

IN THE CIRCUIT COURT OF COLBERT COUNTY, ALABAMA

JOHN R. BENN,

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Plaintiff,

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v.

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Case Number: CV-2002-184

ROBERT NOVAK,

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Defendant.

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SECOND MOTION TO COMPEL

Comes now the Plaintiff John R. Benn and moves pursuant to Rule 37(d) for a Court Order compelling Defendant Robert Novak to respond to Plaintiff's Interrogatories and Requests for Production. In support of said motion Plaintiff would show as follows:

1. In a pleading titled "Opposition to Motion to Compel" Defendant Novak has admitted receiving the outstanding discovery on August 29, 2002. More than thirty (30) days have lapsed since Defendant Novak's admitted receipt.
2. That on June 18, 2002, Plaintiff submitted Interrogatories, Requests for Admissions and Requests for Production to Defendant Robert Novak.
3. Consistent with the Certificate of Service on these discovery pleadings, Plaintiff mailed them with sufficient postage to Defendant Robert Novak at address 1550 Sunrise Highway, Copaigue, New York 11726.
4. Said items have not been returned to Plaintiff by the U.S. Post Office.
5. That on July 25, 2002, Plaintiff sent Defendant Robert Novak a letter reminding him that his discovery responses were due.

6. That on August 5, 2002, Plaintiff received a fax item from Defendant indicating he had not received the mailed version of the discovery items.

7. That on August 6, 2002, Plaintiff send Defendant Robert Novak a letter via Express Mail enclosing a copy of the discovery items. A due date of August 16, 2002 was made for the outstanding discovery responses. Plaintiff further solicited a fax or e-mail address in order to additional communicate copies of pleadings in addition to the process set forth in the ARCP.

8. That the Express Mail packet submitted to the U.S. Post Office on August 6, 2002 was returned "unclaimed" on August 19, 2002.

9. That another Express Mail packet was submitted to the U.S. Post Office on August 19, 2002. An additional copy was sent by regular U.S. Mail on August 19, 2002. The exhibit attached to Defendant Novak's pleading also shows that delivery was attempted on August 20, 2002, and August 21, 2002.

10. That Defendant acknowledges in other pleadings that he received the Express Mail packet on August 29, 2002.

11. That more than the thirty (30) days permitted by the ARCP have lapsed and Defendant Novak has failed to timely respond to the discovery requests.

12. That as of this date Defendant Novak has failed to respond to the outstanding discovery.

Wherefore, Plaintiff prays that this Court will enter an appropriate Order compelling Defendant Novak to respond to Plaintiff's Interrogatories and

