

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Denver County District Court Denver City & County Bldg. 1437 Bannock Street, Room 256 Denver, Colorado 80202	DATE FILED: April 5, 2017 10:23 AM FILING ID: 659FEF328908C CASE NUMBER: 2015CV31709 <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiffs: ROBERT ABRAMS and ABRAMS & ASSOCIATES, LLC, a Colorado limited liability company v. Defendant: SHAWN BEESON	Case Number: 2015CV31709 Ctrm.: 275
Wadi Muhaisen, 34470 Muhaisen & Muhaisen, LLC 1435 Larimer Street Ste 203 Denver, Colorado 80202 Phone Number: 303-872-0084 Fax Number: 303-309-3995 wadi@muhaisenlaw.com	
<p style="text-align: center;">SHAWN BEESON’S RESPONSE TO PLAINTIFF’S MOTION TO STRIKE SHAWN BEESON’S MOTION TO STRIKE; AND, PLAINTIFFS MOTION TO STRIKE SHAWN BEESON’S LATE RESPONSES TO PLAINTIFFS’ REQUESTS FOR ADMISSION</p>	

COMES NOW, the Defendant Shawn Beeson (“Beeson”), by and through counsel, Muhaisen & Muhaisen, LLC, and responds to Plaintiff’s March 13, 2017 Motion, and states as follows:

Mr. Beeson Conferred with Counsel for Plaintiff on Motion to Strike

1. Counsel for the Plaintiff Nathan Silver, who purportedly signed Plaintiffs' March 13th Motion stated in Paragraph 1 that "Defendant's counsel never contacted this firm regarding striking plaintiffs' motion for summary judgment."

2. The Motion goes on to state in Paragraph 2 that "Mr. Mushain (sic) lied to the court when he filed his certification of conferral with the court pertaining to his motion to strike plaintiff's motion for summary judgment." And also, "[a]ttorney Nathan Silver, on behalf of himself and his and Mr. Abrams' staff, confirm that Defendant's counsel never conferred in any way on Shawn Beeson's Motion to Strike plaintiffs' motion for summary judgment and mislead the court thereto"

3. Based on the professional working relationship undersigned has enjoyed with attorney Silver, Defendant has sincere doubts that Mr. Silver asserted the above offensive and inaccurate representations. Interestingly, the "Filing Party" that submitted the motion via Colorado Courts E-Filing is "Abrams and Associates LLC," not The Silver Law Firm LLC. Mr. Beeson requests that the Court inquire directly of Mr. Silver to determine if he, in fact, made the assertions above.

4. Undersigned counsel emailed Mr. Silver on March 3, 2017 and conferred on the filing of a motion to strike the Defendants' motion for summary judgment. *See Exhibit A*. In less than two hours, attorney Silver responded to that very email and indicated that "Robert Abrams opposes" the motion. *Id.* Why would attorney Silver claim there was no conferral when he himself emailed about the same? Whomever drafted and filed the March 13, 2017 motion on behalf of defendants in fact has violated Rule of Professional Conduct 3.3., Candor Toward the Tribunal because he or she misrepresented that undersigned counsel failed to confer regarding

Beeson's motion, as evidenced by *Exhibit A*.

5. Mr. Beeson incorporates all arguments and fact from his March 8, 2017 Motion to Strike Plaintiffs' Motion for Partial Summary Judgment. The fact remains that Plaintiffs' Motion for Partial Summary Judgment was filed later than 91 days prior to trial, and therefore is late pursuant to C.R.C.P. 56(c), and should be stricken.

The Court Should Not Strike Mr. Beeson's Responses to Requests for Admission

6. Regarding Plaintiffs' motion to strike Mr. Beeson's responses to their requests for admission, while Plaintiffs claim they only agreed to an extension for Mr. Beeson to respond to the interrogatories and requests for production, Plaintiffs' paralegal referred to "discovery responses" generally during the email exchange over an extension with undersigned counsel, and did not specifically, by name, exclude the responses to requests for admission in the emails. Furthermore, Mr. Beeson answered the requests for admission on the agreed upon extension deadline.

