STATE OF OHIO
IN THE COURT OF COMMON PLEAS OF LAKE COUNTY
CIVIL DIVISION

BRYAN ANTHONY REO, Plaintiff, v. **MARTIN LINDSTEDT,** Defendant.	Case No. 15CV001590 Hon. Richard L. Collins

BRYAN ANTHONY REO
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PLAINTIFF'S BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

NOW COMES Bryan Anthony Reo ("Plaintiff"), *pro se*, and hereby propounds upon this Honorable Court and Martin Lindstedt ("Defendant") Plaintiff's Brief in Support of Plaintiff's Motion for Summary Judgment:

I. STATEMENT OF FACTS

Plaintiff sued Defendant for libel per se, invasion of privacy – false light, public disclosure of private facts, invasion of privacy – invasion of seclusion, punitive damages, and for a permanent injunction concerning Defendant having used the World Wide Web to tortiously injure Plaintiff. (Plaintiff's Complaint).

Through unanswered Requests for Admissions previously propounded upon Defendant by Plaintiff, Defendant has admitted as true each and every allegation contained within Plaintiff's Complaint. Thus, there is no dispute as to any material fact in the case at bar and Plaintiff is entitled to judgment as a matter of law.

II. LAW & ARGUMENT

A. STANDARD OF REVIEW

Civ.R. 56 provides that summary judgment shall not be granted unless "it appears from evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made."

The standard for the granting of summary judgment is detailed by the Ohio Supreme Court in *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d, 102, 105, 1996-Ohio-336, 671 N.E.2d 241 (1996):

> In order to obtain summary judgment, the movant must show that (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion when viewing evidence in favor of the nonmoving party, and that conclusion is adverse to the nonmoving party. *State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn.*, 631 N.E.2d 150, 152 (1994).

B. THE BINDING, CONCLUSIVE, AND IRREBUTABLE NATURE OF ADMISSIONS

Pursuant to Civ.R. 36(A), a party in a civil action may serve upon any other party a written request for admission, which relate to statements or opinions of fact or the application of law to fact. Each request for admission that is not timely answered is automatically admitted. Civ.R. 36(A)(1) ("The matter is admitted unless, within a period designated in the request, not less than twenty-eight days after service of the request or within such shorter or longer time as the court may allow, 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 by the party's attorney.")

Pursuant to Civ.R. 36(B) in pertinent part, "Any matter admitted under this rule is conclusively established[.]" See also *Tucker v. McQuery*, 107 Ohio Misc.2d 31, 33-34, 2000-Ohio-61, 736 N.E.2d 569 (Ohio Comm. 1999) ("It is well settled law in Ohio that if a party fails to respond within the allotted time, this fact is construed as a conclusive admission of the allegations. See, e.g., Civ.R. 36(B); Dobbelaere v. Cosco, Inc. (1997), 120 Ohio App.3d 232, 244, 697 N.E.2d 1016, 1024, quoting Klesch v. Reid (1994), 95 Ohio App.3d 664, 675, 643 N.E.2d 571, 578; Cunningham v. Garruto (1995), 101 Ohio App.3d 656, 659, 656 N.E.2d 392, 393.")

Once a matter is admitted via a request for an admission, a court may only exercise its discretion to permit an amendment to the response to the discovery request if a "compelling" reason exists. *Tucker* at 34. ("Although trial courts are given the discretion to allow a party to amend answers deemed admitted, courts generally require that the underlying circumstances be compelling. See, e.g., Sandler v. Gossick (1993), 87 Ohio App.3d 372, 377-378, 622 N.E.2d 389, 393 (upholding trial court's refusal to consider answers filed fifty-nine days late without any proffered evidence to excuse attorney's dilatory response); Gwinn v. Volkswagen (Feb. 8, 1988), Greene App. No. 87-CA-56, unreported, 1988 WL 13195, at *3 (stating that no 'compelling circumstances' exist to excuse having failed to file a timely response to a request for admissions where an attorney merely cites 'office personnel problems' as the reason for the late answers).")

C. PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT AS TO ALL CLAIMS ALLEGED AGAINST DEFENDANT IN PLAINITFF'S COMPLAINT

Plaintiff served upon Defendant on November 15, 2015, a series of requests for admissions via electronic mail and Certified United States Mail, Tracking No. 70132630000082334989. (Exhibit A – Requests for Admissions; Exhibit B – Service of Requests for Admissions). As such,

Defendant's answers to Plaintiff's Requests for Admissions were due on or before December 14, 2015.

At the case management conference held on December 17, 2015, the Court authorized Defendant to respond to Plaintiff's Requests for Admissions on or before January 6, 2016. (Exhibit C – Order). As of the date Plaintiff's Motion for Summary Judgment was filed with the Court, Defendant has failed to respond to any of Plaintiff's Requests for Admissions and Defendant lacks a compelling reason for leave to be granted to Defendant to amend Defendant's admissions which are fatal to Defendant's case.

Admissions made by Defendant include:

> Request for Admission No. 22: "Admit that you committed against Plaintiff the common law tort of libel per se."
>
> Request for Admission No. 28: "Admit that you committed against Plaintiff the tort of invasion of privacy."
>
> Request for Admission No. 33: "Admit that you committed against Plaintiff the tort of invasion of privacy – public disclosure of private facts."
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> Request for Admission No. 38: "Admit that you committed against Plaintiff the tort of invasion of privacy – invasion of seclusion."
>
> Request for Admission No. 42: "Admit that Plaintiff is entitled to punitive damages from you."
>
> Request for Admission No. 47: "Admit that Plaintiff is entitled to a permanent injunction in which you are compelled to remove from the World Wide Web and not republish thereto any and all derogatory materials you or your agents published there about Plaintiff."
>
> Request for Admission No. 48: "Admit to all allegations, whether factual or legal, in Plaintiff's Complaint."

(Exhibit A).

III. CONCLUSION

For the reasons set forth herein, summary judgment should be entered against Defendant in Plaintiff's favor as to all claims made against the former in the Complaint of the latter, because there is no dispute as to the material facts and Plaintiff is entitled to judgment as a matter of law. A hearing as to the amount of damages should be scheduled after summary judgment is granted in Plaintiff's favor as to all claims raised against Defendant within Plaintiff's Complaint and the instant civil action should thereafter be brought to an expeditious conclusion.

Respectfully submitted,

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