

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

LEO FRAZIER, as Administrator of the )  
Estate of Manuel Dejesus Corado, deceased, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
SHELTON AND TYRONE POWE )  
LOGGING, et al., )  
 )  
Defendants. )

CIVIL ACTION NO. 09-0119-CG-N

ORDER

Defendants have filed a Motion to Compel (doc. 62). In that motion, they refer to a single paragraph in a single letter to opposing counsel as the sum total of their effort to comply with the good faith conferencing requirements of Rule 37.

Federal Rule of Civil Procedure 37 requires the movant to make a good faith attempt to confer and resolve discovery disputes prior to filing a motion to compel discovery responses. Rule 37 also requires a certification be attached to the motion to compel explaining the efforts taken to resolve the dispute. The Rule 16(b) Scheduling Order (doc. 35) entered in this action provides that “[t]he conferencing requirements set forth in the Federal Rules of Civil Procedure shall be strictly enforced... . In order to comply with the conferencing requirement, a moving party must include more than a cursory statement that counsel have been unable to resolve the matter.”

A single letter between counsel addressing a discovery dispute does not satisfy the duty to confer. Payless Shoesource Worldwide, Inc. v. Target Corp., 237 F.R.D. 666 (D.Kan.2006) (single letter insufficient to satisfy Rule 37); Williams v. Board of County Com'rs of Unified

Government of Wyandotte County and Kansas City, Kan., 192 F.R.D. 698 (D.Kan.2000)(same); Hasbro, Inc. v. Serafino, 168 F.R.D. 99 (D.Mass.1996)(Rule 37 not satisfied where parties had not yet reached impasse in ongoing discussions over discovery responses); cf. Manning v. General Motors, 247 F.R.D. 646 (D.Kan.2007)(numerous efforts to contact opposing counsel over five day period is satisfactory, even if opposing counsel did not respond).

Additionally, the parties are reminded that the Introduction to Civil Discovery Practice in the Southern District of Alabama (1998) which is available on the website for the Southern District of Alabama, [www.als.uscourts.gov](http://www.als.uscourts.gov), states that

[t]he revised Federal Rules have embraced the concept of encouraging the informal, courteous, direct resolution of problems between lawyers prior to bringing any such issue to the Court for formal resolution. The Court expects that all lawyers who attempt to resolve discovery disputes informally will act in a courteous and professional manner.

Id. at p. 3.

Accordingly, it is hereby ORDERED that defendants' Motion to Compel is STRICKEN for failure to comply with the good faith conferencing requirement of Rule 37.

DONE and ORDERED this the 2<sup>nd</sup> day of November, 2009.

/s/ Katherine P. Nelson  
UNITED STATES MAGISTRATE JUDGE