IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

TIMOTHY FADOOL and GENEVIEVE FADOOL,	)	
Plaintiffs,	)	**CASE NO. 3:25-cv-00003**
v.	)	
VIRGIN ISLANDS PORT AUTHORITY, DEFT, INC. d/b/a HERTZ CAR RENTAL, KIMLEY HORN AND ASSOCIATES, INC., AT CONSTRUCTION SOLUTIONS, LLC, and UNIVERSAL CONCRETE, LLC,	)	
Defendants.	)	

ORDER

Before the Court is Defendant Virgin Islands Port Authority's ("VIPA") motion [ECF 78] to have admissions propounded upon Plaintiffs Timothy and Genevieve Fadool ("Plaintiffs") deemed admitted. In addition to having filed an opposition [ECF 80] to the motion, Plaintiffs have filed a motion [ECF 79][1] to allow amendment of the technical admissions, or alternatively, an extension of time, *nunc pro tunc*, in which to respond. VIPA, in turn, has submitted a joint filing [ECF 87] that both replies to Plaintiffs' opposition and opposes their motion. For the reasons to follow, VIPA's motion [ECF 78] shall be denied as moot, while Plaintiffs' motion [ECF 79] shall be granted in part so as to allow the amendment in accordance with Rule 36(b) of the Federal Rules of Civil Procedure.

In its motion, VIPA avers that "on or about" April 2, 2025, it propounded requests for admissions upon Plaintiffs. [ECF 78] at 1.[2] VIPA further avers that Plaintiffs did not respond to

[1] Subsequent to filing its motion [ECF 80] for amendment, Plaintiffs filed a notice [ECF 84] of supplemental filing so as to clarify a factual inaccuracy in their motion. As this clarification has no impact on the Court's decision-making process as to the present motions before it, the clarification is not addressed in the order beyond this footnote.

[2] In support of this contention, VIPA states that it has attached a copy of the admission requests as Exhibit A. [ECF

these requests within the allotted 30-day timeframe. *Id*. In doing so, however, VIPA fails to advise whether Plaintiffs subsequently responded untimely or if said responses are still outstanding. *See generally id*. Finally, the motion does not certify that VIPA sought concurrence from Plaintiffs as to its motion as required under LRCi 7.1(f) and/or that it conferred with Plaintiffs as required under LRCi 37.1(a) on any motion related to discovery.[3] *See generally id*.

In its opposition, Plaintiffs acknowledge that their responses to VIPA's requests for admissions were untimely. [ECF 80] at 2, ¶ 5. Although the responses were due by no later than May 2, 2025, Plaintiffs did not seek an extension of time in which to respond until May 5, 2025. *Id*. at 1, ¶¶ 1, 3. After not receiving a reply to their request, Plaintiffs provided their untimely responses on May 6, 2025, 4–days after the due date. *Id*. at 1–2, ¶¶ 3–4. According to Plaintiffs, VIPA's motion should be denied on any one of the following three grounds:

> (1) failing to properly confer prior to filing in accordance with the local rules;
>
> (2) the Motion is Moot as the admissions are deemed technically admitted by operation of Fed. R. Civ. P. 36; and
>
> (3) Plaintiff has moved to amend the technical admissions and/or sought a four-day extension of time so as to allow the May 6, 2025 filings to be deemed proper and filed.

Id. at 2, ¶6.

VIPA counters that a conference pursuant to LRCi 37.1(a) was not required, as the time in which to respond to the admission requests had passed and that once this occurred, the onus was

78] at 1. Although the notice of filing, *see* [ECF 78–1] at 2, 16, provides that requests for admissions, along with interrogatory and production requests, were served upon Plaintiffs on April 2, 2025, the requests that are attached do not seek admissions, but are instead interrogatories. *See generally* [ECF 78–1].

[3] The Local Rules of Civil Procedure of the District Court of the Virgin Islands were revised on February 1, 2026. As the events associated with present motion took place prior to this revision, the Court cites to the local rules in effect at the time.

on Plaintiffs to request an extension from the Court for good cause shown. [ECF 87] at 3. VIPA is mistaken. Under LRCi 37.1(a), a meet and confer conference is required prior to the filing of *any* motion relating to discovery pursuant to Federal Rules of Civil Procedure 26–37.[4] As VIPA's motion seeks admissions deemed admitted pursuant to Rule 36(a)(3), it clearly requires such a conference. Accordingly, the Court is well within its authority to strike VIPA's motion on this procedural error alone. *See Romero v. Twp. of Tobyhanna*, 2023 WL 2728829, at *2 (3d Cir. Mar. 31, 2023). Indeed, had VIPA conducted such a conference as required, the Court suspects that Plaintiffs would have likely addressed the standard to amend provided under Rule 36(b) and VIPA may very well have not filed its motion.

Notwithstanding VIPA's failure to confer as required under the local rules, as noted by Plaintiffs,[5] the very operation of Rule 36(a)(3) necessarily makes VIPA's motion moot. Under this subsection of the rule,

> [a] matter is 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 attorney. …

In this instance, Plaintiffs failed to respond to any of the admission requests within 30 days, effectively admitting the matters therein. *See Vision Indus. Grp., Inc. v. ACU Plasmold, Inc.*, 2025 WL3764994, at *1 (D.N.J. Dec. 30, 2025) (not for publication). In other words, VIPA's motion serves no purpose, as the relief it seeks is already afforded under Rule 36(a)(3). Thus, the Court shall deny VIPA's motion as moot.

