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*Attorneys for Defendants Bitterroot Public Library,
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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

**JOINT ANSWER OF
DEFENDANTS DR. ROBERT
BROPHY, TRISTA SMITH,
NANSU RODDY, JERRY STEELE,
STEVE SNAVELY, STEVEN
BRUNER-MURPHY, RYAN
OSTER, KENNETH S. BELL AND
JENNIFER B. LINT TO
AMENDED COMPLAINT**

Defendants Dr. Robert Brophy, Trista Smith, Nansu Roddy, Jerry Steele,
Steve Snavely, Steven Bruner-Murphy, Ryan Oster, Kenneth S. Bell and Jennifer

Lint are not named in the caption of Plaintiff's Amended Complaint. They are identified as parties in the body of the Amended Complaint. To protect their rights, they respond to Plaintiff's Amended Complaint, filed April 5, 2011, in the Montana Twenty-First Judicial District Court, Ravalli County, Montana, as follows:

FIRST DEFENSE

In response to the allegations in Plaintiff's Amended Complaint, the Defendants Brophy, Smith, Roddy, Steele, Snavely, Bruner-Murphy, Oster, Bell and Lint allege as follows:

1. Plaintiff's Amended Complaint fails to state a claim against Defendants Brophy, Smith, Roddy, Steele, Snavely, Bruner-Murphy, Oster, Bell and Lint upon which relief can be granted for an alleged violation of Plaintiff's federal rights.

2. Plaintiff's Amended Complaint fails to state a state law claim against Defendants Brophy, Smith, Roddy, Steele, Snavely, Bruner-Murphy, Oster, Bell and Lint.

3. Plaintiff's Amended Complaint fails to state a claim against Defendants Brophy, Smith, Roddy, Steele, Snavely, Bruner-Murphy, Oster, Bell and Lint for conspiracy.

4. The claims against Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint are barred by *res judicata*, collateral estoppel and federal law.

SECOND DEFENSE

Answering the allegations in Plaintiff's Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint admit, deny and allege as follows:

1. Deny the allegations under the jurisdiction heading on page 1 of the Amended Complaint.
2. Admit the allegations in paragraphs 1, 30 and 117 of the Amended Complaint.
3. Deny the allegations in paragraphs 25-29, 42, 43, 47, 56, 58, 67, 73, 75, 77-86, 104-106, 118-122, 124-126, 137-140, 142-144, 191-194, 196-200, 226-230 of the Amended Complaint.
4. Answering the allegations in paragraph 2 of the Amended Complaint, admit Dr. Brophy is a resident of Montana, is the Chairman of the Board of Trustees of the Bitterroot Public Library, and is a person in Montana. Deny the balance of the allegations in paragraph 2.

5. Answering the allegations in paragraph 3 of the Amended Complaint, admit Trista Smith is a resident of Montana, is the current Director of the Bitterroot Public Library, and is a person in Montana. Admit Gloria Langstaff is a former Director of the Bitterroot Public Library.

6. Answering the allegations in paragraph 4 of the Amended Complaint, admit Nansu Roddy is a resident of Montana, is a Senior Librarian at the Bitterroot Public Library, and is a person in Montana.

7. Answering the allegations in paragraph 5 of the Amended Complaint, admit the Bitterroot Public Library is a public library.

8. Answering the allegations in paragraph 6 of the Amended Complaint, admit Jerry Steele is the elected Mayor of the City, is a person in Montana, and is a resident of Montana.

9. Answering the allegations in paragraph 7 of the Amended Complaint, admit Steve Snaveley is or was an officer in the Hamilton Police Department, is a person in Montana, and is a resident of Montana.

10. Answering the allegations in paragraph 8 of the Amended Complaint, admit that Steven Bruner-Murphy is or was an officer in the Hamilton Police Department, is a resident of Montana, and is a person in Montana.

