

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 20-CV-81205-RAR

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

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

Defendants.

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**UNOPPOSED MOTION TO DEEM RESPONSE IN OPPOSITION TO RECEIVER'S  
MOTION TO APPROVE PROPOSED TREATMENT OF CLAIMS TIMELY FILED**

Investors, Jack Terzi, Individually, and as Nominee of Entity of Their Heirs, Successors or Assigns, and Jack Terzi FBO Jewish Communal Fund and as Nominee of Entity of Their Heirs, Successors or Assigns (collectively, "Terzi"), by and through its undersigned counsel, respectfully move this Court for the entry of an Order deeming Terzi's Response in Opposition to Receiver's Motion to Approve Proposed Treatment of Claims timely filed, which is unopposed by counsel for Ryan K. Stumphauzer, Esq., Court-Appointed Receiver ("Receiver") of the Receivership Entities, for the reasons set forth below.

1. On April 23, 2024, this Court entered an Order Setting Briefing Schedule for Claim Determination ("Order") [ECF No. 1845], which thereby instructed all claimants with outstanding objections as to the Receiver's determination of their claim to file a response to the Motion to (1) Approve Proposed Treatment of Claims and (2) for Determination of Ponzi Scheme ("Motion") [ECF No. 1843] by no later than May 7, 2024. The Order further specified the Receiver shall file a reply to each response or each category of responses by no later than Tuesday, May 21, 2024.

2. Regrettably, the only nephew of Terzi's counsel unexpectedly passed away on May 5, 2024, which necessitated an unanticipated absence from work, for the planning and attendance at the memorial and cremation services. As a result of the absence, counsel for Terzi was unable to file a response to the Motion prior to the expiration of the above-referenced deadline.

3. Given the extenuating circumstances, counsel for the Receiver does not oppose this Motion, which if granted by this Honorable Court, will not affect and/or delay the filing of the Receiver's reply to the responses filed by claimants.

4. Under Rule 6(b)(1)(B), Terzi respectfully requests that this Honorable Court deem the Response in Opposition to Receiver's Motion to Approve Proposed Treatment of Claims ("Response"), which is being contemporaneously filed herewith, timely filed.

### **MEMORANDUM OF LAW**

#### **I. Standard for Review**

The Eleventh Circuit has held that, under Rule 6(b)(1)(B), the Court may, for good cause, extend the time period for filing a motion after the deadline has expired as long as the party failed to act because of excusable neglect. *Ashmore v. Sec'y, Dep't of Transp.*, 503 F. App'x 683 (11th Cir. 2013). To determine if there was excusable neglect, the court considers the following factors: (1) the danger of prejudice to the nonmovant; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *Id.* at 685-6 (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993)). Further, in *Ashmore*, the Eleventh Circuit "noted that, in *Pioneer*, the Supreme Court accorded primary importance to the absence of prejudice to the nonmoving party and to the interest of efficient judicial

administration.” *Id.* (citing *Cheney v. Anchor Glass Container Corp.*, 71 F.3d 848, 850 (11th Cir. 1996) (holding that the nonmovant was not prejudiced by the movant’s six-day delay)).

## II. Argument

In the present case, Terzi satisfies each of these four factors highlighted in the Eleventh Circuit’s opinion in *Ashmore*.

### A. *There is No Prejudice to Receiver*

Provided this Honorable Court grants this Motion and, thereby deems the Response timely filed, the Receiver—as well as all other parties to the subject proceeding—will not suffer any prejudice. “(T)o establish prejudice, the delay must ‘result in the loss of evidence, create increased difficulties of discovery, or provide greater opportunity for fraud and collusion.’” *Smith v. Conner*, 2013 WL 178974 (M.D. Fla. Jan. 17, 2013) (Order granting Defendants’ Motion for Extension of Time to Answer or Otherwise Respond to Amended Complaint). In the case at bar, no party to the subject matter will suffer any prejudice as the delay in filing the Response will not result in the loss of evidence, create increased difficulties of discovery, or provide a greater opportunity for fraud and collusion. Moreover, the Receiver’s reply deadline set forth in the Order will not be delayed.

### B. *The Length of Time Elapsed*

In *Smith*, the Middle District granted a Motion for Extension to respond to a Complaint under Rule 6(b)(1)(B), which was filed two full weeks after the due date to respond. In the present case, the Response has been filed before the expiration of two full weeks beyond the time framed provided by the Order. Accordingly, Terzi respectfully request that this Court find that the length of time elapsed prior to the filing of the subject Motion and Response is reasonable, especially considering the circumstances surrounding the matter, under Rule 6(b)(1)(B).

*C. Reasons for the Delay*

As referenced above, the reason for the delay in the present case was the result of the nephew of Terzi's counsel unexpectedly passing away. Given the sudden passing, counsel for Terzi was absent from work for an extended period in order to support family, extensively assist in the planning and coordination of the services and, attend both a memorial and cremation service.

"The Eleventh Circuit has held that 'excusable neglect encompasses situations in which failure to comply with a filing deadline is due to negligence.'" *Carmody v. MHM Solutions, Inc.*, 2008 WL 2844038, \*1 (S.D. Fla. 2008) (quoting *Cheney v. Anchor Glass Container Corp.*, 71 F.3d 848, 850 (11th Cir.1990)). While the delay at hand was not the result of negligence per se, Terzi's counsel has demonstrated excusable neglect for the delay given the circumstances.

*D. Whether Movant Acted in Good Faith*

At all times relevant, Terzi's counsel acted in good faith and filed a Response to the Receiver's Motion contemporaneously herewith and, through this Motion, requests an Order deeming the Response timely filed pursuant to Rule 6(b)(1)(B).

WHEREFORE, Investors, Jack Terzi, Individually, and as Nominee of Entity of Their Heirs, Successors or Assigns, and Jack Terzi FBO Jewish Communal Fund and as Nominee of Entity of Their Heirs, Successors or Assigns, respectfully request that this Court grant this Motion, which is not opposed by the Receiver, under Rule 6(b)(1)(B) and enter an Order deeming the Response filed timely.

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**CERTIFICATION AS TO PRE-FILING CONFERENCE**

Pursuant to Local Rule 7.1(a)(3), S.D. Fla. L.R., the undersigned counsel certifies he conferred with counsel for the Receiver and is authorized to represent (1) the relief requested herein is not opposed; and (2) if the Motion is granted by this Honorable Court, the Receiver intends to file his reply to the Response on May 21, 2024, at the same time replies are filed to other claimant responses, so as not to delay the claims process.

Dated: May 20, 2024

Respectfully submitted,

**BLANK ROME LLP**

/s/Michael R. Esposito  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed on May 20, 2024, with the Clerk of the Court by using the CM/ECF System. I also certify that the foregoing document is being served this day on all counsel of record via transmission of the Notice of Electronic Filing generated by CM/ECF.

/s/Michael R. Esposito  
Michael R. Esposito