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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., and BOONE KARLBERG P.C., Defendants.	Cause No. CV-11-064-M-DWM DEFENDANT LEE ENTERPRISES, INC.'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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Defendant, Lee Enterprises, Inc. ("Lee Enterprises" or "Lee"), through its counsel, Garlington, Lohn & Robinson, PLLP, respectfully files this Brief in Support of Motion for Summary Judgment.

I. FACTUAL BACKGROUND

While people outside of Ravalli County may not be familiar with Michael Spreadbury ("Spreadbury"), he is a well-known local public figure because he has deliberately and persistently interjected himself into a number of highly visible public controversies, most of his own creation. A self-described public watchdog, Spreadbury has devoted years to a vocal and visible crusade against what he perceives as corruption and constitutional violations by the local police, judicial system, city and county governments, state agencies, federal agencies, various public officials, businesses, and individuals. One of his efforts to keep his issues in the news and affect the outcome was a run for mayor in 2009. However, his loss in that election did nothing to dampen his public advocacy.

As set out fully in the Statement of Uncontroverted Facts ("SUF"), his campaign began as early as 2006 and is unabated to this day. An exhaustive description of the public controversies Spreadbury has created or become publicly involved in would be impossible. But just a sampling will demonstrate there is no genuine dispute of fact that Spreadbury was a limited public figure at the time of the August 9, 2010 article in the *Ravalli Republic*. The following are just a few

examples of the public issues into which Spreadbury has interjected himself for the purpose of affecting their resolution.

A. Public Nuisance

In 2006, Spreadbury determined some pallets stacked near his property constituted a fire hazard and a public nuisance. He reported his concerns to the Ravalli County Sherriff's Department and the County Sanitarian. He circulated a petition to have the site declared a public nuisance. SUF at 3. Dissatisfied, he wrote to Montana Attorney General Mike McGrath and Governor Brian Schweitzer. SUF at 4. The dispute ultimately led to a confrontation in which Spreadbury was cited for misdemeanor assault. SUF at 5. Spreadbury has continued to try and keep the issue alive in the courts and on internet blogs. SUF at 26, 45.

B. Alleged Corruption of Elected Officials

Beginning in 2007, Spreadbury sought to force recall elections of Ravalli County Sheriff Chris Hoffman ("Hoffman") and County Attorney George Corn ("Corn"), claiming these officials were incompetent and failed to protect Ravalli County citizens. He tenaciously pursued the effort, in spite of receiving two legal opinions that his petitions did not meet the requirements of the law. Spreadbury re-filed both petitions in 2009. He appealed to Montana Secretary of State Linda McCulloch and complained to Senator Baucus' staff that the peoples' rights were

being denied by the county. SUF at 6-11.

In addition to soliciting signatures for his petitions in public places, Spreadbury took his campaigns against Hoffman and Corn to the internet, posting countless scathing articles and videos on multiple sites claiming these public servants are corrupt, incompetent and criminal. A quick internet search demonstrates the campaign has not let up from 2007 to the present.

Spreadbury's accusations against Hoffman and Corn are wide-ranging, and include failure to provide citizens with a clean environment, failure to protect citizens, corruption, cover ups, and conspiracies to deprive citizens of civil rights -- all issues of public concern. SUF at 9-10. Taking his attack a step further, Spreadbury filed civil lawsuits against Hoffman, Corn, and others, including deputies, seeking over $3.6 million in damages. See SUF at 45.

Spreadbury's unrelenting efforts to solicit public support for his positions on such local matters are demonstrated in his prolific blog postings about them.

In addition, Spreadbury has filed a petition for the recall of State Attorney General, Steve Bullock ("Bullock"), claiming he "presides over a justice system that is top to bottom corrupt" and that Bullock "does not uphold justice." SUF at 13. Again, Spreadbury is out in front of the public on issues he believes are of public concern. He remains a limited public figure in Ravalli County.

