

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-CV-01177-LTB-NYW

**DAKOTA TYLER MCGRATH,**

Plaintiff,

v.

**FORT COLLINS POLICE SERVICES OFFICER NICK RODGERS,** in his individual capacity,

Defendant.

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**PLAINTIFF DAKOTA McGRATH'S REPLY IN SUPPORT OF  
MOTION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE  
36(b) TO PERMIT ADMISSIONS TO BE WITHDRAWN OR AMENDED**

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Plaintiff Dakota McGrath, by and through counsel, Anthony Viorst of the Viorst Law Offices, P.C., hereby submits the following reply in support of his motion for permission to withdraw or amend his admissions, as follows:

1. Defendant opposes Plaintiff's motion to withdraw or amend his admissions, which was made pursuant to F.R.C.P. 36(b). That Rule provides that a 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."
2. As to the first prong of this test, all of the requests for admission propounded by the Defendant concern some aspect of Plaintiff's conduct on the night of the baton strike that

broke his leg. Indeed, every single request for admission starts with the same prefix: “Admit that, on the night of the Incident . . .”

3. If the requests for admission are deemed admitted, the “presentation of the merits of the action” will be hindered, because Mr. McGrath will be prevented from expressing, and the jury will be prohibited from considering, his full and complete version of the events that occurred on the night in question. Thus, Plaintiff has satisfied the first prong of the test for permitting withdrawal or amendment of admissions.

4. Regarding the second prong of the test, the discovery deadline in the instant case has been extended for 60 days, thereby providing the Defendant with sufficient time to fully investigate the issues raised in the requests for admission, and to take a deposition of Mr. McGrath, at which defense counsel can pose detailed questions regarding all of the issues raised in the requests for admission.

5. Under these circumstances, there is absolutely no reason to believe that, as a result of the 11-day delay in transmission of responses to the requests for admission, Defendant will be prejudiced in defending this action on the merits. “The prejudice contemplated by Rule 36(b) is more than simply inconvenience to the party.” *Dedmon v. Continental Airlines, Inc.*, 2015 WL 4639737 (D. Colo. Aug. 5, 2015) (citing *Raiser v. Utah County*, 409 F.3d at 1246). Instead, “the prejudice relates to the difficulty a party may have in proving its case.” *Id.*

6. Therefore, Plaintiff has satisfied the second prong of the test for permitting withdrawal or amendment of admissions.

WHEREFORE, for the foregoing reasons, as well as those stated in his original motion, Plaintiff Dakota McGrath moves for permission to withdraw or amend his admissions.

Dated this 16<sup>th</sup> day of March, 2018.

THE VIORST LAW OFFICES, P.C.

*[Original signature on file at Viorst Law Offices, P.C.]*

*s/ Anthony Viorst*

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Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of March, 2018, I sent a true and correct copy of the foregoing **PLAINTIFF DAKOTA McGRATH'S REPLY IN SUPPORT OF MOTION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 36(b) TO PERMIT ADMISSIONS TO BE WITHDRAWN OR AMENDED** to the following via e-mail:

Matthew J. Hegarty, Esq.  
Thomas J. Lyons, Esq.  
Hall & Evans, LLC  
1001 Seventeenth Street, Suite 300  
Denver, CO 80202

*[Original signature on file at Viorst Law Offices, P.C.]*

*s/ Michelle Spadavecchia*

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Legal Assistant