

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Clover v. Camp Pendleton & Quantico Housing LLC

Clover · No. 20-CV-567-LAB-WVG · Decided March 1, 2023

OPINION

Clover v. Camp Pendleton & Quantico Housing LLC

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 JASON CLOVER, et al., Case No.: 20-CV-567-LAB-WVG 12 Plaintiffs,

ORDER ON EX PARTE

13 v. APPLICATION TO AMEND

DISCOVERY RESPONSE FOR

14 CAMP PENDLETON & QUANTICO

REQUEST FOR ADMISSION (SET

HOUSING, et al.,

15 ONE) PURSUANT TO F.R.C.P. 36(B)

Defendants. 16 17 Before the Court is Plaintiffs’ Ex Parte Application to Amend Discovery
Response 18 for Request for Admissions (Set One) Pursuant to F.R.C.P. 36(b) (“Ex Parte
Application” 19 or “Application”). (Doc. No. 96.) Plaintiffs move the Court to grant Plaintiffs
leave to 20 amend their response to Defendant’s Request for Admission (“RFA”) No. 18 pursuant
to 21 Rule 36(b) of the Federal Rules of Civil Procedure. Plaintiffs explain they inadvertently 22
responded “ADMIT” to RFA No. 18 and instead intended to answer with a denial. For this 23
reason, Plaintiffs seek to correct their response to this single discovery request. 24 In compliance
with Civil Chambers Rule VI, Plaintiffs’ Ex Parte Application 25 explains that, on February 22,
2023, Plaintiffs’ counsel notified defense counsel of their 26 intention to file the instant
Application. (See Doc. No. 96-1, ¶ 4, 6.) On February 27, 2023, 27 Plaintiffs also provided
advance notice to this Court’s Chambers of the ex parte filing. 28 1 Plaintiffs then proceeded with
filing the instant Application. (Doc. No. 96.) Pursuant to 2 Civil Chambers Rule VI, Defendants’
response to Plaintiffs’ Ex Parte Application was due 3 no later than 5:00 p.m. on February 28,
2023. Defendants missed their filing deadline by 4 over one day, filing their Response in
Opposition to the Application (“Opposition”) on

5 March 1, 2023, at 6:25 p.m. (Doc. No. 102.)

6 Defendants’ late-filed Opposition is not well taken. This Court’s Civil Chambers 7 Rule VI

makes clear “after service of the ex parte application, opposing counsel will 8 ordinarily be given until 5:00 p.m. on the next business day to respond. If more time is 9 needed, opposing counsel must call Judge Gallo’s Research Attorney assigned to the case 10 to request to modify the schedule.” Civ. Chambers R. VI, Hon. William V. Gallo. 11 (emphasis added). If they needed more time beyond the standard 24-hour deadline to 12 respond to the Ex Parte Application, Defendants wholly failed to notify Chambers of such 13 need. For this reason, Defendants’ Opposition is procedurally defective. Underscoring the 14 point is Defendants’ misreading of the Court’s February 6, 2023, Order, where the Court 15 expressly directed Plaintiffs to file an Ex Parte Application in compliance with Civil 16 Chambers Rule VI: “In the event the Parties are not aligned on Plaintiffs’ discovery request 17 here, Civil Chambers Rule VI directs Plaintiffs to jointly contact this Court’s Chambers to 18 provide advance notice of its intended ex parte filing, separate and apart from providing 19 advance notice of the ex parte application to Defendants.” (Doc. No. 78, 2:8-12.) 20 Defendants argue Plaintiffs’ Ex Parte Application is procedurally defective because it is 21 not a noticed motion, but Defendants err in their position in light of the Court’s clear 22 instruction to Plaintiffs to proceed with an ex parte filing if the Parties did not agree to file 23 a joint motion. Thus, even if the Court were inclined to consider Defendants’ Opposition 24 on the merits – which it is not – Defendants procedural argument bears no fruit. 25 Defendants assert only one other argument in support of their Opposition, namely 26 that they would be prejudiced by Plaintiffs’ withdrawal of their admission. Defendants 27 purport they believed Plaintiffs abandoned their effort to seek withdrawal of their 28 admission. From there, Defendants claim they consider the instant Application an unfair 1 surprise in the midst of trial preparation. The Court is skeptical of surprise on this issue. 2 Defendants’ Opposition admits Plaintiffs’ (1) immediately notified Defendants of the 3 erroneous admission on November 16, 2023, (2) followed up with Defendants about the 4 matter one month later in “late December,” (3) filed an initial motion for leave to correct 5 the response on February 3, 2023, and (4) renewed their motion via the instant Application 6 on February 27, 2023, after providing advance notice of the filing five days earlier on

7 February 22, 2023. (Doc. No. 102, 6:6-19.) Although Plaintiffs could have moved with 8 more alacrity on their request for relief, there is no dispute the issue was raised to 9 Defendants at least three times since November 16, 2023, leading up to the instant 10 Application’s filing. Defendants may be inconvenienced by the Ex Parte Application’s 11 filing, but the Court strains to see unfair surprise here and indeed finds none. 12 Moreover, Rule 36(b) of the Federal Rules of Civil Procedure provides: 13 A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be 14 withdrawn or amended. Subject to Rule 16(e), the court may 15 permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not 16 persuaded that it would prejudice the requesting party in 17 maintaining or defending the action on the merits. 18 Fed. R. Civ. P. 36(b). Given Plaintiffs’ representation that their admission to RFA 19 No. 18 was inadvertent, the Court finds

Plaintiffs' request for leave to amend their 20 discovery response is appropriate to preserve an accurate record for litigation purposes. 21 *Conlon v. United States*, 474 F.3d 616, 622 (9th Cir. 2007) (citing Fed. R. Civ. P. 36(b) 22 advisory committee notes) (explaining the purpose of Rule 36 is to provide for "truth- 23 seeking" in litigation and "efficiency in dispensing justice."). The response bears on one 24 of the Plaintiffs' medical conditions, which relates to Plaintiffs' claims that they suffered 25 damages when they were exposed to moisture, water intrusion, and mold while living at a 26 property Defendants maintained. (See generally Doc. Nos. 1-2, 1-3.) 27 / / / 28

1 Further, given Defendants' baseless procedural argument and failure to articulate 2 || actual prejudice by Plaintiffs' amendment, the Court finds Defendants have failed to meet 3 || their burden as to prejudice'. Fed. R. Civ. P. 36(b); *Conlon*, 474 F.3d at 622 (indicating 4 || party who obtained admission bears the burden of proving prejudice by the withdrawal); 5 || *Hadley v. United States*, 45 F.3d 1345, 1348 (9th Cir. 1995). Accordingly, the Court 6 || GRANTS Plaintiffs' Ex Parte Application and allows Plaintiff to submit an amended 7 || response to RFA No. 18 from Set One of Defendant's Requests for Admission. Plaintiff 8 serve its amended discovery response no later than five (5) days from the date of 9 || this Order's issuance. 10 IT IS SO ORDERED. 11 ||

Dated: March 1, 2023 12 3 Hon. William V. Gallo United States Magistrate Judge 14 15 16 17 18 19 20 21 22 23 24 25 5 ' Defendants misplaced the burden of proof as to prejudice onto Plaintiffs in their 6 Opposition in stating "Plaintiff does not to any degree detail the prejudice they would face 97 Ex Parte relief were not offered." (Doc. No. 102, 4:4-5.) As cited herein, Rule 36(b) exclusively places the burden of proof on this issue onto the party opposing withdrawal of 28 discovery response.