UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Black v. City of San Diego

No. 21-cv-01990-RBM-JLB (S.D. Cal. Mar. 28, 2025) · No. 21-cv-01990-RBM-JLB · Decided March 28, 2025

SUMMARY

The United States District Court for the Southern District of California granted Defendant Alyssa Tutterow’s motion for relief from waiver and for leave to withdraw, amend, and substantively respond to requests for admission. The court found good cause to excuse the untimely objections to interrogatories and requests for production, and concluded that withdrawal of the deemed admissions would promote presentation of the merits without prejudicing Plaintiff. The court deemed Tutterow’s October 14, 2024 responses to be her operative responses.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Jill L. Burkhardt
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 28, 2025
DOCKET	21-cv-01990-RBM-JLB
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff opposed Defendant Alyssa Tutterow's motion for relief from waiver and for leave to withdraw and amend deemed admissions and to serve substantive discovery responses.
STANDARD OF REVIEW	The court exercised discretion under Federal Rules of Civil Procedure 33(b)(4), 34, and 36(b) to determine whether good cause existed to excuse untimely discovery objections and whether withdrawal or amendment of deemed admissions would promote presentation of the merits without prejudicing the requesting party.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Lance Black v. City of San Diego, Alyssa Tutterow, San Diego Police Department, San Diego County, San Diego Sheriff's Department, individual officer defendants

TOPICS

discovery dispute | waiver | civil procedure | police misconduct | section 1983

PRACTICE AREAS

civil procedure | civil rights | discovery

QUESTIONS PRESENTED

1. Whether Tutterow showed good cause for relief from waiver of objections to the interrogatories and requests for production under Federal Rules of Civil Procedure 33 and 34.
2. Whether the court should permit withdrawal and amendment of Tutterow's deemed admissions under Federal Rule of Civil Procedure 36(b).

HOLDINGS

1. The court may excuse untimely discovery objections when good cause exists, and Tutterow established good cause because the delay resulted from a counsel conflict and substitution, there was no bad faith, and Plaintiff suffered no material prejudice.
2. The court may permit withdrawal and amendment of deemed admissions when doing so promotes presentation of the merits and the requesting party fails to establish prejudice; both conditions were satisfied here.

KEY QUOTATIONS

> *"To determine whether there is good cause to find objections are not waived, courts consider (1) the length of delay, (2) the reason for delay, (3) the existence of bad faith, (4) the prejudice to the party seeking waiver, (5) the nature of the request, and (6) the harshness of imposing sanctions."* (at 2)

> *"[T]he court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits."* (at 5)

> *"The prejudice contemplated by Rule 36(b) is not simply that the party who obtained the admission will now have to convince the factfinder of its truth."* (at 6)

FACTUAL BACKGROUND

Plaintiff served discovery requests on Defendant Tutterow on June 17, 2024, with responses due August 7, 2024. Tutterow's then-counsel informed Plaintiff's counsel eight days before the deadline that a conflict prevented counsel from conferring with Tutterow and that substitute counsel would need an extension. Substitute counsel was approved on September 6, 2024, and Tutterow served substantive discovery responses on October 14, 2024. The discovery cutoff remained approximately two months away, and Plaintiff did not adequately show prejudice from allowing the late objections and withdrawal of deemed admissions.

PROCEDURAL HISTORY

Black commenced this civil-rights action in November 2021 and filed a Third Amended Complaint in March 2024. He served interrogatories, requests for production, and requests for admission on the officer defendants, including Tutterow, with responses due August 7, 2024. After a conflict caused former defense counsel to be unable to coordinate responses with Tutterow, new counsel served responses on October 14, 2024. Tutterow then moved for relief from waiver and to withdraw and amend the deemed admissions; the court granted the motion.

DISPOSITION

other

CASES CITED

- Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1473 (9th Cir. 1992)
- Barlow v. Herman, No. 2:13-CV-00033-JAD, 2014 WL 60213, at *2-3 (D. Nev. Jan. 6, 2014)
- S.P. v. County of San Bernardino, No. EDCV 19-1897-JGB-KKx, 2020 WL 4335375, at *3 (C.D. Cal. May 13, 2020)
- Karr v. Napolitano, No. C 11-02207 LB, 2012 WL 1965855, at *5 (N.D. Cal. May 13, 2012)
- Shacar v. Trans Union LLC, No. CV 20-11115 AB (RAOx), 2021 WL 6496405 (C.D. Cal. Sept. 22, 2021)
- Douglas v. Banks, No. C 09-3191 LHK PR, 2011 WL 577419, at *1 (N.D. Cal. Feb. 7, 2011)
- Conlon v. United States, 474 F.3d 616, 622-24 (9th Cir. 2007)
- Hadley v. United States, 45 F.3d 1345, 1348-49 (9th Cir. 1995)
- Lyons v. Santero, No. CV 07-02773-MMM (VBK), 2011 WL 3353890, at *3 (C.D. Cal. May 11, 2011), report and recommendation adopted, 2011 WL 3353868 (C.D. Cal. Aug. 1, 2011)
- Santana Row Hotel Partners, L.P. v. Zurich American Insurance Co., No. C05-00198 JWHRL, 2007 WL 1140464, at *2, *5 (N.D. Cal. Apr. 17, 2007)

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