Turning to Plaintiffs' motion [ECF 79], they seek to either be allowed to amend the

[4] Likewise, under the local rules as applicable at the time, LRCi 7.1(f) further required that a meet and confer conference be conducted on any non-dispositive motion unless exigent circumstances warranted otherwise.

[5] *See* [ECF 80] at 3.

technical admissions or alternatively, for a 4–day extension of time *nunc pro tunc* to May 6, 2025 in which to respond. [ECF 79] at 1. In seeking to amend, Plaintiffs cite to Rule 36(b). *Id*. at 2–4. Notably in its objection, VIPA contends that it is not required to show that it will sustain prejudice under Rule 36(a)(3). [ECF 87] at 5–6. VIPA fails to address the standard, however, of Rule 36(b), which is the very basis of Plaintiffs' motion to amend. *See generally id*. Had it done so, VIPA would have appreciated that such prejudice is one of the requisite factors to be considered by the Court.

Under Rule 36(b), "courts may permit withdrawal of the admission if: (1) doing so 'would promote the presentation of the merits of the action'; and (2) 'the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits.'" *Gwynn v. City of Philadelphia*, 719 F.3d 295, 298 (3d Cir. 2013). While courts may consider other factors as well, such as whether good cause for the delay exists, they are not required to do so. *Id*. The rationale for the rule is straightforward, in that when possible, a case should be determined on its merits. *Am. Bridge Co. v. Virgin Islands Port Auth.*, 2008 WL 918701, at *1 (D.V.I. Apr. 3, 2008). Indeed, "withdrawal or amendment of admissions should be allowed when not doing so would result in a determination that fails to consider the merits." *Id*. As for the prejudice contemplated under the rule, it is not simply that the party who obtained the admission now has to convince the jury of its truth. *Gwynn*, 719 F.3d at 299. Instead, something more is required. *Id*. Finally, in deciding whether to withdraw or amend an admission, courts have great discretion. *Skoczylas v. Atlantic Credit and Fin., Inc.*, 2002 WL 55298, at *3 (E.D.Pa. Jan. 15, 2002) (string citations omitted).

In the case at hand, the Court entered its trial management order ("TMO") on June 10, 2025, some 35-days after Plaintiffs provided their untimely admission responses to VIPA. *See*

[ECF 63]. Pursuant to the TMO, fact discovery was to end on January 30, 2026. *Id*. ¶ 3. That deadline has subsequently been extended to February 27, 2026. [ECF 148]. Plaintiffs provided their responses on May 6, 2025, just 4-days beyond the deadline. In his untimely responses, Plaintiff Timothy Fadool admits to five of the admission requests, while denying the remaining nine.[6] [ECF 79–1]. Plaintiff Genevieve Fadool, in turn, admits to six of the admission requests propounded upon her, while denying the remaining nine. [ECF 79–2]. By way of example, both Plaintiffs denied the admission requests that state they were not on the island of St. Thomas on the date of the accident and that there was no construction at the airport at the time of their visit.[7] [ECF 79–1] ¶¶ 2–3; [ECF 79–2] ¶¶ 1–2. Ignoring for the moment that these two requests contradict one another—one request seeks affirmation that the pair were not on the island the day of the incident, while the other seeks affirmation that there was no construction at the airport during their visit to the island—the requests are contrary to the facts asserted in the complaint. [ECF 1] ¶¶ 10–12. As such, VIPA should have anticipated these requests would be denied based on the facts alleged. *See Skoczylas*, 2002 WL 55298, at *4. Nor does the Court find that VIPA sustained any prejudice whatsoever in receiving the admission responses 4-days beyond their due date. Again, a disposition on the merits of the case is favored. *See Skoczylas*, 2002 WL 55298, at *3. Accordingly, the Court shall grant Plaintiffs' motion to allow amendment of the technical admissions in each of their respective admission responses.

The premises considered, it is hereby

ORDERED that Defendant Virgin Islands Port Authority's ("VIPA") motion [ECF 78] to

[6] Although VIPA did not attach a copy of the admission requests it propounded or the Plaintiffs' untimely responses to same, Plaintiffs have attached copies of their responses to said requests. *See* [ECF 79–1] and [ECF 79–2].

[7] The Court notes that in the one request that seeks an admission that there was no construction at the airport at the time in question, it was generally known within the Court's territorial jurisdiction that a parking garage was in the process of being constructed. This is certainly the kind of fact that the Court could take judicial notice. *See* Fed.R.Evid. 201(b)(1).

have admissions deemed admitted is **DENIED** as **MOOT**; it is further

ORDERED that Plaintiffs' motion [ECF 79] to allow amendment of the technical admissions or in the alternative, motion for extension of time *nunc pro tunc* to provide such responses is **GRANTED IN PART** as set forth herein. Specifically, it is **ORDERED** that each Plaintiff is allowed to amend their technical admissions to VIPA's requests for admissions as set forth in their respective responses of May 6, 2025.

ENTER:

Dated: February 14, 2026

/s/ G. Alan Teague
G. ALAN TEAGUE
U.S. MAGISTRATE JUDGE