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Attorneys for City and Library Defendants

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., BOONE
KARLBERG P.C., DR. ROBERT
BROPHY, TRISTA SMITH, NANSU
RODDY, JERRY STEELE, STEVE
SNAVELY, STEVEN BRUNER-
MURPHY, RYAN OSTER,
KENNETH S. BELL, and JENNIFER
LINT,

Defendants.

Cause No. CV-11-064-M-DWM-JCL

**CITY AND LIBRARY
DEFENDANTS' BRIEF IN
OPPOSITION TO PLAINTIFF'S
MOTIONS TO QUASH, TO
SUPPRESS AND TO HOLD IN
CONTEMPT**

INTRODUCTION

This opposes Plaintiff's motions to quash, to suppress and to hold Boone Karlberg P.C. ("Boone") in contempt. [Docs. 176, 177, 178.] Plaintiff's motions are not supported by the law or the record. Each motion should be denied. Plaintiff cannot seek several million dollars in damages while hiding the information relevant to those claims.

DISCUSSION

A. Relevance and Use of Social Security Numbers:

According to Plaintiff, Boone has violated Rules 26(a) and (b), Fed. R. Civ. P. [Doc. 178, pp. 1-2.] Rule 26(a), Fed. R. Civ. P., applies to required disclosures. The initial disclosure of the City and Library Defendants was served on April 27, 2011. Their preliminary pretrial statement was served on July 26, 2011. Plaintiff has not demonstrated why these disclosures provide a reason why the Subpoenas involved in Plaintiff's motions should be quashed, why the information resulting from the Subpoenas should be suppressed or why Boone should be held in contempt.

Rule 26(b), Fed. R. Civ. P., addresses the scope and limits of discovery. Under Rule 26(b)(1), Fed. R. Civ. P., parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense. Relevant information need not be admissible at trial if the discovery appears reasonably

calculated to lead to the discovery of admissible evidence. Here, as outlined below, the Subpoenas involved in Plaintiff's motions are reasonably calculated to lead to the discovery of admissible evidence. *See, e.g., Morris v. Sequa Corp.*, 275 F.R.D. 562, 568, 570 (N.D. Ala. 2011) (As Plaintiff put his medical condition at issue, Plaintiff's medical records and Social Security application are relevant to the subject matter of the action and Plaintiff's claims); *Prescott v. County of Stanislaus*, 2011 WL2119036*1 (E.D. Cal. 2011) (mental health records are relevant as they shed light on the nature, depth and degree of plaintiff's mental health issues).

Plaintiff asserts the documents sought by the Subpoenas are privileged. However, the party asserting privilege has the burden of establishing that a privilege applies. *Bible v. Rio Properties, Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007). Here, Plaintiff's allegations place his education, employment and mental health history at issue. As such, he has waived any privilege. *Prescott, supra*, *2-3. Again, Plaintiff has not explained why he should be allowed to seek several million dollars in damages while hiding the true facts relating to those damages.

At least in phone calls, Plaintiff seems to believe his Social Security Number was somehow improperly obtained. However, Plaintiff's Social Security Number was obtained from Plaintiff's own Voluntary Petition for Chapter 7 Bankruptcy signed by Plaintiff, himself, on November 3, 1998, and filed in Case

No. 98-33234-7, United States Bankruptcy Court, District of Montana. Plaintiff's
ire is misplaced when he, himself, has placed his Social Security Number in the
public domain.

Plaintiff alleges his Social Security Number was improperly used. [Doc.
178, p. 2.] However, there was nothing improper in using Plaintiff's date of birth
or Social Security Number as an identifier in the Subpoenas issued to non-parties
to identify the documents sought. The non-parties are highly likely to already
have the numbers. The City and Library Defendants did not file the information
with the Court. If they had, the information would have been redacted as it is on
Exhibit "A" (without attachments) to this brief. Rule 5.2(a), Fed. R. Civ. P. In
this connection, *Myles v. Dienberg's Market, Inc.*, 2009 WL3414903*2 n 2 (E.D.
Miss. 2009), reads as follows:

There is no prohibition against plaintiff's inclusion of Social Security
numbers on the attachments to his Rule 45 subpoenas, and such
inclusion may be necessary in order to obtain the documents
requested. Such information should not be filed with the Court,
however, unless it has first been redacted. The Clerk of the Court has
redacted the personal data information from the documents attached
to plaintiff's motion for leave.

