

Michael E. Spreadbury
700 S. 4th Street
Hamilton, MT 59840
Telephone: (406) 363-3877
mspread@hotmail.com

Pro Se Plaintiff

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By PATRICK E. DUFFY, CLERK
DEPUTY CLERK, MISSOULA

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

MICHAEL E. SPREADBURY) Cause No: CV-11-64-DWM-JCL
Plaintiff)
v.) OBJECTION TO COURT
BITTERROOT PUBLIC LIBRARY,) FINDINGS; IN RE:
CITY OF HAMILTON,) DEFENDANT LEE
LEE ENTERPRISES, INC.,) ENTERPRISES INC.
BOONE KARLBERG, PC,)
_____)

Comes now Spreadbury with objection to court findings and recommendations with respect to Defendant Lee Enterprises Inc. in the aforementioned.

Motion:

Spreadbury moves that Honorable court rejects findings and recommendation of Honorable Magistrate Lynch, prior bias to Plaintiff, evident in findings.

Brief in Support

The Only Irrefutable Fact

In the aforementioned, the only fact that cannot be refuted is the presence of public property at the site of Spreadbury's peaceful assembly August 20, 2009 site is within block #18 of the original City of Hamilton Platt Map pled in this case *Shuttlesworth v. Birmingham 394 US 147 (1969)*. A public library accepts public funds as does Defendant City of Hamilton; a municipality accepts tax revenue for its function. A lease of property from a municipality to a Public Library does not alter property status from public to private property. While the site is adjacent to the Bitterroot Public Library structure, the site will always remain public property¹. Spreadbury's right to peaceful assembly within a public park on public property is inviolate *Hague v. CIO 307 US 496 515 (1939)*. This Honorable court referred to the property as "Library premises" which manifests bias towards Spreadbury in the aforementioned. The argument for the Plaintiff in the aforementioned hinges on the right to peaceful assembly on public property protected in Amendment 1 US Constitution District court jurists refuse to uphold right for Spreadbury.

A print media company, Defendant Lee Enterprises is liable for defamation, false light, negligence, NIED when it prints that peaceful assembly is criminal trespass

¹ Spreadbury has pled property containing Bitterroot Public Library at NE Cor. State and S. 4th Streets in Hamilton MT is in original block #18 public property by certified Platt map from Ravalli County Clerk and Recorder.

in the aforementioned. The Due Process Clause establishes Spreadbury's right to have peaceful assembly upheld; state action in color of law cannot interfere with Spreadbury's peaceful assembly *Zablonki v. Redhail 434 US 374 383-386 (1978) Amendment 14 US Constitution*. Spreadbury pled joint action test (TR. # 51) with respect to Defendant Lee and City of Hamilton, [e.g. see July 9, 2009 section].

Due Process Clause vs. Montana Law

The Honorable US Magistrate Lynch imputes protection for Defendant Lee for journalistic articles arising from a court proceeding as Montana Code Ann. MCA§ 27-1-804. The Due Process clause Amendment 14 US Constitution in part:

...no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

As Spreadbury peacefully assembles on public property on the NE cor. State St & S. 4th St. Hamilton, MT 59840 USA on August 20, 2009 a court proceeding for criminal trespass abridged Spreadbury's fundamental constitutional right in Amendment 1 US Constitution. Defendants, including Defendant Lee, in color of law deprived Spreadbury right to peaceful assembly; reason for aforementioned 42 USC s. 1983.

July 9 2009 at 232 W. Main Hamilton Montana 59840

Defendant Lee engaged in civil conspiracy with Defendant City of Hamilton July 9, 2009 due to acting in color of law, deprived Spreadbury established right 42 USC s. 1983, *Adickes v. SH Kress and Co. 398 US at 150 (1970)*. Lee Enterprises came to agreement with Defendant City to ask Spreadbury not to enter storefront at 232 W. Main although no threat (slander, defamation as dispatch called) existed, no cause. Defendant City of Hamilton made "Policy or Custom" to restrict liberty interest of Spreadbury, equal protection protected in *Amendment 5, 14 US Constitution, Monell v. NY City Dept. of Social Services 436 US 658 (1978)*.

