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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MICHAEL E. SPREADBURY) Cause No: cv-11-61-DWM-JCL
Plaintiff)
v.) **MOTION FOR PARTIAL**
BITTERROOT PUBLIC LIBRARY,) **SUMMARY JUDGMENT**
CITY OF HAMILTON,) **AGAINST DEFENDANT**
LEE ENTERPRISES, INC.,) **LEE ENTERPRISES INC.**
BOONE KARLBERG, PC,)
_____)

Comes now Spreadbury with motion for partial summary judgment against Defendant Lee Enterprises PC (hereafter "Lee Enterprises") in the aforementioned.

Motion:

Spreadbury respectfully moves that Honorable Court find partial summary judgment against Lee Enterprises, no material facts remain.

This motion is opposed by Defense counsel.

Brief in Support:

Section 1983 litigation, 42 USC §1983 is established to permit persons who have had constitutional rights violated, and to sue the wrongdoer for redress of injuries.

Liability attaches if the defendant acted in “color of law”, and the action(s) deprived the Plaintiff of some right, privilege, or immunity secured by the Constitution, or federal laws *Monroe v. Pape 365 US 167 (1961)*.

Spreadbury alleges constitutional deprivations in color of law in complaint, amended complaint, 2nd Amended complaint served upon this court. In answer dated April 26, 2011, of Boone Karlberg PC Lee Enterprises admit publishing articles [Joint Answer Main Defendants pg. 7 ¶22] in re: trespass of Spreadbury peacefully assembled on public property August 20, 2009 at 306 State St.

Hamilton, MT 59840 USA; protected in *Amendment 1, US Constitution*. Fewer issues of material fact remain, partial summary judgment proper *Celotex Corp. v. Catrett 477 US 317 (1986)*.

Spreadbury pleads before this Honorable court that the right to peaceful assembly is a fundamental right *Amendment 1 US Constitution*. Spreadbury further avers property, facility at 306 State Street Hamilton MT 59840 that contains the Bitterroot Public library in original block #18 of the City of Hamilton is *public*

property. Common knowledge of mutually independent public entities City of Hamilton, Public library are supported by public funds, Spreadbury avers no private land held by public entities. Honorable court does not need evidence of public property at 306 State St. Hamilton, MT USA location of Spreadbury's peaceful assembly, inherent with public entity defendants. Certified Platt Map of City of Hamilton original block #18 NE cor. State St. & 4th Street confirms Spreadburys claim; owned by City of Hamilton, leased for \$1/year by Public Library. Spreadbury yields to court for evidentiary requirement.

The *Stigma-Plus test* is met by assisting Defendants in depriving library privileges MCA§22-1-311 of Spreadbury, identify Spreadbury in articles defamatory per se for alleging crime when none occurred *Paul v. Davis 424 US 693 (1976)*, *Humpries v. Co. of Los Angeles 554 F. 3d 1170 (9th Cir. 2009)*. The deprivation of Spreadbury's right to liberty to enter Lee Enterprises storefront Ravalli Republic 232 W. Main St. Hamilton MT USA without due process of law is protected in **5th, 14th Amendment US Constitution**. Lee Enterprises in color of law due to *Public Function Test*, interfering in election; *Joint Action Test* July 9, 2009 combined effort to deprive Spreadbury liberty interest with Defendant Hamilton Police at Defendant Lee Enterprises property Ravalli Republic 232 W. Main St. Hamilton, MT 59840 USA *Johnson v. Knowles 113 F. 3d at 1119 (9th Cir. 1997)*, *United*

Steelworkers of America et. al. v. Phelps Dodge Corp. 865 F. 2d at 1540-1541 (9th Cir. 1989).

In Joint Answer of *individual* Defendants ¶19 Defendant City of Hamilton admits to asking Spreadbury to not enter 232 W. Main St. Hamilton MT the business of Lee Enterprises, a liberty interest without due process, violates Spreadbury protected right in ***Amendment 5, 14 US Constitution***. Hamilton Police (HPD) Chief and official policymaker Oster made “policy or custom” on Spreadbury by restricting liberty into Lee Enterprises property Ravalli Republic without cause; punitive damages attach to City of Hamilton *Monell v. NYC Dept. of Social Services 436 US 658 (1978)*.

