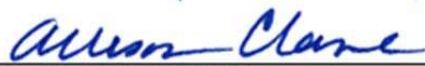


1 “The first half of the test in Rule 36(b) is satisfied when upholding the admissions would
2 practically eliminate any presentation of the merits of the case.” Conlon, 474 F.3d at 622 (citing
3 Hadley v. U.S., 45 F.3d 1345, 1348 (9th Cir. 1995); see also Medina v. Donahoe, 854 F.Supp.2d
4 733, 748-49 (N.D. Cal. 2012) (“Where, as here, the admissions go directly to the ultimate
5 questions at issue in this case, the presentation of the merits of this action would be subverted if
6 defendant were allowed to prevail on the matters deemed to be admitted under Rule 36.”). Here,
7 upholding the admissions would practically eliminate any presentation of the merits of the case.

8 With respect to the second half of the test, “[t]he prejudice contemplated by Rule 36(b) . .
9 . . relates to the difficulty a party may face in proving its case, e.g., caused by the unavailability of
10 key witnesses, because of the sudden need to obtain evidence’ with respect to the questions
11 previously deemed admitted.” Conlon, 474 F.3d at 622 (quoting Hadley v. U.S., 45 F.3d 1345,
12 1348 (9th Cir. 1995)). “The party relying on the deemed admission has the burden of proving
13 prejudice.” Id.; see also Sonoda v. Cabrera, 255 F.3d 1035, 1039 (9th Cir. 2001) (“The party who
14 obtained the admission has the burden of proving that allowing withdrawal of the admission
15 would prejudice its case.”). Here, defendant offers only a vague assertion that defendants may
16 have some difficulty locating some witnesses. In this regard, the court finds that defendant has
17 failed to prove prejudice.

18 Accordingly, upon consideration of the arguments on file and at the hearing, and for the
19 reasons set forth on the record at the hearing, IT IS HEREBY ORDERED that plaintiff’s March
20 18, 2016 motion to withdraw deemed admissions (ECF No. 57) is granted.¹

21 DATED: April 13, 2016

22 
23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE

25
26 _____
27 ¹ The court anticipates that the parties will comply with Local Rule 251 in bringing any future
28 discovery disputes. In this regard, instead of the responsive briefing provided by the parties, the
parties should have filed a joint statement. The court could have dropped plaintiff’s motion from
calendar due to plaintiff’s failure to file a joint statement, and will do so in the future if Rule 251
is violated.