The sequence of events July 9 2009 created a substantial enough possibility of a conspiracy to allow the case to proceed to trial *Adickes at 157*. The Hamilton Police came to an understanding of granting Defendant Lee's request to deprive Spreadbury's liberty interest *ibid*. The *Adickes* court denied summary judgment for the municipality and found SH Kress in conspiracy with the police department.

Common law conspiracy occurs in Montana when a combination of two or more persons intend to accomplish some unlawful objective for the purpose of harming another which results in damage *Jones v. Mont. University System ¶44 155 P.3d 1247 Mont. Supra (2007) citing Schumacker v.*

Meridian Oil Co. 288 Mont. 217 (1998), Viex v. E. Bay Regional Park Dist. 906 F. 2d 1330 (9th Cir. 1990).

Defendant Lee on July 9, 2009 meets joint action test *Johnson v. Knowles 113 F. 3d at 1118-1120 (9th Cir., 1997)*. Defendant Lee acting in color of law with Defendant Hamilton Police, depriving Spreadbury established right meets criteria in 9th Circuit for civil conspiracy under 42 USC s. 1983 *WMX Technologies Inc. v. Miller 80 F. 3d 1315 (9th Cir., 1996) citing Gibson v. US 781 F. 2d 1334 (9th Cir., 1984)*.

This District Court has inserted bias against Spreadbury implying threats were made in Findings and Recommendations served July 28, 2011. The reception area for Defendant Lee at 232 W. Main is approximately 50 square feet, with a few chairs, and a counter. On July 9, 2009 Spreadbury asked to see publisher Kristen Bounds to ask that Defendant Lee not defame Spreadbury. Not available, Spreadbury elected to write a hand written note to Defendant Bounds. Business was transacted as Spreadbury composed note in 50 square foot reception area. Threats of any kind would preclude business activity at Defendant Lee storefront at 232 W. Main Hamilton Montana. Former Lee employee John Kramer exited the storefront on the sidewalk with Defendant Chief Oster exclaimed Spreadbury's "behavior" not "threats" was the reason for the loss of Spreadbury liberty. Composing a hand written note, and allowing business to be conducted in close quarters at 232 W.

Main July 9, 2009 all speak to civil conspiracy, policy or custom for Defendant *City Cape v. Crossroads Correctional Center 99 P. 3d 171 Mont. (2004)*.

Spreadbury had no idea US Magistrate Lynch attended the event July 9, 2009 to confer a true account of the situation; surely federal jurist saw Spreadbury make the plea to stop the defamation (see Appendix A) defamation later to be put on AP wires by Defendant Lee in actual malice to Spreadbury.

Defamation per Se

Defamation per se, negligence per se Pled by Spreadbury against Defendant Lee due to imputing crime of Disturbing Peace, never charged, charge of criminal trespass on public property, and comments about psychological health in ¶50 ¶51 2nd Amended Complaint (TR.#10) *Milkovich v. Lorain Journal Co. 497 US 1 (1990)* . Magistrate Judge Lynch was not aware of August 9, 2010 front page article imputing crime Spreadbury in headline never charged; US Magistrate Lynch aware of peaceful assembly on public property protected Amendment 1 US Constitution and precludes protection for Spreadbury.

It is reckless on the part of this District court to dismiss a Defendant for failure to state a claim which properly claims Federal Civil rights, defamation, defamation per se, Intentional Infliction of Emotional Distress, Malicious Prosecution, Tortious Interference, Policy or Custom depriving right, negligence. Dismissal for

failure to state a claim Rule 12(b)(6) rare and must show glaring problems with basic argument on its face; a pro-se litigant in an civil rights case must have the ability to amend the complaint prior to dismissal *Noll v. Carlson et. al.* 809 F. 2d 1446 (9th Cir., 1987). The only way Lee should be granted partial dismissal from a case is when no set of facts, including color of law tests pled before this honorable court arise *Mishler v. Clift* 191 F. 3d 998 (9th Cir., 1999).

The Defamatory comments listed as ¶50, 51 2nd Amended complaint (TR. # 10) are imputing psychological illness and are defamation per se, negligence. Article of August 9, 2010 ¶89 2nd Amended Complaint (TR. #10) Defendant Lee imputes false conviction of crime never charged against Spreadbury, whose publication is Defamation per se *Shook v. Ravalli County* 9:08-cv-00172-DVM ¶96 line 11.

