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Pro Se Plaintiff

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, PC,)
_____)

Cause No: CV-11-⁶⁴~~61~~-M-DWM -JCL

**RESPONSE TO BOONE
KARLBERG PC MOTION,
BRIEF IN SUPPORT TO
DISMISS; RULE 12(b)(6)**

Comes now Spreadbury with timely response, brief in support to Defendant Boone Karlberg PC motion to dismiss citing Rule 12(b)(6).

Spreadbury moves Honorable court find Boone Karlberg PC, person before this court, acted in color of law established via well pled authority to this court, is Defendant in aforementioned. Defense Counsel opposes motion.

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Brief in Support

Defendant Boone Karlberg PC admitted in April 26, 2011 answer considered as person in the State of Montana. Acting in color of law with named Defendants

conspired to deprive Spreadbury's protected federal rights 42 USC§ 1983. To deny Spreadbury access to court is a violation of liberty, property without due process of law protected in Amendment 14 US Constitution *Monroe v. Pape* 365 US 167 (1961), *Logan v. Zimmerman Brush Co.* 455 US 422 (1982) cause of action as property; *Boddie v. Connecticut* 401 US 371 (1979) right to be heard in court.

In the Federal courts, a motion to dismiss for failure to state a claim Rule 12(b)(6) 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*.

As HPD Chief Oster requests Spreadbury's removal July 9, 2009 from the Ravalli Republic without cause, Defendant Lee publishes articles depriving Spreadbury's right to peaceful assembly, Lee Enterprise conspiracy with Defendant City of Hamilton established 42 USC§ 1983. Defendant Boone Karberg protects Defendant Public Library in conspiracy with City, for no retainer fee from public library, (Notice of Fraud filed 5/9/11 using F. R. Civ. P. 9(b)). See Section VII. pg. 13 for four (4) independent tests for private actor acting in "color of law" from the US Supreme Court which Defendant Boone Karlberg PC meets *Johnson v. Knowles* 113 F. 3d 1114 (9th Cir., 1997). Dismissal improper before court.

I. Defendant Boone Karlberg PC misrepresents Montana Law

Defendant Boone Karlberg PC avers all pleadings before a court are privileged, false statement. Spreadbury invites court, Boone Karlberg to read Montana Code Ann. MCA§ 27-1-804(4) [**What Communications are Privileged**] states:

by a fair and true report without malice of a judicial, legislative, or other public official proceeding or of anything said in the course thereof.

Spreadbury pled before Honorable court in 2nd Amended complaint ¶ 238 pg. 43 Defendant Boone Karlberg PC (hereafter “Boone”) acting in actual malice:

1. Boone avers Spreadbury claimed to be a FBI agent, a federal crime under 18 USC§ 1912 ¶ 27 pg. 29 Joint Answer Individual Defendants. Alleging crime of Defendant is evidence of intent to harm, meeting criteria of MCA§ 27-1-804(4) for non-privileged information.
2. In Appellee Brief before the Supreme Court for Montana Cause No. DA-10-442 dated December 22, 2010 Boone avers Spreadbury “...repeatedly attempted to persuade Roddy and other library staff...” false light said in malice when truth is appointment made to meet with Roddy; only instance Spreadbury asked staff to include submission; Defendant Bell acting in civil courtroom November 20, 2009 as official misconduct MCA§ 45-7-401; interferes with Spreadbury due process in Order of Protection hearing.

3. Although criminal charges were dismissed by Boone's client Ken Bell on August 16, 2010, in same pleading as #2 Boone pleading dated December 21, 2010 told court "Nonetheless (Spreadbury) returned [implying library—public property] and was charged with misdemeanor criminal trespass CR-2009-53." Boone, implying a crime, peaceful assembly which is known to have been dismissed, and not a crime due to the protected right of peaceful assembly, *Amendment 1 US Constitution, oath of lawyers as Bar licensed.*
4. In same pleading, Boone states "...while that charge (trespassing) was pending, Spreadbury approached Roddy.....". Most Honorable City Judge Reardon stated in November 20, 2009 hearing Spreadbury did not violate any court rules by conversing with Roddy November 4, 2009, Boone aware charges dropped August 16, 2010, yet in December 21, 2010 pleading published defamation with malice against Spreadbury, in violation of MCA§ 27-1-804(4) knew, should have known charges dropped peaceful assembly protected right indicates negligence of Spreadbury protected actions *Amendment 1 US Constitution.*
5. In Cause No. DA-10-352 before the Montana Supreme Court, Petitioner Motion to Dismiss in Roddy v. Spreadbury (with fraudulent litigation expenses paid) July 27, 2010 defamatory false light comments are published (as in #3, 4 above) break privilege in MCA§27-1-804(4) for malice intent.

