

Michael E. Spreadbury
 700 S. 4th Street
 Hamilton, MT 59840
 Telephone: (406) 363-3877
mspread@hotmail.com
Pro Se Plaintiff

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 PATRICK E. DUFFY, CLERK
 By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MONTANA
 MISSOULA DIVISION

MICHAEL E. SPREADBURY) Cause No: 9:11cv-0064-DWM-JCL
Plaintiff)
v.) OBJECTION TO PART,
BITTERROOT PUBLIC LIBRARY,) AGREE IN PART; COURT
CITY OF HAMILTON,) FINDINGS IN RE: LEE
LEE ENTERPRISES, INC.,) ENTERPRISES INC.
BOONE KARLBERG, PC,)
_____)

Comes now Spreadbury with objection in part, agree in part to court findings and recommendations (TR. #181) with respect to Defendant Lee Enterprises Inc.

Motion:

WHEREFORE, Plaintiff moves court reject part Findings as controlling authority conflicts with findings, deprive Plaintiff liberty, property without due process.

Brief in Support

Plaintiff agrees with court, part findings for trial, acknowledges Honorable court for their work, findings. Plaintiff objects to part findings and recommendations not consistent with controlling authority, or irrelevant to case in TR. # 181 filed with the court November 30, 2011.

Constitutional Protection of court lost on Plaintiff:

This honorable court insists on using its constitutional protection to speak to defame the Plaintiff, attempt to re-write circumstance of this case with false information to the court, public. As Court uses constitutional protections, fails to allow 42 USC§ 1983 common law, fundamental rights to be protected for Plaintiff.

1. Plaintiff peacefully assembled on public property near the structure of the Bitterroot Public library August 20, 2009 as pled in the aforementioned.
2. Plaintiff had privileges to enter library Montana Code Ann. MCA§ 22-1-311 (Use of Library Privileges) removed without cause in an arbitrary fashion without administrative remedy by Defendant Bitterroot Public Library; a right to liberty, due process deprived before this court.
3. Defendant Public Library did refuse Plaintiff submission in violation of policies for submission, reconsideration in violation of Plaintiff speech.

Court; in 1.Introduction deprives Plaintiff fundamental right:

Plaintiff entered public library May 29, 2009 [SODF # 3 served 11/23/11] for established appointment with Defendant Assistant Library Director Roddy, returned 42 days later (six weeks) as Defendant Library Director Langstaff omitted Defendant Public Library policy within a July 9, 2009 correspondence to Plaintiff. Spreadbury has not returned since July 10, 2009 [SODF# 27,28 served 11/23/2011] Honorable court quoted as "...Spreadbury escalated his dispute with Roddy and the library by engaging in continued confrontational interactions with Library staff." This statement is not founded in fact, and is constitutionally protected, yet untrue. If this Court contends a scheduled appointment for the Plaintiff submission May 29, 2009, and henceforth 6 weeks pass to request library policy omitted from a correspondence July 9, 2009 from the public library director as "continued confrontational interactions" then cognitive issues of court arise, bias 28 USC§ 455 et. seq. for the Plaintiff. Spreadbury served upon this court Exhibit A October 24, 2011 "Public Trust" national security clearance issued January 2008 by the US Dept. of Homeland Security FEMA precludes crime, expected future criminal behavior. Fiction without facts, deprive Spreadbury liberty to enter library without due process, procedural due process, violates Montana Code, and does not serve the sworn oath to uphold federal laws, constitutional rights *Amendment 5, 14 MCA§ 2-1-311 [Use of library—privileges].*

Further, this honorable court wishes to uphold a court order precluding Spreadbury from Defendant Public Library without findings of fact, conclusions [written within opinion] of law which deprive Spreadbury liberty without due process of law *Amendment 14, Due Process Clause US Constitution*.

Spreadbury has made affidavit before this court November 22, 2011 of "...never commit(ing) a crime, or admitted to such in Ravalli County Montana." (§6 *Affidavit in Support of Rule 56(f) Plaintiff Pleading* served November 23, 2011).

Defendant Roddy was never threatened, unsolicited information in police report November 4, 2009 [HPD 1-209CR0002579] without probable cause of crime.

