

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Case No. 9:20-cv-81205-RAR
Civil Division

SECURITIES & EXCHANGE
COMMISSION,
Plaintiff

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING,
Defendant

_____ /

**DEFENDANT, MICHAEL C. FURMAN'S MOTION TO AMEND
ADMISSIONS**

The Defendant, MICHAEL C. FURMMAN ("FURMAN"), by and through undersigned counsel, pursuant to Local Rule 7.1, hereby requests requests, pursuant to Fed. R. Civ. P. 36, to be permitted to Amend his Response to the SEC's Request for Admissions.¹

Requests for Admission are governed by Rule 36. Under Rule 36, "a matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." Fed. R. Civ. P. 36(a)(3). Under Rule 36(b), "the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits."

¹ Furman previously incorporated this request and Motion in response to the SEC's Motion to Strike [ECF No. 1023]. However, the SEC claimed that the foregoing request needed to be filed separately. As a result, Furman has filed the instant Motion in an abundance of caution.

Fed. R. Civ. P. 36(b). Here, allowing Ms. McElhone to amend her admissions would promote the presentation of the merits and would not prejudice the SEC. Allowing Defendant to amend her admissions would “not subserve the presentation of the merits” of the action. *Great Am. Ins. Co. v. Mueller*, No. 8:19-CV-3170-TPB-JSS, 2021 WL 2037805, at *2 (M.D. Fla. Mar. 19, 2021) citing *Perez v. Miami-Dade Cty.*, 297 F.3d 1255, 1264 (11th Cir. 2002) (internal quotations omitted). The issues raised in the RFA bear on Defendant’s Defenses. *Great Am. Ins. Co. v. Mueller*, No. 8:19-CV-3170-TPB-JSS, 2021 WL 2037805, at *2 (M.D. Fla. Mar. 19, 2021). (“The issue of notice may bear on Defendant's defenses in the case.”) Moreover, allowing Furman “to amend [his] admissions with [his] late responses will ultimately allow the court to have a better understanding of the parties’ positions in the case and will promote consideration of the merits of the case.” *Tolbert v. Discovery, Inc.*, No. 4:18-CV-00680-KOB, 2020 WL 3269149, at *3 (N.D. Ala. June 17, 2020). Therefore, allowing Defendant to Amend his responses to the Requests for Admissions will “promote the presentation of the merits of the action.” *Great Am. Ins. Co. v. Mueller*, No. 8:19-CV-3170-TPB-JSS, 2021 WL 2037805, at *2 (M.D. Fla. Mar. 19, 2021); *See also* [ECF No. 916].

There is also no prejudice in allowing amendment to the SEC, as it already intends to seek an adverse inference arising from Furman’s prior invocation of the Fifth Amendment, and Furman has previously testified as to the matters set forth in the Requests for Admission. *See Tolbert v. Discovery, Inc.*, No. 4:18-CV-00680-KOB, 2020 WL 3269149, at *3 (N.D. Ala. June 17, 2020) (“Moreover, Discovery has not

argued that the withdrawal or amendment of the deemed admissions and subsequent consideration of Ms. Tolbert's amended responses to the admissions will create any significant prejudice.”); *Great Am. Ins. Co. v. Mueller*, No. 8:19-CV-3170-TPB-JSS, 2021 WL 2037805, at *2 (M.D. Fla. Mar. 19, 2021)(“As to the second prong of the test, the Court finds there is no risk of prejudice to either party if the request is withdrawn.”). As a result, there is no prejudice and the Furman should be allowed to amend his requests for admission.

WHEREFORE Defendant Michael Furman respectfully requests that the Court enter an Order: (i) Granting the Motion; (ii) Allowing Furman to Amend his request for admissions; and (iii) Granting such further relief as the Court deems just and proper.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(3)

I HEREBY CERTIFY that counsel for the Movant has conferred with all parties or non-parties who may be affected by the relief sought in this Motion in a good faith effort to resolve the issue and Plaintiff does not consent to the relief sought.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of December, 2021, the foregoing was filed using the Court's CM/ECF system which will send notice of electronic filing to all counsel of record.

By: s/ Zachary P. Hyman
Zachary P. Hyman