

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,

v.

FISHER ISLAND DAY SCHOOL, INC., *et al.*,

Defendants.

_____ /

**DEFENDANTS' MOTION TO AMEND CASE MANAGEMENT ORDER
AND RESET CASE MANAGEMENT DEADLINES**

Defendants Fisher Island Day School, Inc. ("FIDS"), Arthur Viscusi, and Jana Neff (collectively, "Defendants"), under Florida Rule of Civil Procedure 1.200(e) and paragraph 5 of the Court's Case Management Order [DIN 25] (the "CMO"), respectfully move the Court to amend the CMO and reset its Case Management Deadlines, and state as follows:

I. Introduction

Defendants ask the Court to reset the Case Management Deadlines by 124 days, the time between entry of the CMO and the lifting of the Third District's stay. The CMO issued on May 30, 2026, three weeks after Defendants moved to compel arbitration. The next four months went to deciding where this case belongs. The Court heard and ruled on the arbitration motion. A motion for reconsideration was filed, heard, and denied. Defendants took an interlocutory appeal, and the Third District stayed these proceedings from August 28 to October 1, 2026. Three of the CMO's deadlines fell during that stay. Two more fell sixteen days after it lifted. Neither side met them.

Defendants asked Plaintiffs to agree to reasonably extend these deadlines. Plaintiffs refused despite their own non-compliance. The CMO says how deadlines change: by Court order, on prompt motion, notice, and hearing.

II. Statement of Facts

A. The Arbitration Motion, the Appeal, and the Stay

Plaintiffs filed their Complaint and Amended Complaint on March 31, 2026 [DIN 2, 9]. Defense counsel appeared for all Defendants on April 23, 2026 [DIN 19]. Defendants moved to compel arbitration or dismiss on May 8, 2026 [DIN 22].

The Court entered the CMO on May 30, 2026, while the arbitration motion was pending [DIN 25]. The Court heard that motion on June 24, 2026, and ruled on July 2, 2026 [DIN 29]. A motion for reconsideration was filed, heard, and the court entered its order denying reconsideration on July 29, 2026 [DIN 37].

Defendants filed their notice of interlocutory appeal on July 31, 2026 [DIN 38]. This Court denied a stay pending appeal on August 24, 2026 [DIN 46]. Defendants then sought a stay from the Third District Court of Appeal. On August 28, 2026, the Third District stayed these proceedings pending further order [DIN 47]. The Third District lifted that stay on October 1, 2026 [DIN 48]. The appeal remains pending.

B. The CMO and Its Deadlines

The CMO opens with this instruction: “The parties must strictly comply with the deadlines established in this order, which will be strictly enforced unless changed by Court order.”¹

¹Case Management Order [DIN 25], p. 1.

Paragraph 1 states how a deadline changes: “Deadlines may be altered by the Court where the interests of justice so require, upon prompt motion, notice, and hearing.”²

Paragraph 2 lists the Case Management Deadlines by date.³ Paragraph 5 governs motions to extend them and requires the motion to state the basis for the extension and when the basis became known, whether the motion is opposed, the specific date requested and whether it is agreed, and the action and dates that will allow the movant to meet the new date.⁴ Paragraph 5 also provides:

If extending an individual case management deadline may affect a subsequent deadline in the case management order, parties must seek an amendment of the case management order, rather than submitting a motion for extension of an individual deadline.

Five of the Case Management Deadlines have passed.⁵ Three of them, initial disclosures, objections to pleadings, and filing and resolution of all pretrial motions, fell on September 27, 2026, while the Third District’s stay was in force. Two more, propounding written discovery and initial scheduling of depositions, fell on October 17, 2026, sixteen days after the stay lifted. The next deadline, for adding parties, is November 1, 2026. Fact discovery closes December 6, 2026. The projected trial date is May 25, 2027.

C. Plaintiffs’ Late Papers and Their Refusal to Meaningfully Confer

No party served initial disclosures or written discovery before the stay lifted. Plaintiffs served their first papers shortly before midnight on Monday, October 19, 2026: initial disclosures⁶,

²*Id.*, ¶ 1.

³*Id.*, ¶ 2, pp. 1-2.

⁴*Id.*, ¶ 5.

⁵Defendants use “Case Management Deadlines” as the CMO does, to mean the dated deadlines listed in paragraph 2 of the CMO. The deadlines for service of the complaint and for service under extensions are not at issue and Defendants do not ask to change them.

