

William L. Crowley
Natasha Prinzing Jones
Thomas J. Leonard
BOONE KARLBERG P.C.
201 West Main, Suite 300
P.O. Box 9199
Missoula, MT 59807-9199
Telephone: (406)543-6646
Facsimile: (406) 549-6804
bcrowley@boonekarlberg.com
npjones@boonekarlberg.com
tleonard@boonekarlberg.com

*Attorneys for Defendants Bitterroot Public Library,
City of Hamilton and Boone Karlberg P.C.*

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
SUPPORT OF MOTION TO
COMPEL**

INTRODUCTION

This supports the motion of the City and Library Defendants to compel answers to their separate first interrogatories to Plaintiff. Plaintiff has not answered the discovery requests. As a result, the motion to compel should be granted, and the reasonable expenses, including attorney's fees, incurred in presenting this motion should be awarded.

PLAINTIFF'S CLAIMS AND DEFENDANTS' DISCOVERY

Plaintiff's Amended Complaint (Doc. 1), names the Bitterroot Public Library ("BPL") and the City of Hamilton ("City") as Defendants in the caption. On pages 2-3, it also names Dr. Robert Brophy, Trista Smith, Nansu Roddy, Jerry Steele, Steve Snavely, Steven Murphy, Ryan Oster, Kenneth S. Bell and Jennifer B. Lint as "Parties". The Joint Answers of these parties were filed on April 26, 2011 (Docs. 2 and 3). The Initial Disclosure of the City and BPL Defendants was served the next day.

Plaintiff alleges the Defendants conspired to violate his state and federal constitutional rights. [Amended Complaint, ¶¶ 25, 27 (Doc. 1).] Separately, 20 counts in Plaintiff's Amended Complaint are addressed to the City and BPL Defendants. These include the following:

1. Count I - Negligence - Defendants Brophy and BPL.

2. Count II - Abuse of Process - Defendants Brophy and BPL.
3. Count III - Fourteenth Amendment Procedural Due Process - Defendants Brophy and BPL.
4. Count IV - Defamation - Defendants Brophy and BPL.
5. Count V - Misrepresentation - Defendants Brophy and BPL.
6. Count VI - First Amendment Right to Free Speech and to Petition Government - Defendants Roddy and BPL.
7. Count VII - Malicious Prosecution - Defendants BPL and City.
8. Count VIII - Tortious Interference With Prospective Economic Advantage - All Defendants.
9. Count IX - Right to Peaceful Assembly Under Article II, § 6, Montana Constitution and First Amendment, Federal Constitution, and Right of Equal Protection Under Article II, § 4, Montana Constitution and Fourteenth Amendment, Federal Constitution - Defendant Bell.
10. Count X - Liberty Interest Under Fifth and Fourteenth Amendments, Federal Constitution - Defendants Oster and City.
11. Count XI - Negligence - Defendants City and Bell.
12. Count XII - Negligence - Defendants City and Snavelly.
13. Count XIII - Negligence - Defendants City and Murphy.

14. Count XIV - Right of Free Speech and Abuse of Power Under First and Fourteenth Amendments, Federal Constitution - Defendant Murphy.

15. Count XVII - Defamation - Defendant City.

16. Count XX - Intentional Infliction of Emotional Distress - All Defendants.

17. Count XX1 - Negligent Infliction of Emotional Distress - All Defendants.

18. Count XXIV - Injunctive Relief - Defendant BPL.

19. Count XXV - Injunctive Relief - Defendant City.

20. Count XXVI - Punitive Damages - All Defendants.

Defendant BPL's First Interrogatories Nos. 1-7 were served on Plaintiff on April 29, 2011. Interrogatory No. 1 asked Plaintiff to describe those policies, customs or practices of BPL which violated Plaintiff's federal rights, including identifying the rights violated, stating the names and addresses of the people with knowledge, and identifying the documents which relate to these matters.