11. Answering the allegations in paragraph 9 of the Amended Complaint, admit Ryan Oster is the Police Chief for the City, is an official policymaker in some respects, is a resident of Montana and is a person in Montana.

12. Answering the allegations paragraph 10 of the Amended Complaint, admit Kenneth S. Bell is the City Attorney for the City, is an official policymaker in some respects, is a resident of Montana, and is a person in Montana.

13. Answering the allegations in paragraph 11 of the Amended Complaint, admit Jennifer B. Lindt is a resident of Montana, is or was a Deputy City Attorney for the City, and is a person in Montana.

14. Answering the allegations in paragraph 12 of the Amended Complaint, admit the City is a political subdivision in Montana.

15. Answering the allegations in paragraphs 13-21 of the Amended Complaint, admit Stacey Mueller is a resident of Montana, a person in Montana and a publisher of the *Missoulian* newspaper. Admit the *Missoulian*, the *Ravalli Republic*, *Billings Gazette*, the *Helena Independent Record*, the *Great Falls Tribune* and the *Montana Standard* are newspapers in Montana. Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint are without knowledge or information sufficient to form a belief as to the truth of the

remainder of the allegations in paragraphs 13-21 of the Amended Complaint, and therefore, they deny such allegations.

16. Answering the allegations in paragraph 22 of the Amended Complaint, admit William L. Crowley is a shareholder in Boone Karlberg P.C., a law firm, is a person and is a resident in Montana.

17. Answering the allegations in paragraph 23 of the Amended Complaint, admit Natasha Prinzing Jones is a shareholder in Boone Karlberg P.C., a law firm, is a person and is a resident of Montana.

18. Answering the allegations in paragraph 24 of the Amended Complaint, admit Boone Karlberg P.C. is a Montana corporation and is a person in Montana.

19. Answering the allegations in paragraphs 31-37, 40, 41 and 57 of the Amended Complaint, admit Plaintiff attempted to persuade Nansu Roddy and other Library staff to include a letter written by another Bitterroot Valley resident, other than Plaintiff, to President Obama in the Library's collection. Admit the request was refused. Admit Plaintiff was eventually banned from the Library. Admit Plaintiff sent one or more letters regarding the Library's actions.

20. Answering the allegations in paragraphs 38 and 39 of the Amended Complaint, admit a representative of the *Ravalli Republic* called the Ravalli

County Dispatch concerning Plaintiff's conduct at the offices of the *Ravalli Republic*. Admit representatives of the Hamilton Police Department responded to the *Ravalli Republic*. Admit one or more representatives of the Hamilton Police Department have told Plaintiff that the *Ravalli Republic* did not want Plaintiff to enter their business offices because of his conduct.

21. Answering the allegations in paragraphs 44-46, 48 and 55 of the Amended Complaint, admit Plaintiff was charged by the City, acting through its City Attorney, with misdemeanor criminal trespass. Allege that, while that charge was pending, Plaintiff approached Nansu Roddy, and as a result of that encounter, Ms. Roddy sought and obtained an Order of Protection against Plaintiff. Allege Plaintiff has repeatedly attempted to modify, set aside, re-litigate or otherwise collaterally attack the Order of Protection. Allege that, on March 15, 2011, the Montana Supreme Court entered its Order in Cause No. DA-11-00117 denying Plaintiff's Petition for Rehearing based upon the Montana Rules of Appellate Procedure and *res judicata*. Allege the Montana Supreme Court Order, filed March 15, 2011, reads, in part, "We caution Michael from using this matter as a means of harassing Roddy. Further pleadings filed before this Court in this matter without good cause may be sanctioned by the imposition of costs, attorney's fees and/or other monetary or non-monetary penalties under M.R.App.P. 19(5)."

Admit Plaintiff was charged with felony intimidation as a result of his contact with Ms. Roddy. Allege Plaintiff pleaded no contest to the felony intimidation charge and was sentenced on October 20, 2010.

