

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 20-CIV-81205-RAR**

**SECURITIES AND EXCHANGE  
COMMISSION,**

Plaintiff,

v.

**COMPLETE BUSINESS SOLUTIONS  
GROUP, INC. d/b/a PAR FUNDING, et al.,**

Defendants.

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**ORDER GRANTING DEFENDANT LISA MCELHONE'S  
MOTION TO AMEND ADMISSIONS**

**THIS CAUSE** comes before the Court on Defendant Lisa McElhone's Motion to Amend Admissions [ECF No. 914] ("Motion") filed on November 8, 2021. Plaintiff Securities and Exchange Commission ("SEC") filed a Response in opposition [ECF No. 973] ("Response") on November 18, 2021.

In the Motion, Defendant moves to amend her response to the SEC's Request for Admissions to Lisa McElhone ("RFA"). Mot. at 1. Defendant contends that oversight by previous counsel led to Defendant's failure to respond to the RFA. Defendant seeks to amend her admissions to invoke her Fifth Amendment privilege against self-incrimination, as she has done throughout the course of this litigation. Mot. at 2. The SEC objects, averring that allowing Defendant to amend her admissions would not subserve the presentation of the merits and would greatly prejudice the SEC. Resp. at 1–2.


Rule 36 of the Federal Rules of Civil Procedure governs requests for admissions. Fed. R. Civ. P. 36. "The purpose of the rule is to expedite the trial and to relieve the parties of the cost of proving facts that will not be disputed at trial." *Perez v. Miami-Dade County*, 297 F.3d 1255, 1264

(11th Cir. 2002) (internal quotations and citation omitted). Rule 36(b) allows the Court to permit amendment to requests for admissions in certain circumstances. The Eleventh Circuit has held that district courts should apply a “two-part” test when deciding whether to grant a motion to amend admissions. *Id.* The Court should consider (1) whether the amendment will subserve the presentation of the merits and (2) whether the amendment will prejudice the party who obtained the admissions in its presentation of the case. *Id.*

Here, the Court finds that the application of the two-part test favors Defendant. First, the Court does not find that allowing Defendant to amend her admissions would subserve the presentation of the merits. Allowing Defendant to amend her admissions and invoke her Fifth Amendment privilege will allow the Court to have a better understanding of Defendant’s position in the case. Second, the Court is not persuaded that the SEC would suffer prejudice if amendment were permitted. The SEC has been well-aware of Defendant’s intention to invoke her Fifth Amendment privilege throughout the course of this litigation. Indeed, prior to this oversight, Defendant had invoked her Fifth Amendment privilege in every discovery production or request. Further, at trial, the SEC will be permitted to argue that an adverse inference should be applied against Defendant. Accordingly, for the foregoing reasons, it is hereby

**ORDERED AND ADJUDGED** that the Motion is **GRANTED**.

**DONE AND ORDERED** in Fort Lauderdale, Florida this 18th day of November, 2021.

  
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**RODOLFO A. RUIZ II**  
**UNITED STATES DISTRICT JUDGE**