



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
BIRMINGHAM DIVISION**

|                                 |   |                            |
|---------------------------------|---|----------------------------|
| ROBERT B. SANSOME, et al.,      | ) |                            |
|                                 | ) |                            |
| Plaintiffs,                     | ) |                            |
|                                 | ) |                            |
| v.                              | ) | Case No. 01-CV-2026-902889 |
|                                 | ) |                            |
| HOAR CONSTRUCTION, LLC, et al., | ) |                            |
|                                 | ) |                            |
| Defendants.                     | ) |                            |

**RESPONSE TO MOTION TO COMPEL**

Non-party Regions Bank responds to the Motion to Compel (the “Motion”) filed by Plaintiffs Robert B. and Gail Sansome (Doc. 208) as follows:

1. Plaintiffs filed a notice of intent to serve subpoena on Regions Bank to which Regions Bank timely objected. (*See* Doc. 189.) In its objection, Regions Bank explained to Plaintiffs that the proposed subpoena, as written, was “overly broad, making any response by Regions Bank unduly burdensome and expensive.” (*Id.* at Ex. A.) Regions Bank invited Plaintiffs to “confer in good faith about limiting the burden and expense for Regions Bank” and asked them to meet to work in “good faith to attempt to resolve these issues.” (*Id.*) Rather than attempting to meet and confer, however, Plaintiffs elected to file their Motion. (*See* Doc. 208.) Regions Bank respectfully submits that the Court should deny Plaintiffs’ Motion for several reasons.

2. *First*, Plaintiffs’ Motion fails to comply with Alabama Rule of Civil Procedure 37’s requirement<sup>1</sup> that “[a] motion relating to discovery issues shall be accompanied by a

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<sup>1</sup> Alabama Rule of Civil Procedure 45(3)(B) provides that a subpoena “shall not issue” if an objection is served and that the party wishing to serve the subpoena “may move for an order under Rule 37(a) with respect to such objection.” Therefore, parties wishing to move to compel the issuance of a subpoena must comply with Rule 37(a)’s requirements, including its requirement to “endeavor[ ] to resolve the subject of the discovery motion through correspondence of discussions with opposing

statement of the attorney for the moving party stating that the attorney, before filing the motion, has endeavored to resolve the subject of the discovery motion through correspondence or discussions with opposing counsel.” Ala. R. Civ. P. 37(a)(2). Plaintiffs’ Motion does not contain the statement made mandatory by Rule 37. Nor did Plaintiffs’ counsel reach out to counsel for Regions Bank to discuss the proposed subpoena, as counsel for Regions Bank invited them to do. To date, and despite Regions Bank’s invitation to meet and confer, the undersigned has not received any correspondence from counsel for Plaintiffs seeking to resolve the objections raised by Regions Bank.

3. Accordingly, and in compliance with Rule 37, this Court should deny Plaintiffs’ Motion as premature and order Plaintiffs to meet and confer with Regions Bank about the proposed subpoena before ruling on the Motion.

4. *Second*, even putting aside Plaintiffs’ obvious failure to comply with Rule 37, the Court should deny the Motion for the proposed subpoena to Regions Bank for other reasons.

5. In their Motion, Plaintiffs confuse Regions Bank’s obligations under Rule 45(a)(3)(B) as a non-party with those of a party receiving written discovery. Under Rule 45(a)(3)(B), any person or party may object to the issuance of a subpoena and there is no requirement of delineation of specific objections to every category of requests in a proposed subpoena. Even still, Regions Bank’s objection articulated meaningful and specific objections to the categories of documents and information sought by Plaintiffs, and Regions invited Plaintiffs to meet and confer on the scope of the proposed subpoena. Plaintiffs refused to do so.

6. Notably, under the interplay of Rules 45 and 37, the Plaintiffs have the burden

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counsel” before filing the motion. *See* Ala. R. Civ. P. 37(a)(2); *see also* cmt. (noting that Rule 37(a)(2) “applies to non-parties against whom documentary discovery is sought”).

to demonstrate that issuance is appropriate. The Court should also deny the motion because Plaintiffs failed to carry that burden. By way of example, the Plaintiffs failed to establish that the subpoena, as written, does not unduly burden Regions Bank, a non-party to this litigation. Rule 45 requires that the subpoenaing party “shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.” Ala. R. Civ. P. 45(c)(1). And it further requires that the Court “shall enforce this duty.” *Id.* (“The court from which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.”).

7. As explained in Regions Bank’s objection, the subpoena as proposed is unduly burdensome and requires Regions Bank to search an unlimited number of documents from a large number of potential custodians for information that is not clearly relevant to this dispute. Accordingly, it fails to describe the requested documents with “reasonable particularity” as required by Rule 45. Ala. R. Civ. P. 45(a)(3)(C).