The information sought by the Subpoenas is relevant. According to
Plaintiff, his civil rights suits are the largest civil rights suits seen in the State of
Montana. [Doc. 143-1, p. 1.] Plaintiff seeks \$2.2 million in damages for lost
earnings. He also seeks somewhere between \$1 million and \$3 million in damages

for emotional distress. [Doc. 10, p. 29.] As to these matters, Plaintiff has not answered written discovery requests served on him. Specifically, Plaintiff has not answered the Library's Interrogatory No. 4 addressed to Plaintiff's emotional distress, including the identity of people with knowledge and material documents. Likewise, Plaintiff's responses to the Library's Interrogatories Nos. 6 and 7 did not identify any health care professionals who have examined or treated Plaintiff. With regard to Plaintiff's work and employment history, Plaintiff's answer to Snavelly's Interrogatory No. 6 reads, "I am not applying for a position. I am redressing injury caused by Defendants, including Defendant law firm, Boone Karlberg. Information is irrelevant to this case: If the defense can establish relevancy with respect to sitting on public property, I will convey the information." With this in mind, this Court has ordered Plaintiff twice to answer the discovery served on him. [Docs. 68 and 100.]

Given Plaintiff's refusal to cooperate in discovery directed at his damage claims, Subpoenas were issued in an attempt to gather relevant information. Additionally, a protective order relating to Plaintiff's records was proposed to and firmly rejected by Plaintiff. [Doc. 143-3, pp. 1-3.]

A Subpoena was issued to the Riverfront Mental Health Center in Hamilton, Montana. The Subpoena sought "any and all documents or tangible things, including but not limited to your entire file relating to Michael E. Spreadbury . . .

the purpose for the disclosure is litigation involving Mr. Spreadbury. This request includes, but is not limited to, medication reports, medical health providers reports or notes, pharmacists records, medical bills, etc. . . .”.

The documents received from Riverfront Mental Health Center are relevant. Plaintiff seeks several million dollars in damages for alleged loss of employment and emotional damages. The records produced establish Plaintiff was diagnosed with a serious mental illness in 1998. He has received institutional and outpatient care for his mental illness ever since. As the records establish, Plaintiff’s mental illness has caused Plaintiff’s emotional distress and his inability to work full-time in a competitive situation. His mental illness has caused the disruption of his personal relationships. In addition, the records shed light on Plaintiff’s explosiveness and his inability to accept any disagreement with his views. In other words, neither Plaintiff’s mental illness nor the injuries alleged by Plaintiff in this action were caused by the Defendants. *See Prescott, supra*, *1. The City and Library Defendants offer to provide these records to the Court for an *in camera* inspection.

According to Plaintiff, he has been adjudged disabled for purposes of Social Security benefits. [Doc. 136-1 (Notice of Social Security Decision).] He alleges his disability was caused by the Defendants. As a result, a Subpoena was issued to the Social Security Administration Office of Disability Adjudication and Review.

It sought “any and all documents or tangible things, including but not limited to the entire Social Security Administration File relating to Michael E.

Spreadbury . . . This requests any and all documents relating to Mr. Spreadbury’s claim for Social Security disability benefits made in or pending in the years 2010 or 2011, including but not limited to any applications, appeals, decisions or medical or psychological information used to make a determination of Mr. Spreadbury’s claim.”

The Social Security Administration refused to comply with the Subpoena absent Plaintiff’s consent. Plaintiff will not consent to a release of the records for the disability determination upon which he relies in this action. Still, according to the documents produced by Riverfront Mental Health Center, Plaintiff’s disability is based on his longstanding mental illness which was not caused by the Defendants. The City and Library Defendants are weighing the cost and benefit of seeking a Court Order requiring the production of the Social Security records.

Another Subpoena was issued to Lehigh University. It sought, “any and all documents or tangible things, including but not limited to your entire file relating to Michael E. Spreadbury . . . This request includes any and all documents related to Mr. Spreadbury’s relationship with Lehigh University at any time, including but not limited to, transcripts, degrees, applications and application materials, disciplinary records, etc.”

