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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

**CITY AND LIBRARY
DEFENDANTS' BRIEF IN
OPPOSITION TO PLAINTIFF'S
MOTION TO REMAND**

INTRODUCTION

On behalf of Defendants Bitterroot Public Library, Dr. Robert Brophy, Trista Smith, Nansu Roddy, City of Hamilton, Jerry Steele, Steve Snavelly, Steven Bruner-Murphy, Ryan Oster, Kenneth Bell and Jennifer B. Lint, this opposes Plaintiff's motion, dated May 14, 2011, to remand his state law claims for negligent and intentional infliction of emotional distress to state district court. The motion should be denied. It does not serve any legitimate purpose.

BACKGROUND

Plaintiff's Amended Complaint was filed April 5, 2011, in the District Court, Twenty-First Judicial District, Ravalli County, Montana. It was removed to this Court. The Amended Complaint contains 26 counts. Twenty-two of those counts seek damages, including Count 26, which seeks punitive damages under state and federal law. Excluding Count 26, 16 of the damage counts are based on state law (Amended Complaint, Counts 1, 2, 4, 5, 7, 8, 11-13 and 15-21). Five of the damage counts are based on federal law (Counts 3, 6, 9, 10 and 14). With this in mind, Plaintiff seeks to remand two of the sixteen state law damage counts, Counts 20 and 21, alleging negligent and intentional infliction of emotional distress. However, these two counts involve the same alleged acts or omissions which are the basis for the remaining state law counts which Plaintiff does not

seek to remand. Further, they derive from a common nucleus of operative facts which apply to the federal law claims. [Amended Complaint, ¶¶ 190-200.]

DISCUSSION

This Court has subject matter jurisdiction of the claims based on federal law. In the Amended Complaint, Counts 3, 6, 9, 10 and 14, Plaintiff seeks damages for alleged violations of his federal civil rights. This Court has jurisdiction of such claims under 28 U.S.C. 1343(a)(3). Likewise, this Court also has jurisdiction of Plaintiff's state law claims. 28 U.S.C. § 1367.

With this in mind, the standard to be applied to a claim of intentional or negligent infliction of emotional distress has been established under Montana law for some time. *Sacco v. High Country Independent Press, Inc.*, 896 P.2d 411 (Mont. 1995). Applying the standard is neither novel or complex. 28 U.S.C. § 1367(c)(1).

Next, Plaintiff has not demonstrated that his infliction of emotional distress claims substantially predominate over the claims of which this Court has original jurisdiction. 28 U.S.C. § 1367(c)(2). A claim for infliction of emotional distress under Montana law requires a showing of a wrongful act. *See Pospisil v. First National Bank of Lewistown*, 37 P.3d 704 (Mont. 2001). Here, the wrongful acts

alleged to give rise to the infliction of serious or severe emotional distress are the same acts or omissions alleged to support Plaintiff's federal civil rights claims. The claims involve a common nucleus of operative facts.

Further, this Court has not dismissed all claims over which it has original jurisdiction, and this case does not involve exceptional circumstances where there are compelling reasons for declining jurisdiction. 28 U.S.C. § 1367(c)(3)(4). In fact, remanding the two infliction of emotional distress claims does not serve the purposes of judicial economy or convenience. As indicated above, the state law claims of infliction of emotional distress involve the same basic acts, omissions and facts involved in the remaining federal law counts and the fourteen state law counts which Plaintiff does not seek to remand. That is, the infliction of emotional distress claims involve the same evidence, facts and documents. Any remand would result in additional expense to the Defendants and might lead to inconsistent results. Fundamentally, the infliction of emotional distress claims are not independent and separate claims in the sense that (1) separate and independent alleged wrongs would give rise to liability and (2) separate evidence is involved in proving or disproving the claims.

CONCLUSION

Plaintiff's motion to remand his infliction of emotional distress claims should be denied. In a recent email, Plaintiff advised defense counsel to "get back to work." The Defendants and their attorneys should be required to get back to work only in one court, this Court.

DATED this 18th day of May, 2011.

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

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7(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 668 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 18th day of May, 2011.

/s/ William L. Crowley
William L. Crowley
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CERTIFICATE OF SERVICE

I hereby certify that, on the 18th day of May, 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
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