22. Answering the allegations in paragraphs 49, 51, 68-70 and 72 of the Amended Complaint, admit the *Ravalli Republic* newspaper has published articles relating to Plaintiff. Defendants Brophy, Smith, Roddy, Steele, Snavely, Bruner-Murphy, Oster, Bell and Lint are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in these paragraphs, and therefore, they are denied.

23. Answering the allegations in paragraphs 50, 52, 53 and 71 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavely, Bruner-Murphy, Oster, Bell and Lint are without knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore, the allegations are denied.

24. Answering the allegations in paragraph 54 of the Amended Complaint, admit one or more officers of the Hamilton Police Department have investigated conduct of Plaintiff.

25. Answering the allegations in paragraphs 59-65 of the Amended Complaint, admit Boone Karlberg P.C., acting through William L. Crowley and

Natasha Prinzing Jones, has represented Nansu Roddy, Kenneth Bell and the City in litigation filed by Plaintiff, including Cause Nos. DA-10-352, DA-442 and DA-11-0017 in the Montana Supreme Court, Cause Nos. DV-10-93, DV-10-223, DV-10-224 and DV-10-639 in the Twenty-First Judicial District Court, and Cause No. CV-10-49-M-DWM-JCL in the United States District Court, District of Montana. Admit William L. Crowley and Natasha Prinzing Jones filed pleadings, briefs and other documents in the state court actions. Deny the balance of the allegations in these paragraphs.

26. Answering the allegations in paragraph 66 of the Amended Complaint, admit Kenneth Bell voluntarily dismissed the criminal trespass charge against Plaintiff following Plaintiff's no contest plea to the crime of felony intimidation.

27. Answering the allegations in paragraph 74 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint are without knowledge or information sufficient to form to a belief as to the truth of the allegations in this paragraph, and therefore, the allegations are denied. Allege Plaintiff has suggested he is a current or past member of the FBI, the Department of Homeland Security and FEMA.

28. Answering the allegations in paragraph 76 of the Amended Complaint, admit Plaintiff ran for election as Mayor of the City.

29. Answering the allegations in paragraph 87 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 1-86 of the Amended Complaint as though such responses were stated in full here.

30. Answering the allegations in paragraphs 88-92 of the Amended Complaint, admit Plaintiff's library privileges were revoked. Deny the balance of the allegations in the paragraphs.

31. Answering the allegations in paragraph 93 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 1-92 of the Amended Complaint as though such responses were stated in full here.

32. Answering the allegations in paragraphs 94-96 of the Amended Complaint, admit Plaintiff's library privileges were revoked and admit any acts or omissions of Dr. Brophy were done in the course and scope of his position with the Library. Deny the balance of the allegations in these paragraphs.

33. Answering the allegations in paragraph 97 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy,

Oster, Bell and Lint reallege their responses to paragraphs 1-96 of the Amended Complaint as though such responses were stated in full here.

34. Answering the allegations in paragraphs 98-102 of the Amended Complaint, admit Plaintiff's library privileges were revoked. Deny the balance of the allegations in these paragraphs.

35. Answering the allegations in paragraph 103 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 1-102 of Plaintiff's Amended Complaint as though such responses were stated in full here.

36. Answering the allegations in paragraph 107 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 1-106 of Plaintiff's Amended Complaint as though such responses were stated in full here.

37. Answering the allegations in paragraphs 108-111 of the Amended Complaint, admit Plaintiff's library privileges were revoked. Deny the balance of the allegations in the paragraphs.

38. Answering the allegations in paragraph 112 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy,

Oster, Bell and Lint reallege their responses to paragraphs 1-111 of the Amended Complaint as though such responses were stated in full here.

39. Answering the allegations in paragraphs 113-115 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 31-35, 37, 40-41 and 57 of the Amended Complaint as though such responses were stated in full here. Deny the balance of the allegations in the paragraphs.

