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*Pro Se Plaintiff*

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.	)	<b>RESPONSE TO MOTION</b>
BITTERROOT PUBLIC LIBRARY,	)	<b>TO COMPEL, MOTION</b>
CITY OF HAMILTON,	)	<b>BRIEF IN SUPPORT TO</b>
LEE ENTERPRISES, INC.,	)	<b>DENY</b>
BOONE KARLBERG, PC,	)	
_____	)	

Comes now Spreadbury with motion , brief in support to deny motion to compel discovery in the aforementioned.

Motion:

Spreadbury respectfully pleads before honorable court that discovery is not proper, per well established, precedent 42 USC §1983 cases in the federal courts.

*File stamped in error  
6/24/11*  
~~FILED JUN 24 2011~~  
SHIRLEY E. FAUST, CLERK  
By \_\_\_\_\_ Deputy

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JUN 29 2011

CLERK, U.S. DISTRICT COURT  
DISTRICT OF MONTANA  
MISSOULA

Discovery is not at risk to be destroyed, not urgent to preserve evidence. Pleadings before this court by both parties preclude the continuance of discovery in the aforementioned. Dispositive issue: dismissal via Rule 12(b)(6) raised by Defense counsel has not been addressed by the court and precludes discovery. Spreadbury pleads for summary judgment; no functional analysis of qualified immunity of Defendants, nor grant of immunity by this court. Immunity has not been established by this honorable court as conditional statements in Order do not qualify as definitive immunity for Defense actors:

*A Defendant's eligibility for qualified immunity, **if granted**, affords the defendant "immunity from suit rather than a mere defense to liability" Mitchell v. Forsyth 472 US 511 (1985). Consequently **if a defendant is eligible** for qualified immunity, then the defendant should not be subjected to the costs of trial, or burdens of discovery. **"Until this threshold immunity question is resolved, discovery should not be allowed."** Harlow at 818 [from Honorable J.C. Lynch Order May 25, 2011]*

Immunity *pending* before court precludes discovery, defeats any request to compel.

WHEREFORE, Spreadbury asserts well established court precedent for 42 USC §1983 immunity, dispositive motions before court, specifics of fraud, RICO pled before this court in aforementioned without response from Defense, Honorable court. Discovery is improper as instances of immunity not settled, dispositive

motions before the court, issue of Defense fraud specifics F.R. Civ. P. 9(a) defending ineligible defendant public library makes discovery request. Spreadbury moves for denial of motion to compel discovery consistent with 9<sup>th</sup> Circuit, US Supreme Court precedent in 42 USC § 1983 presented herein.

### Brief in Support

Discovery is not proper as dispositive, immunity, fraud issues before court *Harlow v. Fitzgerald* 457 US at 818 *Anderson v. Creighton* 483 US 635 (1987) where the US Supreme Court said:

*Holding from Harlow that qualified immunity ought to be resolved on a motion for summary judgment before any discovery takes place.*

Defendant Boone Karlberg PC is a beneficiary of “Racketeering activity” *Sedima* 105 S. Ct. at 3285 n. 14. Spreadbury pled with specificity the persons, corporations benefiting from this RICO activity in 18 USC §1961(1)(B) which threatens to continue in this case *Semegen v. Weidner* 780 F. 2d 727 (9<sup>th</sup> Cir. 1985). Defendant Boone Karlberg PC uses US Mail , wire service to further this activity *US v. Halbert* 640 F. 2d 1000 (9<sup>th</sup> Cir. 1981). By representing Defendant Bitterroot Public Library, Defendant Boone Karlberg PC continues a criminal racket, racketeering injury to Spreadbury, standing as party to this case *Schreiber Distributing v. Serv-Well Furniture Co.* 806 F. 2d 1393 (9<sup>th</sup> Cir. 1996).

Spreadbury pled that enterprise has executed fraud, RICO per 18 USC §1961 et. seq. more than two occasions. Defense counsel criminally benefiting from ineligible Defendants: the Bitterroot Public Library, Hamilton Montana using public funds. Defendant City of Hamilton, Defendant Boone Karlberg PC, conspire to provide fraudulent litigation expenses; Public Library is independent of the City of Hamilton. To grant a request to compel discovery from a fraudulent, Racketeer Influenced Corrupt Organization (RICO) is improper for this court.

An automatic discovery stay while summary judgment pending is found in 15 USC §78u-4(b)(3)(B) *SG Cowen 189 F.3d at 911-912*. Discovery is normally stayed pending summary judgment *Self v. Horel WL 4774457 N.D. Cal. 10/30/08*.

Defense counsel for City and public library has **FAILED** to plead functional analysis for qualified immunity of Defense actors, asserted “entitlement” of immunity, improper *Morley v. Walker 175 F. 3d 756 (9<sup>th</sup> Cir. 1999)* . This court in its May 25, 2011 order uses conditional statements such as “if” and “when” immunity is granted which establishes the non-grant status of immunity. Court must resolve qualified immunity before permitting discovery *Crawford El v. Britton 523 US 574 (1998)*. *Harlow at 815-820*. Since immunity has not been plead by defense, nor granted by court, discovery must be stayed *ibid*.

