UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

VALERIE RAINES,

CASE NO. 1:14-CV-00003

Plaintiff,

vs. : OPINION & ORDER

: [Resolving Docs. No. <u>101</u> & <u>103</u>]

COLLEGE NOW GREATER CLEVELAND, INC., et al.,

:

Defendants.

:

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Plaintiff Valerie Raines moves under Rule 36 of the Federal Rules of Civil Procedure to deem the outstanding requests for admissions served on Defendant the City of Cleveland admitted as true. In response, Defendants the City of Cleveland and Ms. Monkya Price (the "City Defendants") request leave to file untimely answers to Plaintiff's second set of discovery requests and requests for admissions. In admissions.

On May 8, 2014, Plaintiff Raines served her second discovery requests on the City Defendants, including requests for admissions.^{3/} The City Defendant's responses were due June 10, 2014. The City Defendants did not respond or request an extension of time.

 $[\]frac{1}{2}$ Doc. 101.

 $[\]frac{2}{100}$ Doc. $\frac{103}{100}$.

 $[\]frac{3}{2}$ Doc. $\underline{101-1}$.

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On July 16, 2014, Plaintiff sent the City Defendants a letter again requesting the discovery

responses.⁴ The City Defendants did not respond.

Federal Civil Rule 36(a) states that a matter is deemed admitted "unless, within 30 days after

being served, the party to whom the request is directed serves on the requesting party a written

answer or objection addressed to the matter and signed by the party or its attornev."5/

However, under Rule 36(b)(3) "the 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."

"A district court has considerable discretion over whether to permit withdrawal or

amendment of admissions." The first prong of the Rule 36(b) test is satisfied "when upholding the

admission would practically eliminate any presentation on the merits of the case." The second

prong is satisfied when "the prejudice contemplated . . . is not simply that the party who initially

obtained the admission will now have to convince the factfinder of its truth, ... [but] rather, relates

to special difficulties a party may face caused by a sudden need to obtain evidence upon withdrawal

or amendment of an admission."^{9/}

Here, the Court finds that deeming the outstanding requests for admissions as admitted would

severely hinder the merits consideration of Plaintiff's claims. Further the Court finds that Plaintiff

 $\frac{4}{2}$ Doc. 101-2.

^{5/}Fed. R. Civ. P. 36(a)(3).

6/Fed. R. Civ. P. 36(b).

½ Kerry Steel, Inc. v. Paragon Industries, Inc., 106 F.3d 147, 154 (6th Cir.1997) (internal quotation marks and

citation omitted).

8/Clark v. Johnston, 413 F. App'x 804, 818 (6th Cir.2011) (citation omitted).

⁹/*Id.* (quoting *Kerry Steel, Inc. v. Paragon Indus.*, 106 F.3d 147, 154 (6th Cir.1997) (internal quotation marks)

omitted)).

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Raines cannot show any "special difficulties" she will face if the request for leave to file untimely

responses is granted.

 $Accordingly, the \ Court\ \textbf{DENIES}\ Plaintiff\ Raines's\ motion\ to\ deem\ the\ outstanding\ requests$

for admissions served on the City Defendants admitted as true. The Court GRANTS the City

Defendants' motion for leave to file untimely answers to Plaintiff's second set of discovery requests

and requests for admissions.

The City Defendant shall file their responses 10 days from the issuing of this order.

IT IS SO ORDERED.

Dated: August 15, 2014

James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

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