

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

FILED

AUG 10 2011

PATRICK E. DUFFY, CLERK
By _____
DEPUTY CLERK, MISSOULA

Pro Se Plaintiff

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,) PRELIMINARY
LEE ENTERPRISES, INC.,) INJUNCTIVE RELIEF
BOONE KARLBERG, PC,)
_____)

Comes now Spreadbury with objection to court findings and recommendations with respect to preliminary injunctive relief in the aforementioned.

Motion:

Spreadbury moves that Honorable court rejects findings and recommendation of US Magistrate Lynch, bias to Spreadbury, precludes injunctive relief denial.

Brief in Support

The Honorable court is made aware of four (4) findings and recommendations in the aforementioned by US Magistrate Lynch TR. # 67, 75, 76, 79; abuse of discretion by District court *Rucker v. Davis* 237 F. 3d at 1118 (9th Cir., 2001).

Spreadbury prays for injunctive relief before Honorable District Court in 2nd Amended Complaint (TR. #10) for Defendants, acting in color of law:

Count 22 pg. 38 ln 649 2nd Amended Complaint --Boone Karlberg PC

Count 23 pg. 38 ln 671 2nd Amended Complaint—Lee Enterprises Inc.

Count 24 pg. 41 ln 690 2nd Amended Complaint --Bitterroot Public Library

Count 25 pg. 41 ln 707 2nd Amended Complaint --City of Hamilton

Successful prayers for injunctive relief rely on 1) success on the merits of the case, prospect of irreparable harm and 2) serious questions are raised, balance tips in favor of plaintiff *Prudential Real Estate Affiliates Inc. v. PPR Realty Inc.* 204 F. 3d 867 864 (9th Cir., 2000).

Irreparable Harm component

1. Spreadbury has pled permanent disability in aforementioned, an irreparable harm caused by continuous Defendant unconstitutional, defamatory, negligent, unlawful action as pled in 2nd Amended Complaint.
2. Defendant City of Hamilton deprived Spreadbury's right to speak July 2011, deprivation of free speech with Defendant Bitterroot Library Employee November 4, 2009 make irreparable harm to Amendment 1,5, 14 to equal protection of Spreadbury's free speech protected in the US Constitution.
3. Judge Reardon published in opinion for order of protection that no findings of fact or conclusion of law, procedural due process (no hearing) at Montana District Court, cause DV-10-93 in the 21st Montana District Court. Defendant Boone Karlberg PC, in color of law, beneficiary of Racketeering Activity to protect BPL employee deprives Spreadbury liberty, established right in US Constitution Amendment 5, 14 *Semegen v. Weidner* 780 F. 2d 727 (9th Cir, 1985), *Schreiber Distributing v. Serv. Well Furniture Co.* 806 F. 2d 1393 (9th Cir, 1996).
4. Defendant Bitterroot Public Library denied library privilege to Spreadbury in violation of Montana Code Ann. MCA§ 22-1-311 [Use of Library-Privileges] without cause, Procedural Due Process, liberty deprived, protected in Amendment 5, 14 US Constitution *Mathews v. Eldridge* 424 US 318 (1976). Stima-Plus test, public function, joint action, Nexus test, State

Compulsion test effected by Defendant public library against Spreadbury due to statutory law, constitutional right deprived *Paul v. Davis* 424 US 693 (1976), *Johnson v. Knowles* 113 F. 3d at 1118-1120 (9th Cir., 1997).

5. Defendant Detective Murphy engaged in depriving Spreadbury right to speak July 2011 in Hamilton, Montana which is evidence of continued deprivation of Spreadbury's fundamental constitutional right protected Amendment 1 US Constitution since Spreadbury filed complaint before this US District court.
6. Defendant Lee Enterprises showed reckless disregard for Spreadbury's character in publishing known false, defamatory articles imputing Spreadbury with criminal activity that was never charged. One year after constitutionally protected act of peaceful assembly on Defendant City public property, Lee generates 4 articles, 2 elevated to AP with false, false light information about Spreadbury. National, international publication, republication of known false information about Spreadbury; request for civil arrest of Defendant Baucus per Montana Code Ann. MCA§ 27-16-102(2) requested before court. Irreparable reputational harm effected by Defendant Lee Enterprises, published approximately 30 defamatory articles in actual malice within 3 years containing known false information.

7. Defendant Boone Karlberg PC, since service of summons in the aforementioned has imputed crime of 18 USC § 912 [impersonating federal law enforcement], other pleading with known falsity, in malice which nullifies privilege due to 1) Imputing crime of protected activity 2) nullification of privilege due to malice per Montana Code Ann. MCA§ 27-1-804 [What communication privileged].

Merits of Case

US Magistrate Lynch refuses to uphold Spreadbury's right to peaceful assembly protected in Amendment 1 US Constitution. Property at 306 State Street Hamilton Montana is irrefutably public property, public park (Plaintiff Motion for Summary Judgment City, Public Library TR. # 30) *Hague v. CIO 317 US 496 515 (1939)*.