Discussion on Immunity

Before this court are basic questions for immunity. For example, can a reasonable law enforcement officer, accusing a citizen of trespass on public property, violate peaceful assembly 1<sup>st</sup> Amendment US Constitution expect to be immune from liability? Imagine the Missoula Police Department accusing park goers in Caras Park (a public park) Missoula, MT of criminal trespass?

*Second*, can a reasonable municipal police chief, who asks a citizen to not enter a business lacking cause, in violation of the citizen's liberty as protected in the 5<sup>th</sup> Amendment US Constitution expect protection from liability? Imagine Missoula Police Chief Muir telling Mayor Engen or any other citizen to stay out of Fact or Fiction Bookstore, Missoula, MT for no cause?

*Thirdly*, can a reasonable police officer who investigates a citizen for reporting a sighting of a person on a webpage for stalking, in violation of the protected right to speak 1<sup>st</sup> Amendment US Constitution expect protection from liability? Imagine a Missoula Police officer publishing a police report for a protected act of free speech?

*Fourth*, can a city prosecutor (Lint, Bell) expect immunity from liability as they compose court paperwork, pleadings which criminalize peaceful assembly protected in the 1<sup>st</sup> Amendment US Constitution? Imagine the City Attorney for

Missoula Montana doing administrative tasks to prepare a prosecution for peaceful assembly for a person sitting in the University of Montana oval (public property)?

The defense has the burden to prove qualified immunity applies to these four (or more) instances as presented in the aforementioned, failed to perform a functional analysis of the immunity of the Defense actors herein *Morley*, *Buckley v. Fitzsimmons* 509 US 259 (1993), *Forrester v. White* 484 US 219 (1988), *Gomez v. Toledo* 446 US 635 (1980). The immunity issue must be resolved at the earliest stage of litigation in 42 USC §1983 *Saucier* 533 US at 200.

This Honorable court has before it motions to dismiss, motions for summary judgment, questions of immunity, which are dispositive in nature, court may relieve burden of discovery as these motions pending before court *DiMartini v Ferrin* 889 F. 2d 922 (9<sup>th</sup> Cir. 1989).

#### Racketeering Activity

On or around May 9 2011 Spreadbury served notice of Fraud FRCP 9(b) on this court. A specificity of fraudulent actions pled before this court without reply by Defense counsel or action by the court; Spreadbury pled the particularity of the fraud in the pleading before this court invoking FRCP 9(b) *Leatherman v. Tarrant Co. Narc. Intel. & Cord. Unit* (1993). The activity is an enterprise with MMIA as funding source to benefit Defendant Boone Karlberg PC and Defendant Public

Library, set up by Defendant City of Hamilton *Schreiber Distributing v. Serv-Well Furniture Co.* 806 F. 2d 1393 (9<sup>th</sup> Cir. 1986). The instances of the fraud and RICO pled May 9, 2011 contain more than two instances, the threat of continuance in the aforementioned *Sedima 105 S. Ct. at 3285 n. 14*. The federal statute for RICO is found at 18 USC §1961 (1)(B). Defendant Boone Karlberg PC uses mail, wire services to continue the racket *US v. Halbert 640 F.2d 1000 (9<sup>th</sup> Cir. 1981)*.

Defendant Public Library precluded as ineligible for municipal coverage from MMIA as in independent entity from the City of Hamilton, Montana, gains litigation expenses fraudulently; Spreadbury targeted victim in racket.

Spreadbury has pled the specifics of the RICO activity of the Defendants as organized crime with Boone Karlberg PC corporation as the financial benefactor, with civil and criminal conspiracy with Defendant Public Library to provide unlawful litigation expenses more than two instances; Spreadbury as intended victim. Injury to Spreadbury, standing due to Party to suit, recipient of RICO activity *Semegen v. Weidner 780 F. 2d 727 9<sup>th</sup> Cir., 1985*).

Court is encouraged to ORDER dissolution of Defense counsel due to fraud, RICO; stay discovery as pled herein with well established 42 USC §1983 precedent in District Court from 9<sup>th</sup> Circuit of Appeals and US Supreme 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 1331 words excluding title page, this compliance.

Respectfully submitted this 23<sup>rd</sup> day of June, 2011

BY: \_\_\_\_\_

Michael E. Spreadbury, Self Represented Plaintiff



Certificate of Service

Cause No. CV-11-0064-DWM-JCL

I certify as Plaintiff in this action, a copy of the below named motion was served upon the US District Court Missoula Division and all opposing counsel for parties in this above named cause of action by first class mail. The following addresses were used for service:

Response to Motion to Compel; Motion, Brief in Support to Deny

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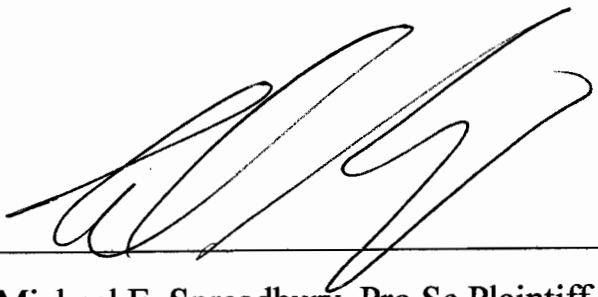
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Dated \_\_\_\_\_ 6/23/11 \_\_\_\_\_

  
\_\_\_\_\_  
Michael E. Spreadbury, Pro Se Plaintiff