

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

TANYA BATTEN,

Plaintiff,

v.

Case No: 5:18-cv-483-Oc-PRL

**TODD L. BARFIELD and BARFIELD &
ASSOCIATES, LLC**

Defendants.

ORDER

This matter is before the Court on Plaintiff's amended motion to compel responses to her first request to produce directed to both Defendants. (Doc. 37). Defendants have filed a response. (Doc. 38).

The discovery request at issue was delivered approximately three weeks after Defendants had been served with the summons and complaint. Early discovery requests, such as this, are specifically contemplated by Federal Rule of Civil Procedure 26(d)(2), which states:

(A) Time to Deliver. More than 21 days after the summons and complaint are served on a party, a request under Rule 34 may be delivered:

- (i) to that party by any other party, and
- (ii) by that party to any plaintiff or to any other party that has been served.


(B) When Considered Served. The request is considered to have been served at the first Rule 26(f) conference.

Pursuant to this Rule, Plaintiff's first request to produce was deemed served at the case management conference, which was conducted on February 7, 2019. Or, arguably, since the parties were unable to reach agreement at their Rule 26(f) conference, it should be deemed served on

February 22, 2019—the date the Court issued its Case Management and Scheduling Order. Either way, more than thirty days had passed before Plaintiff filed the instant motion to compel.

With that said, defense counsel claims, not unreasonably, that the first request to produce—which was served more than five months earlier—had been forgotten, given the progression of the case and the intervening stay of discovery. And, there is no dispute that Plaintiff’s counsel never mentioned the outstanding discovery until the day before the instant motion was filed. Since then, Defendants have served their responses. Under these circumstances, Plaintiff’s motion to compel is due to be **DENIED**.¹

DONE and **ORDERED** in Ocala, Florida on April 19, 2019.



PHILIP R. LAMMENS
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties

¹ The Court is expressing no opinion on the substance of the discovery responses.