Plaintiff's "Linked in" site states that he received a bachelor's earth and environmental science engineering geology degree from Lehigh University after attending from 1989 to 1993. [Doc. 143-1, p. 2.] However, a Westlaw computer search located an address for Plaintiff at Lehigh University Building 97 in Bethlehem, Pennsylvania for the two-month period of December 23, 1996, to February 25, 1997. No other addresses in Bethlehem, Pennsylvania were revealed, including for the period 1989 to 1993, the period of Plaintiff's alleged attendance at Lehigh University. However, Lehigh University refused to comply with the Subpoena. Absent Plaintiff's cooperation, it appears a Court order for the information will be required, and the City and Library Defendants are weighing benefit against cost in determining whether to seek such an order.

A Subpoena was also issued to the University of Montana. It sought, "any and all documents or tangible things, including but not limited to your entire file relating to Michael E. Spreadbury . . . This request includes any and all documents relating to Mr. Spreadbury's relationship with the University of Montana at any time, including but not limited to transcripts, degrees, applications and application materials, disciplinary records, etc."

Although Plaintiff has condemned the University of Montana for being an alleged "Tier II" school, Plaintiff's "Linked in" site states that he received a bachelor's, geology-secondary science degree in 1994 from "Lehigh University

University of Montana.” It also states that Plaintiff has had a “science teaching jobs University of Montana School of Education” at “public, private and specialty schools throughout the U.S. and an American School in Mexico” during the period “August 1997 to June 2006.” [Doc. 143-1, pp. 1-2.] As with Lehigh University, the University of Montana refused to comply with the Subpoena absent Plaintiff’s cooperation. Therefore, it appears a court order for the information will be necessary, and the City and Library Defendants are weighing benefit against cost in determining whether to seek such an order.

Plaintiff’s “Linked in” site also states “Plaintiff has ‘diversified education experience at public, private and specialty schools throughout the U.S. and an American School in Mexico.’” [Doc. 143-1, p. 1.] As a result, a Subpoena was issued to the Montana Education Licensure (Certification) Program, Montana Office of Public Education. It sought, “any and all documents or tangible things, including but not limited to your entire file relating to Michael E. Spreadbury . . . This request includes any and all documents relating to certification and licensure of Michael E. Spreadbury as a teacher during the period 1994-present.”

In response to the Subpoena issued to “OPI,” the state agency produced documents establishing that Plaintiff held a Class V teaching license for the period July 1, 1998, to June 30, 2001. A Class V license is issued for three years when the applicant meets a majority of the requirements for licensure but is deficient in

academic qualifications. Plaintiff then received a Class II license for the period July 1, 2001, to June 30, 2006. The standard licensing period for a Class II license is five years. Plaintiff renewed his Class II license for the period June 1, 2006, to June 30, 2011. Although Plaintiff could have again renewed the license, it has expired. In this connection, the mental health records produced by Riverfront Mental Health Center shed light on the sporadic and limited nature of Plaintiff's teaching experience.

Next, a Subpoena was issued to RLK Hydro, Inc., in Kalispell, Montana. That Subpoena sought "any and all documents and tangible things including but not limited to your entire file relating to former employee Michael E. Spreadbury . . . This request includes any and all documents related to Mr. Spreadbury's relationship with RLK Hydro, Inc., at any time, including but not limited to his employment with your firm from 1996 to 1997." According to Plaintiff's "Linked in" site, he was a geologist with RLK Hydro, Inc., for one year (1996-1997). [Doc. 143-1, p. 1.] In response, RLK Hydro, Inc., produced time records for Plaintiff for a brief period of time March 1, 1997, to June 27, 1997.

Plaintiff's "Linked in" site also stated that he worked as a staff geologist for one year (1995-1996) at Geotechnics, Inc. A Subpoena was issued to Geotechnics, Inc. It sought "any and all documents or tangible things, including but not limited to your entire file relating to former employee Michael E.

Spreadbury . . . This request includes any and all documents related to Mr. Spreadbury's relationship with Group Delta Consultants and Geotechnics, Inc. at any time, including but not limited to his employment as a staff geologist with your firm from 1995-1996." In response to the Subpoena, Geotechnics, Inc., advised it has no record of Plaintiff ever being employed by it.

