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' CONSOLIDATED REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S FEDERAL CLAIMS AND MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S STATE LAW CLAIMS**

In opposing the City Defendants' motions for summary judgment, Spreadbury effectively acknowledges he has no evidence to raise a genuine issue for trial. Instead of submitting a Statement of Genuine Issues attaching relevant evidence, Spreadbury offers a "Statement of Disputed Facts to Deny Defendant Summary Judgment" ("SGI") which is nothing more than a re-listing of Spreadbury's all-too-familiar musings about Defendants' alleged wrongs. Not a single document – no evidence of any kind – is attached to Spreadbury's SGI. Having failed to raise a genuine issue for trial, and having failed to justify additional discovery under Rule 56(f), the City Defendants' motions for summary judgment should be granted.

Because Speadbury has largely ignored the facts and analysis set forth by the City Defendants in their originating brief, this reply brief is limited to addressing the few issues raised by Spreadbury in his response.

A. Spreadbury's Own Conduct and Litigation Approach Necessitated Lengthy Briefing.

Spreadbury complains he received "approximately 700 pages" from the City Defendants the week of Thanksgiving. (Spreadbury's Brief, p. 2.) Although he never asked for an extension to respond – a request the City Defendants would not have objected to – he suggests the City Defendants' attempt to finally put him to

his proof is a sinister attempt to "distract a disabled IFP pro se in hopes of no response." (Spreadbury's Brief, p. 2.)

The fact is, to the extent Plaintiff has any grounds to complain about having to respond to lengthy briefs, he has only himself to blame. The long and tortuous history of his interaction with the City Defendants takes time to tell, and involves voluminous documentation. More importantly, his theories in this lawsuit are many and continue to change, both in terms of the law and the facts. For this reason, the City Defendants were forced to present a Statement of Facts that was expansive.

In sum, there is nothing wrong or improper with the City Defendants' reasonable attempt to defend against Spreadbury's myriad claims and allegations. Sadly, even meritless claims can necessitate the expenditure of substantial time and resources. Spreadbury knows this. As he warned the City Defendants prior to his litigation spree: "Get Ready for a constant pummeling in the courts. . . . Destroying lives for ego is pricey on budgets." (SOF 39.)

B. Qualified Immunity Does Not "Hold Up" Discovery or Summary Judgment.

Spreadbury continues to ignore applicable law and this Court's rulings on the question of qualified immunity. He continues to argue discovery must cease

and summary judgment may not be issued until this Court decides the question of qualified immunity. (Plaintiff's Brief, p. 3.) This Court has already rejected his argument. (Doc. 112, pp. 4, 5.)

Moreover, on a substantive level, Spreadbury fails to provide any facts or analysis as to any of the individual City Defendants, and specifically why their specific conduct was not reasonable in light of clearly-established law. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). As set forth in the City Defendants' originating brief, the undisputed facts establish qualified immunity as a matter of law.

C. Citing To Relevant Authority Is Not "Deception."

Spreadbury points to the undersigned's citation to *U.S. v. American Library Association*, 539 U.S. 210 (2003) as evidence of "deception." (Plaintiff's Brief, p. 4.) He notes the cited authority was "an internet filter case," and this is not. (Plaintiff's Brief, p. 4.) That distinction is correct. However, it in no way alters the well-established general proposition, applicable here, that "a public library does not have an obligation to add materials to its collection simply because the material is constitutionally protected." *American Library Assoc.,* 539 U.S. at 210, n. 4.

D. The ALA Policy Does Not Support Plaintiff.

Spreadbury attaches the American Library Association's "Right To Read" policy to his brief. However, nothing in that policy, or in any facts presented by Spreadbury, suggests the policy was violated by the City Defendants. The policy does not support Spreadbury's advocated per se rule that any material submitted by a patron must be included in the library collection. Moreover, even if it did, the standard applicable here is found in the U.S. Constitution, not the policies of the ALA. Spreadbury conveniently ignores the applicable constitutional standard. *See, e.g., Brown v. Louisiana,* 383 U.S. 131, 142 (1966).

E. No Genuine Issue Exists Regarding Conspiracy.

Spreadbury argues "Defendant fails to offer defense for conspiracy to deprive Plaintiff rights." (Plaintiff's Brief, p. 5) That is not true. The City Defendants' extensive SOF and summary judgment briefing established there were no violations of Spreadbury's constitutional rights, either as part of a conspiracy, or otherwise. (*See* City Defendants' Brief on Federal Claims, pp. 7-18.) Spreadbury's only response is to quote allegations from his complaint. (Plaintiff's Brief, p. 6.) That is insufficient at this juncture. Fed. R. Civ. P. 56. Spreadbury submits no evidence in support of his allegations that would give rise to a genuine issue.

