



1 as whether the moving party can show good cause for the delay or has a strong case on the  
2 merits, but the two factors enumerated in the rule are “central to the analysis.” Id.

3 Defendant John Crane Inc. (“JCI”) served written discovery, including Requests for  
4 Admission, on October 24, 2012. According to the declaration proffered by Plaintiffs, they  
5 responded to JCI’s written discovery on November 26, 2012, but failed to serve responses  
6 to the Requests for Admissions. See Decl. of Kenneth O. Taylor III (“Taylor Decl.”) (ECF No.  
7 183-2), ¶ 3. Mr. Taylor further states in his declaration that the attorney managing the case  
8 left the firm shortly thereafter, and that no one noticed the oversight until counsel for JCI  
9 called them and informed them that the responses were overdue and would be deemed  
10 admitted. Id. at ¶¶4-5. He alleges that he contacted JCI’s counsel on December 24, 2012  
11 to seek a stipulation for more time to respond to the Requests for Admissions, defense  
12 counsel declined two days later, and so Plaintiffs filed the present motion. JCI does not  
13 appear to dispute any of this.

14  
15 a. Presentation of the Merits

16 “The first half of the test in Rule 36(b) is satisfied when upholding the admissions  
17 would practically eliminate any presentation of the merits of the case.” Conlon, 474 F.3d at  
18 622 (internal quotations omitted) (quoting Hadley v. United States, 45 F.3d 1345, 1348 (9th  
19 Cir. 1995)). The requests for admissions effectively ask Plaintiffs to concede their case. For  
20 instance, the first Request for Admission is, “Please admit that YOU did not inhale any  
21 asbestos fibers from any product placed into the stream of commerce by JCI.” See Ex. A  
22 to Taylor Decl. Therefore, the Court finds that upholding the admissions would practically  
23 eliminate any presentation of the merits of the case.

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25 b. Prejudice to the Nonmoving Party

26 The second prong of the Rule 36(b) test is whether withdrawing or amending the  
27 admissions would prejudice the nonmoving party in maintaining or defending the action on  
28 the merits.

1 The prejudice contemplated by Rule 36(b) is not simply that the  
2 party who obtained the admission will now have to convince the  
3 factfinder of its truth. Rather, it relates to the difficulty a party  
4 may face in proving its case, e.g., caused by the unavailability of  
5 key witnesses, because of the sudden need to obtain evidence  
6 with respect to the questions previously deemed admitted.

7 Id. at 622 (internal quotations omitted) (quoting Hadley, 45 F.3d at 1348). The party relying  
8 on the admissions has the burden of proving prejudice. Id.

9 JCI argues that it is prejudiced because fact discovery closed on November 30, 2012,  
10 six days after Plaintiffs' responses were due, and that it has relied on these admissions in  
11 preparing its expert witnesses. The Court finds this insufficient to meet JCI's burden of  
12 demonstrating prejudice. JCI had the opportunity to depose Plaintiffs, and JCI does not  
13 indicate what specific additional discovery it would have engaged in had the matters not  
14 been deemed admitted. Furthermore, JCI deposed Plaintiffs before the Requests for  
15 Admissions were even served, so JCI could not have relied on the admissions in taking the  
16 depositions. Therefore, the Court finds that JCI would not be prejudiced were the  
17 admissions to be withdrawn and/or amended.

18 c. Other Considerations

19 As noted above, the Court may also consider other factors, such as whether Plaintiffs  
20 can show good cause for the delay. Although the Court declines to make a specific finding  
21 as to whether a personnel shift constitutes good cause, it notes that Rule 36(b) "seeks to  
22 serve two important goals: truth-seeking in litigation and efficiency in dispensing justice."  
23 Conlon, 474 F.3d at 622. While the Court strongly admonishes Plaintiffs' counsel to be more  
24 careful in the future, to uphold the admissions would circumvent litigation's goal of getting  
25 at the truth and would not substantially further the goal of efficiency.

26 JCI also argues that the Court should not consider Plaintiffs' motion because they  
27 filed it in violation of Local Rule 26.1, which requires the parties to meet and confer  
28 concerning disputed issues prior to filing motions regarding discovery. It is questionable  
whether the meet-and-confer occurred. However, while the Court once again warns  
Plaintiffs' counsel to tread carefully in the future, the Court finds that it would only

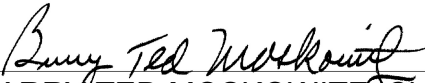
1 unnecessarily increase the expense of this litigation to require Plaintiffs to comply now.  
2 Therefore, since Plaintiffs meet both prongs of Rule 36(b)'s test, the Court **GRANTS**  
3 Plaintiffs' motion to withdraw and/or amend admissions.

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5 **II. CONCLUSION**

6 For the reasons above, the Court **GRANTS** Plaintiffs' motion to withdraw and/or  
7 amend admissions (ECF No. 183). The Court further **ORDERS** that discovery be re-opened  
8 for sixty (60) days as of the date of this order solely for discovery related to the admissions  
9 at issue, and refers the matter to Magistrate Judge Bartick to re-set the dates in the current  
10 scheduling order (ECF No. 179) as needed.

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13 IT IS SO ORDERED.

14 DATED: April 4, 2013

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16 BARRY TED MOSKOWITZ, Chief Judge  
17 United States District Court  
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