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IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION
CASE NO.: 2026-006626-CA-01

CHRIS MISERESKY and
LAUREN COLEMAN,
individually and on behalf of their
minor child, A.M.,

Plaintiffs,

vs.

FISHER ISLAND DAY SCHOOL, INC., a
Florida not-for-profit corporation, ARTHUR
VISCUSI a/k/a ART VISCUSI, individually and
in his capacity as Head of School, and JANA
NEFF, individually and in her capacity as Chair of
the Board of Trustees,

Defendants.
_____/

Plaintiffs' Motion for Entry of Default Against Defendant Arthur Viscusi

Arthur Viscusi was personally served on April 10, 2026 (DE 18), and counsel appeared for him by name on April 23, 2026 (DE 19; DE 20). The Court ordered Defendants to serve their Answer within twenty days of July 2, 2026 (DE 29, paragraph 3). Defendants asked for seven days past the ruling on reconsideration, which set their own outside date at August 5, 2026 (DE 34; DE 37). No order extended that date, Defendants never asked the Court for any further extension, and no Defendant has served an answer. The appellate stay was not entered until August 28, 2026, and was lifted on October 1, 2026 (DE 47; DE 48). Plaintiffs, Chris Miseresky and Lauren Coleman, individually and on behalf of their minor child, A.M., ask the Court to enter a default under Florida Rule of Civil Procedure 1.500(b) and deny DE 34 as moot.

I. Procedural background

1. On March 31, 2026, Plaintiffs filed their Verified Amended Complaint (DE 9). It asserts Count I (breach of contract) against Fisher Island Day School, Inc.; Count II (tortious interference with an advantageous business relationship) against Arthur Viscusi; Count III (civil conspiracy) against all three Defendants; Counts IV through VII (negligent misrepresentation, fraudulent misrepresentation, promissory estoppel, and fraudulent inducement) against Fisher Island Day School, Inc. and Arthur Viscusi; Count VIII (false light) against Fisher Island Day School, Inc. and Arthur Viscusi; and Count IX (equitable accounting and inspection of records) against Fisher Island Day School, Inc.

2. Fisher Island Day School, Inc., through its registered agent, and Arthur Viscusi were served with process on April 10, 2026 (DE 17; DE 18). On April 23, 2026, Christopher M. David and Miguel J. Chamorro of Fuerst Ittleman David & Joseph filed notices of appearance as counsel for all three Defendants, Ms. Neff by name (DE 19; DE 20).

3. Ms. Neff then joined every motion Defendants filed directed to the Verified Amended Complaint. All three Defendants, Ms. Neff by name, moved for an extension of time to respond to the Amended Complaint on April 28, 2026 (DE 21), moved on May 8, 2026 to compel arbitration or, in the alternative, to dismiss the Amended Complaint and strike (DE 22), and moved on July 21, 2026 for a further extension of time to answer (DE 34). DE 22 sought dismissal for failure to state a cause of action and is a motion under Florida Rule of Civil Procedure 1.140(b). None of DE 21, DE 22, or DE 34 raised lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process as to any Defendant. Under Rule 1.140(g), a party who makes a motion under the rule but "omits from it any defenses or objections then available to that party that this rule permits to be raised by motion" shall "not thereafter make a motion based on any of the defenses or objections omitted." Rule 1.140(h)(1)

provides that "A party waives all defenses and objections that the party does not present either by motion under subdivisions (b), (e), or (f) of this rule or, if the party has made no motion, in a responsive pleading . . . ." By joining DE 22 without raising any of those defenses, Ms. Neff waived lack of jurisdiction over the person, insufficiency of process, and insufficiency of service of process, and she stands before this Court on the same footing as the served Defendants.

4. After a hearing on June 24, 2026, the Court entered its Order on Defendants' Motion to Compel Arbitration, or, in the Alternative, to Dismiss the Amended Complaint and Strike on July 2, 2026 (DE 29). The Order denied the motion to compel arbitration, granted the motion to dismiss as to Counts VIII and IX, and provided in paragraph 3 that "The Defendants shall serve their Answer within twenty (20) days from the date of this Order." (DE 29, paragraph 3.)

5. Defendants told this Court in their own filing that the Order "provides that the Defendants' Answer is due on July 22, 2026." (DE 34, paragraph 2.) Under Florida Rule of General Practice and Judicial Administration 2.514(a)(1), the twenty-day period ended no later than Monday, July 27, 2026, two days before the Court ruled on reconsideration. Defendants did not claim in DE 34 that an appeal excused or postponed the Answer. They asked for more time to file the Answer (DE 34, paragraphs 2 and 3).