40. Answering the allegations in paragraph 116 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 1-115 of the Amended Complaint as though such responses were stated in full here.

41. Answering the allegations in paragraph 123 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 1-122 of the Amended Complaint as though such responses were stated in full here.

42. Answering the allegations in paragraph 127 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 1-126 of the Amended Complaint as though such responses were stated in full here.

43. Answering the allegations in paragraphs 128-131 of the Amended Complaint, admit Kenneth S. Bell is an official policymaker in some respects. Deny the balance of the allegations in the paragraphs.

44. Answering the allegations in paragraph 132 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 1-131 of the Amended Complaint as though such responses were stated in full here.

45. Answering the allegations in paragraphs 133-135 of the Amended Complaint, admit Police Chief Oster is an official policymaker in some respects. Deny the balance of the allegations in the paragraphs.

46. Answering the allegations in paragraph 136 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 1-135 of the Amended Complaint as though such responses were stated in full here.

47. Answering the allegations in paragraph 141 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 1-140 of the Amended Complaint as though such responses were stated in full here.

48. Answering the allegations in paragraph 145 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 1-144 of the Amended Complaint as though such responses were stated in full here.

49. Answering the allegations in paragraphs 146-149 of the Amended Complaint, admit one or more officers of the Hamilton Police Department sent reports to Kenneth S. Bell. Deny the balance of the allegations in these paragraphs.

50. Answering the allegations in paragraph 150 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 1-149 of the Amended Complaint as though such responses were stated in full here.

51. Answering the allegations in paragraphs 151-155 of the Amended Complaint, admit Plaintiff was investigated. Deny the balance of the allegations in these paragraphs.

52. Answering the allegations in paragraph 156 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 1-155 of the Amended Complaint as though such responses were stated in full here.

53. Answering the allegations in paragraphs 157-161 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint incorporate here by reference their responses to paragraphs 59-65 of the Amended Complaint as though stated in full here. Deny the balance of the allegations in these paragraphs.

54. Answering the allegations in paragraph 162 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint incorporate by this reference their responses to paragraphs 1-161 of the Amended Complaint as though stated in full here.

55. Answering the allegations in paragraphs 163-167 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint incorporate by this reference their responses to paragraphs 59-65 of the Amended Complaint as though stated in full here. Deny the balance of the allegations in these paragraphs.

56. Answering the allegations in paragraph 168 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint incorporate by this reference their responses to paragraphs 1-167 of the Amended Complaint as though stated in full here.

57. Answering the allegations in paragraphs 169-173 of the Amended Complaint, admit Kenneth S. Bell filed a criminal complaint against Plaintiff. Deny the balance of the allegations in paragraphs 169-173.

58. Answering the allegations in paragraph 174 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint incorporate by this reference their responses to paragraphs 1-173 of the Amended Complaint as though stated in full here.

59. Answering the allegations in paragraphs 175-180 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint are without knowledge or information sufficient to form a belief as to the truth of the allegations in these paragraphs, and therefore, the allegations are denied.

60. Answering the allegations in paragraph 181 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint incorporate by this reference their responses to paragraphs 1-180 of the Amended Complaint as though stated in full here.

61. Answering the allegations in paragraphs 182-189 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint are without knowledge or information sufficient to form a

belief as to the truth of these allegations, and therefore, deny the allegations in these paragraphs.

62. Answering the allegations in paragraph 190 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint incorporate by this reference their responses to paragraphs 1-189 of the Amended Complaint as though stated in full here.

63. Answering the allegations in paragraph 195 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint incorporate by this reference their responses to the allegations in paragraphs 1-194 of the Amended Complaint as though such responses were stated in full here.

64. Answering the allegations in paragraph 201 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint incorporate by this reference their responses to the allegations in paragraphs 1-200 of the Amended Complaint as though such responses were stated in full here.

