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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 OPPOSITION
TO PLAINTIFF'S MOTION TO
STRIKE

COMES NOW Co-Defendant, Lee Enterprises, Inc. ("Lee Enterprises"),
through its counsel, Garlington, Lohn & Robinson, PLLP, and hereby respectfully
files its Brief in Opposition to Plaintiff's Motion to Strike (Dkt. 62).

INTRODUCTION

Plaintiff, Michael Spreadbury ("Spreadbury"), moved to strike portions of
Lee Enterprises' Response Brief in Opposition to Spreadbury's Motion for Partial

Summary Judgment (Dkt. 57) and corresponding Statement of Genuine Issues (Dkt. 58). Spreadbury claims “information regarding speaking to a librarian November 4, 2009” should be stricken as free speech and irrelevant evidence. (Dkt. 62 at 1.) However, Spreadbury fails to cite to any legal authority in support of his motion, and the Federal Rules of Civil Procedures do not allow a motion to strike matters outside of the pleadings. Furthermore, the information Spreadbury wishes to strike is relevant to Spreadbury’s current claims, and Spreadbury has failed to show the information is prejudicial. Accordingly, Spreadbury’s Motion to Strike should be denied.

ARGUMENT

“Under Federal Rule of Civil Procedure 12(f), a court ‘may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.’” *Mag Instrument, Inc. v. JS Prods., Inc.*, 595 F. Supp. 2d 1102, 1106 (C.D. Cal. 2008); Fed. R. Civ. P. 12(f). “[T]he function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial.” *Mag Instrument*, 595 F. Supp. 2d at 1106 (citing *Sidney-Vinsein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir.1983)). “Whether to grant a motion to strike is within the sound discretion of the district court.” *Mag Instrument*, 595 F. Supp. 2d at 1106 (citing *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1528 (9th Cir. 1993),

overruled on other grounds by *U.S. v. Beary*, 2007 WL 2712217, (N.D. Cal. Sept. 14, 2007) (unpublished)).

“In determining whether to grant a motion to strike, a district court views the pleadings in a light most favorable to the non-moving party, and ‘resolves any doubt as to the . . . sufficiency of a defense in defendant’s favor.’” *Mag Instrument*, 595 F. Supp. 2d at 1106 (citing *State of Cal. Dep’t of Toxic Substances Control v. Alco Pac., Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002) (citing *In re 2TheMart.com Sec. Litig.*, 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000); *Wailua Assocs. v. Aetna Cas. & Sur. Co.*, 183 F.R.D. 550, 553-554 (D. Haw. 1998)).

“Motions to strike are generally regarded with disfavor because of the limited importance of pleading in federal practice, and because they are often used as a delaying tactic.” *Mag Instrument*, 595 F. Supp. 2d at 1106 (citing *Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d 1101, 1152 (C.D. Cal. 2003)) (citations omitted).

“Both because striking a portion of a pleading is a drastic remedy, and because it often is sought by the movant simply as a dilatory tactic, motions under Rule 12(f) are viewed with disfavor and are infrequently granted.” *F.D.I.C. v. Niblo*, 821 F. Supp. 441, 449 (N.D. Tex. 1993).

I. Spreadbury’s Motion to Strike Should Be Dismissed.

Since Federal Rule of Civil Procedure 12(f) only allows the Court to strike

matters from pleadings, Spreadbury's motion to strike portions of Lee Enterprises' Response Brief in Opposition to Spreadbury's Motion for Partial Summary Judgment (Dkt. 57) and Statement of Genuine Issues (Dkt. 58) should be denied. Further, the matters Spreadbury wishes to strike are relevant to Spreadbury's current claims, and Spreadbury has failed to show he is prejudiced.

A. Spreadbury Moved to Strike Matters Outside the Pleadings.

Spreadbury's motion should be denied because he seeks to strike information outside the pleadings. "Rule 12(f) permits the court, on motion of either party, to strike "from any *pleading* any insufficient defense or redundant, immaterial, impertinent or scandalous matter." *Int'l Longshoremen's Ass'n, S.S. Clerks Loc. 1624, AFL-CIO v. Va. Int'l Terminals, Inc.*, 904 F. Supp. 500, 504 (E.D. Va. 1995) (citing Fed. R. Civ. P. 12(f)) (emphasis in original). Pleadings include a complaint, an answer, and answers to counterclaim. *See* Fed. R. Civ. P. 7(a).

Courts have consistently determined Rule 12(f) only permits the Court to strike information from pleadings. *See also Newsome v. Webster*, 843 F. Supp. 1460, 1464 (S.D. Ga. 1994) (motion to strike not appropriate to challenge affidavits); *Welch v. Bd. of Directors of Wildwood Golf Club*, 146 F.R.D. 131, 138-139 (W.D. Pa. 1993) (same holding as *Newsome*); *Int'l Longshoremen's Ass'n*, 904 F. Supp. at 504 ("The filing of a motion to strike, therefore, is not a proper way to

challenge the Employer Defendants' responsive filing.”); *Bd. of Educ. of Evanston Township High Sch. Dist. No. 202 v. Admiral Heating & Ventilation, Inc.*, 94 F.R.D. 300, 304 (N.D. Ill. 1982) (memoranda are not pleadings, thus, motion to strike footnote was improper); *Resolution Trust Corp. v. Blasdell*, 154 F.R.D. 675, 683 (D. Ariz. 1993) (Rule 12(f) cannot be used to strike a response to a motion to dismiss).

