

IN THE SIXTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

JANE DOE, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. \_\_\_\_\_  
 )  
 JOHN DOE, )  
 )  
 Defendant. )

**MEMORANDUM IN SUPPORT OF PLAINTIFFS  
MOTION TO RELY UPON REQUESTS FOR ADMISSION**

The plaintiffs move this Court to take notice that the facts admitted in Plaintiffs’ two sets of Requests to Admit are conclusively established, pursuant to Rule 36.02 of the Tennessee Rules of Civil Procedure, due to the defendants’ decision not to respond to the plaintiffs’ requests.

Rule 36.01 of the Tennessee Rules of Civil Procedure provides as follows:

A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26.02 set forth in the request that relate to statements or opinions of fact or the application of law to fact, including the genuineness of any documents described in the request. . . . The matter is admitted unless, within 30 days after service of the request . . . the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party’s attorney . . . .

See Tenn. R. Civ. P. 36.01 (emphasis added). The purpose of this rule is to reduce the number of issues that must be proven at trial by establishing the matter prior to trial. See Tennessee Dep’t of Human Servs. v. Barbee, 714 S.W.2d 263, 267 (Tenn. 1986). Consequently, any matter admitted under this rule is “conclusively established” and the need for proof at trial is unnecessary. See Tenn. R. Civ. P. 36.02; Barbee, 714 S.W.2d at 266.

The plaintiffs have served two separate requests for admissions upon the defendants and the defendants chose not to respond to either set of requests. On January 29, 2001, Plaintiffs' First Requests to Admit were served. (See Exhibit 1 to Motion.)<sup>1</sup> Having received no response by March 7, 2001, more than 30 days after the defendants' responses were due under Rule 36.01, the plaintiffs served a Notice of Intent to Rely on Requests to Admit advising the defendants of the plaintiffs' intent to rely on these admissions at trial. (See Exhibit 2 to Motion.) The Plaintiffs' Second Requests to Admit were served upon the defendants on December 3, 2001. (See Exhibit 3 to Motion.) Again the defendants failed to timely respond to the plaintiffs' requests. The defendants decision not to respond is undoubtedly due to a conscious decision on their part not to contest matters not reasonably subject to dispute. Pursuant to Rule 36, the matters reflected in these requests are now admitted. See Tenn. R. Civ. P. 36.01.

Despite the clear language of Rule 36 and out of an abundance of caution pursuant to Barbee, the plaintiffs now bring these matters to this Court's attention and move to have these requests deemed admitted and request that this Court take notice that the facts admitted in these requests are conclusively established for purposes of this litigation. Compare Carlen v. Jackson, 2001 WL 1090513, at \*2-4 (Tenn. Ct. App. Sept. 19, 2001) (concluding defendant who did not timely respond to requests for admission could not assert an affirmative defense where summary judgment was earlier granted on that defense based on the defendant's failed response to the requests for admission) (copy attached); Porter v. Melton, 1992 WL 29821, at \* 4 (Tenn. Ct. App. Feb. 21, 1992) (holding trial court should have granted the plaintiff's motion to rely upon request for

---

<sup>1</sup> All exhibits are filed contemporaneously herewith with the Plaintiff's Motion to Rely Upon Requests for Admission.

admissions and the facts admitted conclusively established for the purpose of that lawsuit) (copy attached); McDaniel v. Walker, 1987 WL 17731, at \*2 (Tenn. Ct. App. Sept. 30, 1987) (holding trial court was correct in granting summary judgment where the record established that the plaintiffs made no response to the defendant's request for admissions and therefore those facts were conclusively established) (copy attached).

Respectfully submitted,

---

John A. Day, No. 9416  
Rebecca C. Blair, No. 17939  
**BRANHAM & DAY, P.C.**  
5300 Maryland Way, Suite 300  
Brentwood, Tennessee 37027  
(615) 742-4880

Counsel for Jane Doe

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been forwarded via U. S. Mail, first-class, proper postage prepaid to counsel for Defendants, on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_