65. Answering the allegations in paragraphs 202-224 of the Amended Complaint, admit Plaintiff seeks injunctive relief against Boone Karlberg P.C., Lee Enterprises, Inc., the Library and the City. Admit Plaintiff seeks a “cease and

desist order” against Boone Karlberg P.C. Admit Plaintiff seeks a “civil arrest” of Perry Backus and possibly Natasha Prinzing Jones. Deny the balance of the allegations in these paragraphs.

66. Answering the allegations in paragraph 225 of the Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint reallege their responses to paragraphs 1-224 of the Amended Complaint as though such responses were stated in full here.

67. Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint deny all other allegations in Plaintiff’s Amended Complaint not specifically admitted, denied or qualified above.

THIRD DEFENSE

Responding to Plaintiff’s claims under 42 U.S.C. § 1983, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint allege as follows:

1. No policy or custom of the City or the Library caused a violation of Plaintiff’s federal rights.
2. No act or omission of a representative of the City or the Library caused a violation of Plaintiff’s federal rights.

3. No representative of the City or the Library acted with deliberate indifference or a culpable state of mind.
4. No act or omission of the City, the Library or their representatives was unreasonable, arbitrary or capricious.
5. No act or omission of the Library and its representatives was under color of state law or represented state action.
6. Concerning any alleged right of petition, no policy or custom of the City or the Library or act or omission of a representative of the City or the Library interfered with Plaintiff's ability to seek a state court remedy or rendered a potential state court remedy ineffective.
7. Any alleged acts or omissions of Kenneth Bell and/or Jennifer Lindt are subject to prosecutorial immunity.
8. Plaintiff does not have standing to assert another's right to free speech.
9. The purpose of any alleged assembly by Plaintiff was not to petition the government for redress of grievances.
10. Allegations of humiliation, loss of reputation and loss of community standing and injury to character are not a cognizable liberty or property interest

protected by due process, and due process does not impose affirmative obligations or minimal levels of conduct.

11. Any prosecution of Plaintiff was supported by probable cause, and no statement by a representative of the City or the Library was deliberately false or made with a reckless disregard for the truth.

12. Concerning any claim of malicious prosecution, Plaintiff did not suffer a post-arraignment loss of liberty.

13. Concerning any Fourteenth Amendment due process claim, no act or omission of a representative of the City or the Library was objectively harmful enough to establish a constitutional violation, and no representative of the City or the Library acted with a culpable state of mind. Further, no act or omission of a representative of the City or the Library denied Plaintiff a fair trial.

14. Concerning any claim under the Fifth Amendment, the City and the Library are not federal entities, and no representative of the City or the Library is a federal actor.

15. No representative of the City or the Library (1) entered into a conspiratorial agreement to injure or harm Plaintiff, (2) committed an overt act or omission which promoted a conspiracy agreement, or (3) acted with a class-based

invidious discriminatory animus. Further, the City and the Library cannot conspire with their own representatives.

16. Concerning any claim of discrimination, no representative of the City or the Library subjected Plaintiff to intentional discrimination. Also, Plaintiff was not treated differently than others similarly situated, and no representative of the City or the Library acted with a discriminatory animus.

17. Defendants Brophy, Smith, Roddy, Steele, Snavely, Bruner-Murphy, Oster, Bell and Lint were not personal or integral participants in the alleged violations of Plaintiff's federal rights.

18. No act or omission of Defendants Brophy, Smith, Roddy, Steele, Snavely, Bruner-Murphy, Oster, Bell and Lint violated clearly established law of which a reasonable official should have known, and Defendants Brophy, Smith, Roddy, Steele, Snavely, Bruner-Murphy, Oster, Bell and Lint are entitled to qualified immunity on Plaintiff's claims under 42 U.S.C. § 1983.

19. Concerning Plaintiff's claims for injunctive relief, Plaintiff (1) is not asserting a justiciable controversy, (2) is not asserting irreparable injury, (3) has failed to exhaust administrative and statutory remedies, and (4) legal remedies are adequate.