6. In DV-10-224 Defendant Roddy Answer to Amended Complaint dated 27 May 2010 pg. 2 ¶ 6 is defamatory falsehood with malice: “Roddy admits that (Spreadbury) was convicted upon proof beyond a reasonable doubt of the crime of criminal trespass. (Spreadbury) entered and remained unlawfully *in* the Public Library (emphasis given)”. Statement by Boone is false, false light which is given to the State Court with malice, defeating MCA§ 27-1-801(4) for privileged communications before judicial hearing.
7. In same pleading as #6, pg. 3 ¶3 “Probable cause existed to arrest and prosecute (Spreadbury) for the crime of criminal trespass....” Boone knew or should have known, by Defending City of Hamilton that public library sits on *public* property, peaceful assembly right abridges “crime” of trespass. Boone pled with defamatory malice May 27, 2010 which negates privilege MCA§ 27-1-804(4).
8. Boone’s pleading of 24 June 2010 in DV-10-224, Response to Request for Reconsideration pg. 2 In 3 “Good cause exists to continue the protection granted Ms. Roddy from Spreadbury’s aggressive acts of intimidation and harassment.” Proper pleading in a courtroom not considered harassment, or intimidation; published in defamatory malice by Boone to 21st District Court, violates MCA§ 27-1-801(4) for privilege of pleading, fraud to court.

9. In DV-10-93 pleading by Boone 2 December 2010, republished #8 in defamatory malice pg. 2 ln 19 which defeats privilege in MCA§27-1-801(4).
10. In Boone's Joint Answer of Individual Defendants April 26, 2011 pg.9 ¶26 "Kenneth Bell voluntarily dismissed the criminal trespass charge [August 16, 2010] against (Spreadbury) *following* (Spreadbury) no contest plea to the crime of... (October 15, 2010)." Spreadbury is not sure how an event on August 16, 2011 can *follow* an event on October 15, 2011 but will yield to the court that this statement was said in malice which defeats the privilege of court pleadings in MCA§27-1-801.
11. In Joint Answer of Defendants pg. 6 ¶19 "...Spreadbury attempted to persuade Nansu Roddy and other library staff to include a letter..." false light defamatory statement. Spreadbury made appointment to meet with Roddy, did not "persuade" any staff at public library. Comment published, identifies Spreadbury, and gives false light privilege defeated MCA§27-1-801(4) due to malice, intent to harm Spreadbury by publishing comment.

The court should be made aware the MCA§ 27-1-801 does not privilege court pleadings written with malice. The above eleven (11) examples show Defendant Boone writing defamatory callous indifference, malice against Spreadbury *Smith v. Wade 461 US 30 (1983)*. The callous indifference by Boone in pleadings before this court shows malice by the indifference to

Spreadbury's protected right to peaceful assembly *Smith at 56*. Spreadbury is required to show recklessness in Boone pleadings for punitive award; actual malice is reckless disregard *Smith at 45-48*.

II. Public Library owns no property at 306 State St. Hamilton, Montana

The court should be give judicial notice Defendant Bitterroot Public Library does not own private property in Hamilton, MT. Defendant Boone-Karlberg PC refers to "library property" pg.2 ¶2 which does not exist. Original Plat Map City of Hamilton, MT sealed as true and correct copy February 25 2010 by Clerk and Recorder employee Lynda Buiel. Block #18 owned by City of Hamilton (Book #77 Page #58). Property owned by City of Hamilton, is *public* property. Nexus of aforementioned is peaceful assembly on public property by Spreadbury on August 20, 2009 in Hamilton, Montana USA as protected in *Amendment 1 US Constitution*.

III. Boone has Duty to public to adhere to oath to uphold Constitution

All attorneys in the state of Montana swear to uphold the constitution in the state of Montana, a duty to every member of the public as a court officer. Defendant Boone Karlberg PC has breached that duty to the Plaintiff by publishing items #1-11 in reckless disregard for Spreadbury's protected right to peaceful assembly.

By pleading to the court with malice that Spreadbury harassed and intimidated Senior Librarian by filing redress for injury *Art. II. s. 16 (Administration of Justice) Montana Constitution*. Civil cases allowed by those restrained: MCA§ 40-15-201(6) court asked to keep a tally of all cases filed; Spreadbury avers to informing court of actions against, and involving Roddy in oral argument against Boone Karlberg PC, to little interest from a State Judge Larson; Spreadbury performed due diligence to lawful authority in State of Montana.

Defamation by Defendant Boone Karlberg rises to the level of assisting other Defendants in this cause of action, echoing their sentiments to courts in the State of Montana with such recklessness, callous disregard, malice that would knowingly cause Emotional Distress to Spreadbury as pled in 2nd Amended Complaint.