Simply put, “the federal rules of civil procedure do not provide for a motion to strike documents or portions of documents other than pleadings.” *U.S. v. Crisp*, 190 F.R.D. 546, 551 (E.D. Cal. 1999); *see also Lowery v. Hoffman*, 188 F.R.D. 651 (M.D. Ala. 1999) (“procedural rule providing for motions to strike material from pleadings does not provide for striking of non-pleadings”). More analogous to our circumstances, in *Petaway v. City of New Haven Police Department*, 541 F. Supp. 2d 504 (D. Conn. 2008), the Court determined neither defendant’s motion for summary judgment nor their memorandum in support was a pleading that could be subject to plaintiff’s motion to strike.

Spreadbury’s motion seeks to strike matters outside of the pleadings. Spreadbury moves the Court to strike matters from Lee Enterprises’ Response Brief in Opposition to Spreadbury’s Motion for Partial Summary Judgment (Dkt. 57), and from Lee Enterprises’ corresponding Statement of Genuine Issues (Dkt. 58). Obviously, these are not pleadings as defined in Federal Rule of Civil

Procedure 7(a). Accordingly, Spreadbury's Motion to Strike should be denied.

B. The Matters Spreadbury Wishes to Strike From Lee Enterprises' Brief and Statement of Genuine Issues Are Relevant.

Even if Spreadbury was seeking to strike matters from a pleading, which he is not, his motion should still be denied, because the matters he wishes to strike are relevant to his current claims against Lee Enterprises.

A party may move the Court to strike "an insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Fed. R. Civ. P. 12(f). "Immaterial' matter is that which has no essential or important relationship to the claim for relief or the defenses being plead. "Impertinent' matter consists of statements that do not pertain, and are not necessary, to the issues in question." *Cairns v. Franklin Mint Co.*, 24 F. Supp. 2d 1013, 1037 (C.D. Cal. 1998) (internal citation omitted).

Spreadbury moves this Court to strike information regarding speaking with a librarian on November 4, 2009, contending it is free speech and not relevant to his current claims. (Dkt. 62 at 1.) However, Spreadbury fails to cite any legal authority in support of his motion and fails to show how the interaction with the librarian on November 4, 2009, is not relevant in his current claim.

The conversation with the librarian, Nansu Roddy, on November 4, 2009, is relevant because it shows why the City dropped its charges of criminal trespass against Spreadbury, and that the articles published by Lee Enterprises were

privileged and not defamatory.

Spreadbury's current dispute with the Defendants stems from an altercation with Ms. Roddy at the Bitterroot Public Library ("Library"), in May or June of 2009, when Ms. Roddy refused to submit a letter Spreadbury requested to be placed on the reserve shelf in the Library. *See* Def. Lee Enterprises' State Genuine Issues Opposition Pl.'s Mot. P.S.J. ¶¶ 1-3 (June 21, 2011) (Dkt. 58). As a result, Spreadbury had numerous interactions with Library Staff, and eventually was banned from the Library. (Dkt. 58 at ¶ 4.) Subsequently, Spreadbury returned to the Library and was charged with criminal trespass (Dkt. 58 at ¶¶ 5-6.) The *Ravalli Republic*, a newspaper owned by Lee Enterprises, published articles stemming from the criminal trespass charges brought against Spreadbury. (Dkt. 58 at ¶ 7.) The articles were republished by the *Missoulian*, a paper owned by Lee Enterprises. (Dkt. 58 at ¶ 8.) However, none of the articles contained personal opinions from the reporters, but, instead, were based purely on official Ravalli County Court documents. (Dkt. 58 at ¶ 9.)

While the criminal trespass proceedings continued, Spreadbury was also charged with felony intimidation stemming from an encounter with Ms. Roddy outside the Library on November 4, 2009. (Dkt. 58 at ¶¶ 15-16.) Ms. Roddy sought and obtained an Order of Protection against Spreadbury. (Dkt. 58 at ¶ 15.) Like the criminal trespass charges, both the *Ravalli Republic* and the *Missoulian*

published articles regarding the felony intimidation charges brought against Spreadbury, but none of these articles contained personal opinions from the reports. Instead, the articles were based on official Ravalli County Court documents. (Dkt. 58 at ¶¶ 9, 16-17.)