Defendant Bitterroot Public Library admitted to removing library privileges of Spreadbury in ¶30, 32, 34, 37 Joint Answer April 26, 2011 without willful violation of the rules, never asked Spreadbury to remove person from public library: former Director Langstaff, under oath in municipal trespass trial affirmed no staff asked Spreadbury to leave library; Defendant public library in violation *MCA§22-1-311[Use of Library-Privileges]*. Procedural Due Process protected in ***Amendment 14 US Constitution*** violated for Spreadbury; state statute breeched, right to liberty interest [library privilege] taken protected ***Amendment 14 US Constitution***; no administrative remedy, access to library board, no written appeal is offered to Spreadbury, not heard pre-deprivation *Matthews v. Eldridge 424 US*

319 (1976), Mendez v. INS 563 F. 2d 956 (9th Cir. 1977) federal statute due process.

Lee Enterprises actors publishing articles identifying Spreadbury for criminal trespass in Hamilton, MT for established right of peaceful assembly when *reasonable* publisher, editor knew or would have known **1st Amendment US Constitution** protects peaceful assembly of Spreadbury, no law can be enforced abridging this right **Amendment 14 US Constitution**. Actual malice test for defamation of Spreadbury met by Defendant Lee Enterprises prior to November 3, 2009 as public figure by publishing crime for established, protected right *New York Times Co. v. Sullivan 376 US 254 (1964)*. Re-publication of articles by Lee Enterprises identifying Spreadbury in false light, and defamatory falsehood exceed malice threshold for Lee Enterprises identifying Spreadbury in criminal act of trespass for peaceful assembly on public property in City of Hamilton USA as Spreadbury private citizen after November 3 2009 election for Hamilton MT mayor *New York Times Co.*

Restricting access to Ravalli Republic July 9, 2009 Hamilton Police Chief Oster, official policymaker engaged in civil conspiracy to deprive Spreadbury's established rights between Defendant City of Hamilton, Lee Enterprises. Chief Oster made new policy to restrict liberty interest of Spreadbury without cause, deprives due process of law in violation of **Amendment 5, 14 US Constitution**.

Defendants prosecute Spreadbury in sworn complaint to Hamilton City Court for peaceful assembly on public property. Lee Enterprises actions in color of law with other Defense actors implicate for §1983, negligence, defamation, IIED, NIED in Spreadbury's 2nd Amended complaint served on Honorable court May 4, 2011.

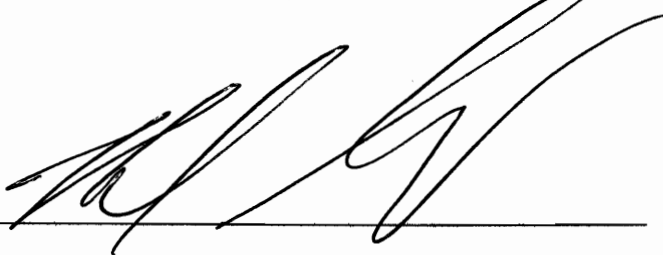
No material facts remain, Lee Enterprises publish articles imputing crime when Spreadbury engaging in protected act of peaceful assembly on public property, partial summary judgment for Spreadbury proper. Lee Enterprises admit to Spreadbury before this court; no clear and convincing evidence standard is needed where the *New York Times Standard* for defamatory publication and summary judgment apply *Anderson et. al. v. Liberty Lobby Inc. et. al. 477 US 242 (1986)*.

WHEREFORE, Spreadbury moves Honorable Court find count # 8,18,19,20,21,23,26 of 2nd Amended Complaint as actions and omissions admitted and enacted by Lee Enterprises, subject to summary judgment. Spreadbury asks court to find summary judgment against Lee Enterprises for above counts, fully admitted in April 26 2011 pleading before this court.

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 1069 words excluding title page, this compliance.

Respectfully submitted this 26th day of May, 2011

BY: 

Michael E. Spreadbury, Self Represented Plaintiff