FOURTH DEFENSE

Concerning Plaintiff's state law allegations, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint allege as follows:

1. Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint incorporate by this reference the defenses in Nos. 4, 6-12, 15, 16 and 19 of the Third Defense above as though such defenses were stated in full here.
2. Under MCA § 2-9-305(5), Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint are immune from liability on Plaintiff's state law claims against him.
3. No act or omission of Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint violated Plaintiff's state constitutional rights.
4. Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint did not owe Plaintiff the legal duties alleged by him, and no act or omission of the City, the Library or their representatives violated a legal duty owed to Plaintiff.

5. Plaintiff's own negligence caused or contributed to his injuries and damages, and any damage award to Plaintiff is barred or should be apportioned accordingly.

6. Concerning alleged infliction of emotional distress, Defendants Brophy, Smith, Roddy, Steele, Snavely, Bruner-Murphy, Oster, Bell and Lint did not commit a negligent or intentional wrongful act or omission against Plaintiff which caused serious or severe emotional distress.

7. Concerning alleged defamation, Defendants Brophy, Smith, Roddy, Steele, Snavely, Bruner-Murphy, Oster, Bell and Lint did not make a false or unprivileged publication about Plaintiff.

8. Adequate remedies exist under statutory and common law in connection with Plaintiff's alleged state constitutional tort theories.

9. Concerning alleged abuse of process, Defendants Brophy, Smith, Roddy, Steele, Snavely, Bruner-Murphy, Oster, Bell and Lint did not use process for an improper purpose not proper in the regular course of proceedings.

10. Concerning alleged misrepresentation, Defendants Brophy, Smith, Roddy, Steele, Snavely, Bruner-Murphy, Oster, Bell and Lint did not (1) make an untrue representation regarding a past or existing material fact, (2) without

reasonable grounds to believe it, (3) with an intent that Plaintiff would rely upon it, and (4) upon which Plaintiff justifiably relied.

FIFTH DEFENSE

Concerning Plaintiff's alleged damages, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint allege as follows:

1. Plaintiff has not been damaged or injured in the manner or to the extent claimed.
2. Under MCA § 2-9-305(4), Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint are entitled to indemnity for any money judgments or legal expenses, including attorney's fees, either incurred by Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint or awarded to Plaintiff to which Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint may be subject as a result of this lawsuit.
3. Plaintiff's compensatory damages are speculative.
4. Plaintiff has not suffered any permanent injury, and he may not recover damages for alleged loss of established course of life.

5. No act or omission of a representative of the City or the Library was motivated by an evil intent, involved a callous or reckless indifference to Plaintiff's rights or represented actual fraud or malice.

6. The liability, if any, of Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint are limited as provided in MCA §§ 2-9-108, 2-9-305, 2-9-314 and 2-9-317.

7. Plaintiff's Amended Complaint is abusive, frivolous and vexatious under state and federal law, and Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint are entitled to an award of his attorneys fees in defending Plaintiff's claims against them.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint request judgment in their favor as follows:

1. dismissing all claims of the Plaintiff on their merits;
2. for an award of attorney's fees and all lawful costs of suit expended on behalf of Defendants Brophy, Smith, Roddy, Steele, Snavelly, Bruner-Murphy, Oster, Bell and Lint; and
3. for such other and further relief as equitable.

DATED this 26th day of April, 2011. .

/s/ William L. Crowley
William L. Crowley
BOONE KARLBERG P.C.
Attorneys for Defendants
Bitterroot Public Library, City of
Hamilton and Boone Karlberg P.C.

CERTIFICATE OF SERVICE

I hereby certify that, on the 26th day of April, 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/ William L. Crowley _____
William L. Crowley
BOONE KARLBERG P.C.
*Attorneys for Defendants Bitterroot Public
Library, City of Hamilton,
and Boone Karlberg P.C.*