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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

**JOINT PRELIMINARY
PRETRIAL STATEMENT OF THE
CITY AND LIBRARY
DEFENDANTS**

In accordance with L.R. 16.2(b)(1), Defendants Bitterroot Public Library

(“BPL”), Dr. Robert Brophy, Trista Smith, Nansu Roddy, City of Hamilton

("City"), Jerry Steele, Steve Snavely, Steven Bruner-Murphy, Ryan Oster, Kenneth S. Bell and Jennifer B. Lint submit their joint Preliminary Pretrial Statement.

BACKGROUND

Plaintiff has described himself as a "constitutionalist." His goal is to fight corruption in all aspects of "government" and to fundamentally change how things work. Plaintiff perceives that corruption exists in the Montana Courts, the Judicial Commission, the Montana Bar Association, the Attorney General's Office, local law enforcement, the BPL, Lee Enterprises, the State Librarian, the State Library Commission and the University of Montana.

On August 8, 2007, Plaintiff was found guilty in absentia of an assault on his neighbor. On appeal, the state district court dismissed the assault charge on the ground of lack of speedy trial. In the past, Plaintiff has stated that he lost his FEMA career as a result of the assault trial and a phone conversation with Montana Attorney General Bullock in 2007.

On May 29, 2009, Plaintiff came to the BPL. He tried to persuade Nansu Roddy and other BPL staff to include a letter to President Obama written by another Bitterroot Valley resident in the BPL's reserve collection. The letter alleged corruption by local officials. Plaintiff scared Ms. Roddy. She visited with

law enforcement about the encounter, and she reported the incident to her supervisor, Gloria Langstaff, BPL's Director.

Plaintiff made a similar demand of (and was refused by) the North Valley Library. On June 8, 2009, Plaintiff wrote to the Directors of both libraries concerning the refusals. He made a passing reference to the Unibomber. On the next day, Ms. Langstaff wrote to Plaintiff denying his request. She welcomed Plaintiff to attend a Library Board meeting concerning his request.

On June 11, 2009, Plaintiff again appeared at the BPL. He began a rude tirade directed at Jo Frankenfurter, a BPL staff person. According to Joseph Costantino, Plaintiff's conduct "was despicable." In response, Ms. Langstaff wrote to Plaintiff banning him from BPL's premises and buildings due to his behavior. Identifying BPL Operations Policy, the letter states that patron behavior that becomes disruptive to library users and staff or is a public nuisance is not allowed and the patron will be asked to leave. It also states that BPL reserves the right to refuse service to anyone who is not complying with library policy.

On June 15, 2009, Plaintiff was seen outside BPL requesting library patrons to deliver a message to Ms. Langstaff. He had copied references, including a "Library Bill of Rights" and "The Freedom to Read Statement," for delivery to Ms. Langstaff. On the next day, Plaintiff called BPL requesting that Ms. Langstaff

meet him off premises. She refused. Plaintiff said, "okay," and hung up. Later, he called the BPL reference desk to have "his property" returned to him.

Concerned with Plaintiff's harassment, Ms. Langstaff contacted law enforcement. She spoke with Hamilton Police Officer J. Reichart. He said that he would keep Plaintiff's notebook, call Plaintiff and have Plaintiff pick up the notebook at City Hall.

On June 16, 2009, Plaintiff emailed a member of the Library Board. He said he wanted to come to the next Library Board meeting. He said Ms. Langstaff banned him from BPL when he told her that he would present information that would likely result in her termination. He said Ms. Langstaff had committed a crime by giving information to the Hamilton Police Department and the Board would be an accomplice if they upheld her decision. He attached an affidavit about his conduct and a copy of his computer "home page which got 500 hits a week." He advised the home page could be updated about the Library. While saying that he was "acceptant" of Ms. Langstaff's decision, his use of the Library should be restored. He also advised that he has eight years of post secondary education and holds a teaching license in Montana. He stated that he is the "main impetus" to informing the FBI about the Hamilton Police Department covering up crime.

On July 15, 2009, Plaintiff confronted a Library patron outside BPL. He asked that a letter be delivered to Ms. Langstaff. In the letter, Plaintiff alleged Ms. Langstaff had no authority to ban him from BPL. He informed her that she had committed a crime by providing information to the Hamilton Police Department. He also informed her in bold typeface that he was reinstating his own library privileges. Following the letter, Ms. Langstaff again met with law enforcement. It was suggested she file for a temporary order of protection. She elected not to do that at the time.

On July 23, 2009, the Library Board of Trustees voted unanimously to support Ms. Langstaff if she should seek an order of protection. On August 20, 2009, Plaintiff was observed in the Library gazebo. Ms. Langstaff called law enforcement. Officer Snavelly spoke with Plaintiff and took a report about the ban from the Library. That afternoon, a female came into the Library. She was upset. Mr. Spreadbury had asked her for her name and phone number. When she refused, he left. However, he came back with a camera and was taking her photograph. Ms. Langstaff called Officer Snavelly. Two officers came and spoke with the woman. On that same day, Dr. Brophy, on behalf of the Library Board, sent Plaintiff a letter. It stated the Board supported the Director's letter banning

Plaintiff from BPL. On one of Plaintiff's computer sites, a picture appeared of Plaintiff on BPL property with a bag over his head.

On August 25, 2009, Plaintiff wrote the Library Board complaining of the ban. He argued Ms. Langstaff was not qualified for her position and should be replaced by Ms. Roddy. He advised that he is highly educated and holds national security clearance due to his working as a federal officer with "Homeland Security-FEMA" for two years. He also advised that Library employees had a criminal relationship with the police, and he had no desire to enter the Library.

Similarly, on the Bitterroot Rising computer page on August 25, 2009, Plaintiff stated that Ms. Langstaff was violating the law and the Library was working with the Hamilton Police to commit crimes and to violate his rights. He complained that embezzlement was occurring at the Library, and it would be featured in a documentary due out in September. He said the Library "was toast." He also said Ms. Langstaff "looks like one mean bat" and no terrorist would want to see Ms. Langstaff again after one look at her. Finally, he asked that the ACLU vacate Montana because of false advertising in claiming to stand up for First Amendment rights.