Interrogatory No. 2 asked Plaintiff to state the names of those representatives of BPL who damaged or injured Plaintiff, including identifying their acts or omissions, stating the names and addresses of those people with knowledge and identifying the documents which address the acts or omissions. Interrogatory

No. 3 asked Plaintiff to describe the injury to his character alleged in paragraphs 78 and 82 of the Amended Complaint, including stating the names and addresses of those people with knowledge and identifying the documents which concern the injury. Interrogatory No. 4 asked Plaintiff to describe the emotional distress alleged in paragraphs 79, 80, 81, 82 and 85, and Counts XX and XXI of his Amended Complaint, including stating the names and addresses of those people with knowledge and identifying the documents which concern the emotional distress. Interrogatory No. 5 asked Plaintiff to describe those facts which support Plaintiff's punitive damage claim against BPL. Interrogatory No. 6 asked Plaintiff to identify the names and addresses of those health care professionals who examined Plaintiff for bodily injury or emotional distress caused by the Defendants. Interrogatory No. 7 asked Plaintiff to state the name and address of the last four medical doctors seen by him.

Defendant Smith's First Interrogatories Nos. 1-4 were served on Plaintiff on April 29, 2011. Interrogatory No. 1 asked Plaintiff to identify those acts, omissions or statements of Smith which violated Plaintiff's federal rights, including identifying the rights violated, stating the names and addresses of those people with knowledge and identifying the documents which concern the violations. Interrogatory No. 2 asked Plaintiff to identify those acts, omissions or

statements of Smith which violated Plaintiff's state constitutional rights, including identifying the rights violated, the names and addresses of those people with knowledge, and identifying the documents which relate to the violations. Interrogatory No. 3 asked Plaintiff to identify those facts which support an allegation that Smith conspired against Plaintiff, including the names and addresses of the members of the conspiracy and the people with knowledge and the identity of the documents which relate to the conspiracy. Interrogatory No. 4 asked Plaintiff to identify the names and addresses of those expert witnesses whom Plaintiff expects to testify on his behalf at trial including the information in Rule 26(b)(4)(A)(I), Mont. R. Civ. P.

Defendant Brophy's First Interrogatories Nos. 1-10 were served on Plaintiff on April 29, 2011. Interrogatory No. 1 asked Plaintiff to identify those acts, omissions or statements of Brophy alleged to have violated Plaintiff's federal rights, including identifying the rights violated, stating the names and addresses of those people with knowledge and identifying the documents which concern the violations. Interrogatory No. 2 asked Plaintiff to identify those acts, omissions or statements of Brophy alleged to have violated his state constitutional rights, including identifying the rights violated, stating the names and addresses of those people with knowledge and identifying the documents which concern the

violations. Interrogatory No. 3 asked Plaintiff to identify those facts which support an allegation that Brophy conspired against Plaintiff, including the names and addresses of the members of the conspiracy and the people with knowledge and to identity of the documents which relate to the conspiracy. Interrogatory No. 4 asked Plaintiff to identify those acts or omissions of Brophy or another representative of the Library alleged to be negligence in Count I. Interrogatory No. 5 asked Plaintiff to identify those acts or omissions of Brophy or another representative of the Library alleged to be abuse of process in Count II. Interrogatory No. 6 asked Plaintiff to identify those acts or omissions of Brophy or another representative of the Library alleged to be a procedural due process violation in Count III. Interrogatory No. 7 asked Plaintiff to identify those statements or publications of Brophy or another representative of the Library alleged to be defamation in Count IV. Interrogatory No. 8 asked Plaintiff to identify those statements or publications of Brophy or another representative of the Library alleged to be misrepresentation in Count V. Interrogatory No. 9 asked Plaintiff to identify the facts which support an award of lost earnings, including the names and addresses of those people with knowledge and the identity of the documents which relate to the lost earnings. Interrogatory No. 10 asked Plaintiff to identify those sources of his income in the past ten years.

