

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:
OAKHURST LODGE, INC.,

Debtor.

Case No. 11-17165-A-11

JACK PATEL et al.,

Plaintiffs,

v.

STEVE MARSHALL et al.,

Defendants.

Adv. No. 19-1055-A

DMS-8

MEMORANDUM

Argued and submitted on March 16, 2021

at Sacramento, California

Honorable Fredrick E. Clement, Bankruptcy Judge Presiding

Appearances: Donna M. Standard for Steve Marshall;
Sharlene F. Roberts-Caudle, Glenn E. Gates
for Jack Patel, Justin D. Harris, Harris
Law Firm, PC for Jack Patel, Sam Patel,
and Oakhurst Lodge, Inc.; Sheryl D. Noel
for Sushila Desai and Shantilal Desai

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1 A party who fails to respond to Requests for Admission admits
2 them. After the pretrial conference, relief may be granted only to
3 "prevent manifest injustice." Under Oakhurst Lodge, Inc.'s Chapter 11
4 plan, Steve Marshall retained equity if he made "a \$50,000 capital
5 contribution." Financial reports, signed by Marshall, show that he
6 loaned the debtor \$45,000. After trial, Marshall moves to withdraw
7 his deemed admissions about characterization of those funds. Would
8 denying relief cause manifest injustice?

9 **I. FACTS**

10 Oakhurst Lodge, Inc., corporation, filed chapter 11 bankruptcy
11 and confirmed a plan. As applicable here, the plan provides:

12 6.10.1 **Class Description.** This class consists of all
13 equity interests in the Debtor. The current holders of
14 equity interests are as follows: Chet Patel-40 shares; Sam
15 Patel-34 shares; Steve Marshall-40 shares.

16 ...

17 6.10.3 **Treatment.** All Class 4 equity interests shall be
18 extinguished on the Effective Date. Steven Marshall shall
19 make a \$50,000 capital contribution on or before the
20 Effective Date and shall be issued 50 shares in the
21 Reorganized Debtor on the Effective Date if the
22 contribution is made on or before the Effective Date. Jack
23 Patel shall make a \$50,000 capital contribution on or
24 before the Effective Date and shall be issued 50 shares in
25 the Reorganized Debtor on the Effective Date.

26 Plan § 6.10, ECF No. 79, Case No. 11-17165. The effective date of the
27 plan was March 21, 2012.

28 This court previously ruled that Sam Patel did not receive notice
of the plan and therefore his rights were not modified by plan
confirmation.

The Monthly Operating Report for the period ending October 31,
2011, signed by Steve Marshall, shows the debtor received a \$45,000

1 "loan from shareholder," ECF No. 88, Case No. 11-17165. Although the
2 Report does not specify who made this payment, the parties agree that
3 the origin of these funds was Steve Marshall (or persons making the
4 payment on his behalf). The Monthly Operating Report for the period
5 ending February 29, 2012, also signed by Steve Marshall, shows that
6 the debtor received a \$1,994.12 "shareholder loan repayment," ECF No.
7 136, Case No. 11-17165. The same Report also shows that Jack Patel
8 advanced \$50,000 to the debtor, *Id.* No filed statement or report
9 indicates that Steve Marshall made the required capital contribution
10 on or before March 21, 2012.

11 **II. PROCEDURE**

12 Thereafter, Oakhurst Lodge, Inc., Jack Patel and Sam Patel
13 brought this adversary proceeding against Steve Marshall, requesting
14 the following: i) declaratory relief that Jack Patel owns 50 shares,
15 that Sam Patel owns 34 shares and that Steve Marshall retains no
16 interest; ii) declaratory relief as to the identity of the members of
17 the debtor's board of directors and officers; iii) determination of
18 the interests of judgment creditors Sushila and Shantilal Desai, if
19 any, in the shares of stock and/or proceeds from shares of stock
20 awarded to Marshall, First Amended Complaint, ECF No. 95. Marshall
21 answered.
22