Plaintiff was subsequently charged with criminal trespass. On September 9, 2009, the City Court issued its Conditions of Release. In part, Plaintiff was

precluded from entering onto the BPL premises. He was also precluded from contacting any witnesses or victims.

On November 3, 2009, Plaintiff was defeated in the election for Mayor of Hamilton, Montana. On the next day, Ms. Roddy left the Library. As she stepped off the curb in front of the Library, Plaintiff pulled his vehicle to a stop. He jumped out of the truck acting agitated. He directed his agitation at Ms. Roddy, and he demanded she get the criminal charges against him dismissed. He told her to go to the offices of Kenneth Bell, the City Attorney and cancel the criminal trial. He became more and more agitated. Ms. Roddy was intimidated. She told Plaintiff she was not in a position to respond to his request. Plaintiff raised his fists at Ms. Roddy several times. She ran to her vehicle and tried to lock herself in the vehicle. When a truck stopped, Plaintiff got in his truck and fled. A man who had witnessed the incident came out of his office. He was concerned for Ms. Roddy.

Ms. Roddy applied for a temporary order of protection. The incident also led to Plaintiff being investigated and later charged with felony intimidation. Plaintiff was arrested on November 6, 2009.

Plaintiff was represented by an attorney in connection with the misdemeanor trespass charge. Plaintiff moved to dismiss the charge on the ground

of insufficient evidence to support it. The motion was denied. On February 18, 2010, a city court jury found Plaintiff guilty beyond a reasonable doubt of the crime. Plaintiff was sentenced, and he appealed to the Ravalli County District Court. Following Plaintiff's later plea on the charge of felony intimidation, the City attorney voluntarily dismissed the trespass charge.

As to the intimidation charge, Plaintiff filed a motion to dismiss the charges on January 15, 2010, for a failure to establish probable cause for the offense of intimidation. [Plaintiff's Supreme Court Brief, Cause No. DA-10-0619, p. 3.] The motion was denied. Subsequently, Plaintiff entered into a plea agreement. The District Court found a factual basis for the charge, and it accepted Plaintiff's plea of *nolo contendere* on October 15, 2010. Despite the plea, Plaintiff has appealed the criminal judgment to the Montana Supreme Court. He argues the District Court did not have jurisdiction of the intimidation offense because of the absence of probable cause to support it.

At the order of protection hearing on November 20, 2009, the City Judge asked Plaintiff's public defender to assist Plaintiff with the hearing. Since Plaintiff had an attorney, Mr. Bell, the City Attorney, stepped forward with permission of the City Judge to assist Ms. Roddy. Plaintiff provided the Court with a statement in response to the order of protection request. Ms. Roddy was

examined by Mr. Bell. Plaintiff's attorney cross-examined Ms. Roddy. Then, Plaintiff provided a second statement to the Court claiming the allegations were false, but stating he would address the Court further at a different time. Following summations by the attorney, the City Court made the Order of Protection permanent for five (5) years through November 14, 2014. In addition, the Protective Order was extended to protect the entire BPL staff. In part, Plaintiff was not to come within 600 feet of Ms. Roddy's place of employment.

On December 31, 2009, Plaintiff filed a motion to reconsider the Order of Protection. He alleged Ms. Roddy gave false information in her application for the protective order and at the hearing. He also alleged the Order of Protection violated his right to peaceful assembly under the state and federal constitutions. He alleged Mr. Bell's participation in the hearing was a public abuse of power and violated his constitutional rights of due process and equal protection. He complained that the Court "had propagated a crime." However, the motion was denied. Subsequently, on February 17, 2010, Plaintiff requested the Ravalli County District Court to review and dissolve the Order of Protection on February 17, 2010. However, Plaintiff's request was denied, and Plaintiff appealed the matter to the Montana Supreme Court, which dismissed his appeal.

On February 18, 2011, Plaintiff filed a petition for rehearing. In part, he alleged that Mr. Bell engaged in felonious behavior at the protective order hearing. He also alleged Ms. Roddy and Boone Karlberg were engaged in public fraud and a misuse of public funds. However, on March 15, 2011, the Supreme Court denied Plaintiff's petition for rehearing and warned Plaintiff not to harass Ms. Roddy. Since the dismissal, Plaintiff has advised that he will file an appeal with the United States Supreme Court.

During this time period, Plaintiff also filed a civil complaint against Ms. Roddy (DV-10-224) in the Ravalli County District Court. However, on October 5, 2010, the Court entered its Order awarding summary judgment to Ms. Roddy. According to the District Court, Plaintiff had failed to establish his claims of infliction of emotional distress, and his claims were barred by res judicata and collateral estoppel. Judgment was entered on October 18, 2010.

At the same time, Plaintiff filed a civil action against Mr. Bell (DV-10-223) in the Ravalli County District Court. Plaintiff alleged Mr. Bell led Ms. Roddy with gestures at the protective order hearing. He also alleged Mr. Bell elicited false testimony and defamed Plaintiff. Further, Plaintiff alleged the infliction of emotional distress. However, on August 9, 2010, the District Court granted Mr. Bell's motion to dismiss. Plaintiff appealed the decision to the Montana

Supreme Court, which affirmed the District Court. The Supreme Court determined that Mr. Bell was protected by immunity. Then, Plaintiff sought to file a petition for rehearing. He argued that the adherence to the law escaped the Montana Supreme Court. He questioned the Court's ability to understand English. He also stated the Supreme Court had "enveloped" municipal fraud. Plaintiff's petition for rehearing was rejected as untimely.