C. Ravalli County Government

Spreadbury took his concerns about justice and citizens' rights to the Ravalli County Commissioners. His conduct at the Courthouse eventually resulted in a letter accusing him of "disorderly conduct and intimidation of county employees." Referring to Spreadbury's visits to the Clerk and Recorder's office on February 13, and February 5, 2009, the Commissioners stated "both of these visits caused disruptions of the operations of the Clerk and Recorder's office and other adjacent offices, and were alarming enough to have county employees contact law enforcement." The letter warned Spreadbury that "[i]nappropriate, abusive behavior toward employees will not be tolerated...[and] if you wish to continue to conduct business at the Ravalli County Offices, we are advising you to conduct yourself appropriately at all times by not yelling, making abusive remarks, or attempting to intimidate our employees in any manner." SUF at 12.

Spreadbury engaged in a public demonstration in which he photographed himself standing in front of the courthouse with a paper bag over his head holding an upside down American flag. This deliberate publicity stunt got the attention of the public. The *Ravalli Republic* reported on the demonstration in an article dated February 19, 2009. The article identified Spreadbury as someone who was seeking to recall Hoffman, Corn and Bullock, and had been alleging corruption by city and county government since 2006. SUF at 15.

D. The Public Library

In May or June of 2009, Spreadbury attempted to have a letter addressed to President Obama added to the Reserve collection at the Bitterroot Public Library. The lengthy letter alleged pervasive corruption by local officials and law enforcement, stating "[t]here are no civil rights here, there is no justice here, and there is no one to appeal to." The letter describes Ravalli County as the "Holy Grail of Injustice in America." It describes County Attorney Corn as "an all powerful entity, above the laws of the United States, openly protected by the State and our National Representatives." SUF at 16.

In addition, the letter complained that the City of Hamilton did not exist, the City's Fire Department was not equipped to handle potential fire hazards at the Rocky Mountain Lab, and articulated numerous specific complaints about Ravalli County law enforcement officers, Attorney Corn and Sheriff Hoffman. The letter compares Ravalli County to the Soviet Union and recounts the efforts of the author to get the attention of the entire Montana congressional delegation about these problems. SUF at 16.

In his own words Spreadbury acknowledged he was involving himself in a public controversy: "[t]he subject matter [of the letter] is justice within Ravalli County and Montana; it meets a public informational need." SUF at 19. Spreadbury further explained "[i]n this case, it is a critical and emergent situation

to civil rights, justice, and general public safety... I think the public has a right to know about these crimes, and the efforts of concerned citizens." SUF at 19.

The librarian, N. Roddy, declined to accept the letter for the Library's collection. Spreadbury insisted it was a matter of great public importance as it concerned justice, civil rights and public safety, and matters the public had a right to know. SUF at 17-19. Clearly, Spreadbury was interjecting himself into this controversy in the hopes of affecting its resolution.

Refusing to take no for an answer, Spreadbury continued to press his case in various ways, eventually getting himself banned from the Library premises. SUF at 20-21. When he returned in violation of the ban, he was charged with criminal trespass. His continued attempts to accost library personnel with his agenda led to a protective order to stay away from Roddy, and a felony intimidation charge. SUF at 22-23, 37, 40.

The *Ravalli Republic* reported on these newsworthy public events by a local public figure. An article on September 10, 2009 was headlined "Mayoral candidate charged with trespass." The matters were of public interest, as evidenced by comments made about the articles on-line. SUF at 37-38.

Spreadbury's campaign against the Library included accusing the Director of criminal acts and embezzling, and publicly discouraging its fund-raising efforts, saying the library misuses public funds. Online Spreadbury says the library "is run

by terrorists worried that the rule of law, and the US Constitution will return to Hamilton, Montana." SUF at 31-33. Spreadbury boasts 10 million people have viewed the letter addressed to President Obama online. SUF at 31. Certainly, Spreadbury has created a public controversy about access to the library and interjected himself into the center of that controversy.

