILS AS A MATTER OF LAW.

In discovery, Plaintiff was asked to "[i]dentify those statements or publications of a representative of the City which you allege to be defamation as alleged in Count 17 or the Amended Complaint." (SOF 57.) Plaintiff answered as follows: "Defendant Jerry Steele proclaiming incorrect knowledge of Plaintiff's medical condition. Attorneys for City (Boone Karlberg) republishing crime of sitting on public property in state court documents (through communication of Bell case and others.)" (SOF 61.)

The claims against Boone Karlberg were dismissed by this Court's July 21, 2011 Order. (Doc. 69.) Specifically, the Court determined that, under Montana law, "statements made in a judicial proceeding are absolutely immune and a cause of action for defamation cannot be predicated thereon." (Doc. 69, p. 9 (*citing Montana Bank of Circle, N.A. v. Ralph Meyers & Son, Inc*, 769 P.2d 1208, 1213 (Mont. 1989).)

Thus, Plaintiff's only identified basis for defamation concerns a statement Mayor Jerry Steele allegedly made in his office about Plaintiff's "medical condition." (SOF 53.) These allegations are based on a conversation Steele had in his office with two private citizens who are friends or acquaintances of

Spreadbury, Lorraine Crotty and Dick White. Steele recalls Crotty and White came to his office to discuss a proposed agreement between the Hamilton Police Department and County Sheriff. The conversation later turned to Spreadbury. Crotty and/or White commented that they had observed Spreadbury during a court hearing and that he handled himself well. Steele made a comment that, in his experience, Spreadbury's behavior is inconsistent, and that sometimes "he acts like a schizophrenic." (SOF 53-54.)

Steele has no personal knowledge regarding Spreadbury's medical or emotional condition, and he has affirmed it was not his intention to imply or suggest he had any such knowledge, or to comment on Spreadbury's medical or emotional condition. (SOF 55.) Rather, he was merely expressing an opinion about Spreadbury's inconsistent behavior, based upon his personal experience, in a private conversation. (SOF 55.)

To prevail on defamation, Spreadbury must prove Mayor Steele's statement was slanderous. Slander is defined, in pertinent part, as follows:

> Slander is a false and unprivileged publication other than libel which:
>
> . . .
>
> (2) imputes in him the present existence of an infectious, contagious, or loathsome disease; [or]

. . .

(5) by natural consequence causes actual damage.

Mont. Code Ann. § 27-1-803.

The test for defamation is stringent. *McConkey v. Flathead Electric Co-op.*, 125 P.3d 1121, ¶ 45 (Mont. 2005) (citing *Frigon v. Morrison-Maierle, Inc.*, 760 P.2d 57, 62 (Mont. 1998)). "It is not sufficient, standing alone, that the language is unpleasant and annoys or irks him, and subjects him to jests or banter, so as to affect his feelings." *Wainman v. Bowler* 576 P.2d 268 (Mont. 1978).

Further, claims of defamation may not be based on innuendo or inference, and the statements must be aimed specifically at the person claiming injury. *McConkey,* ¶ 45. Nor do sarcastic and hyperbolic statements meet the stringent test for defamation. *Id.* Finally, a basic principal in the law of defamation is that an expression of opinion generally does not carry a defamatory meaning and is thus not actionable. *Anderson v. City of Troy*, 68 P.3d 805, 807 (Mont. 2003).

Mayor Steele had no personal knowledge regarding Spreadbury's medical condition and never purported to have such knowledge. He expressed an opinion that Spreadbury sometimes "acts like a schizophrenic." He expressed his opinion in response to Crotty and White's opinion that Spreadbury handles himself well. This is not defamation. *E.g., Anderson*, 68 P.3d at 807.

Moreover, even if Mayor Steele's comment could qualify as defamatory, the undisputed facts demonstrate Spreadbury was not damaged by the comment in any fashion. The comment was made in a private conversation with two of Spreadbury's friends. It was not repeated. Moreover, despite repeated requests to provide evidence of his claimed damages, Spreadbury has refused to provide any.

VII. SPREADBURY'S INFLICTION OF EMOTIONAL DISTRESS CLAIMS FAIL AS A MATTER OF LAW.

Spreadbury must first identify a wrongful act or omission by the City Defendants to prevail on an infliction of emotional distress claim. *Pospisil v. First National Bank of Lewistown*, 37 P.3d 704, 708 ¶ 26 (Mont. 2001). This he cannot do, particularly in light of the fact that the City Defendants owed him no actionable duty in tort. *See* Part II, *supra*. But even assuming a wrongful act, there is still no basis for Spreadbury's claim.

When the Montana Supreme Court recognized the tort of infliction of emotional distress, it provided a safeguard to protect against "a floodgate of claims for emotional distress, particularly fraudulent claims." *Sacco v. High Country Independent Press, Inc.*, 896 P.2d 411, 425 (Mont. 1995). Specifically, it determined that only claims for "serious or severe" emotional distress may be maintained. *Id.* Serious or severe emotional distress exists when the distress is so

extreme that no reasonable person could be expected to endure it. *Id.* at 426; *see also McConkey*, ¶55; *Renville v. Fredrickson*, 101 P.3d 773, ¶¶ 14-16 (Mont. 2004).

