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AUG 31 2011



DEPUTY

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6 **MONTANA 21ST JUDICIAL DISTRICT COURT**
7 **RAVALLI COUNTY**

8 _____
9 MICHAEL E. SPREADBURY) Cause No: *DV-11-535*
10 Plaintiff) Dept. 1
11 v.)
12 KAREN MAHAR,) **PETITION FOR WRIT OF MANDAMUS**
13 CITY OF HAMILTON,)
14 BOONE KARLBERG PC,)
15 Defendants)

16 _____
17 Comes now the Plaintiff, petition for Writ of Mandamus before Honorable James Haynes, 21st
18 Montana Judicial District Hamilton, Montana.

19 This petition for Writ of Mandamus is to compel Karen Mahar, Hamilton City Attorney to
20 release a requested accident report for September 14, 2007 accident at the intersection of Fox
21 Field Ave. and US 93 in Hamilton Montana. Spreadbury has made several requests to Boone
22 Karlberg PC, in writing, one to Karen Mahar on or around August 15, 2011 via electronic mail to
23 attorney@cityofhamilton.net. Defendants are not responding to established Montana law to
24 release an accident report to the public. Honorable Court is familiar with DC-10-639 before this

25 court where Spreadbury gained access to public information via Montana Code, balance of right
26 to know as written in the Montana Constitution Art. II. s. 9.

27 Montana Code Ann. MCA § 61-7-114 [Accident reports confidential] has a provision in
28 subsection (2)(e) for release to the public with names, witness names, law enforcement officer
29 names redacted or otherwise removed. Defendants are refusing to release information required
30 open to public inspection.

31 Due to respect for court's workload, and previous victory for public information, Writ of
32 Mandamus is appropriate to settle matter clearly established in Montana law. Spreadbury
33 requests that Honorable Court orders the appropriate release of the September 14, 2007 accident
34 report in accordance with MCA §61-7-114(2)(e) as requested of Defendants to the Plaintiff by
35 way of this petition for Writ of Mandamus.

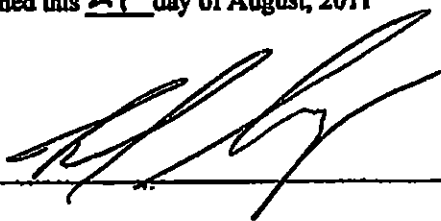
36 Respectfully Submitted to the Honorable Court on this Date.

37

38 Signed this 21th day of August, 2011

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A handwritten signature in black ink, appearing to read "Michael E. Spreadbury", is written over a solid horizontal line. The signature is stylized and cursive.

41 Michael E. Spreadbury, self represented litigant.

HON. JAMES A. HAYNES
District Judge - Dept. 2
Twenty-First Judicial District
Ravalli County Courthouse
205 Bedford - Suite B
Hamilton, Montana 59840
(406) 375-6780
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[Signature]
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MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

<p>MICHAEL E. SPREADBURY, Plaintiff, vs. KAREN MAHAR, CITY OF HAMILTON, BOONE KARLBERG, P.C., Defendants.</p>	<p>Cause No. DV 11-535 // Department No. 2 OPINION AND ORDER</p>
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Plaintiff is representing himself in this action. Defendants are represented by William L. Crowley and Natasha Prinzing Jones of Boone Karlberg, P.C.

On August 31, 2011, Plaintiff petitioned this Court for a writ of mandamus to compel Defendants Karen Mahar and City of Hamilton to release an accident report. On October 12, 2011, Defendants voluntarily appeared in this action and filed a *Joint Answer of Defendants Karen Mahar, City of Hamilton and Boone Karlberg P.C.* Defendants did not file a counterclaim. On October 13, 2011, Defendants filed *Defendants' Motion to Declare Plaintiff a Vexatious Litigant* (Doc. # 5) and a brief in support (Doc. # 6) of the motion. On October 13, 2011, Plaintiff filed a *Notice of Withdrawal* [sic] (Doc. # 7), requesting that the Court "voluntarily dismiss process via MRCiv. P 23.1(c) [sic],"

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referring apparently to Montana Rule of Civil Procedure 23.1(c). Montana Rule of Civil Procedure 23.1(c) concerns settlement, dismissal, and compromise of a derivative action (e.g., a shareholder action) and has no application to this cause.

On October 14, 2011, Defendant Boone Karlberg P.C. filed a motion to dismiss (Doc. # 8) on the grounds that Defendant Boone Karlberg P.C. has no power to produce the document Plaintiff requested in his writ. On October 18, 2011, Defendants, through counsel, filed a *Consent to Withdrawal of Petition of Writ of Mandamus* (Doc. # 10) in accordance with Montana Rule of Civil Procedure 41, stating that the petition should be dismissed with prejudice. Defendants, therefore, deem Plaintiff's *Notice of Withdrawal* [sic] to be a motion pursuant to Montana Rule of Civil Procedure 41. The Court likewise so deems Plaintiff's *Notice of Withdrawal* [sic]. Montana Rule of Civil Procedure 41 provides in pertinent part:

(a) Voluntary Dismissal.

(1) *By the Plaintiff.*

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable statute, the plaintiff may dismiss an action without a court order by filing:

- (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or
- (ii) a stipulation of dismissal signed by all parties who have appeared.

(B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice.

(2) *By Court Order; Effect.* Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim may remain pending for independent adjudication. Unless

the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

The Defendants have filed an answer in this action and the parties have not filed a signed stipulation; therefore, dismissal under Montana Rule of Civil Procedure 41(a)(1) is not proper. However, the Court determines that it is proper to grant Plaintiff's motion and to dismiss this cause under Montana Rule of Civil Procedure 41(a)(2), provided that the dismissal is with prejudice.

ORDER

Accordingly, it is **ORDERED** that:

1. Plaintiff's *Notice of Withdrawal* (Doc. # 7) is **GRANTED** and this cause is **DISMISSED WITH PREJUDICE**, each party to bear its own costs.

DATED this 20th day of October 2011.


HON. JAMES A. HAYNES, District Judge

AR 10-20-11
cc: counsel of record
Michael E. Spreadbury, *pro se*

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EXHIBIT TT