

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

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|------------------------------------|---|-------------------------|
| BARBARA ANN WILSON, |) | |
| Plaintiff, |) | |
| |) | CIVIL ACTION NO. |
| v. |) | |
| |) | CV-10-KOB-2386 |
| CITY OF BIRMINGHAM, et al., |) | |
| Defendants. |) | <u>OPPOSED</u> |

DEFENDANTS' MOTION TO COMPEL

The Defendants, the City of Birmingham (“City”), a municipal corporation under the laws of the State of Alabama, and the Birmingham Library Board (“Board”), by and through their attorney of record, moves the Honorable Court for an Order compelling the Plaintiff to provide Responses to the *Defendants’ First Set of Interrogatories and First Request for Production and Rule 26 Initial Disclosures*. As grounds for this Motion, the Defendants would state the following:

1. On September 2, 2010, the Plaintiff filed this lawsuit in Federal Court.
(Document 1)
2. On December 7, 2010, this Honorable Court entered a Scheduling Order governing this case. *(Document 23)*
3. On December 9, 2010, via U.S. Mail, the Defendants forwarded *Defendants’*

First Set of Interrogatories and First Request for Production to the Plaintiff.

Said discovery was due January 9, 2011. The Plaintiff failed to respond within thirty (30) days.

4. The parties also agreed to exchange Rule 26 Initial Disclosures by December 30, 2010. The Plaintiff failed to provide such by December 30, 2010.
5. On January 24, 2011, via email, Defendants' counsel stated to Plaintiff's counsel the discovery responses and initial disclosures were overdue and requested the status of such discovery responses. The Plaintiff did not respond.
6. On February 4, 2011, Defendants' counsel forwarded to Plaintiff's counsel a letter stating the discovery responses and initial disclosures were overdue and requested the status of such without the need for Court intervention.
(Exh. 1)
7. To date, the Plaintiff's counsel has not responded to the Defendants' counsel February 4, 2011 letter, provided the December 9, 2010 discovery or Rule 26 Initial Disclosures.
8. The Defendants have been denied discovery it is entitled to and needs to defend the Plaintiff's lawsuit.
9. Pursuant to *Section II, Discovery Disputes* of the Scheduling Order, the

Defendants state that a resolution to the discovery dispute can be solved by Plaintiff providing the outstanding discovery.

WHEREFORE PREMISES CONSIDERED, the Defendants respectfully move this Honorable Court to compel the Plaintiff to provide the Defendants with the Plaintiff's answers to the *Defendant's First Set of Interrogatories*, responses to *Defendant's First Request for Production* and *Rule 26 Initial Disclosures*. That such other and further relief be provided as the Court may deem proper.

Respectfully submitted,

/s/Fredric L. Fullerton, II
Fredric L. Fullerton, II
Assistant City Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Adam P. Morel, Esq.
517 Beacon Parkway West
Birmingham, AL. 35209

/s/Fredric L. Fullerton, II
Of Counsel