In December 2010, Plaintiff began contacting the Montana Library Commission and the Montana State Library. He alleged that Ms. Roddy had lied to a judge and to law enforcement. He alleged he had been improperly banned from BPL. He also alleged Ms. Roddy and BPL were engaging in public fraud in accepting a defense from the Montana Municipal Interlocal Authority ("MMIA") in response to Plaintiff's lawsuits. When Plaintiff was advised that the Montana Library Commission had no authority to withhold funding from BPL as Plaintiff requested, Plaintiff began attacking the Commission. He alleged the Commission and the State Library were covering up crimes, public insurance fraud, and he demanded the resignation of Darlene Staffelt.

Plaintiff also turned to his computer and the Internet. He announced that the State Librarian was a hypocrite and a public official gone bad. She was ignoring public fraud. On April 22, 2011, Plaintiff emailed the Department of

Justice. He stated that the State Library was condoning a crime by a member library, the fraudulent use of public funds. Plaintiff wrote, "These scumbags and white collar criminals are covering up for each other."

On the Internet, Plaintiff also attacked the Montana Supreme Court. He announced that one Justice had been implicated in taking improper funds from lawyer groups for favorable decisions. Other Justices were described as having no backbone, being an empty suit, and being a burden on public funds. Finally, he described one Justice as "a shifty bastard who can't even sit still for a photograph."

At about the same time, under the heading "We The People Of Montana," Plaintiff stated that BPL was announcing the opening of a pedophilia room using public funds. According to the publication, the room was inspired by Michael Jackson, was referred to by Library staff as "Neverland" and was equipped with mood lights. Ms. Roddy was alleged to have said the lighting was to help the "children feel more comfortable." It also stated that Dr. Brophy approved all of the improvements and is assured that MMIA was more than adequate to cover any mishaps or community complaints. Also, according to the publication, BPL would be committing the white collar crime of public fraud if public funds were used to defend the resulting complaints.

Next, on November 16, 2010, Plaintiff sued the City and Ken Bell for an alleged failure to provide police reports to Plaintiff in violation of his public right to know. In response to Plaintiff's request for injunctive relief, the District Court has determined the reports involved confidential criminal justice information, and following a balancing of privacy interests, the Court made redacted copies available to Plaintiff under seal. Subsequently, Plaintiff announced that he had a copy of one of the reports when he filed suit. A summary judgment motion on Plaintiff's damage claims has been briefed and argued.

On April 11, 2011, Plaintiff requested the City provide him with a motor vehicle accident report in a matter to which Plaintiff was not a party. The report was determined to be confidential under MCA § 61-7-114(2), and its production to Plaintiff was refused. In response, Plaintiff advised that he was a licensed physics teacher and he needed the report for research purposes. The request was again refused, and on May 6, 2011, Plaintiff announced he would sue the City concerning the production of the report.

On July 22, 2011, Plaintiff was arrested and jailed for contempt. The circumstances are currently unknown to counsel.

JURISDICTION AND VENUE

The Court has jurisdiction of Plaintiff's civil rights claims under 28 U.S.C. § 1343. Also, supplemental jurisdiction exists for the Plaintiff's state law claims. 28 U.S.C. § 1367. Venue is proper.

DEFENSES, LEGAL THEORIES AND BASES

A. Preliminary Matters:

1. Many of Plaintiff's claims against the City, the Library and their representatives are barred by res judicata, collateral estoppel and federal law.

a. Basis: As reflected in the above Background section, Plaintiff has sued the City, Nansu Roddy and Kenneth Bell in state district court. He alleged many of the same liability and damage claims in those suits which he alleges here.

2. Kenneth Bell is absolutely immune from Plaintiff's claims against him. *Genzler v. Longanbach*, 410 F.3d 630, 637 (9th Cir. 2005).

a. Basis: Bell's alleged acts or omissions are associated with the judicial phase of the criminal process.

3. Some of the conduct of which Plaintiff complains is not state action. *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 51 (1999); *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003).

a. Basis: The alleged acts or omissions of the Library Defendants are not an exercise of power exclusively reserved for the government under the public function test. Also, they do not involve coercion under the compulsion or coercion test. Finally, they do not involve action so interconnected or dependent on the City as to meet the joint action or close nexus test.

4. The individual City and Library Defendants are immune from Plaintiff's state law claims against them. MCA § 2-9-305(5); *Peschel v. City of Missoula*, 2008 WL5131369*9 (D. Mont. 2008).

a. Basis: The employers of the individual Defendants are also Defendants in this action. The individual Defendants' acts or omissions arose out of the course or scope of their employment, and none of the exclusions in MCA § 2-9-305(6) apply.

B. Federal Civil Rights:

1. No policy or custom of the City or the Library caused a violation of Plaintiff's federal civil rights. *Menotti v. City of Seattle*, 409 F.3d 1113 (9th Cir. 2005).

a. Basis: No authorized policymaker or policy adopted by an authorized policymaker directed people to violate Plaintiff's federal constitutional rights. Further, no longstanding practice or custom which constitutes standard

operating procedure caused a violation of Plaintiff's federal constitutional rights. In addition, no representative of the City or the Library acted with deliberate indifference.

2. No act or omission of the individual City and Library Defendants caused a violation of Plaintiff's federal civil rights. *Harry A. v. Duncan*, 351 F. Supp. 2d 1060, 1072 (D. Mont. 2005); *Jones v. Williams*, 297 F.3d 930, 936 (9th Cir. 2002).

a. Basis: No representative of the City or the Library did an affirmative act, participated in another's affirmative act or omitted to perform an act that he or she was legally required to do that caused a deprivation of Plaintiff's federal civil rights.

3. No act or omission of a representative of the Library or the City violated Plaintiff's First Amendment rights. *Neinast v. Board of Trustees of Columbus Metropolitan Library*, 346 F.3d 585 (6th Cir. 2003); *Mendocino Environmental Center v. Mendocino County*, 192 F.3d 1283, 1300 (9th Cir. 1999); *Dunn v. Hyra*, 676 F. Supp. 2d 1172, 1192 (W.D. Wash. 2009).

a. Basis: No act or omission of a representative of the Library or the City directly impacted Plaintiff's First Amendment rights or was motivated by an intent to deter Plaintiff's First Amendment rights. Plaintiff's conduct was

inconsistent with the nature of a Library and violated Library rules. He had and exercised other alternative channels for his First Amendment rights. The Library rules and the acts or omissions of the representatives of the Library and City were rational means to further legitimate interests.