Spreadbury then proceeded to file civil lawsuits against the library, library board members and employees, and other civil servants, alleging the same issues of citizen rights, corruption, and incompetence of public servants. SUF at 46. This occurred well after the mayoral election in November 2010 and was also considered newsworthy by the local paper.

E. National Institutes of Health Rocky Mountain Lab

For several years, Spreadbury has been in the forefront of controversies about the NIH Level IV lab built in Hamilton. His complaints include allegations of fraud, low frequency noise, environmental concerns, safety of infectious agents such as ebola, and fire safety. SUF at 30. In August 23, 2009, Spreadbury spoke out at a public meeting telling Montana Representative Rehberg he had been trying for over two years to get a federal fire station at the Lab. SUF at 36. In 2010, he filed a lawsuit against the United States Department of Health and Human Services, the National Institutes of Health, Francis Collins, and the local director of the Hamilton lab, Marshall Bloom, which he continues to pursue. SUF at 47.

These issues are well documented in his web postings and both predated and postdated Spreadbury's unsuccessful run for mayor.

F. The Law School

Another of Spreadbury's enduring public complaints relates to the supervision of a law student intern, Angela Wetzsteon, by the Ravalli County Attorney. Spreadbury has filed and published numerous documents alleging impropriety by Wetzsteon and Attorney Corn, as well as the University of Montana School of Law, and its Deans, Ed Eck and Irma Russell. He accuses the law school of supporting criminal activity and the deans of refusing to meet with him. SUF at 43.

G. *Ravalli Republic* News Coverage

Finally, Spreadbury's frequent appearance in the local news media over a period of years also demonstrates he was a limited public figure. The *Ravalli Republic* reports on matters of local interest. It began reporting on Spreadbury in 2008, when he had demonstrated in front of the courthouse to protest the Clerk's treatment of his recall petitions. SUF at 2.

Coverage continued through and after the mayoral election in November 2009. SUF at 2. In September 2009, the paper described Spreadbury as one who "characterizes himself as a public watchdog and champion of free speech and civil rights who is dedicated to exposing a vast criminal conspiracy in the Bitterroot

Valley." SUF at 37.

On the day of the mayoral election, the *Ravalli Republic* reported Spreadbury had spent the previous day in court on procedural matters bearing on his criminal trespass case. SUF at 39. After the election, Spreadbury did not fade into local obscurity, but kept himself front and center in multiple local controversies.

Shortly after the election, for example, a news article entitled, "Former candidate charged with intimidation" reported on the felony charge that alleged Spreadbury threatened a library employee. SUF at 41.

When Spreadbury began filing lawsuits against numerous individuals, businesses, and government officials in the City of Hamilton, it made headlines again. SUF at 45.

On August 6, 2010, Spreadbury represented himself in hearings in two separate matters, one civil and one criminal. The *Ravalli Republic* reported on both, because by then, Spreadbury had become a local public figure and the hearings were newsworthy. SUF at 2, 48-49.

The August 9, 2010 article accurately reported on the hearings of August 6, but in background, mistakenly stated that Spreadbury had previously been convicted of disturbing the peace. SUF at 49. Spreadbury notified the newspaper of the mistake, and on August 24, 2010, the *Ravalli Republic* published a

correction. SUF at 50.

By his own admission and his own actions as a "public watchdog" Spreadbury has purposely and repeatedly interjected himself into issues of public controversy in Ravalli County from 2006 to the present. His run for mayor of Hamilton was only one of the many tools he used to keep himself and his causes in the public eye. A year later, he was still making headlines and was still indisputably a public figure when the August 9, 2010 article was published.

Lee did not act with malice, nor did it breach the applicable standard of care. It followed the standard fact-checking practices in the newspaper industry and promptly published a correction. SUF at 51.

II. PROCEDURAL BACKGROUND

As a result of pretrial motions and orders, the only claims remaining against Lee are defamation per se, negligence, and tortious interference with prospective economic advantage. Dkt. 249. The Court declined to rule on whether Spreadbury was a limited public figure when the August 9, 2010 article was written, finding the issue was not properly raised in Lee's Opening Brief. Dkt. 249 at 10.