Defendant Lee published October 13, 2010 front page article tainting Plaintiff jury, identified Spreadbury in headline, article "Court Rules against Spreadbury" indicated court appearance as jury notices mailed, in violation of Plaintiff right to impartial jury *Amendment 6 US Constitution*. This honorable court found no conspiracy to deprive constitutional rights under 42USC§ 1983.

As this Court deprives, allows deprivation of Spreadbury established rights, cause of action as property interest, pled in the aforementioned (injury is full disability), deprived by this court without due process of law.

Civil Conspiracy Revisited:

Defendant Lee engaged in civil conspiracy with Defendant City of Hamilton July 9, 2009 due to acting in color of law, deprived Spreadbury established right 42 USC s. 1983, *Adickes v. SH Kress and Co.* 398 US at 150 (1970). Lee Enterprises came to agreement with Defendant City via Municipal Policy; Spreadbury not to enter storefront at 232 W. Main although no threat (slander, defamation as dispatch called) existed, no cause *Monell v. NYC Social Services* 436 US 658 (1978).

Defendant City of Hamilton made "Policy or Custom" to restrict liberty interest of Spreadbury, equal protection protected in *Amendment 5, 14 US Constitution, Monell*.

The sequence of events July 9 2009 created a substantial enough possibility of a conspiracy to allow the case to proceed to trial *Adickes at 157*. The Hamilton Police came to an understanding of granting Defendant Lee's request to deprive Spreadbury's liberty interest protected Amendment 5, 14 US Constitution *ibid*. The *Adickes* court denied summary judgment for the municipality and found SH Kress in conspiracy with the police department.

Common law conspiracy occurs in Montana when a combination of two or more persons intend to accomplish some unlawful objective for the purpose of harming another which results in damage *Jones v. Mont. University*

System ¶44 155 P.3d 1247 Mont. Supra (2007) citing Schumacker v. Meridian Oil Co. 288 Mont. 217 (1998), Viex v. E. Bay Regional Park Dist. 906 F. 2d 1330 (9th Cir. 1990).

Defendant Lee on July 9, 2009 meets joint action test *Johnson v. Knowles 113 F. 3d at 1118-1120 (9th Cir., 1997)*. Defendant Lee acting in color of law with Defendant Hamilton Police, depriving Spreadbury established right meets criteria in 9th Circuit for civil conspiracy under 42 USC s. 1983 *WMX Technologies Inc. v. Miller 80 F. 3d 1315 (9th Cir., 1996) citing Gibson v. US 781 F. 2d 1334 (9th Cir., 1984)*.

The July 9, 2010 article published by Defendant Lee protects the of Hamilton, Defendant Bell as Official Misconduct MCA§ 45-7-401(b)(c) (acting outside duties) effected November 20, 2009, hearing of Defendant Public Library Roddy obtains protection order without finding of fact, conclusions of law in violation of M. R. Civ. P. 52(a), Spreadbury due process protected *Amendment 14, US Constitution*. Defendant Boone employee Natasha Prinzing-Jones tells court no statute prohibits Bell's behavior, untrue and protected by Defendant Lee in August 9, 2010 article. Defendants Lee, Boone, City, Public library in joint function in conspiracy to deprive Spreadbury liberty, due process without due process of law per 42 USC § 1983, pled in the aforementioned *Johnson v. Knowles 114 F. 3d at 1118-1120 (9th Cir., 1997)*.

Peaceful Assembly, Procedural Due Process

This court misinterprets peaceful assembly on public property as “returning to the library”. Peaceful assembly on public property must be supported by this court, regardless of the circumstances *Amendment 1 US Constitution*. The procedural due process violations of the Bitterroot Public Library, by denying Spreadbury remedy to deprivation of library privileges trigger Stigma Plus Test, Procedural Due Process 14th *Amendment US Constitution Mathews v. Eldridge 424 US 319 (1976)*.