IV. Spreadbury Established Prima Facie of 42 USC s. 1983

A pro se Plaintiff, such as Spreadbury has less stringent standard than formal pleadings by attorneys for 42USC§ 1983 *Haines v. Kerrer 404 US 519 (1972)*. In 2nd Amended Complaint before this court, Spreadbury pled 1) Boone Karlberg PC is considered a person ¶22-24 pg.6 2) Spreadbury pled Boone Karlberg acted in color of law ¶22-24 pg. 6 with other named Defendants, and 3) Pled deprivation of Constitutional right in the US District Court of Montana, Missoula Division, In 113 Spreadbury 2nd Amended Complaint *Mathews v. Eldridge 424 US 319 (1976)*.

Defendant Boone Karlberg by imputing criminal behavior recklessly into published court pleadings with regard to Spreadbury is generally construed as defamation per se *Paul v. Davis 424 US 693 (1976)*. Defendant Boone acted in concert with Defendants, a willing participant engaging in joint action with an official in color of law effecting the deprivation of rights *Dennis v. Sparks 449 US 24 (1980)*.

There is no state of mind requirement in 42 USC§ 1983 Boone pleads a “meeting of the minds”; [see **section VII** below] a person in color of law, working in conjunction with Defendant City, Defendant Public Library to deprive right to peaceful assembly, procedural due process *Monroe v. Pape 365 US 167 (1961)*.

City Judge Reardon did not find issues findings of fact, conclusions of law to make the order permanent per MCA§ 40-15-201(2).

Defendant Boone Karlberg PC in a pleading filed in the case 21st District Court June 24, 2010 that Spreadbury was “...collaterally attacking the order of protection...” by requesting appeal to District Court; such a request was “...harassing and intimidating...(same #9 above)” Senior librarian Roddy although civil cases Spreadbury’s statutory right per MCA§ 40-15-201(6). The right to appeal Order of Protection is found in MCA§ 40-15-302; Defendant Boone Karlberg PC pled request for reconsideration should be denied, which deprives

Spreadbury right to procedural due process as protected in *14 Amendment US Constitution, Fonda v. Gray* 707F.2d435(9th Cir. 1983).

V. Boone Karlberg PC perpetuates Fraud to protect Civil Conspiracy

The unlawful act of public fraud, which erodes confidence in local government, perpetuated unlawfully against Spreadbury to maintain unlawful advantage, civil conspiracy with Defendant Public Library, City of Hamilton. In DV-10-93 21st District, Defendant Boone Karlberg provides unlawful defense for City Library Employee Roddy arranged by Defendant City of Hamilton insured Montana Municipal Interlocal Authority (MMIA). Eligible city personnel and municipalities in the State of Montana pay for liability insurance with public funds.

Defendant Public Library is not a municipality, and Senior Librarian Roddy does not work for City of Hamilton, eligible policyholder with MMIA. In a June 24, 2010 court pleading not privileged under MCA§ 27-1-804(4) contains actual defamatory malice against Spreadbury, Defendant Natasha Prinzing-Jones pg. 2 ln 8 refers to “fraud against City (Hamilton) as “not new”, Defendant Boone Karlberg PC defrauds honorable court (Notice of Fraud F.R. Civ. P. 9(b) filed 5/9/11).

VI. Stigma-Plus test met for Boone, Defendants

The Federal Circuit has determined that when a liberty or property interest is deprived under the 14th Amendment protected by state law, Plaintiff reputation damaged by unlawful criminal charges a Stigma-Plus test is satisfied *Paul, Humpries v. Co. of Los Angeles 554 F. 3d 1170 (9th Cir., 2009)*. Defendant Boone Karlberg PC on several occasions (see #1-11) defamed Spreadbury with recklessness not protected with normal pleading before a court MCA§ 27-1-804(4) in conspiracy with Defendants in aforementioned. Defendants conspired to deprive Spreadbury library privileges, a liberty interest protected in MCA§22-1-311[Use of Library—Privileges]. When a government action that per se defames and extinguishes of a statutory right in state law, stigma-plus test is met *Paul at 708. Hart v. Parks, 450 F. 3d 1059 (9th Cir., 2006)*.

Spreadbury was handed court restrictions by Hamilton Judge Reardon of loss of 2nd Amendment right to arms, restricted travel misreported in Defendant Lee Enterprises Newspaper as Ravalli County Montana only. City court restrictions are a loss of liberty for a protected right, peaceful assembly on public property, use of library privileges, submission to library *Amendment 1US Constitution, MCA§ 22-1-311 [Use of library—Privileges]*.