In its Order, the Court clarified the standard for Spreadbury's remaining claims. If Spreadbury was a private figure when the August 9, 2010 article was published, a negligence standard applies. Dkt. 249 at 7-8, 11. On the contrary, if Spreadbury was a limited public figure, Lee is entitled to judgment as a matter of

law on all remaining claims, because it has already been determined that Lee did not act with malice. Dkt. 249 at 9, 11.

III. STANDARD OF REVIEW

> Summary judgment is proper:
>
> if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law.
>
> [T]he plain language of Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

Celotex Corp. v. Catrett, 477 U.S. 317, 317 (1986).

The Court in *Celotex* emphasized that summary judgment is not to be disfavored but, rather, employed as an "integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Celotex*, 477 U.S. at 327 (citations omitted). Courts must construe Rule 56(c) with regard to the rights of both parties, including persons who oppose claims having no basis in fact. *Celotex*, 477 U.S. at 327. A party's failure to make a sufficient showing on an essential element of a case entitles the moving party to summary judgment as a matter of law. *Celotex*, 477 U.S. at 323.

Not all disputes create a genuine issue of material fact. "A dispute as to a material fact is 'genuine' if there is sufficient evidence for a reasonable jury to return a verdict for the non-moving party." *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir. 1997) (citation omitted), *overruled on other grounds by Ellington v. Dir. of Corrections*, 2009 WL 900168, slip op. (E.D. Cal. Mar. 31, 2009). Mere assertions or allegations by the opposing party are insufficient to defeat summary judgment. *Celotex*, 477 U.S. at 323-324.

IV. ARGUMENT

Lee Enterprises is entitled to judgment as a matter of law because it is undisputed Spreadbury was a limited public figure when the August 9, 2010 article was published and Lee did not act with malice. Alternatively, even if Spreadbury was a private figure, Lee is still entitled to summary judgment since it did not breach the applicable standard of care.

A. Defamation Per Se

Since Spreadbury was a public figure, he must prove Lee Enterprises acted with malice in publishing the August 9, 2010 article.

> Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation that exposes any person to hatred, contempt, ridicule, or obloquy or causes a person to be shunned or avoided or that has a tendency to injure a person in the person's occupation.

Mont. Code Ann. § 27-1-802 (2011).

However, if a plaintiff in a defamation case is found to be a public figure, the plaintiff can only recover damages if the alleged defamatory statement was made with actual malice. *Williams v. Pasma*, 202 Mont. 66, 72, 656 P.2d 212, 215 (1982) (*citing N.Y. Times v. Sullivan*, 376 U.S. 254, 279-280 (1964)). Stated differently, a public figure may only recover if the alleged defamatory publication was made "with knowledge of its falsity or reckless disregard for its truth or falsity." *Madison v. Yunker*, 180 Mont. 54, 66, 589 P.2d 126, 133 (1978).

Public figures are divided into two subcategories, public figures for all purposes and public figures for a limited purpose. "All purpose public figures" have achieved such pervasive fame and notoriety that they become public figures for all purposes and in all contexts. On the other hand, "[l]imited purpose public figures" have voluntarily injected themselves into a particular public controversy and thereby become public figures for that limited range of issues. *Kurth v. Great Falls Trib. Co.*, 246 Mont. 407, 408, 804 P.2d 393, 394 (1991) (*citing Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974)). In either case, public figure plaintiffs must show the alleged defamatory statement was made with actual malice, meaning it was published "with knowledge that it was false or with reckless disregard of whether it was false or not." *Kurth*, 804 P.2d at 394 (*citing N.Y. Times,* 376 U.S. at 280).

