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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 IN OPPOSITION  
TO PLAINTIFF'S MOTION FOR  
VOLUNTARY DISMISSAL

Defendant, Lee Enterprises, Inc. ("Lee Enterprises" or "Lee"), through its counsel, Garlington, Lohn & Robinson, PLLP, respectfully files this Response in Opposition to Plaintiff, Michael Spreadbury's Motion for Voluntary Dismissal (Dkt. 290). Plaintiff's Motion should be denied as the parties have not agreed on

Spreadbury's proposed "settlement," attached to his Motion, and dismissal under such terms would be prejudicial to Lee.

While Plaintiff represents his motion is unopposed, he did not ask Lee's counsel prior to filing the motion whether Lee would oppose it. *See* attached email. Failure to comply with Local Rule 7.1(c)(1), requiring a party to contact opposing counsel prior to filing a motion, may result in summary denial of the motion. L.R. 7.1(c)(4).

The rules do not allow Spreadbury to have the matter dismissed simply by filing a Notice, once the opposing party has served either an answer or a motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(i).<sup>1</sup> The matter may only be dismissed on terms the Court considers proper pursuant to Federal Rule Civil Procedure 41(a)(2). "In other words, the voluntary dismissal cannot take effect until a court order has been entered and the terms and conditions imposed by the court are complied with." *Lau v. Glendora Unified Sch. Dist.*, 792 F.2d 929, 930 (9th Cir. 1986).

Lee would be prejudiced if Plaintiff's Motion were granted.

The purpose of authorizing the court to place conditions on a voluntary dismissal is to prevent unfair prejudice to the other side in the case. Typical examples of such prejudice occur when a party proposes to dismiss the case at a late stage of pretrial proceedings, or seeks to avoid imminent adverse ruling, or may on refiling

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<sup>1</sup> Spreadbury incorrectly references Federal Rules of Civil Procedure 23(e) and 23.1(c), which apply to class actions.

deprive the defendant of a limitations defense.

*In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*, 628 F.3d 157, 162 (5th Cir. 2010). “When a court is faced with a Rule 41(a)(2) motion, it should ‘first ask whether an unconditional dismissal will cause the non-movant to suffer plain legal prejudice.’ ” *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*, 628 F.3d at 163 (citation omitted). “If such prejudice would ensue, the court may either refuse to dismiss the case or may ‘craft conditions that will cure the prejudice.’ ” *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*, 628 F.3d at 163 (citation omitted). The District Court may do so with whatever terms necessary to offset the prejudice. *See Bridgeport Music, Inc. v. Universal-MCA Music Pub., Inc.*, 583 F.3d 948, 954 (6th Cir. 2009).

Lee has expended significant effort and resources defending this action and expects to prevail. Plaintiff has widely publicized his allegations of wrongdoing by Lee and its employees. There are three remaining counts against Lee currently set for jury trial in September 2012, and a Motion for Summary Judgment is currently under consideration by the Court. Voluntary dismissal without prejudice at this late stage of the litigation and with no limiting conditions would be prejudicial to Lee.

Plaintiff’s “Terms of Settlement Agreement” are unacceptable to Lee. The only conditions of dismissal which would cure the prejudice to Lee would be

dismissal of Spreadbury's claims against Lee with prejudice and on the merits, without imposing any conditions or requirements on Lee that would allow Spreadbury to represent that he prevailed in, or settled his claims.

Lee, therefore, objects to voluntary dismissal unless such dismissal is unconditional as to Lee, and is expressly with prejudice on the merits.

DATED this 25th day of May, 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 In Opposition to Plaintiff's Motion For Voluntary Dismissal* 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 598 words long, excluding Caption, Certificate of Service and Certificate of Compliance.

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

