

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

KAREN JACKSON,)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	CV-11-2632-LSC
CITY OF BIRMINGHAM, et al.,)	
Defendants.)	

ANSWER OF DEFENDANT BIRMINGHAM LIBRARY BOARD

The Defendant, the Birmingham Library Board (“Board”), 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 Board 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 Board for which the plaintiff is entitled to relief.
3. The Board pleads not guilty/liable to the general issue.
4. The Board denies that the Plaintiff was injured in the nature or to the extent claimed and contests damages.
5. The Board 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 Board.
6. The Board pleads not guilty/liable as to all material issues raised in the

Complaint and contest all damages demanded by the Plaintiff. The Board denies that the Plaintiff is due compensatory, actual or punitive damages, attorney's fees or costs of any type.

7. The Board denies that the Plaintiff is its employee for purposes of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 and Civil Rights Act of 1991.
8. The Board is a Department of the City of Birmingham. Any and all claims against it are due to be dismissed. White v. Birchfield, 582 So. 2nd 1085, (Ala. 1991), Dean v. Barber, 951 F.2d 1210 (11th Cir. 1992).
9. The Board asserts the defense of immunity, whether qualified, absolute, discretionary, functional, governmental, good faith or substantive as a complete bar to this action.
10. The Plaintiff failed to mitigate its damages, though damages are denied as being due.
11. The Board would plead that the Plaintiff has violated the Birmingham Library policies.
12. The Board pleads that the Birmingham Library Board has an anti-sex discrimination/hostile work environment policy which is enforced and all employees and public are required to comply.
13. The Board asserts that Plaintiff's claims are time barred.
14. The claims of the Plaintiff are untrue and the Board is not guilty. The Plaintiff does not work in a sexually hostile environment.
15. The Board 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.
16. 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.
17. The Board 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.

18. 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).
19. 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).
20. 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).
21. The Board pleads that patrons wanting to access 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.
22. The Board 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.
23. The Board 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

City of Birmingham Law Department
600 City Hall, 710 North 20th Street
Birmingham, Alabama 35203
(205) 254-2369/(205) 254-2502 FAX

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