4. Plaintiff is not asserting a property or liberty interest. MCA § 22-1-311 (“The board may exclude from use of the library any and all persons who shall willfully violate the rules of the library.”); MCA § 1-1-204(5) (“Willfully . . . means a purpose of willingness to commit the act or make the omission referred to . . .”).

a. Basis: Plaintiff’s conduct was disruptive to Library staff and patrons.

5. Plaintiff was provided due process. *Goss v. Lopez*, 419 U.S. 565 (1975); *Matthews v. Eldridge*, 424 U.S. 319, 333-34 (1976).

a. Basis: Plaintiff was aware of the Library rules and policy. He was given an opportunity to express his disagreement.

6. The acts or omissions of the representatives of the City and Library were not arbitrary or irrational without any relationship to legitimate objectives. *City of Los Angeles v. McLaughlin*, 865 F.2d 1084, 1088 (9th Cir. 1989).

a. Basis: Plaintiff's conduct upset patrons. Library staff believed his conduct was scary and despicable.

7. Probable cause existed to prosecute Plaintiff for the crimes for which he was prosecuted. *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004).

a. Basis: In each prosecution of Plaintiff, reasonable grounds existed to believe Plaintiff had committed a crime.

8. The individual City and Library Defendants are entitled to qualified immunity on each of Plaintiff's civil rights claims against them. *Siegert v. Gilley*, 500 U.S. 226 (1991).

a. Basis: As to each of the civil rights claims asserted by Plaintiff, the circumstances do not amount to a violation of Plaintiff's federal civil rights. Further, the acts or omissions, if any, of the individual City and Library Defendants did not violate clearly established law. Next, a reasonable official standing in the shoes of the individual City and Library Defendants could reasonably believe their acts or omissions, if any, did not violate a federal constitutional right.

9. No representative of the City or the Library made a statement that was deliberately false or made a statement with reckless disregard for the truth.

Hervey v. Estes, 65 F.3d 784, 788-89 (9th Cir. 1995).

a. Basis: No representative of the City or the Library was deliberately false or acted with a disregard for the truth.

10. No representative of the City or the Library entered into a conspiracy to injure or impair Plaintiff. *Crowe v. County of San Diego*, 608 F.3d 406, 440 (9th Cir. 2010).

a. Basis: No representative of the City or the Library ever agreed with anyone to impair or impede Plaintiff's right.

11. A city cannot conspire with its employees, and no representative of the City entered into a conspiracy to injure Plaintiff. *Hoefler v. Fluor Daniel, Inc.*, 92 F. Supp. 2d 1055, 1057 (C.D. Cal. 2000).

a. Basis: The matter raises an issue of law.

12. Psychological injury and alleged injury to reputation are not interests protected by the Fourteenth Amendment. *Parham v. J. R.*, 442 U.S. 584 (1979); *Paul v. Davis*, 424 U.S. 693 (1976).

a. Basis: The issue raises a question of law.

13. Plaintiff has not been treated differently than others similarly situated, and no Defendant acted with a discriminatory intent or purpose. *North Pacifica LLC v. City of Pacifica*, 526 F.3d 478, 486 (9th Cir. 2008).

a. Basis: City and Library representatives acted because of Plaintiff's conduct and not because of some wrongful purpose. He was not treated differently than other citizens under the circumstances.

14. Plaintiff's constitutional claims can be analyzed under explicit textual sources of rights and claims under more generalized sources or prohibited. *Ramirez v. Butte-Silver Bow County*, 298 F.3d 1022, 1029 (9th Cir. 2002).

a. Basis: The matter involves questions of law.

15. An alleged inadequate criminal investigation does not give rise to a viable § 1983 claim. *Chang v. Chin*, 2002 WL1299873*7 (C.D. Cal. 2002).

a. Basis: The matter raises an issue of law.

16. Regarding a right to petition, no act or omission of a Defendant rendered Plaintiff's state court remedies ineffective. *Delew. Wagner*, 143 F.3d 1219, 1222 (9th Cir. 1998).

a. Basis: No act or omission of a City or Library Defendant prevented Plaintiff from seeking a state remedy.

C. State Constitution:

1. No act or omission of a representative of the City or the Library violated Plaintiff's state constitutional rights. *Dorwart v. Caraway*, 58 P.3d 128 ¶ 44, 136 ¶ 44 (Mont. 2002).

a. Basis: See Background on pages 2-13 of this Preliminary Pretrial Statement.

2. Plaintiff violated his responsibilities under the Montana Constitution. Article II, § 3, 1972 Montana Constitution.

a. Basis: Plaintiff's own acts or omissions violated his corresponding responsibility in connection with his state constitutional rights.

3. No act of omission of a representative of the Library or City violated Plaintiff's human dignity in a violation of Article II, § 4 of the Montana Constitution. *Walker v. State of Montana*, 68 P.3d 872 (Mont. 2003).

a. Basis: No act or omissions of a representative of the City or Library degraded or demeaned Plaintiff.

4. Adequate remedies exist under statutory and common law in connection with Plaintiff's alleged constitutional tort theories. *Sunburst School Dist. No. 2 v. Texaco, Inc.*, 165 P.3d 1079 ¶ 64 (Mont. 2007).

a. Basis: Adequate potential remedies are available to Plaintiff besides a damage claim for an alleged state constitutional violation.

5. No act or omission of a representative of the City or Library violated Plaintiff's substantive due process rights under state law. *Newville v. State, Dept. of Family Services*, 883 P.2d 793, 800 (Mont. 1994).

a. Basis: No act or omission of a representative of the Library or City represents arbitrary or oppressive state action.