On February 18, 2010, a jury in the City Court for the City of Hamilton found Spreadbury guilty of criminal trespass. (Dkt. 58 at ¶ 18.) Both the *Ravalli Republic* and the *Missoulian* published articles regarding the conviction. (Dkt. 58 at ¶¶ 19-20.) Spreadbury appealed the decision, and, eventually, the City of Hamilton dropped the criminal trespass charges after the Montana Supreme Court upheld Ms. Roddy's Order of Protection, restraining Spreadbury from entering into the Library for five years. (Dkt. 58 at ¶ 20.) The *Ravalli Republic* and the *Missoulian* published articles regarding the City dropping the criminal trespass charges against Spreadbury. (Dkt. 58 at ¶ 20.) Spreadbury eventually pled guilty to the felony intimidation charges. (Dkt. 58 at ¶ 21.)

The encounter between Spreadbury and Librarian Roddy on November 4, 2009, which lead to the felony intimidation charges and subsequent conviction, appears to be the "information regarding speaking to a librarian on November 4, 2009" which Spreadbury seeks to have stricken. However, this information is highly relevant and Spreadbury's motion should be denied.

Essentially, Spreadbury's Amended Complaint alleges he was defamed by

Lee Enterprises publishing articles about the criminal trespass charges because they were subsequently dropped by the City. However, Spreadbury fails to recognize the articles were true, simply reporting that criminal trespass charges were brought against Spreadbury and that he later was convicted of those charges. The fact the charges were later dropped does not change the facts which were published. Moreover, Spreadbury fails to recognize these articles were privileged. Montana Code Annotated § 27-1-804(4), “makes a fair and true report without malice of a judicial proceeding a privileged publication.” *Cox v. Lee Enters., Inc.*, 222 Mont. 527, 529, 723 P.2d 238, 239-240 (1986).

“Information regarding speaking to a librarian (Ms. Roddy) on November 4, 2009” is highly relevant because it shows why the City dropped the criminal trespass charges against Spreadbury. Spreadbury’s Amended Complaint infers Lee Enterprises published false information about his criminal trespass charges because they were subsequently dropped by the City. However, this is not true. The charges were dropped after the Montana Supreme Court upheld Ms. Roddy’s Order of Protection, restraining Spreadbury from entering into the Library for five years. Facts showing why the charges were dropped are relevant to show the articles published by Lee Enterprises were true and privileged. The information is relevant and Spreadbury’s Motion to Compel should be denied.

C. Spreadbury Is Not Prejudiced By Matters He Wishes to Strike.

Finally, Spreadbury has not shown any prejudice from the matters he wishes to strike. “Rule 12(f) of the Federal Rules of Civil Procedure permits allegations that are redundant, immaterial, impertinent or scandalous to be stricken.

Generally, however, unless the matters are prejudicial as well, a motion under 12(f) will not be granted.” *Magnavox Co. v. APF Elecs., Inc.*, 496 F. Supp. 29, 35 (N.D. Ill. 1980) (citing Charles A. Wright, Arthur R. Miller 5, *Federal Practice and Procedures* § 1382, 809-819 (3d ed., Matthew Bender 1969).

Spreadbury’s Motion to Strike requests the Court strike “information regarding speaking to a librarian November 4, 2009” in Lee Enterprises’ Brief in Opposition to Spreadbury’s Motion for Partial Summary Judgment and corresponding Statement of Genuine Issues as protected free speech and irrelevant. (See Dkt. 62 at 1.) However, Spreadbury fails to state why and/or how this information is prejudicial to his current claim. Moreover, Spreadbury does not claim the information contained in Lee Enterprises’ briefing is untrue. Rather, he claims it is irrelevant. However, as shown above, the information is highly relevant because it shows why the City subsequently dropped the criminal trespass charges. This also shows articles published by Lee Enterprises were privileged and Spreadbury’s claims of defamation fail as a matter of law.

Therefore, even assuming Spreadbury’s Motion to Strike covers relevant

matters outside of the pleadings, his motion should still be denied since he has not shown the information he seeks to be stricken is prejudicial.

CONCLUSION

Spreadbury's Motion to Strike the information regarding speaking to the librarian on November 4, 2009, from Lee Enterprises' Brief in Opposition to Spreadbury's Motion for Partial Summary Judgment and corresponding Statement of Genuine Issues should be denied. Spreadbury has not cited any legal authority for his Motion to Strike, and the Federal Rules of Civil Procedure only allow the Court to strike matters from pleadings. Since Spreadbury seeks to strike information outside of the pleadings, his motion should be denied. Further, even if Spreadbury's motion had sought to strike matters from a pleading, his motion should still be denied because information regarding Spreadbury speaking to the librarian on November 4, 2009, is highly relevant to Spreadbury's current claims, and Spreadbury has not shown any prejudice from the information.

DATED this 13th day of July, 2011.

/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 Defendant LEE ENTERPRISES, INC.'S BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE 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 2295 words long, excluding Caption, Certificate of Service, and Certificate of Compliance.

/s/ Jeffrey B. Smith
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 2011, a copy of the foregoing document was served on the following persons by the following means:

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