The 14th Amendment Due Process clause guarantees no law will be enforced which abridges an American’s constitutional rights. The honorable court is abridging Spreadbury’s right to sit peacefully on *public property* at 306 State St. Hamilton, MT 59840 USA on August 20, 2009 on the commons of the Bitterroot Public Library. No court privilege is available to Defendant Lee under Montana Code Ann. MCA§ 27-1-801 due to it depriving Spreadbury’s fundamental right Amendment 1 US Constitution, *Hague v. CIO 307 US 496 (1939)*. The Hamilton Municipal court is presided by Honorable Michael J. Reardon, former JAG lawyer, well aware of Spreadbury’s assertion of fundamental right, threatened to incarcerate Spreadbury if recital of US Constitution occurred in court.

US District Court has erred in granting privilege, Montana Code Ann. MCA§ 27-1-801 over Spreadbury's right to peacefully assemble at 306 State St. Hamilton MT 59840 on August 20, 2009 as pled in the aforementioned, ripe for appeal if not corrected via objection of this US Magistrate finding (TR. #181).

Issues within July 9, 2010 Lee article, failed correction

Defendant Lee reporter attended August 6, 2010 oral arguments, failed to ask Spreadbury for statement, fact check, article entitled "Spreadbury lawsuits begin pretrial hearings" on cover of Defendant Ravalli Republic. Lee reporter acted as "eyewitness" to August 6, 2010 court proceedings reporting known false information, intent to inflict harm through falsehood *Time Inc. v. Pope* 401 US at 285 (1971). Any falsification establishes actual malice *Time Inc. at* 289. Lee reporter Schmerker made false publication with high degree of awareness of probable falsity for publishing conviction of Disturbing the Peace MCA§ 45-8-101, Defendant City Prosecutor Bell unlawfully in a civil courtroom *Time Inc. at* 291, *Garrison v. Louisiana* 379 US at 74 (1964).

A statement published with known falsity by Defendant Lee, quotations out of context such as Spreadbury's "lost in space" referred to Bell in a civil courtroom as Defendant City Prosecutor is false factual assertion to Spreadbury in ln. 2 p7 Doc. 124-5 (court transcript) readers rely on quotes to form opinion of speaker *Masson*

v. NY Magazine Inc. 501 US at 511 (1991). Injury to reputation as Defendant Lee as statement of Spreadbury contrary to actual speech in Oral Argument as recorded in transcripts (Doc. #124-5); imputes lack of integrity of speaker as quotes used out of context *Masson at 511*. Falsification occurred in August 9, 2010 Lee article as Law Student Wetzsteon, “key point of Spreadbury’s argument...” attributed as supervised by Spreadbury yet no supervision occurred as affirmed by Justice Bailey Affidavit August 17, 2007, eyewitnesses at August 8, 2007 trial.

The social context of article is important as Defendant Lee reporter claims “eyewitness” status, then makes known falsifications, false statements *Time Inc., Letter Carriers et. al. v. Austin et. al. 418 US 264 (1974)*. As a desire to injure plaintiff is evident in Defendant Lee articles in August 2010 including August 9, 2010 Defendant Ravalli Republic article examined by this court, evident in winter, spring imputation of crime on Spreadbury, falsifications, AP submissions of false statements Spreadbury entitled to redress injuries *Montana Const. Art. II s. 16, Letter Carriers et. al.* Defendant Lee has made known false statement of fact, falsification, and intent to injure as critical arguments to oral arguments are falsely attributed, quotes out of context of speaker, as Defendant Lee claims eyewitness account without clear fact-checking with transcript, editorial, publisher oversight breeches duty to Spreadbury to not print false information *Time Inc., Masson, Garrison, Gertz v. Robert Welch Inc. 418 US at 340 (1974)*.

The failed correction to the August 9, 2010 article by Defendant Lee was published August 24, 2010. By the time of Lee's failed correction, the charge of Trespass on public property was dismissed August 16, 2010. The failed correction has several problems:

1. Lee's failed correction of the August 9, 2010 article mentions an unrelated event a day *after* the article was published: namely the Montana Supreme Court Decision of August 10, 2010 denying Spreadbury's out of time appeal for the Roddy order of protection.
2. The failed correction never mentioned the charge to be corrected, namely the false publication of Spreadbury's conviction for Disturbing the Peace.
3. The August 10, 2010 decision by the Montana Supreme Court did not "uphold" the unlawful "ban" of Spreadbury's public library privileges; failed correction added false published information by Lee.