23 In dispute is whether the \$45,000 that Steve Marshall advanced to
24 Oakhurst Lodge, Inc. was a capital contribution or a loan.
25 Immediately before the close of discovery and some six months before
26 trial, Jack and Sam Patel's attorney Justin Harris served Steve
27 Marshall 20 Requests for Admission by mail, Declaration of Justin D.
28 Harris, ECF No. 192. The deadline for Marshall to respond to the

1 Requests for Admission was July 13, 2020.¹ Marshall did not respond. As
2 a result, Marshall effectively admitted that Jack Patel had not
3 received notice of the Chapter 11 bankruptcy, that Marshall was not a
4 shareholder and that Jack Patel made a \$50,000 capital contribution
5 payment as required under the plan on or before the effective date,
6 ECF No. 193. Marshall continued to not respond to the deemed
7 admissions for 6.5 months.

8 Sam and Jack Patel filed a Motion in Limine on January 29, 2021,
9 ECF No. 190, requesting that the court exclude all evidence that will
10 contradict the deemed admissions. Marshall opposed this motion, ECF
11 No. 201, stating that: i) he was not served the Requests for Admission
12 in compliance with the Scheduling Order because an "additional five
13 days" (sic-FRBP 9006(f) 3 days) was applicable for when his response
14 was due; ii) he sent an objection to the Requests for Admission to
15 Justin Harris but he cannot find a copy of the objection; iii) he did
16 not hear back from Harris and therefore assumed there were no further
17 issues; iv) he alternatively requests permission to withdraw the
18 admissions under Federal Rule of Civil Procedure 36(b). The court
19 denied Marshall's request and granted Sam and Jack Patel's Motion in
20 Limine, ECF No. 207.

21
22 Marshall now brings this motion to: i) set aside the court's
23 ruling on the Motion in Limine; ii) set aside the Requests for
24 Admissions being deemed admitted, or alternatively, to exclude the
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27 ¹ Requests for admission must be responded to within 30 days, Fed. R. Civ. P.
28 36(a)(3), *incorporated by Fed. R. Bankr. Proc. 7036*. Fed. R. Bankr. Proc.
9006(f) allows for an additional three days. The deadline fell on Sunday,
July 12, 2020. Thus, the deadline was extended to the next business day July
13, 2020.

1 admissions entirely on the basis they were not disclosed in Sam and
2 Jack Patel's lists of exhibits prior to trial, which were not realized
3 at trial; and iii) set a new trial so that Marshall may bring
4 additional evidence to support his claims, ECF No. 210. Marshall filed
5 voluminous evidence in support of his motion, Exhibits, ECF No. 212.
6 In particular, Marshall filed with his exhibits his responses to the
7 original Requests for Admission, asserting that Marshall alone made a
8 \$50,000 capital contribution to the debtor and denying that Jack Patel
9 ever made a \$50,000 capital contribution, *Id.*

10 **III. JURISDICTION**

11
12 This court has jurisdiction. 28 U.S.C. § 1334; General Order No.
13 182, U.S. District Court for the Eastern District of California. This
14 is a core and non-core proceeding. The first count is core. The second
15 and third counts are non-core. First count: 28 U.S.C. § 157(b)(2)(A),
16 (O); Second and Third counts: 28 U.S.C. § 1367; Status Conference
17 Hr'g, April 13, 2020. The parties have consented to the entry of final
18 orders and judgment by the bankruptcy court. Amended Compl. ¶ 13,
19 March 9, 2020, ECF No. 95; Status Conference Hr'g, April 13, 2020.
20 Venue is proper. 28 U.S.C. § 1409(a).