Defendant Roddy's First Interrogatories Nos. 1-6 were served on Plaintiff on April 29, 2011. Interrogatory No. 1 asked Plaintiff to identify those acts, omissions or statements of Roddy which have violated his federal rights, including the identity of the rights violated, the names and addresses of those people with knowledge and the identity of the documents which relate to the violations. Interrogatory No. 2 asked Plaintiff to identify those acts, omissions or statements of Roddy which violated Plaintiff's state constitutional rights, including the identity of the rights violated, the names and addresses of those people with knowledge and the identity of the documents which relate to the violations. Interrogatory No. 3 asked Plaintiff to identify those facts supporting an allegation that Roddy conspired against Plaintiff, including the names and addresses of the members of the conspiracy and those people with knowledge and to identify the documents which relate to the conspiracy. Interrogatory No. 4 asked Plaintiff to describe those First Amendment rights which Roddy or other representatives of the Library or the City violated as alleged in Count VI. Interrogatory No. 5 asked Plaintiff to identify those acts or omissions of Roddy or other representatives of the Library or the City which violated Plaintiff's First Amendment rights as alleged in Count VI. Interrogatory No. 6 asked Plaintiff to identify those acts or

omissions of Roddy alleged to be negligent or intentional infliction of emotional distress in Counts XX and XXI.

Defendant City of Hamilton's First Interrogatories Nos. 1-8 were served on Plaintiff on April 29, 2011. Interrogatory No. 1 asked Plaintiff to identify those policies, customs or practices of the City which violated Plaintiff's federal rights, including the identity of the rights violated, the names and addresses of those people with knowledge and the identity of the documents which relate to the policies, customs, practices and violations. Interrogatory No. 2 asked Plaintiff to identify those state constitutional rights which a representative of the City violated, including a description of how the rights were violated. Interrogatory No. 3 asked Plaintiff to identify the economic loss alleged in Paragraph 78 of the Amended Complaint, including the names and addresses of those people with knowledge and the identity of the documents relating to such loss. Interrogatory No. 4 asked Plaintiff to identify the injury to Plaintiff's established course of life as alleged in paragraph 81 of the Amended Complaint, including the names and addresses of those people with knowledge and the identity of the documents which relate to such injury. Interrogatory No. 5 asked Plaintiff to describe those acts or omissions of each Defendant alleged to be tortious interference with prospective economic advantage as alleged in Count VIII. Interrogatory No. 6 asked Plaintiff

to describe the damage to prospective economic advantage alleged in Count VIII, including the names and addresses of those people with knowledge and the identity of the documents which relate to the damage. Interrogatory No. 7 asked Plaintiff to identify those statements or publications of a representative of the City alleged to be defamation in Count XVII. Interrogatory No. 8 asked Plaintiff to identify those acts or omissions of a representative of the City alleged to be negligent or intentional infliction of emotional distress as alleged in Counts XX and XXI.

Defendant Jerry Steele's First Interrogatories Nos. 1-6 were served on Plaintiff on April 29, 2011. Interrogatory No. 1 asked Plaintiff to identify those acts, omissions or statements of Steele which violated Plaintiff's federal rights, including the identity of the rights violated, the names and addresses of those people with knowledge and the identity of the documents which relate to the violations. Interrogatory No. 2 asked Plaintiff to identify those acts, omissions or statements of Steele alleged to have violated Plaintiff's state constitutional rights, including the identity of the rights violated, the names and addresses of those people with knowledge and the identity of the documents which relate to such violations. Interrogatory No. 3 asked Plaintiff to identify those facts alleged to support an allegation that Steele conspired against Plaintiff, including the names

and addresses of the members of the conspiracy and the people with knowledge and to identify the documents which relate to the conspiracy. Interrogatory No. 4 asked Plaintiff to identify those statements or publications of a representative of the City which are alleged to be defamation as alleged in Count XVII.

Interrogatory No. 5 asked Plaintiff to describe his educational history, including the schools attended, the dates attended and his course of study, along with any degree or certification obtained by him. Interrogatory No. 6 asked Plaintiff to identify the injury to his lifestyle alleged in paragraph 81 of the Amended Complaint, including the names and addresses of those people with knowledge and the identity of the documents which relate to the injury.

Defendant Oster's First Interrogatories Nos. 1-4 were served on Plaintiff on April 29, 2011. Interrogatory No. 1 asked Plaintiff to identify those acts, omissions or statements of Oster alleged to have violated Plaintiff's federal rights, including the identity of the rights violated, the names and current addresses of those people with knowledge and the identity of the documents which relate to the violations. Interrogatory No. 2 asked Plaintiff to identify those acts, omissions or statements of Oster alleged to have violated Plaintiff's state constitutional rights, including the identity of the rights violated, the names and addresses of those people with knowledge and the identity of the documents which relate to the

violations. Interrogatory No. 3 asked Plaintiff to identify those facts which support an allegation that Oster conspired against Plaintiff, including the names and addresses of the members of the conspiracy and the people with knowledge and to identify the documents which relate to the conspiracy. Interrogatory No. 4 asked Plaintiff to identify those policies or customs of the City or Oster alleged to have violated Plaintiff's rights as alleged in Count X. Interrogatory No. 5 asked Plaintiff to identify the nature and amount of those items of compensatory damage sought by Plaintiff.

