

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

**MOTION FOR RECONSIDERATION OF DEFENDANT'S
MOTION TO AMEND ADMISSIONS**

The Defendant, MICHAEL C. FURMMAN ("FURMAN"), by and through undersigned counsel, pursuant to Federal Rule of Civil Procedure 60(b)(1) and Local Rule 7.1, hereby requests that this Court reconsider its denial of FURMAN's Motion to Amend Admissions [ECF-1030] and, in support thereof, states the following:

ARGUMENT

The purpose of a motion for reconsideration is to alert the court to manifest error or the discovery of new evidence. Pineda v. Am. Plastics Techs., Inc., No. 12-21145-CIV, 2014 WL 1946686, at *3 (S.D. Fla. May 15, 2014). The grounds supporting a motion for reconsideration include: 1) changes in controlling law, 2) the availability of new evidence, and 3) correction of clear error or prevention of manifest injustice. Id. Excusable neglect is a proper basis for reconsideration. Hill v. Lazarou Enterprises, Inc., No. 10-61479-CIV, 2011 WL 1401603, at *2 (S.D. Fla. Mar. 21, 2011), report and recommendation adopted, No. 10-61479-CIV, 2011 WL 1428050 (S.D. Fla. Apr. 13, 2011).

The undersigned counsel first entered these proceedings on behalf of FURMAN on November 10, 2021. [ECF-930]. Two days later, SEC counsel notified the undersigned of her intent to seek an adverse jury instruction premised on FURMAN having waived his prior invocation of his Fifth Amendment privilege in response to Plaintiff's request for admissions. FURMAN, bewildered by the notification instructed the undersigned to respond with a proper motion. Having only recently assumed the representation, and without access to review any other discovery at the time, the undersigned counsel hesitated and delayed, ultimately filing the motion to amend responses in proper form on December 1, 2021 ("Motion"). [ECF-1030].

The decision proved a detriment to FURMAN, most evidently at hearing the following day. In denying FURMAN's Motion, the Court repeatedly noted its significant concern regarding the potential prejudice to Plaintiff that would accompany granting the Motion in such close proximity to trial. Indeed, SEC counsel herself indicated that she may have been receptive to some amicable resolution to the matter had the undersigned communicated with her more robustly earlier on.

While the possibility that this Court may have reflected differently on an earlier filed motion is no certainty, FURMAN, whose very livelihood hangs on the outcome of these proceedings, is certainly worse off for his counsel having not explored it. If there has ever been a textbook example of the potential for a manifest injustice to taint a trial, this must be it: a cash-strapped defendant proceeding *pro se* for a majority of the litigation, counsel arriving just a few weeks before trial, and a transformative restructuring of the parties at the eleventh hour. This Court should

not allow FURMAN to be denied a trial fully on the merits due to the unintentional failings of counsel.

WEHEREFORE, the Defendant, MICHAEL C. FURMAN, respectfully requests that this Court reconsider the denial of his Motion to Amend Admissions [ECF-1030] and for any further relief the Court deems appropriate.

RULE 7.1(a)(3) CERTIFICATION

I HEREBY CERTIFY that on December 4, 2021, counsel for the movant conferred, via email, with counsel for Plaintiff sought in the motion in a good faith effort to resolve the issues raised in the motion. The Plaintiff's counsel stated her objection to the motion.

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REQUEST FOR HEARING

The Defendant, pursuant to Local Rule 7.1(b)(2), respectfully requests a hearing before the Court on the matters herein on the basis that the implications for Defendant are particularly complex and oral argument will aid the Court in reaching a just and proper resolution as to the relief requested.

The Defendant estimates that argument would require no more than 15 minutes.

Respectfully Submitted,

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