21 **IV. LAW**

22 **A. Federal Rule of Civil Procedure 16(e)**

23 If the motion to withdraw or amend is made after a pretrial order
24 has been entered or during trial, the amendment must be necessary to
25 "prevent manifest injustice," Fed. R. Civ. P. 16(e), *incorporated by*
26 *Fed. R. Bankr. P. 7016; United Phosphorus, Ltd. v. Midland Fumigant,*
27 *Inc.*, 205 F.3d 1219, 1236 (10th Cir. 2000); *McLean Contracting Co. v.*
28

1 *Waterman Steamship Corp.*, 277 F.3d 477, 479-480 (4th Cir. 2002). The
2 burden is on the party seeking modification to establish that
3 “manifest injustice” would result if the pretrial order is not
4 modified, *Byrd v. Guess*, 137 F.3d 1126, 1132 (9th Cir. 1998)
5 (abrogation on other grounds recognized by *Moreland v. Las Vegas*
6 *Metropolitan Police Dept.*, 159 F.3d 365, 372-373 (9th Cir. 1998)).

7 **B. Federal Rule of Civil Procedure 36(b)**

8 When a party serves on any other party a request for admission
9 and the other party fails to respond, “The automatic admission...is a
10 sufficient remedy for the party who made the request.” 8B Charles
11 Alan Wright, Arthur R. Miller, Mary Kay Kane & Richard L. Marcus,
12 *Federal Practice & Procedure* § 2265 (3d. ed. 2010). A party may be
13 permitted to withdraw or amend an admission only if the court finds,
14 subject to Fed. R. Civ. P. 16(e), “[i] withdrawal will aid in
15 presenting the merits of the case, and [ii] no substantial prejudice
16 to the party who requested the admission will result from allowing the
17 admission to be withdrawn or amended,” Phillips & Stevenson, *Federal*
18 *Civ. Proc Before Trial* § 11:2087 (Rutter Group 2020); Fed. R. Civ. P.
19 36(b), incorporated by Fed. R. Bankr. P. 7036. Both elements must be
20 satisfied, see *Conlon v. United States*, 474 F.3d 616, 625 (9th Cir.
21 2007) (holding that a court must consider both factors in deciding a
22 motion to withdraw or amend); *Gutting v. Falstaff Brewing Corp.*, 710
23 F.2d 1309, 1313 (8th Cir. 1983).

24 **V. DISCUSSION**

25 Steve Marshall requests the court to i) vacate the judgment as to
26 the Motion in Limine, or alternatively, allow him to withdraw his
27 deemed admissions; and ii) to grant him a new trial. In summary,
28

1 Marshall requests relief from his deemed admissions. Therefore, to
2 decide whether to grant Marshall's motion, the court will particularly
3 consider whether denying the motion will result in manifest injustice
4 under Fed. R. Civ. P. 16(e), and whether granting the motion will
5 impose substantial prejudice on Sam and Jack Patel under Fed. R. Civ.
6 P. 36(b).

7 **A. Federal Rule of Civil Procedure 16(e) - Prevent Manifest**
8 **Injustice**

9 Denying Marshall's request will not constitute manifest injustice
10 under Fed. R. Civ. P. 16(e) if Marshall's \$45,000 payment is a loan
11 and not a capital contribution. Whether Marshall's advance to the
12 debtor corporation is a debt or equity depends primarily on his intent
13 on the date of the transaction, see *In re Daewoo Motor America, Inc.*,
14 471 B.R. 721 (C.D. Cal. 2012).

15 Oakhurst Lodge, Inc.'s financial reports establish that Marshall
16 intended his \$45,000 advancement to be a loan. The October 2011
17 Monthly Operating Report, signed by Marshall, indicates that the
18 \$45,000 was a "loan from shareholder," ECF No. 88, Case No. 11-17165.
19 There are no reports prior to this period or before the plan's
20 effective date indicating that the debtor received other loans from
21 shareholders. The February 2012 Report, also signed by Marshall, shows
22 a \$1,994.12 "shareholder loan repayment," ECF No. 136, Case No. 11-
23 17165, signaling that the \$45,000 was not a capital contribution. No
24 statement indicates that Marshall made any capital contribution on or
25 before March 21, 2012. The evidence presents that Marshall's \$45,000
26 advance was a loan and contradicts Marshall's statement that he alone
27 made the \$50,000 capital contribution on or before the effective date,
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1 ECF No. 212.