6. Plaintiff is not asserting a liberty or property interest. MCA § 22-1-311; *Kiely Const., L.L.C. v. City of Red Lodge*, 57 P.3d 836 ¶¶ 27-28 (Mont. 2002).

a. Basis: The matter involves a question of law. Plaintiff's conduct was disruptive of Library staff and patrons.

7. No act or omission of a Library or City representative violated Plaintiff's state due process rights.

a. Basis: Plaintiff was aware of the Library rules, and he expressed his disagreement.

8. Plaintiff's equal protection rights under state law were not violated. *Powell v. State Compensation Ins. Fund*, 15 P.3d 877 ¶¶ 17-19 (Mont. 2000).

a. Basis: Plaintiff was not treated differently than others similarly situated, and no representative of the City or Library acted with an improper discriminatory purpose.

D. Negligence:

1. No representative of the City or the Library owed Plaintiff the legal duties alleged by him. *See Nautilus Ins. Co. v. First Nat. Ins., Inc.*, 837 P.2d 409, 411 (Mont. 1992); *Phillips v. City of Billings*, 758 P.2d 772, 775 (Mont. 1988) (alleged duty to investigate effectively).

a. Basis: The matter raises a question of law.

2. No act or omission of a representative of the City or the Library breached a legal duty of care to Plaintiff or caused Plaintiff's alleged damages. *Meng v. Eliasson*, 458 P.2d 777, 780 (Mont. 1969).

a. Basis: *See* Background on pages 2-13 of this Preliminary Pretrial Statement.

3. Plaintiff's own negligence or wrongful acts or omissions caused his damages or injuries. *Green v. Hagele*, 595 P.2d 1159, 1161 (Mont. 1979).

a. Basis: *See* Background on pages 2-13 of this Preliminary Pretrial Statement.

E. Infliction of Emotional Distress:

1. No act or omission of a representative of the City or the Library was wrongful. *Pospisil v. First National Bank of Lewistown*, 37 P.3d 704, 708 ¶ 26 (Mont. 2001).

a. Basis: See Background on pages 2-13 of this Preliminary Pretrial Statement.

2. The emotional distress of Plaintiff was not serious or severe. *Sacco v. High Country Independent Press, Inc.*, 896 P.2d 411, 425-26, 428-29 (Mont. 1995).

a. Basis: Plaintiff's emotional distress, if any, was not so severe that no reasonable person could be expected to endure it.

3. Serious or severe emotional distress is not a reasonably foreseeable consequence of an act or omission of a representative of the City or the Library. *Sacco v. High County Independent Press, Inc.*, 896 P.2d 411, 426 (Mont. 1995).

a. Basis: The circumstances surrounding the events alleged by Plaintiff are not such that one would anticipate emotional distress to a degree that no reasonable person could be expected to endure it.

4. No act or omission of a representative of the City or the Library caused serious or severe emotional distress.

a. Basis: Plaintiff's own acts or omissions caused his emotional distress, if any.

F. Defamation:

1. No representative of the City or the Library made a false or unprivileged publication concerning Plaintiff which defamed him. MCA §§ 27-1-802, 27-1-803, 27-1-804; *McConkey v. Flathead Electric Co-op*, 125 P.3d 1121 ¶¶ 44-47 (Mont. 2005); *Anderson v. City of Troy*, 68 P.3d 805 ¶ 15 (Mont. 2003).

a. Basis: No false or unprivileged statement of a representative of the City or the Library tended to disgrace or degrade Plaintiff or cause him to be shunned or avoided.

2. The publications, if any, of representatives of the City or the Library were privileged. MCA § 27-1-804.

a. Basis: Any publication by a representative of the City or the Library was made in the proper discharge of an official duty or in a judicial or other proceedings authorized by law.

G. Malicious Prosecution:

1. Defendant Bell is immune from Plaintiff's malicious prosecution claim. *Kalina v. Fletcher*, 522 U.S. 118, 130 (1997).

a. Basis: The alleged acts or omissions of Defendant Bell were prosecutorial in nature.

2. Probable cause existed to believe Plaintiff had committed the crimes for which he was prosecuted. MCA § 45-7-302; *Reece v. Pierce Flooring*, 634 P.2d 640, 642-43 (Mont. 1981).

a. Basis: Reasonably trustworthy information existed to warrant a prudent person in believing that Plaintiff had committed the crimes for which he was prosecuted.

3. No representative of the City or the Library was motivated by malice. *First Bank (N.A.) - Billings v. Clark*, 771 P.2d 84, 90 (1989), overruled on other grounds, *Jacobsen v. Allstate Ins. Co.*, 215 P.3d 649 ¶ 66 (Mont. 2009).

a. Basis: No representative of the City or the Library acted with an improper motive.

H. Abuse of Process:

1. No representative of the City or the Library used process for a purpose not proper in the regular course of proceedings. *Seipel v. Olympic Coast Investments*, 188 P.3d 1027 ¶ 20 (Mont. 2008).

a. Basis: No representative of the City or Library used process against Plaintiff with an ulterior motive to coerce Plaintiff to do something which he could not be compelled to do legally and regularly.

I. Misrepresentation:

1. No representative of the City or the Library made a negligent or intentional misrepresentation regarding Plaintiff. *Cechovic v. Hardin & Associates, Inc.*, 902 P.2d 520 (Mont. 1995); *Durbin v. Ross*, 916 P.2d 758 (Mont. 1996) (actual fraud).

a. Basis: No representative of the City or the Library made an untrue representation of a past or existing material fact without reasonable grounds for believing it to be true and which was made with an intent Plaintiff would rely on it. Likewise, Plaintiff did not rely on any representation of a representative of the City or the Library which reliance caused Plaintiff damage.

H. Tortious Interference:

1. No act or omission of a representative of the City or the Library tortiously interfered with a business relationship or business prospect of Plaintiff. *Maloney v. Home and Investment Center, Inc.*, 994 P.2d 1124, 1132 (Mont. 2000).

a. Basis: No representative of the City or the Library committed an act (1) intentionally or willfully, (2) which was calculated to cause Damage ro

Plaintiff's business relationships or prospects, (3) which was done with an unlawful purpose of causing damage or loss without justifiable cause, and (4) which resulted in actual damage or loss.