Here, Spreadbury was asked in discovery to "[d]escribe the alleged emotional distress alleged in paragraphs 79, 80, 81, 82 and 85 and Counts 20 and 21 of your Amended Complaint." (SOF 57.) He was further asked to identify those persons with knowledge of the emotional distress, and any documents relating to the same. (SOF 57.) Spreadbury has refused to provide the information, despite this Court's orders requiring him to do so. (SOF 57-66.) His latest correspondence again repeats his argument that he can assert the emotional distress claim and put his condition squarely at issue, yet refuse to provide any evidence: "Requesting information protected by federal law 5 USC § 552 Privacy Act is like asking you Mr. Leonard to commit a crime. While I realize that lawyers can commit crime, I do not." (SOF 66.) Indeed, Spreadbury's only "substantive" response to the discovery on emotional distress was as follows: "Imputing Plaintiff committed crime by peaceful assembly on public property, and publishing information to world audience, interfering with election, causes severe emotional distress." (SOF 61.) Spreadbury's bare *ipse dixit* is not sufficient under *Sacco* and its progeny.

VIII. SPREADBURY'S CLAIM FOR INJUNCTIVE RELIEF FAILS AS A MATTER OF LAW.

Montana law provides a party may seek a preliminary injunction to require a person or entity to "refrain" from "a particular act." Mont. Code Ann. § 27-19-101. Although an applicant is not required to prove the ultimate merits of the case, Montana courts have consistently denied applications that fail to establish irreparable harm or otherwise present a prima facie case. *See, e.g., Valley Christian School v. Montana High School Assoc.*, 86 P.3d 554 (Mont. 2004). In this case, Spreadbury has made numerous allegations, but has not made a prima facie case on any claim, much less a showing of irreparable harm. *See Bitterrooters for Planning v. Board of Commissioners of Ravalli County*, 189 P.3d 624 (Mont. 2008). Moreover, this Court has already considered Spreadbury's claim for injunctive relief and has denied the claim. (Doc. 79.)

IX. THE INDIVIDUAL DEFENDANTS ARE IMMUNE FROM PLAINTIFF'S STATE LAW CLAIMS.

The individual City Defendants are entitled to immunity from Plaintiff's state law claims. Mont. Code Ann. § 2-9-305, titled "[i]mmunization, defense, and indemnification of employees[ ]" provides, in pertinent part, as follows: "In an action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the

governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment . . . ".

The Montana Supreme Court has consistently applied the immunity provision to shield individual government employees from liability where their employer is sued in the same action for the same conduct. *See, e.g., Kenyon v. Stillwater County,* 835 P.2d 742 (Mont. 1992); *Germann v. Stephens,* 137 P.3d 545 (Mont. 2006). Here, in view of the City and Library's acknowledgment that all of the alleged conduct by the individual City Defendants occurred in the course and scope of their employment, the individual defendants are entitled to immunity under the plain language of Mont. Code Ann. § 2-9-305(5). *See also Peschel v. City of Missoula*, CV 08-79-M-RFC-JCL, 2008 WL 5131369 (D. Mont. 2008) *report and recommendation adopted,* CV-08-79-M-RFC, 2009 WL 29906 (D. Mont. 2009).

X. SPREADBURY'S PUNITIVE DAMAGES CLAIM FAILS AS A MATTER OF LAW.

There is no independent cause of action for punitive damages. Mont. Code Ann. § 27-1-220. Regardless, the City is immune from a claim of punitive damages. Mont. Code Ann. § 2-9-105; *see City of Newport v. Fact Concerts, Inc.*,

453 U.S. 247, 271 (1981); Under state law, so too are its employees. Mont. Code Ann § 2-9-305.

Further, it has not been shown that any act or omission by a City Defendant was motivated by an evil intent or involved a reckless or callous indifference to Spreadbury's federally protected rights, or amounted to actual malice or actual fraud. *Smith v. Wade*, 461 U.S. 30 (1983); Mont. Code Ann. § 27-1-221.

XI. SPREADBURY'S CLAIMS RELATING TO THE CRIMINAL CHARGES FILED AND MAINTAINED AGAINST HIM ARE BARRED BY PROSECUTORIAL IMMUNITY.

Montana follows the common law doctrine of prosecutorial immunity. *See Rahrer v. Bd. of Psychologists*, 993 P.2d 680, 682-83 (Mont. 2000) *(citing State ex rel. Dept. of Justice v. District Court*, 560 P.2d 1328, 1330 (Mont. 1976).) Filing and maintaining criminal charges are among the many duties of a prosecutor, and when a prosecutor acts within the scope of these duties, "that prosecutor is absolutely immune from civil liability, regardless of negligence or lack of probable cause." *Rosenthal v. County of Madison*, 170 P.3d 493, 499-500 (Mont. 2007). Moreover, the doctrine of prosecutorial immunity applies to cover not only the personal liability of prosecutors, but also the vicarious liability of the City. *Rahrer*, 993 P.2d at 682.

In this case, neither the individual prosecutors, nor the City, can be held liable for any of Spreadbury's claims based on the filing and maintaining of the criminal charges against him. As such, his claims for abuse of process and malicious prosecution should be dismissed in their entirety, in addition to any other claim based on the carrying out of prosecutorial functions.

CONCLUSION

For the reasons stated, the City Defendants' Motion for Summary Judgment on Plaintiff's State Law Claims should be granted.

DATED this 17th day of November, 2011.

/s/Thomas J. Leonard
Thomas J. Leonard
BOONE KARLBERG P.C.
Attorneys for City Defendants

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 4,006 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 17th day of November, 2011.

/s/ Thomas J. Leonard
Thomas J. Leonard
BOONE KARLBERG P.C.
Attorneys for City Defendants

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:

__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/ Thomas J. Leonard
Thomas J. Leonard
BOONE KARLBERG P.C.
Attorneys for City Defendants