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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 RESPONSE BRIEF IN
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL (Dkt. 237)

Defendant, Lee Enterprises, Inc. ("Lee"), through its counsel, Garlington, Lohn & Robinson, PLLP, respectfully submits this response Brief in Opposition to Plaintiff's Motion for Order to Compel Lee Discovery FRCP 37(a) (Dkt. 237), filed on February 24, 2012.

Although Spreadbury's Motion to Compel includes wide ranging complaints

and objections, upon careful reading, the relief requested is to compel responses to Plaintiff's Request for Production No. 3 and Requests for Admission Nos. 1 and 4. (See Dkt. 237 at 4.)

Spreadbury acknowledges that Lee responded, but is dissatisfied with the responses. However, Spreadbury provided no clarification, additional information, or other bases on which to compel different answers.

Request for Production No. 3 asks for a document that does not exist. Federal Rule of Civil Procedure 37 requires production of existing documents in the party's possession. Request for Admission No. 1 is not sufficiently clear to understand or admit, in particular, due to the lack of a verb. In response to Request for Admission No. 4, Lee admitted it is the owner of the *Ravalli Republic*, the *Missoulian*, and the *Billings Gazette*, and that it publishes newspapers. (See Dkt. 238-1.) Lee specifically denied liability for comments made on its websites, pursuant to Section 230 of the Communications Decency Act. (See Dkt. 238-1.) There is no basis to compel different responses.

To the extent Spreadbury seeks to void Lee's responses at the same time he seeks to compel them, his arguments have no merit. Spreadbury admits the responses were received the first day after the bankruptcy stay was lifted. Lee was precluded from responding to the discovery requests until the automatic stay was lifted. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992), *superseded by statute on*

another point, Lewis v. Daybreak Group, Inc., 2008 WL 4801647 (Cal. App. 4 Dist. Nov. 5, 2008) (unpublished). Lee's responses were timely.

Spreadbury's protest of attorney Poe's signature on Lee's discovery responses is supported by no authority. The law firm of Garlington, Lohn & Robinson, PLLP, is and has been counsel of record and Ms. Poe's signature on the responses does not make them "void" as Mr. Spreadbury contends.

CONCLUSION

Spreadbury's Motion to Compel should be denied.

DATED this 5th day of March, 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 Response Brief in Opposition to Plaintiff's Motion to Compel (Dkt. 237)* 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 379 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 the 5th day of March, 2012, a copy of the foregoing document was served on the following persons by the following means:

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