K. Injunction:

1. Plaintiff is not entitled to injunctive relief. *Northern Cheyenne Tribe v. Norton*, 503 F.3d 836, 843 (9th Cir. 2007).

a. Basis: Plaintiff does not present justiciable claims. Further, Plaintiff has not suffered irreparable injury, and legal remedies are available to him. Further, an injunction is not warranted and does not serve the public interests.

L. Damages:

1. Plaintiff may only recover those damages measured by his actual injury. *See Farrar v. Hobby*, 506 U.S. 103, 112 (1992); MCA § 27-1-201.

a. Basis: These matters involve questions of law.

2. Plaintiff has not been damaged or injured in the manner or to the extent claimed. *See MCA § 27-1-201; Farrar v. Hobby*, 506 U.S. 103, 112 (1992).

a. Basis: *See Facts* on pages 2-13 of this Preliminary Pretrial Statement.

3. No act, omission or statement of a representative of the City or the Library caused Plaintiff damage or injury. *See Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 306-07 (1986); MCA § 27-1-202.

a. Basis: *See* Facts on pages 2-13 of this Preliminary Pretrial Statement.

4. Plaintiff does not have a right to a particular employment. *Kafka v. Hagner*, 176 F. Supp. 2d 1037, 1043 (D. Mont. 2001).

a. Basis: Plaintiff alleges the Defendants cost him his employment.

5. The City and the Library are immune from a claim for punitive damages. MCA § 2-9-105; *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981).

a. Basis: The matter is a question of law.

6. No act or omission of a representative of the City or the Library was motivated by evil intent or involved a reckless or callous indifference to Plaintiff's federally protected rights or amounted to actual malice or actual fraud. *Smith v. Wade*, 461 U.S. 30 (1983); MCA § 27-1-221.

a. Basis: No representative of the City acted with a culpable state of mind.

7. The City and Library Defendants are entitled to recover their attorney's fees from Plaintiff. *Stitt v. Williams*, 919 F.2d 516, 531 (9th Cir. 1990); *Lato v. Sieverman*, 919 F. Supp. 336, 339-40 (C.D. Cal. 1996).

a. Basis: Plaintiff's claims are meritless and vexatious. The City and Library Defendants work earnestly at their jobs with little in return. They should not have to bear the burden of Plaintiff's ungrounded crusade to attack perceived corruption.

M. Computation of Damages:

1. The City and Library Defendants seek to recover their attorney's fees from Plaintiff.

EARLY NEUTRAL EVALUATION

Settlement is highly unlikely. Plaintiff is a vexatious litigant. He has said things will not end with this lawsuit.

RELATED STATE AND FEDERAL LITIGATION

The following related state litigation is noted:

1. *Roddy v. Spreadbury* (Protective Order action), Cause No. CV-2009-1680P, Hamilton City Court, Cause No. DV-10-93, Ravalli County District Court and Cause No. DA-11-017, Montana Supreme Court (relevant orders are attached as Exhibit A to Doc. 12). In the City Court, it was determined

that Ms. Roddy had reasonable apprehension of bodily injury and intimidation from Plaintiff. Plaintiff argued (1) Ms. Roddy gave false information to the police and the Court, (2) the Order violated MCA § 22-1-311, (3) Plaintiff was engaging in peaceful assembly, (4) Plaintiff was falsely arrested and defamed, (5) no probable cause existed for the Order, (6) the Order was an abuse of power, and (7) Plaintiff's due process and equal protection rights were violated. The City Court's Order, dated January 19, 2010, denying Plaintiff's Second Motion for a New Trial notes that Plaintiff's conduct had violated the conditions of Plaintiff's pretrial release on a misdemeanor trespass charge. In the District Court, Plaintiff repeated his arguments in City Court. He also alleged Defendant Bell's actions violated Plaintiff's due process rights. Next, he alleged Ms. Roddy was committing public fraud in using the services of retained counsel. In the Montana Supreme Court, Plaintiff argued criminal activity had been committed by Defendant Bell. He argued that his state and federal constitutional rights involving due process, equal protection, free speech, liberty and assembly had been violated. He also alleged Boone Karlberg P.C. and Bell were committing public fraud in opposing Plaintiff's requests for relief.

2. *Spreadbury v. Roddy*, DV-10-224, Ravalli County District Court (Emotional Distress case) (relevant pleadings and orders are attached as Exhibit B

to Doc. 12). Plaintiff alleged the acts or omissions of Ms. Roddy had inflicted emotional distress on him. In awarding summary judgment to Ms. Roddy, the District Court concluded the evidence was insufficient to support serious or severe emotional distress.

3. *Spreadbury v. Bell* (Emotional Distress case), Cause No. DV-10-23, Ravalli County District Court, and Cause No. DA-10-442, Montana Supreme Court (relevant pleadings and orders are attached as Exhibit C to Doc. 12). Plaintiff argued Defendant Bell defamed him and inflicted emotional distress. He argued Defendant Bell violated due process and engaged in an abuse of power. Defendant Bell was alleged to have led Ms. Roddy in providing false testimony. The District Court and Supreme Court concluded Defendant Bell was entitled to prosecutorial immunity.

4. *State v. Spreadbury*, DC-09-154 (Felony Intimidation case) (relevant pleadings and orders are attached as Exhibit D to Doc. 12). On October 15, 2010, Plaintiff entered a plea of no contest to felony intimidation. Plaintiff admitted that sufficient evidence existed upon which to convict Plaintiff. The Court determined that a factual basis existed for the criminal charge, and Plaintiff was making a knowing, intelligent and voluntary plea to the offense. Plaintiff has since appealed

the criminal judgment. He argues the Court did not have jurisdiction in the matter as probable cause for the charge was lacking.