7. However, even if the Court finds that Mr. Beeson's responses to the requests for admission were untimely, they should not be stricken since C.R.C.P. Rule 36(b) contemplates the withdrawal and amendment of admissions where no prejudice is demonstrated. The Colorado Supreme Court has held that a late response to requests for admission may be treated as a motion to withdraw admissions. *Moses v. Moses*, 180 Colo. 397, 403, 505 P.2d 1302, 1305 (1973). *Moses* also held that late filings may be permitted where no prejudice is shown. *Id.* Plaintiffs have demonstrated no prejudice. In *Moses*, a responding party submitted her responses to requests for admissions late, but prior to the district court's granting of the opposing party's motion for summary judgment. The Supreme Court reversed the district court's decision, despite

the responding party's failure to comply technically with the Rules of Civil Procedure. The court held that a deemed admission is not un rebuttable, but rather "may be contradicted and rebutted by other evidence," because to rule otherwise would be an "arbitrary denial of substantial justice ... contrary to the spirit of the Rules of Civil Procedure." *Id.* at 402-03, 505 P.2d at 1305; *Cortez v. Brokaw*, 632 P. 2d 635, 637 (Colo. App 1981) (district court did not err in denying the employer's motion for summary judgment where the employee rebutted deemed admissions with late responses).

8. While Mr. Beeson does not ask the Court to condone later answers to discovery¹, he is not asking to answer any requests for admission now, since he already answered them on the same date the parties agreed to extend the discovery response deadline. Plaintiff is certainly not prejudiced since they have had the answers to the requests for admission for several weeks now. This would promote the resolution of this dispute on the merits and would not prejudice any party. The court must take care that "technical considerations will not be allowed to prevail to the detriment of substantial justice. *Sanchez v. Moosburger*, 187 P.3d 1185, 1188 (Colo. App. 2008). Plaintiff have not suffered prejudice, since even having to engage in further litigation does not constitute prejudice. *Id.* at 1189. Nor does preparing a motion for summary judgment in reliance on a deemed admission.² *Id.* Defendants have not alleged, much less demonstrated, any cognizable prejudice.

¹ Defendant's Law Firm migrated all files, emails, and deadlines to a new office cloud-based system in early 2017, and the response date for this discovery was not calendared properly. This error was technological and no fault of injured party Shawn Beeson.

² Mr. Beeson maintains that Plaintiffs' Motion for Partial Summary Judgment is late and should be stricken. While both parties have lateness arguments in this case, unlike a late response to a discovery request, a motion for summary judgment is a request for "...a drastic remedy and is never warranted except on a clear showing that there exists no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law."

WHEREFORE, Mr. Beeson again requests that the court grant his March 8, 2017 Motion to Strike Plaintiff's Motion for Partial Summary Judgment, and denies Plaintiff's motion to strike Mr. Beeson's responses to requests for admission. At long last, this dispute should be resolved at trial, and on the actual merit.

DATED this 3rd day of April, 2017.

Respectfully Submitted,

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** The "S/" is a symbol representing the signature of the person whose name follows the "S/" on the electronically or otherwise signed form of the E-Filed or E-Served document pursuant to C.R.C.P. 121 lr 1-26(1)(f). A printed or printable copy of an E-Filed or E-Served document with original or scanned signatures is maintained by the filing party and is available for inspection by other parties or the court upon request pursuant to C.R.C.P. 121 lr 1-26(7).*

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing pleading was [] hand delivered, or [X] E-Served by the Court-authorized E-System provider, or [] served by facsimile to [insert fax number of opposing party or their counsel], or [] sent by United States mail postage prepaid, to the following on this 3rd day of April 2017:

Attorney for Plaintiff Silver Law Firm, LLC
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Yvette Garcia
Legal assistant
Muhaisen & Muhaisen, LLC