

request for the First Settlement Agreement, Defendant is at least entitled to a response stating as much. *Fishel v. BASF Group*, 175 F.R.D. 525, 531 (S.D. Iowa 1997) (“Even if there are no [responsive] documents, plaintiff is entitled to a response as required by Fed. R. Civ. P. 34(b)”). Accordingly, Plaintiff is ORDERED to execute an affidavit or declaration by May 16, 2013, signed by its executive officer, (1) stating that after diligent search, the First Settlement Agreement is not in its “possession, custody, or control,” *Bitler*, 2007 WL 1164970, at *5; and (2) describing, *with particularity*, its efforts to locate the First Settlement Agreement, including *who* conducted the search and who that person or persons consulted with to conduct that search to ensure the veracity of their statements. *Traveler v. CSX Transp., Inc.*, No. 1:06-CV-56, 2007 WL 433530, at *2 (N.D. Ind. Feb. 6, 2007) (citations omitted).

Plaintiff is reminded that Federal Rule of Civil Procedure 26(e)(1) requires a party to supplement or correct its discovery responses in a timely manner if it learns that it is incomplete or incorrect.

SO ORDERED.

Enter for this 2nd day of May, 2013.

/S/ Roger B. Cosby
Roger B. Cosby,
United States Magistrate Judge