5. *Spreadbury v. City of Hamilton and Bell*, Cause No. DV-10-639, Ravalli County District Court. Plaintiff seeks equitable relief and damages from the City and Defendant Bell under state law and 42 U.S.C. § 1983. The case arises out of a refusal to provide Plaintiff with copies of two police reports. On June 28, 2011, the District Court issued its summary judgment opinion and order on Plaintiff's claims for equitable relief. The Court determined the two reports were confidential criminal justice information. It performed the balancing required by Art. II, § 9 of the Montana Constitution and state statutes relating to confidential criminal justice information. It made redacted copies of the reports available to Plaintiff in sealed form. A summary judgment motion on Plaintiff's damage claims has been briefed and argued. Plaintiff seeks damages for negligence, a violation of his right to petition and equal protection under the state and federal constitution, a violation of his due process rights under the federal constitution, abuse of power, misrepresentation and negligent hiring, supervision and training.

6. *City of Hamilton v. Spreadbury*, Cause No. CR-2009-53, Hamilton City Court (trespass). On February 18, 2010, a jury entered its verdict finding Plaintiff guilty of trespass at the BPL on August 20, 2009. Plaintiff's motion to

dismiss the charge on the ground of insufficient evidence was denied. One juror was excused after stating that Plaintiff had attacked her for supporting another for mayor. Plaintiff argued his actions were an exercise of free speech. Plaintiff appealed the verdict to state district court. After Plaintiff's plea to the crime of intimidation, the City Attorney voluntarily dismissed the trespass charge.

PROPOSED STIPULATION OF LAW OR FACTS

The City and Library Defendants suggest the parties should agree that the City is immune from a claim of punitive damages under state and federal law.

PROPOSED DEADLINE FOR ADDING PARTIES AND AMENDING PLEADINGS

The City and Library Defendants respectfully suggest an appropriate deadline for adding parties and amending pleadings is September 15, 2011.

CONTROLLING ISSUES OF LAW SUITABLE FOR PRETRIAL DISPOSITION

The City and Library Defendants respectfully suggest the following matters are suitable for pretrial disposition:

1. Whether the Defendants owed Plaintiff the legal duties alleged by him.
2. Whether Plaintiff's federal and state law claims are supported by the law or the evidence.

3. Whether the individual Defendants are entitled to qualified immunity on Plaintiff's federal civil rights claims against them.

4. Whether the individual City and Library Defendants are immune from Plaintiff's state law claims against them.

5. Whether Plaintiff's claims against the City and Library Defendants are barred in whole or in part by res judicata or collateral estoppel.

6. Whether the City and Library Defendants are entitled to recover attorney's fees from Plaintiff.

PEOPLE WITH KNOWLEDGE OR INFORMATION

Those people believed to have knowledge or information material to the claims in this action include the following:

1. Plaintiff: Plaintiff has knowledge or information relating to his liability and damage claims in this action.

2. Crystal Cox, Eureka, Montana: On information and belief, Ms. Cox has been including information directly and indirectly from Plaintiff in her computer blog relating to Plaintiff's allegations.

3. Darlene Stafford: Plaintiff corresponded with Ms. Stafford by email and mail concerning the matters alleged by him relating to the State Library and the State Library Commission.

4. Sean Boushie: Mr. Boushie has knowledge or information concerning harassment by Plaintiff by phone and online in attempts to get Mr. Boushie fired and arrested at the University of Montana.

5. Nansu Roddy: Ms. Roddy has knowledge or information concerning some of the matters alleged by Plaintiff and Plaintiff's harassment of her.

6. Jo Frankenfurter: Ms. Frankenfurter has knowledge or information concerning Plaintiff's conduct at the Bitterroot Public Library.

7. Joseph Castantino: Mr. Castantino has knowledge or information concerning Plaintiff's treatment of BPL staff, including Ms. Frankenfurter.

8. Kenneth Bell: Mr. Bell has knowledge or information concerning Plaintiff's allegations.

9. Robert Brophy: Dr. Brophy has knowledge or information concerning Plaintiff's allegations.

10. Gloria Langstaff: Ms. Langstaff has knowledge or information concerning Plaintiff's conduct at and directed at the Bitterroot Public Library.

11. Jerry Steele: Mr. Steele is the Mayor of the City of Hamilton.

12. Steve Snavelly: Officer Snavelly has knowledge or information concerning those matters for which he was contacted to investigate.

13. Steven Bruner-Murphy: Mr. Murphy has knowledge or information concerning his acts or omissions, if any, relating to Plaintiff.

14. Ryan Oster: Mr. Oster is the Police Chief of the City of Hamilton. He has knowledge or information concerning Plaintiff's acts or omissions.

15. Jennifer B. Lint: Ms. Lint has knowledge or information concerning Plaintiff's prosecution for trespass.

16. Nicholas Miller: Mr. Miller represented Plaintiff at the protective order hearing and concerning the criminal charge of felony intimidation.

17. Officer B. W. Weston: Officer Weston investigated the felony intimidation charge involving Plaintiff. He also investigated a suspicious activity report involving Plaintiff on February 13, 2009, at the County Administration Building. In his blog, Plaintiff has alleged that Officer Weston is part of a local terror racket that includes Sheriff Hoffman, Defendant Bell and former County Attorney Bell.

18. Gavin Rickleffs: Mr. Rickleffs witnessed Plaintiff's encounter with Ms. Roddy outside the Bitterroot Public Library.

19. Officer S. P. Snavelly: Officer Snavelly has knowledge or information concerning his interaction with Plaintiff on November 6, 2009.

20. Ravalli County Deputy Sheriff Jerod Guisinger: Deputy Guisinger has knowledge or information concerning his interaction with Plaintiff on November 6, 2009.

21. Joel Thompson: Mr. Thompson represented the State in connection with the felony intimidation charge against Plaintiff.

22. Officer Neumayer: Officer Neumayer investigated possible harassment by Plaintiff at the *Ravalli Republic* on August 18, 2010.

