

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

**KAREN JACKSON,** )  
**Plaintiff,** )  
v. )  
**CITY OF BIRMINGHAM, et al.,** )  
**Defendants.** )

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**CIVIL ACTION NO.**

**CV-11-2632-LSC**

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**ANSWER OF DEFENDANT CITY OF BIRMINGHAM**

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The Defendant, the City of Birmingham (“City”), Alabama, a municipal corporation existing under the laws of the State of Alabama, by and through its attorney of record, in the above entitled cause and in Answer to the Complaint heretofore filed says as follows:

1. The City denies each and every material allegation of the Complaint, except to jurisdiction and venue, and demands strict proof thereof.
2. The Complaint fails to state a claim against the City for which the Plaintiff is entitled to relief.
3. The City pleads not guilty/liable to the general issue.
4. The City denies that the Plaintiff was injured in the nature or to the extent claimed and contests damages.
5. The City denies that the Plaintiff suffered damages as alleged in the Complaint and that if said damages were in fact sustained, they were caused by parties other than the City or its officers, agents or employees.

6. The City pleads not guilty/liable as to all material issues raised in the Complaint and contest all damages demanded by the Plaintiff. The City denies that the Plaintiff is due compensatory, actual or punitive damages, attorney's fees or costs of any type.
7. The City asserts the defense of immunity, whether qualified, absolute, discretionary, functional, governmental, good faith or substantive as a complete bar to this action.
8. The Plaintiff failed to mitigate its damages, though damages are denied as being due.
9. The City would plead that the Plaintiff has violated the Birmingham Public Library policies.
10. The City has an anti-sex discrimination/hostile work environment policy which is enforced and all employees and public are required to comply.
11. The City asserts that Plaintiff's claims are time barred.
12. The claims of the Plaintiff are untrue and the Defendant is not guilty. The Plaintiff does not work in a sexually hostile environment.
13. The Defendant asserts the statute of limitations as to claims arising under 42 U.S.C 2000 which occurred prior to 180 days prior to filing the her EEOC charge.
14. The complaint fails to state a claim upon which relief may be granted under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 and Civil Rights Act of 1991.
15. The City denies that it violated any provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 and Civil Rights Act of 1991.
16. The Plaintiff cannot prove a hostile work environment as she cannot show: (1) that he or she belongs to a protected group, (2) that the employee has been subject to unwelcome sexual harassment, such as sexual advances, requests for sexual favors, and other conduct of a sexual nature, (3) that the harassment must

have been based on the sex of the employee, (4) that the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment, and (5) a basis for holding the employer liable. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

17. Plaintiff's "subjective perception" to the harassment as sufficiently severe and pervasive to alter the terms or conditions of employment is not objectively reasonable. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).
18. Plaintiff's encounters to general vulgarity or references to sex that are indiscriminate in nature are not actionable. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).
19. The City is immune from the imposition of punitive damages for an alleged violation of Constitutional rights. Punitive damages are barred against the City by the provisions of Code of Alabama §6-11-26, 1975, City of Newport v. Facts Concerts, 453 U.S. 247, 101 S. Ct. 2748 (1981).
20. The City pleads that patrons wanting access to the internet services at the Birmingham Public Library are required to accept the policies that they will not violate the criminal laws of the State of Alabama and view pornographic websites.
21. The City pleads that the Birmingham Public Library has used filtration software since 1998. The Birmingham Public Library currently uses *8e6.com* and *Cybrary.net* to stop access to pornographic websites by patrons.
22. The City reserves the right to amend its Answer and raise additional defenses which become known through the discovery process.

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 November 23, 2011 I electronically filed the foregoing with the Clerk of the Court using the e-filing system which will send notification to the following:

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

*/s/Fredric L. Fullerton, II*  
Of Counsel