Defendant Murphy's First Interrogatories Nos. 1-5 were served on Plaintiff on April 29, 2011. Interrogatory No. 1 asked Plaintiff to identify those acts, omissions or statements of Murphy which violated Plaintiff's federal rights, including the identity of the rights violated, the names and current addresses of those people with knowledge and the identity of the documents which relate to such violations. Interrogatory No. 2 asked Plaintiff to identify those acts, omissions or statements of Murphy which violated Plaintiff's state constitutional rights, including the identity of the rights violated, the names and addresses of those people with knowledge and the identity of the documents which relate to such violations. Interrogatory No. 3 asked Plaintiff to identify those facts which support an allegation that Murphy conspired against Plaintiff, including the names

and current addresses of the members of the conspiracy and the people with knowledge and to identify the documents which relate to the conspiracy.

Interrogatory No. 4 asked Plaintiff to identify those acts or omissions of Defendant Murphy alleged to be negligence as alleged in Count XIII. Interrogatory No. 5 asked Plaintiff to identify those acts or omissions of Murphy alleged to have violated Plaintiff's rights in Count XIV.

Defendant Snavelly's First Interrogatories Nos. 1-6 were served on Plaintiff on April 29, 2011. Interrogatory No. 1 asked Plaintiff to identify those acts, omissions or statements of Snavelly which violated his federal rights, including the identity of the rights violated, the name and address of those people with knowledge and the identity of the documents which relate to the violations. Interrogatory No. 2 asked Plaintiff to identify those acts, omissions or statements of Snavelly which violated Plaintiff's state constitutional rights, including the identity of the rights violated, the names and addresses of those people with knowledge and the identity of the documents which relate to the violations. Interrogatory No. 3 asked Plaintiff to identify those facts which support an allegation that Snavelly conspired against Plaintiff, including the names and addresses of the members of the conspiracy and the people with knowledge and the identity of the documents which concern the conspiracy. Interrogatory No. 4

asked Plaintiff to describe the damage to his reputation alleged in Count VIII. Interrogatory No. 5 asked Plaintiff to identify those acts or omissions of Snively alleged to be negligence in Count XXII. Interrogatory No. 6 asked Plaintiff to describe his work or employment history for the past ten years, including the names and addresses of his employers, the dates of his employment and the job position and duties held.

Defendant Bell's First Interrogatories Nos. 1-8 were served on Plaintiff on April 29, 2011. Interrogatory No. 1 asked Plaintiff to identify those acts, omissions or statements of Bell which violated Plaintiff's federal rights, including the identity of the rights violated, the names and current addresses of those people with knowledge and the identity of the documents which concern such violations. Interrogatory No. 2 asked Plaintiff to identify those acts, omissions or statements of Bell alleged to have violated Plaintiff's state constitutional rights, including the identity of the rights violated, the names and addresses of those people with knowledge and the identity of the documents which relate to such violations. Interrogatory No. 3 asked Plaintiff to identify those facts which support an allegation that Defendant Bell conspired against Plaintiff, including the names and addresses of the members of the conspiracy and the people with knowledge and the identity of the documents which relate to the conspiracy. Interrogatory No. 4

asked Plaintiff to identify the court and cause number of those criminal actions against Plaintiff in which probable cause was missing as alleged in paragraph 28. Interrogatory No. 5 asked Plaintiff to identify the court and cause number of those judicial proceedings which Plaintiff alleges to be malicious prosecution in Count VII. Interrogatory No. 6 asked Plaintiff to identify those policies or customs, if any, of Bell which violated Plaintiff's state or federal rights as alleged in Count IX. Interrogatory No. 7 asked Plaintiff to identify those negligent acts, omissions or statements of Bell alleged in Count XI. Interrogatory No. 8 asked Plaintiff to identify those acts or omissions of Bell alleged to be intentional or negligent infliction of emotional distress in Counts XX and XXI.