The rationale for the malice requirement with regard to public figures is two-

fold. First, public figures are less vulnerable to injury from defamatory statements because of their ability to resort to effective "self-help." "They usually enjoy significantly greater access than private individuals to channels of effective communication, which enable them through discussion to counter criticism and expose the falsehood and fallacies of defamatory statements." *Wolston v. Reader's Digest Assn., Inc.*, 443 U.S. 157, 164 (1979) (*citing Gertz*, 418 U.S. at 344). Second, public figures are less deserving of protection than private persons because public figures, like public officials, have "voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them." *Wolston*, 443 U.S. at 164 (citation omitted).

As the Supreme Court in *Gertz* identified, there are two ways in which a person may become a public figure for purposes of the First Amendment:

> For the most part those who attain this status have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved.

Gertz v. Robert Welch, Inc., 418 U.S. at 323, 345 (1974) (emphasis added).

Spreadbury was a limited public figure when the August 9, 2010 article was published. He deliberately and voluntarily provoked and perpetuated a public controversy with himself at its center, with his relentless campaign against various

individuals, public officials, businesses, the local public library, and the government in Hamilton, Montana and Ravalli County.

The public controversies began in 2006 when Spreadbury called attention to an alleged public nuisance. He continued thrusting himself into public controversies in order to influence the resolution of local issues, filing the recall petitions in 2007 and 2009, confronting the County Commissioners and Clerk and Recorder in 2009, and claiming Rocky Mountain Labs posed serious noise and fire hazards to the community. These were clearly matters of public concern.

Spreadbury did all he could to keep the controversy in the public eye. In addition to complaints, petitions, public meetings, and demonstrations, Spreadbury's strategies included running for mayor, lawsuits and prolific internet blogging. Apparently, he has been successful at reaching a larger target audience through the internet, claiming his website "gets 500 + hits per week." SUF at 22.

Spreadbury made himself newsworthy. Accordingly, the *Ravalli Republic* reported on matters of public interest in which he was involved. Even after he lost his bid for Mayor in November 2009, his local public profile did not diminish.

On April 20, 2010, Spreadbury issued a written statement to the public, alleging misconduct by City Attorney Ken Bell at a public hearing on the Order of Protection. The statement concluded with a threat: "Get Ready for a constant pummeling in the courts. The hunters will become the hunted. Destroying the

lives for ego is pricey on budgets." SUF at 44. Multiple pro se filings followed, further amplifying Spreadbury's public profile. In May 2010, he filed the lawsuit against Corn, Hoffman and others. That same month, Spreadbury filed separate suits against Roddy, the library employee, Angela Wetzsteon, and George Corn, employees for Ravalli County, and Kenneth Bell, employee for the City of Hamilton. SUF at 45-46. In July 2010, he filed a Complaint against the U.S. Department of Health and Human Services, National Institute of Health, Francis Collins, and Marshall Bloom. SUF at 47.

Filing lawsuits may not, in itself, make one a public figure, but Spreadbury's lawsuits are against public servants and policy makers alleging failure to properly perform public duties, violations of citizens' rights, and malfeasance. These were not a person seeking to right a personal wrong. Spreadbury's campaign for Mayor of Hamilton was only a small part of his local notoriety. Losing the election did nothing to dampen his efforts to remain in the public eye with his allegations of conspiracy and injustice, and to affect the resolution of the controversies he created. Spreadbury was a limited public figure long before and after running for Mayor. His campaign continues.

Since Spreadbury was a limited public figure with respect to the issues in the August 9, 2010 article, and Lee did not act with malice as a matter of law, Lee is entitled to judgment.

Nevertheless, as explained below, even if Spreadbury was a private figure and the negligence standard applied, Lee would still be entitled to summary judgment on all of Spreadbury's claims, because it is undisputed Lee did not breach the applicable standard of care.

B. "Companion Claims"

Spreadbury's claims for negligence and tortious interference derive from the defamation per se claim, and cannot proceed if it fails. Because Spreadbury is a limited public figure and Spreadbury cannot show Lee acted with malice in publishing the August 9, 2010 article, the defamation per se claim, and the companion claims, all fail. Dkt. 249 at 10. Only if the Court finds that Spreadbury, with all of his political efforts, remained a private figure on those matters, is negligence considered.

