

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

The Staff of the Missouri Public)	
Service Commission,)	
)	
Complainant,)	
)	Case No. WC-2022-0295
v.)	SC-2022-0296
)	
I-70 Mobile City, Inc.)	
d/b/a I-70 Mobile City Park,)	
)	
Respondent.)	

**MOTION TO STRIKE STAFF’S RESPONSE IN OPPOSITION TO
AMENDED MOTION FOR SUMMARY DETERMINATION**

Respondent, I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park (“I-70 Mobile City”), by and through counsel, and for its Motion to Strike Staff’s Response in Opposition to Amended Motion for Summary Determination, states as follows:

1. On September 22, 2023, I-70 Mobile City filed an Amended Motion for Summary Determination.
2. On October 20, 2023, the Staff filed its Response in Opposition to the Amended Motion.
3. Rule 20 CSR 4240-2.117 governs “Summary Disposition.” The rule’s purpose “is to provide for disposition of a contested case by disposition in the nature of summary judgment or judgment on the pleadings.”
4. Subsection C of Rule 20 CSR 4240-2.117 governs responses to Motions for Summary Determination, and provides:

Not more than thirty (30) days after a motion for summary determination is served, any party may file and serve on all parties a response in opposition to the motion for summary determination. Attached thereto shall be any testimony, discovery or affidavits not

previously filed that are relied on in the response. The response shall admit or deny each of movant's factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary determination, shall state the reason for each denial, shall set out each additional material fact that remains in dispute, and shall support each factual assertion with specific references to the pleadings, testimony, discovery, or affidavits. The response may also have attached thereto a legal memorandum explaining why summary determination should not be granted.

5. Staff's Response makes not a single citation to any testimony, discovery or affidavit. None of its factual assertions in response to each of I-70's factual statements nor any of the "additional material facts" are supported by specific references to pleadings, testimony, discovery, or affidavits.

Staff's Response to I-70's Facts

6. A response that does not comply with the rule with respect to any numbered paragraph of material facts "is an admission of the truth of that numbered paragraph." *Geiler v. Liberty Ins. Corp.*, 621 S.W.3d 536, 546 (Mo. App. W.D. 2021).

7. This failure by Staff results in the facts set forth by I-70 being admitted. "Where a party does not comply with...[the rule's] requirements, the facts presented by the other party are deemed admitted." *Griffin v. Kandi Techs. Corp.*, 454 S.W.3d 341, 347 (Mo. App. S.D. 2014) (citing *Central Trust and Inv. Co. v. Signalpoint Asset Mgmt., LLC*, 422 S.W.3d 312, 320 (Mo. banc 2014)); see also *Tri-State Osteopathic Hosp. Ass'n, Inc. v. Blakeley*, 848 S.W.2d 571, 573 (Mo. App. S.D. 1993) (citing *Cherry v. City of Hayti Heights*, 563 S.W.2d 72, 75 (Mo. banc 1978)) (If the opposing party files no verified denials, facts stated in affidavits and exhibits filed in support of a motion for summary judgment are admitted).

8. Respondent’s Statement of Uncontroverted Material Facts fully complied with the rule, and each numbered paragraph was supported by the Verified Affidavit of Jennier Hunt.

9. In response, Staff did not submit a counter-affidavit.

The rules and the cases are clear as to the effect of failing to file a counter-affidavit. The facts alleged in support of the motion must be deemed admitted and taken as true. *Bently v. Wilson Trailer Company*, 504 S.W.2d 277, 278 (Mo. App. 1973). Plaintiff cannot ‘sit idly by, rely upon his pleadings . . ., or argue that he has evidence for trial that will disclose issues of fact. Rather, he must come forward then with affidavits, depositions, documentary or other evidence that material fact issues do in fact exist Otherwise he is helplessly vulnerable to the ‘harsh and drastic’ remedy of summary judgment.’ *Kroh Brothers Dev. Co. v. State Line Eighty-Nine, Inc.*, 506 S.W.2d 4, 12 (Mo. App.1974).

Sherman v. AAA Credit Serv. Corp., 514 S.W.2d 642, 644 (Mo. App. 1974).

10. Based on Staff’s failure to follow the rule, failure to file a counter-affidavit or support its denials with any evidence, the response should be stricken, I-70 facts deemed admitted, and summary determination should be granted in favor of I-70.

Staff’s Additional Material Facts

11. Staff’s Response also sets forth “Additional Material Facts that Remain in Dispute.” Staff sets forth twenty numbered paragraphs in this section and not one is supported by any reference, let alone a specific reference to the pleadings, testimony, discovery or affidavits.

12. Summary judgment pleadings that fail to follow the rule – specifically, fail to specifically reference the record are “legally defective.” *State ex rel. Nixon v. Hughes*, 281 S.W.3d 902, 908 (Mo. Ct. App. 2009)

13. Staff's additional material facts should be stricken for failure to follow the rule.

WHEREFORE, I-70 Mobile City requests that this Commission enter an order (1) striking Staff's Response in Opposition to Amended Motion for Summary Determination and (2) deeming the facts set forth in I-70's Amended Motion admitted; (3) granting summary determination in I-70's favor; and for such other and further relief just and proper under the circumstances.

Respectfully submitted,

ELLINGER BELL LLC

By: /s/ Stephanie S. Bell
Marc H. Ellinger, #40828
Stephanie S. Bell, #61855
308 East High Street, Suite 300
Jefferson City, MO 65101
Telephone: (573) 750-4100
Facsimile: (314) 334-0450
E-mail: mellinger@ellingerlaw.com
E-mail: sbell@ellingerlaw.com

Attorneys for I-70 Mobile City

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all of the parties of record or their counsel, pursuant to the Service List maintained by the Data Center of the Missouri Public Service Commission on October 30, 2023.

/s/ Stephanie S. Bell
Counsel for Respondent