Spreadbury established to this court original Platt Map of City of Hamilton Montana original block #18; Defendant Bitterroot Public Library is public property where Spreadbury peacefully assembled August 20, 2009.

Honorable US District Judge Malloy refused to grant or deny immunity to Defendant City of Hamilton actors in the aforementioned, no functional analysis of immunity by Defense counsel, yet court compelled discovery (TR.# 68), *Harlow v. Fitzgerald 457 US 800 (1982)*, *Morley v. Walker 175 F. 3d 756 (9th Cir. 1999)*.

Implications to Spreadbury

District Court in aforementioned precludes Spreadbury free speech, liberty, procedural due process protected in US Constitution. Standard for District court for injunctive relief is repetition of deprivation of right, irreparable harm *A&M Records Inc. v. Napster Inc. 239 F. 3d at 1013 (9th Cir., 2001)*.

Spreadbury has suffered irreparable harm of employment disability due to intentional, continuous unlawful deprivation of established right by Defendants in color of law, as pled in aforementioned.

Spreadbury was arrested outside law, without representation, cruel and unusual punishment by Ravalli County Sheriff Hoffman, main defendant in Spreadbury v. Hoffman 9:10-cv00049-DVM where injunctive relief requested against law enforcement, county judiciary. Specifics: County Judge found Contempt outside hearing in violation of Montana Code Ann. MCA§ 3-10-401; Spreadbury unlawfully arrested in violation of 4th Amendment US Constitution. Sentenced to 3 days detention, served outside of general population due to “list” made by Hoffman; a “policy or custom” specifically made for Spreadbury *Monell v City of New York Dept. of Social Services 436 US 658 (1976)*. Cruel and unusual punishment of Spreadbury, a disabled person in violation of Americans with Disabilities Act (ADA), 42 U. S. C. § 12102(2)(A), 8th Amendment US

Constitution *Ingraham v. Wright* 430 US 651 (1977) citing *Greene v. McElroy* 360 US 474 (1959) “traditional ideas of fair treatment”.

Charge of Criminal Mischief MCA§ 45-6-101, Disorderly Conduct MCA§ 45-8-101 have no probable cause, no equal protection for Spreadbury who wrote with chalk on a public sidewalk, third annual “Daly Days” chalk festival was held day after Spreadbury arraignment for same activity protected in Amendment 1, 14 US Constitution. Honorable Court is informed Defendant City of Hamilton, Defendant Detective Murphy of the Hamilton Montana Police Department participated in the unlawful detention of Spreadbury for writing on public sidewalk with chalk, did not uphold Spreadbury right to free speech, equal protection as protected in Amendment 1, 4, 14 US Constitution.

Spreadbury faces threat of repeated injury *O’Shea v. Littleton* 414 US at 495-496 (1974). Defendants actions against Spreadbury meet the “capable of repetition” clause: Spreadbury subject to illegal activity on the part of the Defendants in the aforementioned and entitled to preliminary court injunction, equitable relief *Defunis v. Odegarard ma* US 312 (1974).

Spreadbury has affirmative proof Defendants “capable of repetition yet evading review” from this honorable court as “not entitled” *Southern Pacific Terminal Co. v. ICC* 299 US 498 515 (1911), *Roe v. Wade* 410 US 113 125 (1973). Spreadbury

is in live controversy with city, county: four (4) unlawful arrests since 2007 with documented irreparable injury requires court intervention *Los Angeles c. Lyons* 461 *US at 109 (1983)*.

As court ignores Spreadbury's peaceful assembly on Defendant City of Hamilton public property August 20, 2009 as pled in the aforementioned, initiates application of erroneous legal principles, represents an abuse of discretion by the District Court *Rucker v. Davis* 237 *F. 3d at 1118 (9th Cir., 2001) citing Does 1-5 v. Chadler* 83 *F. 3d 1150 1152 (9th Cir., 1996)*.

Spreadbury has properly pled for District Court to properly intervene with equitable, preliminary injunctive relief of unlawful activity of Defendants deprive Spreadbury protected right in the aforementioned, caused irreparable injury.

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 1310 words excluding title page, this compliance.

Respectfully submitted this ^{9th} day of August, 2011

BY: _____

Michael E. Spreadbury, Self Represented Plaintiff

Certificate of Service

Cause No. 9:2011-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:

Objection to court Findings & Recommendations: Preliminary Injunctive Relief

Russell Smith Federal Courthouse

Clerk of Court

201 E. Broadway

Missoula, MT 59803

Defendant Counsel:

William L. Crowley

Boone Karlberg PC

PO Box 9199

Missoula MT 59807

Jeffrey B Smith

Garlington, Lohn, & Robinson PLLP

PO Box 7909

Missoula MT 59807

Plaintiff Counsel:

Michael E. Spreadbury

PO Box 416

Hamilton, MT 59840

(self-represented)

Dated 8/9/2011


Michael E. Spreadbury, Pro Se Plaintiff