6. On July 10, 2026, Defendants moved for reconsideration of the Order (DE 31). On July 21, 2026, one day before the answer date Defendants identified in DE 34, Defendants filed an Unopposed Motion for Extension of Time asking for an order extending their time to serve an answer "through and including seven (7) days after the Court rules on their pending Motion for Reconsideration." (DE 34.) Defendants tied the request to a single event and rested it on the prospect that reconsideration would send the action to arbitration (DE 34, paragraph 3).

The Court heard the motion for reconsideration on July 27, 2026 and denied it by Order entered July 29, 2026 (DE 37).[1]

7. No order has been entered on DE 34. The most DE 34 requested was seven days from the ruling on reconsideration. Computed under Rule 2.514(a)(1), beginning the count on Thursday, July 30, 2026, that period ended Wednesday, August 5, 2026, which was not a Saturday, Sunday, or legal holiday. August 5, 2026 marks the outer limit of the time Defendants requested.

8. On August 16, 2026, Plaintiffs put the point before this Court and Defendants in writing. Plaintiffs' Response in Opposition to Defendants' Motion to Stay Proceedings Pending Appeal stated that "the date Defendants themselves proposed has come and gone" and that "Seven days after July 29 was August 5, 2026. On August 5, Defendants filed this Motion. They did not file an Answer." (DE 43 at 17.) Defendants still served no answer. Defendants never set DE 34 for hearing, never asked the Court to rule on DE 34, and never asked the Court for any further extension of time.

9. On July 31, 2026, Defendants filed a notice of appeal of the Order of July 2, 2026 (DE 38), which is pending in the Third District Court of Appeal as Case No. 3D2026-1660. On August 5, 2026, the last day of the extension they had requested, Defendants filed a motion to stay the proceedings pending appeal (DE 40) instead of an answer. After a hearing on August 19, 2026, the Court denied that motion on August 24, 2026 (DE 46).

10. On August 28, 2026, upon consideration of Defendants' Motion for Stay Pending Appeal, the Third District Court of Appeal ordered that "the trial court proceedings are hereby temporarily stayed pending further order of this Court." (DE 47.) On October 1, 2026, the Third

[1] The Order of July 29, 2026 refers to Defendants' Motion for Reconsideration as DE 32. The Motion for Reconsideration is DE 31. DE 32 is Plaintiffs' Response in Opposition.

District Court of Appeal denied Defendants' motion for stay and ordered that "The temporary stay previously entered on August 28, 2026, is lifted." (DE 48.) The temporary stay issued more than a month after the twenty-day period of the Order of July 2, 2026 ran out and twenty-three days after August 5, 2026. Neither order of the Third District Court of Appeal mentions, extends, or tolls Defendants' time to answer, and no order of this Court or of the Third District Court of Appeal has relieved Defendants of their obligation to serve an answer.

11. Defendants have not served an answer to the Verified Amended Complaint. Since the Third District Court of Appeal lifted the temporary stay on October 1, 2026, Defendants have not filed or served any answer or any motion directed to the Verified Amended Complaint, and have not asked the Court for any further extension of time.

II. Defendants never served the Answer the Court ordered, and no order extended their time.

12. Under Florida Rule of Civil Procedure 1.500(b), when a party against whom affirmative relief is sought "has failed to plead or otherwise defend as provided by these rules or any applicable statute or any order of court, the party seeking relief may file and serve a motion for default," and the Court "may then enter a default against a party against whom affirmative relief is sought." Rule 1.500(a) limits entry of default by the clerk to a party who "has failed to file or serve any document in the action." Each Defendant has filed documents in this action, so Plaintiffs proceed before the Court under Rule 1.500(b) and have filed and served this motion on each Defendant.

13. Each Defendant has failed to plead or otherwise defend as provided by the Florida Rules of Civil Procedure and by order of this Court. Rule 1.500(b) reaches a party who "has failed to plead or otherwise defend as provided by these rules or any applicable statute or any order of court." The Order of July 2, 2026 did not leave the form of Defendants' defense open. It

directed that "The Defendants shall serve their Answer within twenty (20) days from the date of this Order." (DE 29, paragraph 3.) Every paper Defendants have filed since the Order of July 2, 2026 addresses the arbitration ruling, the appeal, a stay, or the timing of the Answer (DE 30; DE 31; DE 34; DE 35; DE 38; DE 40; DE 41; DE 42; DE 44). None of those papers admits or denies any allegation of the Verified Amended Complaint, and none of them is the Answer the Order required. A party that files other papers in place of the response a court order commands has not defended as provided by that order.

