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FILED

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

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

Cause No.: 9:11-cv-11-64-DWM-JCL

MICHAEL E. SPREADBURY)
Plaintiff)
v.)
BITTERROOT PUBLIC LIBRARY,)
CITY OF HAMILTON,)
LEE ENTERPRISES INC.,)
BOONE KARLBERG PC,)
Defendants)

**MOTION FOR ORDER
TO COMPEL LEE
DISCOVERY FRCP 37(a)**

Comes now Plaintiff with motion to move court to compel discovery from
Defendant Lee for failure to answer, refusal Plaintiff discovery in aforementioned.

Motion:

WHEREFORE Plaintiff moves court to compel Lee discovery, better discovery.

Defense opposes this motion.

Brief in Support:

Plaintiff served 18 discovery questions on Defendant Lee, court on November 11, 2011 due in 30 days per Federal Rules Civ. Procedure 26, well established practice in Federal Circuits (Appendix A). Lee failed to respond to questions in violation of FRCP 37(a), (d). Plaintiff answered Lee 1st Interrogatory of August 12, 2011 on August 15, 2011 (Appendix B). Discovery is not a one way proposition *Hickman v. Taylor 329 US 495 (1947)*.

This Honorable Court granted stay of proceedings for Lee starting December 13, 2011 as Plaintiff interrogatories due 7 days later. On January 30, 2012 Lee gave notice (Doc. #204) to court of removal of stay. On January 31, 2012 an unrecognized person Anita Harper Poe responded to Plaintiff interrogatories with “objection” and “deny” without answer to interrogatories, although sworn notary “answers” by Defendant Missoulian Editor Sherry Devlin on January 27, 2012 (Appendix C). Anita Harper Poe violated this Honorable Court’s LR 12.2 for notice of appearance filed after Plaintiff indicated lapse.

Judicial Notice should be taken of non-appearance of Anita Harper Poe until February 10 2012 (Doc. # 223). Answers of January 31, 2012 by Anita Harper Poe are null due to non-appearance before this court until February 10, 2011.

Honorable Court requires first appearance by attorney of record to be noticed of Court Clerk, Court LR 12.2 (Appendix D).

Denial of discovery causes prejudice to the complaining litigant *Goehring v. Brophy* 94 F. 3d at 1305 (9th Cir., 1996) citing *Sablan v. Dept. of Finance* 886 F. 2d at 1321 (9th Cir., 1988). As Corporate designee Anita Harper Poe did not give notice of appearance until February 10, 2012 and voided Lee answers FRCP 30(b)(6), 31(a)(4). Plaintiff sought discovery from Lee, Anita Harper Poe ineligible to be representative for Lee until notice of appearance.

As US District Court for Montana Missoula Division denies Plaintiff discovery in aforementioned, is reviewable for abuse of discretion upon appeal *Hallett v. Morgan* 296 F. 3d 732 (9th Cir., 2002) citing *Mabe v. San Bernadino Co.* 237 F. 3d 1101 (9th Cir., 2001). Plaintiff moves court to compel Lee to give full discovery answers *Garrett v. City of San Francisco* 818 F. 2d 1515 (9th Cir., 1987).

As Anita Harper Poe was not recognized before this court prior to February 10, 2012 (Doc. #223) gave indication to court that she is illiterate in “answer” to Request for Admission #1 (Appendix D) as Anita Harper Poe does not understand the English Language, or is unclear of Plaintiff writing at grade 12 level. If Honorable court would like to accommodate Anita Harper Poe limited capacity to understand the English language, Plaintiff yields. Plaintiff is unaware of Anita

Harper Poe status as English as Second Language, or other deficiency to be accommodated by the Honorable Court.

Plaintiff clearly asked in Request for Production No. 3 (Appendix D pg. 4) to name any of Lee's internet service customers in the State of Montana or elsewhere. Ms. Anita Harper Poe avers this question ambiguous, although it does not have more than one meaning, nor is it unclear. Again, as a trained educator in Montana it appears Ms Anita Harper Poe has reading comprehension, and basic understanding issues of court rules, reading comprehension, and adherence to authority of this court.

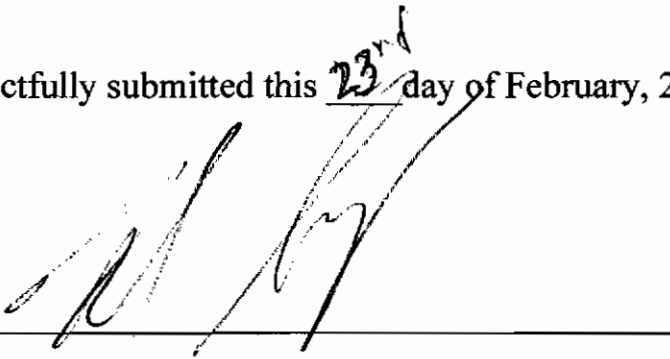
Further Plaintiff Request for Admission No. 4 asks Lee if Defendant websites are owned by Lee, a publisher of Newspapers (Appendix D pg 6). Question is not ambiguous, nor is it seeking information irrelevant to the aforementioned. Lee is claiming to be an` internet service provider such as AOL, or a Matchmaker.com and is not answering discovery in good faith. Ms. Anita Haper Poe appears to have a reading level of grade 5 based upon discovery answers in Appendix D.

As Lee failed to answer with the attorney of record on January 31, 2012 Jeffrey B. Smith *esq.* violated FRCP 33. Plaintiff moves court to compel Lee, by order of this Honorable court for Anita Harper Poe to answer questions posed by Plaintiff in Discovery interrogatories served upon Lee November 21, 2011.

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 710 words excluding title page, this compliance.

Respectfully submitted this 23rd day of February, 2012

A handwritten signature in black ink, appearing to read "Michael E. Spreadbury", is written over a horizontal line. The signature is stylized and cursive.

Michael E. Spreadbury, Pro Se Plaintiff