Peaceful Assembly, Procedural Due Process

This court misinterprets peaceful assembly on public property as “returning to the library”. Peaceful assembly on public property must be supported by this court, regardless of the circumstances *Amendment 1 US Constitution*. The procedural due process violations of the Bitterroot Public Library, by denying Spreadbury remedy to deprivation of library privileges trigger Stigma Plus Test, Procedural Due Process 14th Amendment US Constitution *Mathews v. Eldridge* 424 US 319 (1976). Lee knew or should have known property at a public library leased from a

municipality is public property, and therefore not criminal trespass for peaceful assembly. Lee created 4 articles on or around August 20, 2010 one year beyond Spreadbury's peaceful assembly and created two AP stories ample time for research and accuracy, shows malice, reckless disregard towards Spreadbury as Journalism trained reporters at Lee republished false light, imputing crime *Curtis Publishing Co. v. Butts 388 US 130 (1967)*. August 20 2010 events by Lee are 1) highly offensive to reasonable person, and 2) knowledge of falsity clear by Lee employees © Perry Z. Binder Georgia State University Law: "Binder on Torts". Statements made in actual malice nullifies privilege under Montana Code Ann. MCA§ 27-1-804, as does the violation of peaceful assembly abridged by Lee, Defendants *Amendment 1 US Constitution*.

Known false statements about constitutionally protected activity such as peaceful assembly cannot be abridged by any Montana law, in findings before this court *due process clause 14 Amendment US Constitution*. Defendant Lee has imputed crime of Spreadbury, republished false light of repeatedly returning to library when one appointment made with Library, Spreadbury exhausted remedy including "reconsideration request form" submitted to Bitterroot Public Library July 8, 2009, recommended meeting with Director per BPL employee. Dismissal is improper per well pled case and controversy before this court per *Article III US Constitution*.

Defendant Lee meets Joint Function, Public Function test (interfere with election; ¶26 2nd Amended Complaint TR. #10) proving color of law with other defendants in this case *Johnson v. Knowles 113 F. 3d at 1118-1120 (9th Cir., 1997)*; *Partial Summary Judgment (TR.#51)*. Defendant Lee imputes Spreadbury of Disturbing Peace crime ; criminal trespass on public property meets the standard for emotional distress set under both *Sacco v. HMIP Inc. 271 Mont. 209 (1995)* actual IIED prima facie standard in Montana: *Johnson v. Supersave 211 Mont. 156 (1984)*. A prima facie case in Montana for IIED or NIED needs only have this element without physical or psychological injury *Johnson Mont. Supra:*

whether tortuous conduct results in a substantial invasion of a legally protected interest and causes a significant impact upon the Plaintiff.

In the aforementioned, Lee imputed criminal activity as none were perfected by Spreadbury in engaging in peaceful activity on public property; Defamation, negligence per se *Milkovich, Kernan v. American Dredging Co. 355 US426 (1958)*. Significant impact includes publication in a national newspaper with 1.8 Million readers daily, and radio, internet, and television coverage of criminal act of trespassing on public property, Protected in the 1st Amendment US Constitution, as is asking for help from a librarian in public, unless said activity occurs in the 48th ranked state of Montana. Judicial relief and equal protection do not mean allowance of deprivation of rights. Due to bias from Federal Jurists Lynch,

Malloy, within *Spreadbury v. Hoffman* 9:10-cv-00049-DWM allowing a law student, clinic attendee within this District to practice law without a license against Spreadbury, this court has shown poor judgment, in the aforementioned without proper recusal 18 USC§455 *et. seq.*

Spreadbury must state a claim that he is entitled to relief to overcome Rule 12(b)(6) failure to state claim met in aforementioned *Bell Atlantic Corp. v. Twombly* 167 L. Ed. 2d 929 (2007). Partial Dismissal is improper for Defendant Lee. US Magistrate Lynch in findings and recommendations protecting Montana actors, not upholding US Constitution; bias evident against Spreadbury in aforementioned.

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 1957 words excluding title page, this compliance.

Respectfully submitted this 5th day of August, 2011

BY: _____

Michael E. Spreadbury, Self Represented Plaintiff