In the past, Plaintiff has alleged that the Defendants cost him his job at FEMA. He has also alleged he held or holds national security clearance through FEMA. [Doc. 130.] As a result, a Subpoena was issued to FEMA. It sought the production of "any and all documents or tangible things including but not limited to the entire employee or personnel file relating to Michael E. Spreadbury . . . This request includes any and all documents related to Mr. Spreadbury's employment and/or contractual relationship with FEMA in your possession or control, including but not limited to employee/contractor job descriptions, applications and application materials, reviews, evaluations, personnel records, disciplinary action/proceeding records, letters of termination or separation, workers compensation files, time records, payroll records, job restrictions, etc." Similar to Lehigh University and the University of Montana, FEMA refused to comply with the Subpoena absent Plaintiff's consent. However, the documents produced by Riverfront Mental Health Center establish that Plaintiff's contract job with FEMA was limited and sporadic. He did damage estimates.

In summary, Plaintiff has steadfastly refused to provide information relating to his claims. He also refused to enter into a protective order concerning that information. As a result, the City and Library Defendants were forced to seek information by Subpoena. Further, the information sought is relevant to Plaintiff's claims in this action.

B. Motions to Quash and Suppress:

Plaintiff alleges the Subpoenas referred to above violate his right of privacy. [Doc. 176, pp. 1-2; Doc. 177, p. 2.] However, Plaintiff filed this lawsuit. He seeks several million dollars in damages for lost earnings and emotional distress. Having done so, Plaintiff waived any expectation of privacy. *See, e.g., Prescott, supra* *2. The documents sought by the Subpoenas will shed light on the nature, cause, depth and degree of the injuries alleged by Plaintiff in this action. *Id.* *1. They show Plaintiff's failure to mitigate damages by his failure to renew his teaching license. With this in mind, Plaintiff cannot legitimately contend that he can recover several million dollars in damages in this action while refusing to allow the production of relevant information relating to those damages.

According to Plaintiff, the Subpoenas referred to above are invalid and unlawful. [Doc. 176, p. 2; Doc. 177, p. 2.] A copy of the Subpoena (without attachments) issued to the Riverfront Mental Health Center with Plaintiff's birth date and Social Security Number redacted is attached as Exhibit "A." Rule 5.2(a),

Fed. R. Civ. P. It reflects the Subpoenas served on the other non-parties. The form and content of the Subpoenas are appropriate. Rule 45(a)(1), Fed. R. Civ. P. Further, the Subpoena to Riverfront is HIPAA compliant. It contains the necessary core elements. 45 C.F.R. 164.508(c) (1). In addition, while Plaintiff argues the Subpoenas were issued without Court approval, such approval is not required. Rule 45(a)(3), Fed. R. Civ. P.

Without explanation, Plaintiff alleges the Subpoenas violated 5 U.S.C. 552(a) and (b). [Doc. 176, p. 2; Doc. 177, p. 2.] However, that statute applies to the disclosure of information to the public by federal governmental entities. Here, the Social Security Administration and FEMA have both refused to produce documents because Plaintiff would not consent. The other entities are not federal authorities. 5 U.S.C. 551(1) and 5 U.S.C. 552(f)(1).

Plaintiff argues the Subpoenas violate HIPAA. [Doc. 176, p. 2; Doc. 177, p. 2.] In this connection, it is assumed Riverfront Mental Health Center is a covered entity. 45 C.F.R. 164.104. Still, while HIPAA, in general, prohibits the disclosure of private medical information, 45 C.F.C. 164.508 permits disclosure in certain circumstances, including when it is allowed under 45 C.F.C. 164.512(e). Under this latter section, disclosure is permitted in judicial proceedings in response to a subpoena, when the entity is assured the subpoenaing party has made reasonable efforts to obtain a release. Such efforts are shown by a subpoena

which allows time for objection and none was made before the expiration of the time allowed. *Prescott, supra*, *3. Similarly, under Rule 45, Fed. R. Civ. P., Plaintiff was entitled to notice of the Subpoena, and such notice must be provided before its return date. Rule 45, Fed. R. Civ. P., Advisory Committee Note (2007 Amendment; *see, e.g., Morris, supra*, 275 F.R.D. at 565. In summary, the Riverfront Subpoena is HIPAA compliant, and no law has been violated.

Here, copies of the Subpoenas and enclosing letters were provided to Plaintiff at the time the Subpoenas were sent to the non-parties. [Exhibits “B” to “P”.] Plaintiff did not file a motion to quash or seek other relief from the Court. Instead, he phoned the Defendants’ attorneys to berate them for being “very, very stupid” and for having attended “Tier II” colleges.