The honorable court truncated the full correction in attempt to legitimize Lee's failed correction (e.g. pg. 14 of TR. #181; Findings). Spreadbury is entitled to punitive damages for a lack of correction, damages for injury to character for publication of known false information *Gertz*. Defendant Lee re-published false information about Spreadbury in the failed correction August 24, 2010 from AP stories on or around August 20, 2010 picked up by Radio, TV, six (6) Defendant Lee affiliates, and The USA Today with daily readership of 1.8 Million.

Defendant Lee Internet Comments liable to Newspaper Publisher

District Court errs in relying on *Carafino v. Metrosplash.com Inc* 339 F. 3d 1119 (9th Cir., 2003) as the Communications Decency Act 47 USC§ 230 et. seq. does not apply to Newspaper Publishers (Lee Enterprises) third party comments, but only internet service providers such as AOL, Yahoo, or Matchmaker as in Carifino.

Carafino is about the alleged defamation to a Hollywood actress on a Matchmaker.com profile, as users gain access to the internet, or are engaged in internet chat rooms; The Communications Decency Act (CDA) protects providers of internet service with third party defamation protection. The Plaintiff requested production via interrogatory of Defendant Lee of any person who acquires internet service in Montana or elsewhere pending before this court.

Carafino cites *Bazel v. Smith* 333F.3d 1033 (9th Cir, 2003) in the 9th Circuit, a case that reflects more closely as a court authority to the aforementioned. Defendant Lee does not qualify for immunity under the CDA as a newspaper publisher, a material fact for appeal. Defendant Lee is not:

1. An internet computer service
2. Communication provided from another information provider.

In the aforementioned, third party comments were published by a Defendant Lee newspaper propriety websites as pled in 2nd Amended Complaint (TR. #10). The

Communications Decency Act does not “confer immunity on the publisher of the information” *Baztel at 1032*. District Court is denying Spreadbury property interest in complaint without due process as defamation of third party comments published by Defendant Lee injure Spreadbury.

Emotional Distress as separate cause:

Honorable Court uses wrong authority in Montana for prima facie case for IIED, criteria not consistent with published standard in Montana. *Johnson v. Supersave Markets Inc.* 686 P. 2d 209 Mont. 1984 is the prima facie case, not *Sacco v. HMIP Inc.* 271 Mont. 209 (1995). In Montana, Negligent Infliction of Emotional Distress apply as severe Emotional Distress to Spreadbury was reasonable consequence of Lee’s negligence or omission *Sacco at 425*. The August 9, 2010 article, August 24, 2010 failed corrections had so many known falsifications, false attributions that a reasonable person would identify reckless conduct to create a submissable issue for the Jury *Johnson at 215*.

Spreadbury, being falsely accused of a crime, as this Honorable court found in August 9, 2010 article as false conviction of Disturbing the Peace is sufficient for a ED cause of action in Montana *Sacco, Niles v. Big Sky Eyewear* 771 P. 2d at 119 (1989). The foreseeability of risk to Spreadbury is the chief element of duty in ED cases as Lee damages Spreadbury’s self image, reputation to community, social

stigma as third party comments directed to Spreadbury's psychological health knowingly caused injury *Johnson*. Lee breeched a legally protected interest of liberty from false published comments, other defamatory comments which had a significant impact to Spreadbury *Johnson*. Spreadbury's significant impact is permanent disability from work effected by Lee's reckless disregard for the impact, injury to Spreadbury . Montana Courts find Spreadbury's ED substantial as humiliation, embarrassment, and other emotional distress (anger, others) proximately caused by Lee negligence, breech of lawful duty to mitigate invasion into Spreadbury's protected interests *Johnson at 227*. Spreadbury was impacted by the foreseeable actions of Defendant Lee by permanent impairment to health *Sacco at 224, Cashin v. Northern Pacific Ry Co. 28 P. 2d at 865 (1934)*. Any impairment to Spreadbury's health, temporary or permanent is actionable under standards in Montana for Emotional Distress *Kelly v. Lowney and Williams 126 P. 2d at 488 Mont.(1942)*.