1. Negligence

"Negligence is the failure to use the degree of care that an ordinarily prudent person would have used under the same circumstances." *Peterson v. Eichhorn*, 2008 MT 250, ¶ 23, 344 Mont. 540, 189 P.3d 615.

> To maintain an action in negligence, the plaintiff must prove four essential elements: (1) the defendant owed the plaintiff a legal duty, (2) the defendant breached that duty, (3) the breach was the actual and proximate cause of an injury to the plaintiff, and (4) damages resulted.

Peterson, ¶ 23. "The question of whether a duty exists is one of law. Absent a

duty, breach of duty cannot be established and a negligence action cannot be maintained." *Sikorski v. Johnson*, 2006 MT 228, ¶ 13, 333 Mont. 434, 143 P.3d 161.

With respect to reporting on a public figure, including a limited public figure, Lee had a duty not to act with malice. Since it is undisputed Lee did not act with malice in publishing the August 9, 2010 article, Lee is entitled to judgment as a matter of law.

Alternatively, even if Spreadbury was a private figure, Lee is entitled to summary judgment on Spreadbury's negligence claims because, on the uncontroverted facts, Lee did not breach the applicable standard of care.

Since this claim is governed by state substantive law, the Court must look at Montana law to determine whether expert opinion is required to establish the standard of care. *See Wilderness Dev., LLC v. Hash*, 606 F. Supp. 2d 1275, 1280 (D. Mont. 2009). Montana law recognizes negligence claims against professionals or persons involved in skilled trades are outside the scope of the common experience and knowledge of lay jurors, and expert testimony is required to establish the standard of care. *See Wilderness Dev., LLC*, 606 F. Supp. 2d at 1280.

Journalists and editors are highly-educated, skilled professionals. What constitutes reasonable fact-checking standards and practices in the newspaper industry requires specialized knowledge outside the scope of the common

experience and knowledge of jurors. Consequently, expert opinion is necessary to establish the applicable standard of care.

In accordance with the Court's Scheduling Order (Dkt. 227), on March 13, 2012, Lee disclosed its Liability Experts, Sherry Devlin ("Devlin") and Perry Backus ("Backus"). Devlin has a bachelor's of science degree in News/Editorial Journalism from the University of Colorado. She has over thirty-five years of work experience in the newspaper industry and taught at the University of Montana School, School of Journalism for ten years. SUF at 51. Backus has a bachelor's degree from the University of Montana. He has worked in the newspaper industry for over twenty-five years. SUF at 51.

Backus and Devlin have specialized knowledge necessary to assist the trier of fact in understanding the standards and practices of fact checking in the newspaper industry. Their testimony is relevant to Spreadbury's claims and will be helpful to the jury. *See McClellan v. I-Flow Corp.*, 710 F. Supp. 2d 1092, 1101 (D. Or. 2010) ("Rule 702 permits expert testimony that is helpful to the trier of fact, reliable and relevant."). Both are highly qualified with proper knowledge, skill, experience, training and education to render such opinions. *See* Fed. R. Evid. 702. Their opinions are based on the facts and circumstance surrounding the August 9, 2010 article.

Devlin and Backus agree that it is not common for newspapers to have

written policies on fact-checking and corrections procedures, however, there are well-established standard industry practices. SUF at 51. Based on their expertise, Devlin and Backus have both testified the *Ravalli Republic* comported with industry standards of care in fact-checking the August 9, 2010 article and issuing the August 24, 2010 correction. SUF at 51.

Spreadbury is not able to raise an issue of fact about the applicable standard of care and whether Lee met the standard, because he failed to disclose a liability expert witness. Accordingly, even if Spreadbury was a private figure, Lee Enterprises is still entitled to judgment as a matter of law on Spreadbury's negligence claims because there is no issue of fact on the question of negligence.