8. To give just one example, consider Request #16 of Plaintiffs’ proposed subpoena. (Doc. 162.) It asks Regions Bank to produce “[a]ll Documents in which Regions, or any person Communicating with Regions, compared, contrasted, or discussed the Regions Facility or its operations in relation to a data center, an artificial-intelligence or hyperscale data center, or the Project.” (*Id.* at Request #16 (emphasis added).) The proposed subpoena further defines “Documents” to include emails, texts, drafts of documents, and instant messages, and it defines “Regions” to include any of Regions Bank’s predecessors-in-interest, employees, agents, attorneys, or “other representatives.” To respond to this Request #16, then, Regions Bank would have to search not just its internal final, official corporate documents for any mention of the facility and a data center (a massive task in and of itself), but Regions Bank would also have to search emails, texts, instant messages, and draft

documents—and not just those of certain employees or officers knowledgeable with the Regions Facility but of all employees, agents, attorneys, or “other representatives” for Regions Bank and such people for any of Regions Bank’s its predecessors, like AmSouth Bank. This is an enormous task for a non-party. As Regions mentioned in its objection, Regions Bank is willing to work with Plaintiffs to narrow the scope and reduce the burden on Regions Bank, but as the proposed subpoena is currently written, it imposes undue burden and expense on Regions Bank. Regions Bank’s objection stands, and the Plaintiffs failed to demonstrate that no undue burden exists.

9. *Third*, Plaintiffs are seeking to circumvent this Court’s Scheduling Order and burden Regions Bank, a non-party, with discovery it could have but failed to get from parties. By Plaintiffs’ own admission, the Scheduling Order now “forecloses” party discovery. (Doc. 208 at 2.) Plaintiffs admit that Requests #17-35 in the proposed subpoena to Regions Bank seek the same information they sought from a party to this action. (*Id.* at 11-12; *see also* Doc. 152 (requesting from the buyers “all communications with Regions Bank . . . concerning the zoning or entitlement of the Site”).) Plaintiffs admit they are now “barred from asking the *parties who know the answers.*” (*Id.* at 19 (emphasis added).) But Plaintiffs say they seek non-party discovery so they can discover “what Defendants will offer.” (Doc. 208 at 9.) Plaintiffs should, however, obtain that information from Defendants themselves instead of burdening non-parties with expansive requests aimed at trying to decipher what Defendants will say at the March 8 trial of this matter. (*See id.* at 9 (“Plaintiffs do not know what Defendants will offer on March 8. . . . Under the Scheduling Order, the only way to prepare is non-party discovery.”).) Thus, by Plaintiffs’ own admission, they now seek the same information from Regions Bank that they failed to get from the parties, who “know the answers.”

10. In addition, the discovery sought from non-party Regions Bank does not appear to be for the purposes of cross-examination or rebuttal and, therefore, violates this Court’s

previous orders. By their own admission, the Plaintiffs rested and chose to “stand on their completed record.” (Motion, at 9). The Plaintiffs now, however, seek discovery on entirely new subjects not at issue or relevant to the scheduled March 8, 2027, proceeding and seek to burden a non-party with providing the information they failed to seek or receive during their party discovery.

11. As a non-party, Regions Bank should not carry the burden of Plaintiffs’ failures to get discovery from Defendants. This Court should deny the issuance of the subpoena, which seeks to circumvent this Court’s Scheduling Order and require, once more, that Plaintiffs stand on their completed record.

12. *Fourth*, Plaintiffs’ acknowledgement of other litigation involving the transactions at issue here and Regions Bank demonstrates that the materials sought in this action by Plaintiffs may relate to the other litigation, *Anderson v. Stivender*. Compelling Plaintiffs’ requested discovery against Regions Bank, a non-party, relating to the same information and documents at issues in the *Anderson* action, where it is a named defendant, risks exposing Regions Bank to inconsistent discovery rulings by separate courts. This alone is good cause to refuse to allow the discovery sought by Plaintiffs against Regions Bank.

13. *Fifth*, Plaintiffs implicitly concede a protective order is appropriate here. (See Doc. 208 at 13.) Accordingly, this Court should not issue the subpoena to Regions Bank, as drafted, absent the entry of a suitable protective order or significant narrowing of the information requested in the proposed subpoena.<sup>2</sup>

14. *Sixth*, and as Regions Bank pointed out in its objection, the Plaintiffs’ proposed subpoena, as written, seeks operational and transactional information from Regions Bank

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<sup>2</sup> Regions Bank adopts and incorporates by reference all the arguments raised in its Objection (Doc. 189) as if set out fully herein. Nothing herein should be construed to limit future objections to discovery sought by Plaintiffs in this action against Regions Bank.

that does not relate to the claims being heard on March 8, that the Plaintiffs could have but failed to get from party discovery, or that is needlessly duplicative of information already before the Court.<sup>3</sup>

FOR THESE REASONS, and the reasons explained in Regions Bank's objection and its correspondence to Plaintiffs' counsel, Regions Bank respectfully requests that this Court enter an Order denying the Plaintiffs' Motion under Rule 37 and requiring the Plaintiffs to comply with Rule 37 or, in the alternative, denying the Plaintiffs' Motion to Compel the issuance of a subpoena to Regions Bank, a non-party, along with such other and different relief as this Court deems just and necessary.

Respectfully submitted,

/s/ Brian J. Malcom

BRIAN J. MALCOM

*Attorney for Non-Party Regions Bank*

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<sup>3</sup> By way of example, information relating to the transactions at issue, the parties, the dates, and pricing are before this Court through other evidence. Yet, Plaintiffs seek that same information from Regions Bank in an attempt to unduly burden a non-party.

**CERTIFICATE OF SERVICE**

I hereby certify that this objection has been served electronically via this Court's electronic filing system on all counsel of record:

/s/ Brian J. Malcom  
OF COUNSEL