MATERIAL DOCUMENTS

Those documents believed to be material to the claims or defenses in this action include the following:

1. HPD Report by Officer Weston, November 4, 2009
2. Langstaff Letter, June 11, 2009, to Spreadbury
3. Library Board Letter, August 20, 2009, to Spreadbury
4. Written Statement, September 9, 2009, City Court Clerk (Spreadbury says he has top security clearance)
5. Plaintiff's computer publication, "Hamilton Library to Open Pedophilia Room With Public Funds"

6. Email, Spreadbury to Darlene Staffelt, January 3, 2011, January 7, 2011, January 27, 2011, December 27, 2010, March 4, 2011, April 22, 2011 and April 23, 2011.

7. Letter, January 7, 2011, Darlene Staffelt to Spreadbury

8. Letter, December 10, 2010, Plaintiff to Ms. Staffelt

9. Email, April 22, 2011, Darlene Staffelt to Plaintiff

10. Email, April 22, 2011, Plaintiff to Department of Justice

11. Reconsideration Form, July 8, 2009, Plaintiff

12. The Big Picture blog, April 23, 2011 (state librarian)

13. The Big Picture blog April 23, 2011 (concerning members of Montana Supreme Court)

14. Judgment and Sentence, October 21, 2010, *State v. Spreadbury*, Cause No. DC-09-154 (Felony Intimidation) (Exhibit B to Bell Statement of Position)

15. Conditions of Release, November 10, 2009, Cause No. DC-09-154

16. Complaint, September 2, 2009, *City v. Spreadbury*, Cause No. CR-2009-53

17. Jury Verdict, February 18, 2010, *City v. Spreadbury*, Cause No. CR-2009-53 (Trespass)

18. City Court Sentencing Order, February 18, 2010, *City v. Spreadbury*, Cause No. CR-2009-53
19. Minutes, CR-2009-53
20. Spreadbury Montana Supreme Court Brief, April 1, 2011, *State v. Spreadbury*, Cause No. DA-10-0619 (Intimidation)
21. Order of Protection, November 20, 2009, *Roddy v. Spreadbury*, Cause No. CV-2009-168, Hamilton City Court
22. City Court Orders Denying Request for Relief from Protective Order, December 8, 2009, December 17, 2009 and December 23, 2009.
23. Order on Appeal of City Court Order of Protection, May 20, 2010, DV-10-093, *Roddy v. Spreadbury*, Ravalli County District Court,
24. Order, February 8, 2011, *Roddy v. Spreadbury*, Cause No. DA-11-0017, Montana Supreme Court
26. Order, March 15, 2011, *Roddy v. Spreadbury*, Cause No. DA-11-0017, Montana Supreme Court.
27. Amended Complaint, May 7, 2010, Cause No. 10-224, *Spreadbury v. Roddy*, Ravalli County District court
28. Summary Judgment Opinion and Order, 10/7/10, Cause No. DV-10-224, *Spreadbury v. Roddy*

29. Judgment, October 22, 2010, Cause No. DV-10-224, *Spreadbury v. Roddy*
30. Notice of Entry of Judgment, November 3, 2010, Cause No. DV-10-225, *Spreadbury v. Roddy*
31. Request to Review and Dissolve Protective Order, February 17, 2010.
32. Minutes and Note of Ruling, October 15, 2010, Cause No. DV-09-154, *State v. Spreadbury*, Ravalli County, Montana
33. Spreadbury Affidavit, January 7, 2011, *Spreadbury v. Roddy* (Appeal in DV-10-093)
34. Spreadbury Out-Of-Time Appeal, DA-0017 (Appeal in DV-10-093)
35. Spreadbury Response, October 24, 2010, in DA-11-0017
36. Spreadbury Request to Review and Resolve, February 17, 2010 (CV-2009-168)
37. Amended Complaint, May 7, 2010, *Spreadbury v. Bell*, Cause No. DV-10-223, Ravalli County District Court
38. Opinion and Order Granting Motion to Dismiss, August 19, 2010, Cause No. DV-10-223, *Spreadbury v. Bell*, Ravalli County District Court
39. Judgment, September 27, 2010, *Spreadbury v. Bell*, Cause No. DV-10-223, Ravalli County District Court

40. Opinion, April 5, 2011, *Spreadbury v. Bell*, Cause No. DA-10-442, *Spreadbury v. Bell*, Montana Supreme Court
41. Spreadbury Petition for Rehearing, April 29, 2011, Cause No. DA-10-442, Montana Supreme Court
42. Interlocal Library Contract, July 8, 1997, Ravalli County and City of Hamilton.
43. Plaintiff's response to FEMA letter interrogatory, November 2007 (In Plaintiff's possession, custody and control).
44. Letter, 1/12/08, Lori Brannigan (FEMA) to Plaintiff.
45. Crystal Cox blog, including that related to Brad Weston, MMIA, intel on Spreadbury and Natasha Jones (referred to as Donna Summer Law).

DEFENSE AND INDEMNITY AGREEMENT

Defense and indemnity concerning Plaintiff's claims against the City and Library Defendants are being provided by the Montana Municipal Interlocal Authority (MMIA) under the terms and conditions of its applicable Memoranda of Coverage. MMIA is a group self-insurance plan created under the authority of MCA §§ 2-9-211 and 7-11-101, *et seq.*

PROSPECT FOR SETTLEMENT

A settlement conference at this early stage would not be successful. Indeed, it is doubtful that a settlement can be achieved in this case. In any event, discovery is required to further evaluate liability and damages.

SUITABILITY OF SPECIAL PROCEDURES

Some of the documents in this case involve confidential criminal justice information. A proposed protective order will be provided to Plaintiff. In the event an agreement cannot be reached concerning a protective order, a motion will be provided to the Court.

From the perspective of the City and Library Defendants, Plaintiff has demeaned people, attorneys and state court judges in emails, letters and on the computer. It is anticipated appropriate protection may be sought from the Court.

DATED this 26th day of July, 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 26th day of July, 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.*