

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY HA D.C.  
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MARILYN JOHNSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	00 CV 2608 D/P
	)	
CITY OF MEMPHIS,	)	
	)	
Defendant.	)	
	)	

ROBERT T. HARRIS  
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W. D. OF TN. MEMPHIS

ORDER GRANTING DEFENDANT'S MOTION TO EXTEND TIME TO RESPOND TO  
REQUESTS FOR ADMISSIONS

Before the Court is Defendant's Motion to Extend Time to Respond to Requests for Admissions Or, Alternatively, Motion For Withdrawal of Admissions, filed on July 13, 2004 (docket entry 223). On July 26, 2004, Plaintiffs filed their response to this motion. On July 28, 2004, Defendant filed a reply.<sup>1</sup> The motion was referred to the United States Magistrate Judge for determination. On July 29, 2004, the Court held a hearing on the motion. Counsel for all interested parties were heard. For the reasons below, the motion for extension of time is GRANTED.

On May 14, 2004, Plaintiffs served their First Set of Requests for Admissions ("RFAs") on Defendant. Pursuant to Fed.R.Civ.P. 6

<sup>1</sup>On July 29, 2004, at the hearing on Defendant's motion, the Court granted Defendant's motion for leave to file a reply.

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and 36, Defendant's responses to these RFAs were due by June 16, 2004. However, due to the oversight of Defendant's counsel - and the fact that counsel was preparing for a state court trial during that time period - the responses were not served until June 25, 2004.

Rule 36(b) allows a court to "permit withdrawal or amendment [of an admission] when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits." Fed.R.Civ.P. 36(b). "In determining whether to permit withdrawal of an admission, courts apply a two-prong test: (1) whether the presentation of the merits of the action will be subserved if the admission is not withdrawn; and (2) whether the party who obtained the admission will be prejudiced." Medtronic Sofamor Danek, Inc. v. Michelson, No. 01-2373, 2004 WL 179310, at \*2 (W.D. Tenn. Jan. 2, 2004) (unpublished) (citing Kerry Steel, Inc. v. Paragon Indus., Inc., 106 F.3d 147, 154 (6th Cir. 1997)). "Because the language of [Rule 36(b)] is permissive, the court is not required to make an exception to Rule 36 even if both the merits and the prejudice issues cut in favor of the party seeking exception to the rule." Donovan v. Carls Drug Co., Inc., 703 F.2d 650, 652 (2d Cir. 1983).

Based on the briefs submitted by the parties, arguments of

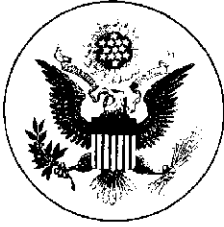
counsel, the applicable law, and the entire record in this case, the Court concludes that the presentation of the merits of the action will be subserved if the admissions are not withdrawn. Many of the issues that are the subject of the RFAs are still in dispute, including the merits of whether the two promotional processes were valid and job-related under the EEOC guidelines and the development of the challenged tests. The presentation of the merits of the case would be undermined if the admissions were allowed to stand. Moreover, Plaintiff will not be prejudiced by the withdrawal of the admissions. The prejudice contemplated by Rule 36(b) "relates to special difficulties a party may face caused by a sudden need to obtain evidence upon withdrawal or amendment of an admission." Kerry Steel, 106 F.3d at 154. Plaintiffs have not articulated, and the Court cannot find, any special difficulties caused by allowing Defendant to serve its responses nine days late. Defendant's motion for extension of time is GRANTED.

IT IS SO ORDERED.



TU M. PHAM  
UNITED STATES MAGISTRATE JUDGE

7/30/04  
DATE



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