District Court erred in not finding independent cause for IIED, NIED in the aforementioned, as Spreadbury injured by substantial invasion of protected interest which had significant and permanent impact on Plainitff as is prima facie in *Johnson*. Further, Spreadbury had fear of loss of profession, did have loss of profession as Wetzsteon entered courtroom as a unsupervised law student; Defendant Lee falsely attributed and published Spreadbury speech to imply

Wetzsteon was supervised *Gabbert v. Conn* 131 F. 3d 793 (9th Cir., 1997).

Spreadbury lost employment immediately as Wetzsteon was unsupervised in a Montana Courtroom August 8, 2007 in violation of LR 83.6; Montana Student Practice Rule, Order #12982 Supreme Court for the State of Montana. Wetzsteon attended clinic at District Court under US Magistrate Lynch, US District Judge Malloy prior to graduation from the University of Montana Law School. A violation of a court order as Wetzsteon effected August 8, 2007 is punishable by Criminal Contempt *Montana Code Ann. MCA*§45-7-309(c).

As Defendant Lee falsely attributes Spreadbury speech for Wetzsteon's supervision in the August 9, 2010 article it triggers severe Emotional Distress due to false arrest, booking, abuse of power by Ravalli County Sheriff as middle of night warrant attempted 0330hrs August 11, 2007.

The Sacco case in Montana (1995) included civil rights, and ED as in aforementioned.

Plaintiff Interrogatories preclude Summary Judgment

Plaintiff is expecting interrogatory/discovery information material to this case, showed discrepancies in witness, Defendant oral accounts; made affidavit to such November 22, 2011 before this court. The US Supreme Court, a controlling authority before this District Court found that interrogatories preclude summary

judgment of a party *Anderson v. Liberty Lobby Inc.* 477 US 242 (1986). The *Celotex* court cited in courts findings (TR. #181), cite answers to interrogatories defeat summary judgment.

The 9th Circuit of Appeals reversed a dismissal of 42 USC§ 1983, stated District Court erred in granting summary judgment while interrogatories outstanding *Klingele v. Elkenberry* 849 F. 2d 409 (9th Cir., 1988). The 9th circuit stated that additional material facts emerge as interrogatories are returned between parties, specific facts contrary to courts knowledge, opinion in summary judgment *Hill v. Hawaii* 791 F. 2d 759 (9th Cir., 1986). Honorable Court is encouraged to review and modify Findings & Recommendations, of November 30, 2011 (TR. #181).

Certificate of Compliance

From LR 7(d)(2)(E) US District Court Rules Montana, I certify that this brief conforms with 14 point font, New Times Roman typeface, is double spaced, contains 2906 words excluding title page, this compliance.

Respectfully submitted this 8th day of December, 2011

BY: _____

Michael E. Spreadbury, Self Represented Plaintiff

Certificate of Service

Cause No. 9:11-cv-11-0064-DWM-JCL

I certify as Plaintiff in this action, a copy of the below named motion was served upon the US District Court Missoula Division and all opposing counsel for parties in this above named cause of action by first class mail. The following addresses were used for service:

Objection to Part, Agree in Part in Re: Lee Enterprises

Russell Smith Federal Courthouse

Clerk of Court

201 E. Broadway

Missoula, MT 59803

Defendant Counsel:

William L. Crowley

Boone Karlberg PC

PO Box 9199

Missoula MT 59807

Plaintiff Counsel:

Michael E. Spreadbury

PO Box 416

Hamilton, MT 59840

(self-represented)

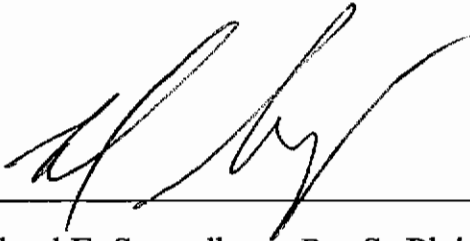
Jeffrey B Smith

Garlington, Lohn, & Robinson PLLP

PO Box 7909

Missoula MT 59807

Dated _____ 12/8/11 _____



Michael E. Spreadbury, Pro Se Plaintiff