Moreover, Spreadbury's reliance on *Adickes v. S.H. Kress & Company*, 398 U.S. 144 (1970) is misplaced. In that case, a white woman who was denied service in a restaurant and then arrested, allegedly because she was in the company of blacks, sued the restaurant. *Id.*, 398 U.S. at 146-47. She alleged a conspiracy between the restaurant and the state in depriving her of her constitutional rights. *Id.* The Court found summary judgment had been improperly granted to the defendant because there was evidence a public official (a police officer) was present when the plaintiff was unconstitutionally denied service, and it was the same police officer who subsequently arrested her. *Id.* In other words, there was real evidence of a potential conspiracy in *Adickes*. *See id.* Here, Spreadbury has presented nothing – neither in terms of conspiracy, nor an underlying constitutional violation.

F. No Genuine Issues Exist Regarding a Municipal Policy or Custom.

Spreadbury argues there are three bases to find a municipal policy or custom in this case, sufficient to establish liability under *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 689 (1979). He is wrong.

First, Spreadbury alleges a municipal policy or custom arose by virtue of the City's prosecution of Spreadbury for trespass. (Plaintiff's Brief, p. 7.) However,

as set forth in the City Defendant's originating brief, 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, 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 Envtl. Ctr. v. Mendocino County,* 192 F.3d 1283, 1300 (9th Cir.1999).

Second, Spreadbury alleges a municipal policy or custom arose when "policymaker Oster decided to deprive Plaintiff liberty interest to enter Defendant Lee storefront open to the public. . . ." (Plaintiff's Brief, p. 7.) However, Spreadbury presents no facts on the incident in question. As a matter of law, Spreadbury has no constitutional right to access another's private place of business. It is undisputed that 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 Spreadbury, 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 Spreadbury to heed the *Ravalli Republic*'s request. (SOF 17.)

Third, Spreadbury alleges a municipal policy or custom arose when "[p]olicymaker Oster unlawfully enters Plaintiffs residence October 4, 2011."

(Plaintiff's Brief, p. 7.) As established by the City Defendants, on that date Hamilton police were called by Spreadbury's probation officers for assistance. (SOF 67.) According to the probation officers, they sought assistance because Spreadbury was uncooperative and very agitated during their routine visit to his home. (SOF 67.) The police officers responded to Spreadbury's residence and stood in the doorway while the probation officers finished their business with Spreadbury. They then left. (SOF 67.) Spreadbury filmed the officers with a digital camera, and has since posted the video on the Internet. (SOF 67.) Contrary to Spreadbury's insistance, this recent isolated incident does not give rise to a municipal policy or custom under § 1983.

G. No Witness Inconsistencies Raise a Genuine Issue.

Spreadbury complains about the characterization of his interaction with Jo Frankfurter, a Library staff person who reported a rude tirade by Spreadbury. (Plaintiff's Brief, p. 9.) She reported the incident to law enforcement. (SOF 8.) Spreadbury argues Ms. Frankfurter has a "cleft face, speech impediment" which provides a "motive to lash out at Plaintiff without cause." (Plaintiff's Brief, p. 9.)

Spreadbury does not appreciate that only disputed issues of material fact may defeat summary judgment. Fed. R. Civ. P. 56. In this regard, Jo Frankfurter is not a named defendant. Regardless of the precise accuracy of her

characterization of the interaction with Spreadbury, it is the City Defendants' conduct in response to her report that is at issue. Spreadbury's speculation about her "motives" is insufficient to raise a genuine issue. Moreover, because the question is irrelevant to his claims, nothing Spreadbury could obtain in future discovery from Frankfurter would change this conclusion.

Next, Mayor Steele presented a sworn affidavit regarding a conversation he had with Dick White and Lorraine Crotty in City Hall. (SOF 53-55.) Spreadbury argues Steele's account is different from what he was told about the conversation. (Plaintiff's Brief, p. 9.) Spreadbury offers no factual support for this statement, relying instead on unidentified hearsay. Apparently, the inconsistency between the sworn evidence and the unidentified hearsay concerns whether Mayor Steele said Spreadbury acts "like a schizophrenic" (SOF 54), or whether he said Spreadbury "is a schizophrenic" (Plaintiff's Brief, pp. 9-10).

Again, the conversation Steele had in his office was with two private citizens who are friends or acquaintances of Spreadbury. It is uncontroverted that Steele has no personal knowledge regarding Spreadbury's medical or emotional condition, and was merely expressing an opinion about Spreadbury's inconsistent behavior. (SOF 55.) As a matter of law, this is not defamation. *See* Mont. Code

Ann. § 27-1-803; *McConkey v. Flathead Electric Co-op.*, 125 P.3d 1121, ¶ 45 (Mont. 2005); *Anderson v. City of Troy*, 68 P.3d 805, 807 (Mont. 2003).

Moreover, it is undisputed that Spreadbury was not damaged by the comment. (SOF 53-55.) The comment was made in a private conversation with two of Spreadbury's friends. It was not repeated. Despite repeated requests to provide evidence of his claimed damages, Spreadbury has refused to provide any. (SOF 57-66.) Again, no further discovery on the issue would make any difference. As set forth in the City Defendants' Response to Plaintiff's Motion To Defer Summary Judgment, incorporated herein by reference, Spreadbury has not sustained his burden under Rule 56(f) regardless.

CONCLUSION

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

DATED this 5th day of December, 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 1,784 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 5th day of December, 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 5th day of December, 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