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FILED
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 By PATRICK E. DUFFY, CLERK
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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MONTANA
 MISSOULA DIVISION

MICHAEL SPREADBURY)	Cause No: CV-11- ⁶⁴ 61 -M-DWM
Plaintiff)	
v.)	RESPONSE TO LEE'S INITIAL
BITTERROOT PUBLIC LIBRARY,)	PLEADING; MOTION TO SET
CITY OF HAMILTON,)	ASIDE, BRIEF IN SUPPORT
LEE ENTERPRISES, INC.,)	
BOONE KARLBERG, PC,)	
_____)	

Comes now the Plaintiff with motion to set aside, brief in support, initial response to Defendant Lee Enterprises in the aforementioned.

Motion:

WHEREFORE, Plaintiff respectfully moves that Honorable Court set aside Defendant Lee Enterprises motion to dismiss with cause as pled herein.

This motion is opposed by Defense counsel.

Brief in Support:

Section 1983 litigation, 42 USC §1983 is established to permit persons who have had constitutional rights violated, and to sue the wrongdoer for redress of injuries.

Liability attaches if the defendant acted in “color of law”, and the action(s) deprived the Plaintiff of some right, privilege, or immunity secured by the Constitution *Monroe v. Pape 365 US 167 (1961)*.

Spreadbury alleges several constitutional deprivations in complaint, amended complaint, 2nd Amended complaint filed before this court in the aforementioned.

The Due Process Clause of the 14th Amendment of the US Constitution protects civil litigants who seek recourse.....as plaintiff attempting to redress grievances *Logan v. Zimmerman Brush Co. 455 US 422 (1982)*. This same clause is interpreted as preventing states from denying potential litigants use of established adjudicated procedures to dismiss, such an action would be the equivalent of denying litigants an opportunity to be heard of their claimed rights *Logan at 430*.

A meaningful right to be heard, and an attempt to settle claims of right and duty through the judicial process must be given a right to be heard *Boddie v. Connecticut 401 US 371 (1979)*.

The fundamental right, amongst several pled by the Plaintiff in the complaint properly filed with this court is for peaceful assembly on public property. Peaceful assembly is a fundamental constitutional right found in Amendment 1 US Constitution. Defendants in this case, conspired to make illegal, and publish as such the fundamental right to peaceful assembly *Schneider v. State (Town of Irvington) 308 US at 162 (1939)*.

No state shall make or enforce any law which shall abridge the privileges or immunities of The United States; nor shall any state deprive any person life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

--Amendment 14, US Constitution.

In the aforementioned, Defendant Lee Enterprises acted in concert with local officials, a willful participant engaged in joint action with local officials in Hamilton, Montana effecting a deprivation of Plaintiff's right to peaceful assembly on public property *Dennis v. Sparks 449 US 24 (1980)*. Defendant is a newspaper company whose reporters are trained in First Amendment rights in Journalism School prior to employment. Negligence, intentional interference, defamation attaches as Lee Enterprises: 1) intentionally and willfully covered a story of Plaintiff engaged in peaceful assembly on public property; Defendant had duty to

Plaintiff to not violate, or participate with unlawful actions of City of Hamilton 2) Defendant breached that duty by publishing, republishing story to a intrastate, interstate and international audience; 3) Defendant Lee Enterprises did with the purpose of destroying plaintiff character, co-acting with other defendants, acting in violation of all 3 of 3 defamatory journalistic precepts: *i)* Plaintiff committed criminal act which did not occur, *ii)* Financial status of Plaintiff revealed, and *iii)* mental health of Plaintiff defamed in online comments. 4) Actions of Defendant Lee Enterprises, other defendants resulted in loss of ability to be gainfully employed, and is categorized by the State of Montana as disabled; proof of tortious interference *Sebena v. Am. Automobile Assn. 280 Mont. 305 (1996)*.

No altercation occurred at the library, Plaintiff asked for, and was never given policy promised by former Director in written correspondence. Plaintiff was attempting to lawfully exhaust administrative remedies at Bitterroot Public Library, including meeting with Director, suggested by Senior Librarian Roddy. No meeting was allowed, privileges unlawfully removed per MCA§ 22-1-311 without administrative remedy by Defendants.

Defendant Lee Enterprises published 33 articles, online comments, and 2 AP submissions printed in 6 Lee newspapers in The State of Montana within a 3 year time span. News, radio, national and international publication of defamatory falsehood on or around August 20, 2010 was a malicious act by then Editor Perry

Backus which had intent of harm to character per MCA§ 27-16-102(2) entitles Plaintiff to request the arrest of Perry Backus due to calculated, malicious acts which disabled Plaintiff ability to work. Law is established to protect people, disabling the public with use of unlawful criminal charges, international defamation by Defendants precluded by constitutional right, Plaintiff has lawful ability to request civil arrest of Backus by court affidavit, discretion of a Judge.

