

SEP 12 2003

For The Northern Mariana Islands

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(Deputy Clerk)

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For Publication on Web Site

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff)
)
v.)
)
PACIFIC MICRONESIA CORPORA-)
TION, ASIA PACIFIC HOTEL, INC.,)
and TAN HOLDINGS CORPORA-)
TION, all doing business as DAI-ICHI)
HOTEL SAIPAN BEACH,)
)
Defendants)
)

Civil Action No. 02-0015

NOTICE OF ORDER
GRANTING PLAINTIFF'S
MOTION TO WITHDRAW
ADMISSIONS

THIS MATTER came before the court on Wednesday, September 10,
2003, for hearing of plaintiff's motion to withdraw certain admissions. Plaintiff
appeared by and through its attorney, David F. Offen-Brown; defendants Asia

1 Pacific Corporation, Inc. and Tan Holdings Corporation appeared by and
2 through their attorneys, Colin M. Thompson (who argued) and Steven P.
3 Pixley; defendant Pacific Micronesia Corporation appeared by and through its
4 attorney, Matthew T. Gregory.
5

6 THE COURT, having considered the written submissions and oral
7 arguments of the parties, adopted its tentative ruling and granted plaintiff's
8 motion to withdraw certain admissions.
9

10 Plaintiff moved to withdraw admissions 1 through 13, which had been
11 deemed admitted due to plaintiff's failure to timely respond to defendants' May
12 12, 2003, discovery requests.
13

14 Immediately upon realizing that he had failed to respond to the discovery,
15 plaintiff's counsel prepared a response to the requests for admission, served it
16 upon defense counsel, and requested that they accept the late response.
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18 After communication between the parties, defendants indicated that they
19 could not fully comply with plaintiff's counsel's request (although they agreed
20 to allow withdrawal of admissions 1, 2, 3, 4, 12, and 13), which triggered this
21 motion.
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1 The court grants plaintiff's motion for several reasons. First, the matters
2 were deemed admitted solely due to counsel's inadvertence. In light of counsel's
3 declaration under oath and as an officer of the court as to the reason for his
4 failure to timely respond to the request for admissions, and because all counsel
5 in this lawsuit have otherwise diligently prosecuted the matter, the court
6 concludes that allowing the admissions to stand would be fundamentally unfair.
7
8 Second, the possible prejudice to defendants is greatly outweighed by the
9 unquestioned prejudice to plaintiff. Third, absent substantial aggravating factors
10 not present here, the law favors decision of cases on their merits, and not due to
11 procedural lapses. *See e.g. Hadley v. United States*, 45 F.3d 1345, 1350 (9th Cir.
12 1995) (presentation on the merits is preferred if no sufficient showing of
13 prejudice to non-moving party). Fourth, the court's calendar is not so full that
14 the undoubted need for management of its docket would justify so onerous a
15 sanction.
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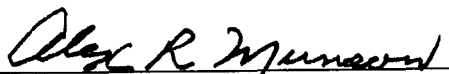
21 As always, the court urges counsel to be mindful of their obligations to
22 their clients to avoid the necessity of motions such as this, but it also reminds
23 them of their professional obligations to each other.
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FOR THE FOREGOING REASONS, plaintiff's motion to withdraw admissions was granted.

IT WAS SO ORDERED.

DATED this 12th day of September, 2003.



ALEX R. MUNSON
Judge