VII. Defendant Boone meets 4 independent tests to prove “in Color of Law”

Defendant Boone meets four (4) independent tests derived by the US Supreme Court to determine if private individual acted in color of law *Johnson v. Knowles 113 F. 3d at 1118-1120 (9th Cir. 1997)*.

1. Public Function Test

Defendants interfered with an election for public office *Johnson at 1119*.

Spreadbury was candidate for Mayor of Hamilton in November 3, 2009 election; peaceful assembly on public property on August 20, 2009. Spreadbury pled prima facie evidence of interference with election 2nd Amended Complaint In 119 ¶26.

2. Joint Action Test

Defendant Boone Karlberg PC had agreement with Defendants to defame Spreadbury deprive established right that can cause state action *George v. Pacific-CSC Work Furlough 91 F. 3d at 1231 (9th Cir. 1996)*. When Defendant City, Boone have common objective of defaming Spreadbury in re: deprived right of peaceful assembly August 20, 2009 both are in color of law *United Steelworkers of America et. al. v. Phelps Dodge Corp. 865 F. 2d at 1540-1541 (9th Cir. 1989)*.

Spreadbury alleges in 2nd Amended complaint that Defendant Boone acted in concert with Defendant City in ¶26 pg. 7, in #1-11 section I, fraudulent representation of Defendant public library *Collins v. Womancare 878 F. 2d at 1154*

(9th cir. 1989), *Burton v. Wilmington Parking Auth.* 365 US at 725 (1961). When City, Boone have common objective to defame, deprive Spreadbury constitutional right to liberty, peaceful assembly on public property, joint action test is satisfied *United Steel Workers*.

3. State compulsion Test

Defendant City of Hamilton exercised coercive power, significant encouragement due to large purse strings over Boone; is joined with city in color of law *Johnson at 1119-1120*. It is unlikely that Defendant William L. Crowley, Natasha Prinzing-Jones, Boone would publish criminal trespass on public property December 21, 2010 when client was City Attorney Bell who dismissed charges August 16, 2010 unless “meeting of minds” created compulsion *Collins*. Defendant Boone as private party has taken step with City that caused harm to Spreadbury; accepts fraudulent retainer fees as benefit for unconstitutional behavior *Nat’l Collegiate Athletic Assn. v. Tarkanian* 488 US 179 (1988).

4. Nexus Test

There is a sufficiently close nexus that Defendant City, Boone are indistinguishable; actions blurred, fairly attributable to each other, interdependence establish color of law of private actor *Collins, Johnson at 1120*.

VIII. Malicious Conduct, actions in color of law allow Punitive damages

Spreadbury has established non-privileged communication of Boone through lawful authority in Montana Code Ann. MCA§ 27-1-801(4) in Section I #1-11.

The Stigma-Plus test is met for the defendants for depriving Spreadbury a state interest, depriving peaceful assembly on public property, while defaming with continued reckless defamatory, false light comments in Defendant Lee Newspapers, court pleadings before the Judiciary, public in Montana *Paul*.

Finally, Defendant Boone acted in reckless disregard for the truth with other Defendants in color of law by meeting US Supreme Court criteria for private parties acting in color of law to knowingly deprive Spreadbury liberty interests procedural due process without due process of law *Johnson, Matthews v. Eldridge 424 US 319 (1976)*.

Proof of constitutional deprivation is Defendant Boone including material from November 2009 which is free speech, arbitrary assignment of Order of Protection outside Montana case precedent *Edelen v. Bonemarte 337 Mont. 407 (2007)* where Bonemarte admitted to threatening Edelen, order was thrown out due to no finding of fact conclusion of law as in Spreadbury. Boone given notice that evidence presented contains no threat, irrelevant to case, proof of more reckless deprivation of abridged rights *Amendment 1,14, US Constitution*. Spreadbury has no control

over Montana's rank as 48th in nation, tainting of jury by Defendant Lee Enterprises. Spreadbury has proof of Roddy false swearing MCA§ 45-7-202 to Judge Reardon with respect to Order of Protection, denied District court hearing after Defendant Bell official conduct MCA§ 45-7-401 (appearing in civil courtroom) outside duties of City Attorney MCA§ 7-4-4604 on Roddy's behalf November 20, 2009.

Dismissal for not stating a claim F. R. Civ. P. 12(b)(6) not appropriate for Defendant Boone Karlberg acting in color law per US Supreme Court independent tests, **stigma-plus test** requirements met for Boone as Defendant *Johnson, Paul*.

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 2880 words excluding title page, this compliance.

Respectfully submitted this 11th day of May, 2011

BY: _____

Michael E. Spreadbury, Self Represented Plaintiff