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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-JCL

**CITY AND LIBRARY  
DEFENDANTS' BRIEF IN  
SUPPORT OF MOTION TO  
COMPEL COMPLIANCE WITH  
DISCOVERY ORDER**

## **INTRODUCTION**

This supports the motion of the City and Library Defendants to compel Plaintiff's compliance with the Court's prior discovery order. The prior Order requires Plaintiff to answer the Interrogatories served on him by the City and Library Defendants. Despite the Order, Plaintiff has not, to date, answered the Interrogatories. Further, despite requests, he has not expressed an intention to comply with the Court's discovery order.

## **BACKGROUND**

Plaintiff's Amended Complaint includes some 20 counts involving the City and Library Defendants. [Doc. 55, pp. 2-4.] Specifically, Plaintiff alleges claims under 42 U.S.C. § 1983. He also alleges claims under state law for negligence, abuse of process, defamation, misrepresentation, malicious prosecution, tortious interference with prospective economic advantage and negligent and intentional infliction of emotional distress. He seeks compensatory damages, punitive damages and injunctive relief. [Doc. 76, p. 2.]

The City and Library Defendants would like to address the merits of Plaintiff's claims so they are not facing later judicial or extrajudicial allegations that they have victimized Plaintiff. To do that, the City and Library Defendants need answers to the Interrogatories served on Plaintiff.

The Interrogatories were served on Plaintiff on April 29, 2011. They seek to have Plaintiff identify the facts, people and documents alleged to support Plaintiff's various claims and allegations against the City and Library Defendants. [Doc. 55, pp. 4-16.] Plaintiff's answers to the discovery requests were due June 1, 2011. As a result of Plaintiff's failure to answer the discovery requests, the City and Library Defendants filed a motion to compel. It was opposed by Plaintiff. However, on July 25, 2011, the Court entered its order granting the motion to compel. [Doc. 68.]

Since the discovery was served on Plaintiff, he has filed some 14 motions, including a motion for partial summary judgment on the claims against the City and Library Defendants (Doc. 30), a motion to stay discovery (Doc. 42) and a motion for protective order (Doc. 71). The identified motions have all been denied by the Court. [Docs. 47, 76 and 78.]

### **DISCUSSION**

Motions to require compliance with a court's discovery order are addressed to the Court's discretion. *David v. Hooker, Ltd.*, 560 F.2d 412, 418 (9<sup>th</sup> Cir. 1977). In this connection, the Court may enter any order which is "just." Rule 37(b)(2)(A), Fed. R. Civ. P. This includes orders which preclude a party

from supporting or opposing designated claims or allegations. Rule 37(b)(2)(A), Fed. R. Civ. P.; *Von Brimer v. Whirlpool Corp.*, 536 F.2d 838, 844 (9<sup>th</sup> Cir. 1976).

The City and Library Defendants suggest that the Court should again order Plaintiff to answer the discovery served on him. Further, the Court should expressly warn Plaintiff that discrete claims or allegations made by Plaintiff will be dismissed or prohibited if he fails to responsively answer the discovery addressed to those claims or issues by a date certain.

In addition, the Court should award the City and Library Defendants their reasonable expenses, including attorney's fees, incurred in making the motion to compel compliance with the Court's discovery order. If so, Plaintiff is not rewarded for his obstinate behavior in the event he reverses his course. Likewise, the City and Library Defendants are not prejudiced by being forced to require Plaintiff to do what he should have done in the first instance.

Plaintiff's refusal to answer the discovery requests is willful and in bad faith. Specifically, answering or refusing to answer the discovery requests is within Plaintiff's own control. *Henry v. Gill Industries, Inc.*, 983 F.2d 943, 948 (9<sup>th</sup> Cir. 1993). Still, the suggested order serves the public policy of favoring disposition of cases on their merits. *Id.* It gives Plaintiff an opportunity to do the right thing and to allow his various claims and allegations to be determined on

their merits. It allows Plaintiff an opportunity to change course and to comply with the purpose of discovery which is to assure a mutual knowledge of relevant facts essential to proper litigation. *Hickman v. Taylor*, 329 U.S. 495, 507 (1947).

At the same time, the suggested order also avoids the risk of prejudice to the City and Library Defendants. *Valley Engineers, Inc. v. Electric Engineering Co.*, 158 F.3d 1051, 1056 (9<sup>th</sup> Cir. 1998). In controlling of discovery, a court should attempt to regulate the traffic for purposes of a fair trial to all concerned. *See, e.g., Massaro v. Dunham*, 603 P.2d 249, 251-52 (Mont. 1979). As the discovery involved in this motion goes to the basics of Plaintiff's liability and damage claims and allegations against the City and Library Defendants, allowing Plaintiff another chance to responsively answer the discovery allows him an opportunity to preserve his ability to address the merits of his claims while avoiding the obvious prejudice to the City and Library Defendants from a refusal to responsively answer the discovery. It also serves the Court's need to manage its docket, and it serves the public interest in an expeditious resolution of litigation. *Id.* Specifically, should Plaintiff hold steadfast to his refusal to responsively answer the discovery requests, then he has no one to blame but himself for an order dismissing claims or prohibiting him from supporting or opposing the issues and claims in his action.

There will be no legitimate basis to any future judicial or extrajudicial claim that he has been victimized.

Next, the Court should also award to the City and Library Defendants the reasonable expenses, including attorney's fees incurred in making the motion to compel compliance with the Court's prior discovery order. Rule 37(a)(5)(C), Fed. R. Civ. P. Plaintiff's refusal to comply with the Court's discovery order is not substantially justified, and the circumstances do not make an award of such expenses unjust. Further, such an award serves the purpose of deterrence concerning both future litigants, as well as the Plaintiff in this action. *Wyle v. R.J. Reynolds Industries, Inc.*, 709 F.2d 585, 589 (9<sup>th</sup> Cir. 1983).

### **CONCLUSION**

The Court should grant the motion of the City and Library Defendants compelling Plaintiff to comply with the Court's prior discovery order. Further, Plaintiff should be warned that a failure to responsively answer the discovery requests served on him by a date certain will result in an order dismissing claims or prohibiting Plaintiff from supporting or opposing discrete claims or allegations in this action. Finally, the Court should award to the City and Library Defendants their reasonable expenses, including attorney's fees, incurred in making this motion to compel compliance with the Court's discovery order.

DATED this 9<sup>th</sup> day of August, 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 1,082 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 9<sup>th</sup> day of August, 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 9<sup>th</sup> day of August, 2011, a copy of the foregoing document was served on the following persons by the following means:

- 1        CM/ECF
- Hand Delivery
- 2        Mail
- Overnight Delivery Service
- Fax
- E-Mail

1.      Clerk, U.S. District Court
2.      Michael E. Spreadbury  
         700 South Fourth Street  
         Hamilton, MT 59840

/s/ William L. Crowley  
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