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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

DEFENDANT LEE ENTERPRISES,
INC.'S BRIEF IN SUPPORT OF
MOTION TO AMEND ORDER
(DKT. 189)

Defendant, Lee Enterprises, Inc. ("Lee Enterprises"), through its counsel,
Garlington, Lohn & Robinson, PLLP, respectfully submits this Brief in Support of
its Motion to Amend Order (Dkt. 189).

I. BACKGROUND

In his Second Amended Complaint, Plaintiff, Michael Spreadbury

("Spreadbury"), seeks the same compensatory damages from Lee Enterprises and all the other Defendants. Specifically, Spreadbury alleges the conduct of the Defendants has resulted in his loss of employment and earnings capacity, damaged reputation, impaired lifestyle, and emotional distress and mental pain and suffering. In order to evaluate Spreadbury's damages claims, the City Defendants subpoenaed documents from third parties directly relevant to Spreadbury's employment history, earnings capacity and mental health.

Some of the non-parties served with subpoenas refused to respond without Spreadbury's consent or a Court Order. Spreadbury would not consent and filed a Motion to Quash and Motion to Suppress, arguing the information sought was privileged and protected by federal law. The Order at issue (Dkt. 189) resulted from this dispute.

The Magistrate denied Spreadbury's motions, finding that, by raising his damages claims and putting these matters at issue, Spreadbury had waived the privilege for matters relevant those claims, and the law cited by Spreadbury did not preclude the Defendants from obtaining and using the subpoenaed information in this litigation. Dkt. 189. In addition, reading Spreadbury's Motion to Suppress broadly, the Magistrate made the confidential information subject to a Protective Order under Federal Rule of Civil Procedure 26(c). The Order provides that "(1) the City Defendants shall not disclose outside the bounds of their litigation any of

Spreadbury's personal information obtained via the disputed subpoenas; and (2) the City Defendants shall move the Court to file under seal any document containing any of Spreadbury's personal information obtained via the disputed subpoenas." Dkt. 189 at 9-10.

II. DISCUSSION

Lee Enterprises understands that, as a Co-Defendant in the same lawsuit, it may access and use the confidential information subject to the Protective Order, as such access remains within the bounds of the litigation and, thus, is not prohibited by the Order. However, given the Plaintiff's pro se status, and to avoid misunderstandings and wasteful duplication, Lee Enterprises, with the agreement of the City Defendants, requests the Court expressly clarify that the information obtained by the City Defendants via subpoena is available for use in this litigation by all Defendants, including Lee Enterprises.

The rules of procedure require production of the fruits of discovery to the parties to the litigation. Fed. R. Civ. P. 26(a). Lee Enterprises is such a party. Requiring co-defendants to independently obtain the same information would be contrary to the aims set out in the first and fundamental rule of the Federal Rules of Civil Procedure: "These rules . . . should be construed and administered to secure the just, speedy and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1; *See Williams v. Johnson & Johnson*, 50 F.R.D. 31, 32 (S.D.N.Y.

1970) (allowing parties in a separate lawsuit to access fruits of discovery, holding “there is no merit to the all-encompassing contention that the fruits of discovery in one case are to be used in that case only”).

The information obtained by the City Defendants’ subpoenas is equally relevant and necessary to Lee Enterprises’ defenses. Spreadbury’s damages claims against Lee Enterprises are the same as those brought against the City Defendants, and the rationale for allowing access to documents relevant to the defense of those claims is identical as well. The Magistrate’s holding that Spreadbury waived any privilege in these documents by making claims that put such information at issue is the law of the case. Under the law of the case doctrine, a court is generally precluded from reconsidering an issue previously decided by the same court in the identical case. *U.S. v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000).

Amending the Protective Order will promote judicial economy by preventing reconsideration of issues already decided, avoiding unnecessary duplication of effort, preventing undue delay and expense for all parties, preventing the additional cost and inconvenience to third parties which would occur if Lee Enterprises was required to issue separate subpoenas for the same records from the same non-parties, and preventing duplicative objections and briefing on the same issues.

III. CONCLUSION

For the reasons stated herein, Lee Enterprises requests the Court issue an Amended Order identical to Dkt. 189, except with the addition of language clarifying that access to the information by Lee Enterprises is “within the bounds” of the litigation and that Lee Enterprises is also subject to the Protective Order granted to the City Defendants. In the alternative, Lee Enterprises requests a separate Order expressly permitting Lee Enterprises to access and use the fruits of all discovery, including the subpoenas, in its own defense in this litigation, subject to the same conditions as apply to the City Defendants.

DATED this 22nd day of February, 2012.

/s/ Jeffrey B. Smith
Attorneys for Defendant, Lee Enterprises, Inc.

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(d)(2)(E), I certify that this *Defendant Lee Enterprises, Inc.'s Brief In Support of Motion to Amend Order [Dkt. 189]* is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office Word 2007, is 824 words long, excluding Caption, Certificate of Service and Certificate of Compliance.

/s/ Jeffrey B. Smith
Attorneys for Defendant, Lee Enterprises, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2012, a copy of the foregoing document was served on the following persons by the following means:

- 2 CM/ECF
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- 1 Mail
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