

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SUPERSONIC, INC.	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-05-2477
	§	
ABIGAIL'S FREIGHT LINES, LLC AND	§	
LAREDO CAL-TEX, INC. D/B/A	§	
CAL-TEX, INC.	§	
	§	
Defendants.	§	

ORDER

This case is before the court on defendant Abigail Freight Lines, LLC's motion to withdraw deemed admissions and motion to extend the time for serving discovery responses (Dkt. 21). Having considered the parties' submissions and the law, the court concludes that defendant's motion should be denied.

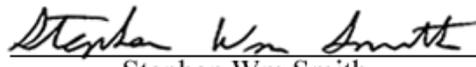
Plaintiff served the requests for admissions on defendant Abigail Freight Lines on November 23, 2005. Defendant concedes that its discovery responses were due on or before December 30, 2005, based on an oral extension of time from plaintiff's counsel. Defendant's representative, Sylvia Castro, has testified by affidavit that she believed further extensions of time allowed defendant until the first week of February to respond. A legal assistant for defendant's counsel, Melissa Cerda, confirms that she received an oral extension of time

from defendant's counsel until the first week of February.¹ However, neither witness explains why no responses were forthcoming in February. In fact, defendant provided no responses until April, 2006, after plaintiff filed a motion for summary judgment.

Pursuant to Federal Rule of Civil Procedure 36(a), if a party fails to respond to a request for admission within 30 days the matter is admitted. That is the situation here. The situation is exacerbated by defendant's pattern of delay and inattention to this case. Defendant did not file an answer until after plaintiff filed a motion for default, and defendant has not complied with its disclosure obligations under Federal Rule of Civil Procedure 26. Defendant filed its response to plaintiff's motion for summary judgment over a month late. Given the complete absence of any explanation for defendant's dilatory conduct, the court denies defendant's request to withdraw the deemed admissions and to serve late responses. *See Dukes v. South Carolina Ins. Co.*, 770 F.2d 545, 548-49 (5th Cir. 1985) (trial court did not abuse its discretion in refusing to allow responses to requests for admissions filed outside of 30 days where responding party failed to offer explanation and had history of evasive and dilatory conduct). It is therefore

ORDERED that defendant's motion (Dkt. 21) is denied.

Signed at Houston, Texas on July 10, 2006.


Stephen Wm Smith
United States Magistrate Judge

¹ Plaintiff's counsel denies that any extensions beyond December 30, 2005 were given but even taking defendant's representations as true, the responses were well overdue.