2. Tortious Interference

Even if Spreadbury was a private figure, Lee is entitled to summary judgment on Spreadbury's tortious interference claim because it is undisputed Lee did not act with the malice that is an essential element of the claim. Montana does not recognize a tort of negligent interference with prospective economic advantage. The Montana Supreme Court has endorsed the *Restatement (Second) of Torts*, which states a party is not liable for economic loss resulting from negligent interference with contractual or business relations. *Restatement (Second) of Torts* § 766c (1979); *Bolz v. Meyers*, 200 Mont. 286, 293, 651 P.2d 606, 610 (1982).

Intentional conduct for a malicious purpose is an essential element of a

claim for tortious interference with prospective economic advantage. To establish a case of intentional interference with prospective business advantage, a plaintiff must show acts which: (1) were intentional and willful; (2) were calculated to cause damage to the plaintiff's business; (3) were done with unlawful purpose of causing damages or loss, without right or justifiable cause on the part of the actor; and (4) resulted in actual damages or loss. *Sebena v. Am. Automobile Assn.*, 280 Mont. 305, 309, 930 P.2d 51, 53 (1996). In a cause of action for intentional interference with prospective economic advantage ". . . the focus on the legal inquiry is on the intentional acts of the 'malicious interloper' in disrupting a business relationship." *Maloney v. Home & Inv. Ctr., Inc.*, 2000 MT 34, ¶ 42, 298 Mont. 213, 994 P.2d 1124.

The first element of tortious interference is that the defendant's conduct must be "intentional and willful." This rules out a cause of action for negligent interference with prospective economic advantage. This Court has already determined Lee did not publish the article with malice, i.e., knowledge of its falsity or in reckless disregard for the truth. Dkt. 249 at 6. Thus, the mistake was not willful.

The second and third elements also eliminate negligence as a cause and require malicious intent: the defendant's conduct must be calculated (i.e., intended) to damage plaintiff's business, and must be done with the unlawful

purpose (i.e., intent) of injuring the plaintiff. *Bolz*, 651 P.2d at 611. Unless the plaintiff can produce evidence that the defendant's acts were calculated to cause damage to the plaintiff rather than for any legitimate business reason of its own, a prima facie case of tortious interference fails as a matter of law. *Hughes v. Lynch*, 2007 MT 177, ¶ 29, 338 Mont. 214, 164 P.3d 913.

When the plaintiff fails to make a showing sufficient to establish the existence of any single element essential to his case, and on which he will bear the burden of proof at trial, summary judgment is the proper remedy. *Celotex*, 477 U.S. at 323. In Montana, malicious intent to cause harm to the plaintiff is an essential element of a claim for tortious interference. Because there is no evidence of malice as a matter of law, summary judgment for Lee Enterprises on this claim is warranted.

V. CONCLUSION

Lee Enterprises is entitled to summary judgment because Spreadbury was a limited public figure for purposes of the issues in the August 9, 2010 article. Accordingly, since it is undisputed Lee did not act with malice in mistakenly reporting Spreadbury was convicted of disturbing the peace rather than criminal trespass, Lee is entitled to judgment as a matter of law on defamation per se. Alternatively, even if Spreadbury was a private figure, Lee is still entitled to judgment because it did not breach the applicable standard of care and was, therefore, not negligent. Finally, Spreadbury's tortious interference claim fails

since the Court has already determined Lee did not act with malice.

For all the reasons stated above, Lee Enterprises respectfully requests the Court grant its Motion for Summary Judgment.

DATED this 4th day of April, 2012.

/s/ Jeffrey B. Smith
Attorneys for Defendant, Lee Enterprises, Inc.

VI. CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(d)(2)(E), I certify that this *Defendant Lee Enterprises, Inc's Brief in Support of Motion for Summary Judgment* is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office Word 2007, is 5136 words long, excluding Caption, Certificate of Service and Certificate of Compliance.

/s/ Jeffrey B. Smith
Attorneys for Defendant, Lee Enterprises, Inc.

VII. CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of April, 2012, a copy of the foregoing document was served on the following persons by the following means:

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