Defendant Lint's First Interrogatories Nos. 1-5 were served on Plaintiff on April 29, 2011. Interrogatory No. 1 asked Plaintiff to identify those acts, omissions or statements of Lint which violated Plaintiff's federal rights, including the identify of the rights violated, the names and addresses of the people with knowledge and the identity of the documents which relate to such violations. Interrogatory No. 2 asked Plaintiff to identify those acts, omissions or statements of Lint which violated Plaintiff's state constitutional rights, including the identity of the rights violated, the names and addresses of those people with knowledge and the identity of the documents which relate to such violations. Interrogatory

No. 3 asked Plaintiff to identify those facts which support an allegation that Lint conspired against Plaintiff, including the names and addresses of the members of the conspiracy and the people with knowledge and the identity of the documents which relate to the conspiracy. Interrogatory No. 4 asked Plaintiff to identify those acts, omissions or statements of Lint alleged to be negligence in Count XI. Interrogatory No. 5 asked Plaintiff to identify those acts or omissions of Lint alleged to be intentional or negligent infliction of emotional distress in Counts XX and XXI.

DISCUSSION

Plaintiff's answers to the Interrogatories were due by June 1, 2011. On June 6, 2011, defense counsel emailed Plaintiff to advise that his motion to stay discovery was denied, and his answers to the Interrogatories were overdue. Plaintiff was advised, in part, "Absent a reasonable explanation by you, we will file a motion to compel the answers on June 13, 2011." In response, Plaintiff advised:

Dear Mr. Crowley,

I have several responses to your inquiry into discovery.

1. I am not aware of any denial of a motion to stay discovery decision on immunity. However, I will check the docket.

2. I have asked the Court to provide counsel due to documented disability, provided counsel would be more qualified to proceed with this case.
3. Your firm is committing fraud with respect to representing the Bitterroot Public Library in this case documented with this Court, and the U.S. Department of Justice.

(Email, 6/8/11).

On May 4, 2011, Plaintiff filed his motion for appointment of counsel (Doc. 16). On May 19, 2011, Plaintiff filed his motion to stay discovery (Doc. 42). However, on May 25, 2011, the Court entered its Order (Doc. 47) which, in part, denied both these motions. Next, as outlined in the Response to Plaintiff's Notice of Fraud and Motion to Appoint Lead Defense Attorney (Doc. 45), pages 3-4 and Exhibit A thereto, paragraphs 2-3, there is no wrongful act by BPL or Boone Karlberg, P.C., in connection with a determination of whether coverage exists and a defense is provided by MMIA in this action.

A defendant may obtain discovery information concerning any matter not privileged which is relevant to a claim or defense of any party to an action. Rule 26(6)(1), Fed. R. Civ. P. Further, a responding party "must serve" answers and any objections within 30 days after being served with interrogatories. Rule 33(b)(2), Fed. R. Civ. P.; *see also* Rule 6(d), Fed. R. Civ. P. (three-day rule). With

this in mind, a failure to object to the interrogatories within the time fixed by the rules “constitutes a waiver of any objection.” L.R. 26.3(4).

Applying these rules, it would be an abuse of discretion to deny the motion to compel of the City and Library Defendants. Without the discovery answers, the City and Library Defendants cannot go forward and defend the liability and damage claims against them.

In addition, if a motion to compel is granted, the Court “must” award the moving party the reasonable expenses, including reasonable attorney’s fees, in making the motion unless (1) the opposing party was substantially justified in his or her non-disclosure or (2) other circumstances make an award of expenses unjust. Rule 37(a)(5)(A), Fed. R. Civ. P. Here, Plaintiff is not substantially justified in failing to answer the Interrogatories served on him, and the circumstances do not make an award of expenses unjust.

CONCLUSION

The Court should grant the motion to compel of the City and Library Defendants. Also, the Court should award the City and Library Defendants their reasonable expenses, including attorney’s fees, incurred in connection with the motion to compel.

DATED this 16th day of June, 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 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 3,607 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 16th day of June, 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 16th day of June, 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.*