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*Attorneys for City and Library 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

**DEFENDANTS BITTERROOT  
PUBLIC LIBRARY AND CITY OF  
HAMILTON'S BRIEF IN  
SUPPORT OF REQUEST FOR  
LEAVE TO FILE  
SUPPLEMENTAL SUMMARY  
JUDGMENT MOTION AND  
BRIEF**

Defendants Bitterroot Public Library and City of Hamilton (collectively, “City Defendants”) request the Court grant leave to file a limited supplemental summary judgment motion and brief. Specifically, the City Defendants wish to brief the breach and causation elements of those state law negligence claims that, under the Court’s recent Findings and Recommendations, survived the City Defendants’ Motion for Summary Judgment on Plaintiff’s State Law Claims. Allowing the motion may well obviate the need for a trial and would not affect any other deadlines. Plaintiff has been contacted with respect to this request and objects thereto.

The City Defendants’ supplemental motion would be fully briefed shortly after the motions deadline in the Scheduling Order. (*See* Dkt. 182.) However, good cause supports this slight modification. Where good cause exists, a formal motion is not required to modify a scheduling order. *See* Adv. Comm. Notes on 1983 Amendment to Fed. R. Civ. P. 16(b). Under Rule 16(b), the good cause inquiry “primarily considers the diligence of the party seeking the amendment.” *U.S. v. Boyce*, 148 F. Supp. 2d 1069, 1078 (S.D. Cal. 2001); *see also* 6A Wright, Miller & Kane, *Federal Practice and Procedure* § 1522.1 at 231 (2d ed. 1990) (“good cause” means scheduling deadlines cannot be met despite party's diligence). In addition, the existence and degree of prejudice to the party opposing

modification may be relevant to the good cause inquiry. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.1992).

Good cause supports this request. *See* Fed. R. Civ. P. 16(b)(4) (a schedule may be modified “for good cause and with the judge’s consent.”). As set forth more fully below, the City Defendants were diligent in seeking summary judgment on all of Plaintiff’s claims at an early stage in the litigation. They filed their summary judgment motions a full three months before the Scheduling Order required filing dispositive motions. Once the Court’s Findings and Recommendations were issued, the City Defendants quickly moved for leave to file a supplemental motion and brief.

In addition to the City Defendants’ diligence, Plaintiff would suffer no prejudice by the modification. Allowing the motion would not affect any other deadlines, and would likely save the parties and the Court the time and expense of a trial. Trial would be an unnecessary exercise because the facts of record already establish Plaintiff is not entitled to relief on any claim, and the City Defendants would therefore be entitled to a directed verdict at trial. Forcing a trial under these circumstances would be inconsistent with considerations of judicial economy and the Rules’ underlying purpose to “secure the just, speedy, and inexpensive determination of every action.” Fed. R. Civ. P. 1.

On November 17, 2011, the City Defendants filed two summary judgment motions – one on Plaintiff’s federal claims, and one on Plaintiff’s state law claims. (Dkt. 149, 151.) The City Defendants also submitted the required Statement of Undisputed Facts. (Dkt. 152, 158.) Although two separate briefs were filed, both were based on the same Statement of Undisputed Facts. In addition, to avoid unnecessary repetition, the City Defendants asked the Court to read the brief on Plaintiff’s federal claims first, “[a]s many of the issues overlap.” (Dkt. 151, p. 2.)

Unfortunately, because of the overlap between the briefs and statement of facts, the City Defendants were less than clear in moving for summary judgment on Plaintiff’s state law negligence claims. Because the alleged underlying breaches were discussed elsewhere, the City Defendants focused their negligence discussion on the element of duty and, specifically, the public duty doctrine. (Dkt. 149, pp. 5-7.)

On March 6, 2012, this Court issued an Order, Findings and Recommendations on the City Defendants’ summary judgment motions. (Dkt. 250.) Although the majority of Plaintiff’s claims were dismissed as a matter of law, certain state law negligence claims survived the motion. Notably, the Court disagreed with the City Defendants’ interpretation of the public duty doctrine. (Dkt. 250, pp. 40-42). Finding the doctrine did not apply to the question of duty,

the Court determined the City Defendants did “not present the alternative argument that Spreadbury’s claims fail because the undisputed evidence of record establishes the individual Defendants acted with the requisite degree of care.” (Dkt. 250, p. 39.)

Pursuant to the foregoing analysis, the Court found the following negligence claims remained for trial:

1. Whether Steve Snavelly negligently investigated Plaintiff’s trespass on August 20, 2009, and whether Plaintiff was damaged or injured as a result. (Dkt. 250, pp. 39-43.)
2. Whether Steven Bruner-Murphy negligently investigated allegations that Plaintiff was stalking the Library Director, and whether Plaintiff was damaged or injured as a result. (Dkt. 250, pp. 44-46.)
3. Whether the Library Board negligently revoked Plaintiff’s library privileges, and whether Plaintiff was damaged or injured as a result. (Dkt. 250, pp. 44-46.)

The undisputed facts of record, set forth in the Statement of Undisputed Facts and in the City Defendants’ brief on Plaintiff’s federal claims, establish no breach of duty was committed by the City Defendants under Montana tort law, even assuming a legal duty was owed to Plaintiff. For this reason, the City Defendants respectfully request an opportunity to brief these limited issues. Of

course, this will also provide Plaintiff an opportunity to come forward with any evidence he might have to support his claims for trial.

Under these circumstances, granting leave to submit an additional motion and brief is warranted. Although the motion would not be fully briefed by the deadline set forth in the Scheduling Order, which is March 9, 2012, the City Defendants can submit the motion and brief quickly – on or before March 19, 2012 – to ensure that no other deadlines would be threatened by the motion. In sum, although the City Defendants could have been clearer about the bases for their prior summary judgment motion, they have exercised reasonable diligence. They submitted their summary judgment briefs three months before the filing deadline, and quickly moved for leave to file a supplemental motion upon receiving the Court’s Findings and Recommendations. This, coupled with the fact that the supplemental motion would not require modification of any other dates in the Scheduling Order, establishes the requisite good cause. *See Fed. R. Civ. P. 16(b)(4).*

For these reasons, the Court should enter an Order granting the City Defendants leave to file a supplemental summary judgment motion and brief, and directing that the motion and brief be filed no later than March 19, 2012.

DATED this 9<sup>th</sup> day of March, 2011.

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

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 7.1(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 1,067 words, excluding the parts of the brief exempted by L.R. 7.1(d)(2)(E).

DATED this 9<sup>th</sup> day of March, 2012.

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



CERTIFICATE OF SERVICE

I hereby certify that, on the 9<sup>th</sup> day of March, 2012, a copy of the foregoing document was served on the following persons by the following means:

- 1, 3      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
3.      Anita Harper Poe  
         Jeffrey B. Smith  
         Garlington, Lohn & Robinson, PLLP  
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         Missoula, MT 59807-7909

/s/ Thomas J. Leonard \_\_\_\_\_  
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