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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 TO PLAINTIFF'S  
SECOND MOTION FOR  
VOLUNTARY DISMISSAL

Defendant, Lee Enterprises, Inc. ("Lee Enterprises" or "Lee"), through its counsel, Garlington, Lohn & Robinson, PLLP, respectfully files this Response to Plaintiff, Michael Spreadbury's Second Motion for Voluntary Dismissal (Dkt. 304). Lee does not object to dismissal, on the condition dismissal is with prejudice. Lee objects to a dismissal without prejudice.

Again, 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* L.R. 7.1(c)(4) (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).

Lee would be unfairly prejudiced by a dismissal without prejudice. The matter may only be dismissed on terms the Court considers proper. *See* Fed. R. Civ. P. 41(a)(2).

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 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 (internal 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 (internal citation omitted). The district court may do so with whatever terms necessary to offset the prejudice. *See Bridgeport Music, Inc. v. Universal-MCA*

*Music Publg., Inc.*, 583 F.3d 948, 954 (6th Cir. 2009).

As explained in Lee's Response to Spreadbury's first Motion for Voluntary Dismissal (Dkt. 292), fully incorporated herein, the only conditions of dismissal which would cure the prejudice to Lee would be dismissal of Spreadbury's claims against Lee with prejudice.

Lee, therefore, objects to voluntary dismissal without prejudice, but does not oppose dismissal that is expressly with prejudice.

DATED this 31st 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 to Plaintiff's Second 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 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 May 31, 2012, a copy of the foregoing document was served on the following persons by the following means:

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