The Due process clause indicates no law can abridge Plaintiff right to peaceful assembly, which includes MCA§ 27-1-804 as pled by Defense counsel as defense to publishing Plaintiff involved in criminal act, other false light information when no criminal act had occurred. The judicial misrepresentation, and intentional deprivation of Plaintiff right in this case does not exempt Defendant Lee Enterprises from duty to not deny Plaintiff when clear constitutional right is involved *Shuttlesworth v. Birmingham 394 US at 159 (1969)*.

The cause of action for IIED, NIED have jurisdiction in a State court, the remand to that court is proper, this Honorable court should expect a Plaintiff motion.

Defense misrepresents a prima facie case of ED to this court. Simply, a Defendant that has availability of position of power over Plaintiff, deprives established right, or his interests, acts in an unreasonable or outrageous manner with reasonable expectation of ED to Plaintiff, then ED inflicted upon Plaintiff. The standard in

the State of Montana is *Johnson v. Supersave 211 Mont. 465* (1984) and serves as IIED litmus test for the Montana Supreme Court:

whether tortuous conduct results in a substantial invasion of a legally protected interest and causes a significant impact upon the Plaintiff.

Defendant Lee Enterprises avers incorrectly that physical or psychological evidence of harm must be produced to inact ED *Johnson*. In *Stensvad v. Towe 232 Mont. 378 (1988)* The Montana Supreme court awarded damages absent physical injuries when Defendant conduct resulted in substantial invasion of legally protected interest which caused significant impact on person of Plaintiff.

Plaintiff was never out of “compliance” with public library staff, or law enforcement in Hamilton MT in summer 2009. Plaintiff has right to peaceful assembly on public property, and although never asked to leave the public library, had liberty, property interests deprived by the Defendants in this case.

A complaint invoking federal civil rights statute as jurisdictional basis, attempting to state claim under such statute sufficient to establish subject matter jurisdiction under 42 USC§ 1983, F.R.Civ. P. 12(b)(1), 28 USCA; *Shaw v. Los Angeles 797 F. 2d 743 (9th Cir. 1986)*. A §1983 pro se complaint which avers a policy or custom under *Monroe* is sufficient to withstand a motion to dismiss “even if the claim is based on nothing more than bare allegation that the individual officer conduct

conformed to official policy, custom or practice.” *Shah*. Defendant Lee Enterprises acted with City of Hamilton to deprive Plaintiff right to peaceful assembly, and as a co-conspirator must answer the deprivation of Spreadbury’s rights. Plaintiff has pled in ¶50, 51 of Amended Complaint specific details of malicious defamation per se by Defendant Lee Enterprises, as well as dates of mass republishing of defamation on or around August 20, 2010.

Defendant Lee Enterprises violated 42 USC§ 1983 by acting in color of law, and depriving Plaintiff right to peaceful assembly as protected in Amendment 1 US Constitution. Further, Defendant Lee Enterprises used position of power over Plaintiff to maliciously defame and distribute this information to a very large audience in conspiracy with the other Defendants in the aforementioned.

There is no privilege for Defendant Lee Enterprises articles when the court proceeding violated a clearly established right of the Plaintiff under 42 USC§ 1983. The references to *Cox v. Lee Enterprises Inc. 222 Mont. 527 (1986)* in Defendant motion to dismiss do not indicate a violation of Cox’s fundamental right, or Cox pleading to a court for redress of deprivation of constitutional right as herein by Spreadbury.

Plaintiff right to be heard, given equal protection of property, liberty under precepts of 14th Amendment supersedes all claims made by Defendant Lee Enterprises.

A cause of action is a species of property protected by the 14th Amendment US Constitution *Logan v. Zimmerman Brush Co. 455 US 422 (1982)*. The use of a library is a liberty interest, paid by taxpayers; a cause of action is a property interest *Logan*. Substantive rights of life, liberty, property cannot be deprived except pursuant to constitutionally adequate procedures; Defendant is asking court to deprive Plaintiff these rights by dismissal; once it is determined that the due process clause applies, question only remains what process is due *Amendment 5, 14 US Constitution, Cleveland Bd. Of Education v. Loudermill 470 US 532 (1985)*.

In the Federal courts, a motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted *Guiliani v. Chuck IHaw. App.620 P. 2d 733 (1980)*.

Intentional harm to property interests, herein Spreadburys ability to work is a cognizable cause of action sounding in tort *Guliani at 733*.

Defendant Lee Enterprises acted in concert with Defendant City of Hamilton, Defendant Boone Karlberg to deprive Plaintiff right to peaceful assembly, a clearly established right. A violation of a clearly established constitutional right is actionable in this Honorable court as a violation of 42 USC§ 1983. No law,

including Trespassing on private property, can abridge this right per Amendment 14, US Constitution.

Defendant Lee Enterprises did act with other Defendants in this case to violate Plaintiff's established right, and motion to dismiss from 28 April 2011 should be properly set aside.

Respectfully submitted this 5th day of May, 2011

BY: _____

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Certificate of Service

Cause No. CV-11-0064-DWM

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:

Response to Lee's Initial Pleading; Motion to Set Aside, Brief in Support

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Dated 5/5/11


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(self-represented)



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