2 Due to the presented evidence, Marshall failed to show that
3 granting his motion to withdraw admissions is necessary to prevent
4 manifest injustice under Fed. R. Civ. P. 16(e).

5 **B. Federal Rule of Civil Procedure 36(b) - Aids or Promotes**
6 **Presentation of the Case**

7 The first half of the test under Rule 36(b) is satisfied when
8 upholding the admissions at issue would eliminate any presentation of
9 the merits of the case. Here, denying Marshall's request to set aside
10 the Motion in Limine and the deemed admissions would eliminate a
11 determination of the merits. In particular, admissions No. 1 (Sam
12 Patel did not receive notice of the chapter 11 plan filed by Oakhurst
13 Lodge, Inc.), No. 3 (Marshall did not make a \$50,000 capital
14 contribution to the debtor on or before the effective date), No. 13
15 (Jack Patel made a \$50,000 capital contribution payment to the debtor
16 on or before the effective date) and No. 20 (Marshall has no
17 shareholder interest in Oakhurst Lodge, Inc.) essentially bar Marshall
18 from presenting the merits of this case, Exhibits, ECF No. 193.
19 Allowing Marshall to withdraw his admissions would facilitate his
20 presentation of the merits of this case. For the foregoing reasons,
21 Marshall satisfied the first half of the test under Rule 36(b).

22 **C. Federal Rule of Civil Procedure 36(b) - Substantial**
23 **Prejudice**

24 When determining whether a party satisfied the second half of the
25 test under Rule 36(b), courts focus on the prejudice that the
26 nonmoving party would suffer at trial, *Conlon v. United States*, at 623
27 (holding that continuing the case for discovery and resubmission of
28 exhibits after the plaintiffs relied on the deemed admissions for 2.5

1 months for imminent trial constituted clear prejudice); See *Sonoda v.*
 2 *Cabrera*, 255 F.3d 1035, 1039-40 (9th Cir. 2001); see also *Raiser v.*
 3 *Utah County*, 409 F.3d 1243, 1247 (10th Cir. 2005) (holding that there
 4 was no prejudice when the nonmoving party relied on the deemed
 5 admissions for only a two-week period while preparing its summary
 6 judgment motion).

7 Marshall states in his motion that the deemed admissions due to
 8 his failure to respond by the deadline constitute "manifest
 9 injustice," ECF No. 212. However, this case involves more than a mere
 10 failure to comply with the deadlines. This adversary proceeding has
 11 been pending for over 1.5 years. Marshall did not file any response
 12 regarding the Requests for Admissions until 6.5 months after they were
 13 deemed admitted, ECF No. 201. Marshall's present motion was filed 7
 14 months after they were deemed admitted. Sam and Jack Patel have
 15 heavily relied on the deemed admissions while persisting through this
 16 adversary proceeding. Granting Marshall's motion would require retrial
 17 of the entire action, which would severely prejudice Sam and Jack
 18 Patel.


19
 20 The court concludes that Marshall failed to satisfy the second
 21 prong of Rule 36(b) and will deny his motion. Therefore, the court
 22 will not permit Marshall to withdraw or amend the deemed admissions
 23 under Rule 36(b).

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1 **VI. CONCLUSION**

2 For each of these reasons, Steve Marshall's motion will be denied
3 as provided herein. The court will issue an order from chambers.

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5 **Dated:** March 16, 2021

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7 _____
8 **Fredrick E. Clement**
9 **United States Bankruptcy Judge**

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Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked , via the U.S. mail.

Attorney for the Plaintiff(s)	Attorney for the Defendant(s) (if any)
Bankruptcy Trustee (if appointed in the case)	Office of the U.S. Trustee 2500 Tulare St, Ste 1401 Fresno, CA 93721
All Creditors	Steve Marshall 32149 Road 416 Coarsegold, CA 93614-8932
Sheryl Noel 499 W Shaw #116 Fresno, CA 93704	