14. DE 34 does not stand in the way of a default. Florida Rule of Civil Procedure 1.090(b)(1)(A) authorizes the Court to extend the time to act when a request is made before the time expires. The rule places the power to extend in the Court. A motion asks for time, and only an order grants time. No order was entered on DE 34.

15. Even the full extension DE 34 requested ran no later than August 5, 2026, and no answer followed. The contingency on which Defendants rested their request, an order sending the action to arbitration, never occurred (DE 34, paragraph 3; DE 37). A request for more time cannot yield more time than it requests, and treating DE 34 as an open source of additional time would hand Defendants an extension they never requested and this Court never granted. Plaintiffs ask the Court to deny DE 34 as moot and to enter the default.

16. The pendency of Defendants' appeal does not suspend their obligation to answer. Under Florida Rule of Appellate Procedure 9.130(f), in the absence of a stay, during the pendency of a review of a nonfinal order the lower tribunal may proceed with all matters, except that it may not render a final order disposing of the cause pending review absent leave of the court. This Court denied a stay (DE 46), and the Third District Court of Appeal denied a stay and

lifted its temporary stay (DE 48). A default with further proceedings on damages is not a final order disposing of the cause, and Rule 9.130(f) permits this Court to enter it now.

17. Plaintiffs seek entry of a default against Arthur Viscusi on each remaining count directed to that Defendant, Counts II, III, IV, V, VI, and VII. Plaintiffs request that the action then proceed to the determination of damages on those counts, with final judgment to be entered when permitted under Rule 9.130(f). Plaintiffs file separate motions for default against Fisher Island Day School, Inc. and Jana Neff on the same grounds. Proof of service on Arthur Viscusi is the return of service filed April 10, 2026 (DE 18). Plaintiffs file with this motion the Declaration of Non-Military Service as to Defendant Arthur Viscusi.

18. Plaintiffs have filed this motion and served it on Defendants' counsel of record through the Florida Courts E-Filing Portal under Florida Rule of General Practice and Judicial Administration 2.516(b)(1), as Rule 1.500(b) provides. Rule 1.500(b) does not require a hearing, and under paragraph 2 of the Case Management Procedures in the Case Management Order (DE 25) the Court may rule on this motion on the papers. Plaintiffs will also submit this motion through CourtMAP with the Court's Request for Special Set form, and the Court will issue the notice of hearing on approval.

III. Relief requested

Wherefore, Plaintiffs ask the Court to enter an order (a) granting this motion; (b) denying Defendants' Unopposed Motion for Extension of Time (DE 34) as moot; (c) entering a default under Florida Rule of Civil Procedure 1.500(b) against Defendant Arthur Viscusi a/k/a Art Viscusi on Counts II, III, IV, V, VI, and VII of the Verified Amended Complaint; (d) directing that the action proceed to the determination of damages on those counts, with final judgment to

be entered when permitted under Florida Rule of Appellate Procedure 9.130(f); and (e) granting any further relief the Court considers just and proper.

CERTIFICATE OF CONFERRAL

I certify that conferral prior to filing is not required under rule 1.202. This is a motion for default, which Florida Rule of Civil Procedure 1.202(c)(2) exempts from conferral, and Plaintiffs include this certificate as paragraph 1 of the Case Management Procedures in the Case Management Order entered May 30, 2026 (DE 25) requires.

Dated: October 21, 2026

Respectfully submitted,

/s/ Joseph W. Montgomery
Joseph W. Montgomery, Esq.
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CERTIFICATE OF SERVICE

I certify that on October 21, 2026, this motion was filed with the Clerk of the Court through the Florida Courts E-Filing Portal and served through the Portal's e-service function under Florida Rule of General Practice and Judicial Administration 2.516(b)(1) on each address on the Portal service list, including Christopher M. David, Esq. (cdavid@fidjlaw.com; dmuller@fidjlaw.com; narcia@fidjlaw.com) and Miguel J. Chamorro, Esq. (mchamorro@fidjlaw.com), Fuerst Ittleman David & Joseph, One Datran Center, 9100 South Dadeland Boulevard, Suite 1610, Miami, Florida 33156, Counsel for Defendants, and Jennifer Carroll, Esq. (jcarroll@fisherphillips.com).

/s/ Joseph W. Montgomery
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