Plaintiff also argues the Subpoenas violate FERPA. 20 U.S.C. 1232(a) and 34 C.F.R. Part 99. [Doc. 176, p. 2; Doc. 177, p. 2.] However, FERPA has not been violated. Lehigh University and the University of Montana have refused to provide documents absent Plaintiff’s consent. Again, given the information disclosed in the documents provided by Riverfront Mental Health Center, the City and Library Defendants are balancing the benefit and cost of seeking additional information from Lehigh University and the University of Montana through a court order.

Without citation of any specific authority, Plaintiff alleges the Subpoenas violate his Fourth Amendment search and seizure rights. [Doc. 176, p. 2.] However, as addressed above, the Subpoenas are lawful. In summary, Plaintiff's motions to quash and to suppress should be denied. Fundamentally, Plaintiff cannot seek several million dollars in damages while hiding the information relating to those claims.

C. Motion for Contempt:

Plaintiff again seeks to hold Boone in contempt. [Doc. 178.] However, Plaintiff cannot prove (1) a clear and definite order exists and (2) Boone knew of the order, and (3) Boone deliberately, recklessly or willfully disregarded the order. *Gates v. Shinn*, 98 F.3d 463, 467-68 (9th Cir. 1996); *U.S. v. Powers*, 629 F.2d 619, 627 (9th Cir. 1980). As addressed above, the Subpoenas involved in this matter did not violate Plaintiff's expectation of privacy. They were not invalid or unlawful, and they do not violate federal law. [Doc. 178, p. 2.] As such, Plaintiff's arguments to the contrary should be rejected.

According to Plaintiff, Boone should be held in contempt because the attorneys have acted in bad faith, abused the judicial process and have violated 27 U.S.C. 1927 (unreasonable and vexatious multiplying of proceedings). [Doc. 178, p. 2.] However, Plaintiff chose to file this action seeking several million dollars in damages. Plaintiff was served discovery which he refused to answer despite two

orders compelling him to do so, together with an award of attorney's fees as a result of his refusal. [Docs. 68, 100, 112.] Plaintiff was offered a stipulated protective order, which he steadfastly refused. [Doc. 143-3, pp. 1-3.] As a result, the City and Library Defendants were forced to seek information relevant to Plaintiff's claims through the use of Subpoenas. Given Plaintiff's own actions in refusing to cooperate in discovery and otherwise, his allegations of bad faith and abuse of the judicial process are without foundation.

Specifically, Boone has not engaged in conduct which is willfully disobedient of court orders or conduct which is bad faith, vexatious, wanton or oppressive. *Fink v. Gomez*, 239 F.3d 989, 991-94 (9th Cir. 2001). Instead, Boone has sought information relevant to Plaintiff's claims while Plaintiff has steadfastly attempted to hide the relevant information.

Finally, without any support, Plaintiff argues Boone should be held in contempt because it corresponded with the Montana Department of Corrections. Copies of the two letters sent on behalf of Boone's client were provided to Plaintiff at the time they were sent to the Montana Department of Corrections. With this in mind, the letters were sent on behalf of Boone's client, one of Plaintiff's victims. A state right exists to submit views and concerns to governmental entities, including Plaintiff's probation officer concerning Plaintiff's escalating behavior. MCA § 2-3-101. The Department of Corrections is in charge

of the investigation and supervision of Plaintiff. Although Plaintiff continues to deny it, he is a felony offender on probation. MCA § 46-3-1004; 46-23-1011. He was sentenced for felony intimidation against Boone's client. *State v. Spreadbury*, 257 P.3d 392 (Mont. 2011). His victims, including Boone's client, have a right to look to the Department of Correction for protection.

CONCLUSION

Plaintiff's separate motions to quash, to suppress and to hold Boone in contempt should each be denied. They are not supported by the law or the record. Plaintiff cannot seek millions of dollars in damages while hiding the information relevant to his claims.

DATED this 5th day of December, 2011.

/s/ William L. Crowley
William L. Crowley
BOONE KARLBERG P.C.
Attorneys for City and Library Defendants

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 3,575 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 5th day of December, 2011.

/s/ William L. Crowley
William L. Crowley
BOONE KARLBERG P.C.
Attorneys for City and Library Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on the 5th day of December, 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 City and Library Defendants