⁶ In addition to being late, Plaintiffs’ initial disclosures are deficient. Among other deficiencies, they list an outside evaluator, admissions personnel at other schools, and a platform vendor without one name. They claim damages, tuition, donations, tutoring, and replacement-school costs without one number. The undersigned is engaging will

interrogatories, requests for production, and requests for admission. Each came after the CMO deadline that governed it. Plaintiffs did not move for an extension.

On October 20, 2026, Plaintiffs' counsel asked about the status of Defendants' initial disclosures and referred to the papers Plaintiffs had served the night before. Defense counsel proposed that the Case Management Deadlines be extended and asked for times to meet and confer on reasonable new dates. Plaintiffs' counsel refused to consider any extension if it did not provide that all prior deadlines stood. Ironically, the Plaintiffs took this position, despite the fact that their disclosures and discovery were all late. At 10:46 p.m. on October 21, 2026, Plaintiffs filed motions seeking defaults against Defendants, all of whom have appeared and litigated this case since April. The Defendants filed their Answer and Affirmative Defenses at 9:38 a.m. on October 22, 2026.

On October 22, 2026, Defendants moved to strike Plaintiffs' untimely disclosures and discovery (the "Motion to Strike"). That motion told the Court that Defendants would seek this relief. Defendants file this motion the same day.

III. Argument

A. The Court May Reset Its Deadlines pursuant to Rule 1.200(e)

Case management deadlines are strictly enforced "unless changed by court order." Fla. R. Civ. P. 1.200(e)(1). The CMO says the same thing on its first page.

A trial court's duty to take charge of a case includes the power to set and enforce case management deadlines. *Creceus v. Rizzitano*, 430 So. 3d 268, 279 (Fla. 6th DCA 2026). Setting a deadline includes resetting it when the docket overtakes it. The CMO reserves exactly that power: deadlines "may be altered by the Court where the interests of justice so require." CMO ¶ 1.

seek to meet and confer regarding these deficiencies and hopefully a motion to compel will not be required. If motion practice is required, it is yet another reason to reset the deadlines.

When one extension would affect later deadlines, the parties “must seek an amendment of the case management order, rather than submitting a motion for extension of an individual deadline.” Fla. R. Civ. P. 1.200(e)(1); CMO ¶ 5. Every remaining deadline in the CMO is sequenced from the five that have passed. A piecemeal extension would not work. Defendants therefore ask for an amended order.

The general enlargement rule does not control here. Rule 1.090(b)(2) provides that “[e]xtensions of deadlines in case management orders are governed by rule 1.200 or rule 1.201.” The question is not excusable neglect under Rule 1.090(b)(1)(B). It is whether the interests of justice warrant a new schedule, shown through the specifics Rule 1.200(e)(3) requires.

The rules also anticipate this situation. “If any party is unable to meet the deadlines set forth in the case management order for any reason, including due to the unavailability of hearing time, the affected party may promptly set a case management conference and alert the court.” Fla. R. Civ. P. 1.200(g). Defendants ask, in the alternative, that the Court treat the hearing on this motion as a case management conference under Rule 1.200(g) and (j).

Scheduling discovery is a matter for the trial court’s judgment. “The trial court has a far superior vantage point as to prior discovery which has gone on, the necessity for further discovery, and the many considerations which go into managing a trial docket and granting continuances.” *Glades Gen. Hosp. v. Louis*, 411 So. 2d 1318, 1319 (Fla. 4th DCA 1981).

This motion is consistent with the Motion to Strike. Defendants do not ask the Court to excuse a deadline that a party extended on its own. They ask for the order the CMO requires before any deadline moves. That is the difference between Defendants’ position and Plaintiffs’. Plaintiffs served late and asked no one. Defendants are asking the Court.

**B. The Motion to Compel Arbitration Litigation, the Appeal, and the Stay
Consumed the Time the CMO Allotted**

The CMO's schedule assumed the case would proceed on the merits from May 30, 2026. It could not. The first question in this case was forum, not merits. Defendants contend Plaintiffs' claims belong in arbitration, and that contention has been before this Court or the Third District continuously since May 8, 2026.

A party that asserts a right to arbitrate must take care not to act inconsistently with that right. Active participation in litigation of the merits can waive it. *Raymond James Fin. Servs., Inc. v. Saldukas*, 896 So. 2d 707, 711 (Fla. 2005). Defendants could not serve merits discovery and press their arbitration rights at the same time without putting those rights at risk.

From August 28 to October 1, 2026, the Third District's stay halted these proceedings. While an appellate court's stay is in force, the trial court cannot act in the case, including by setting or enforcing discovery deadlines. *See Stokes v. Jones*, 317 So. 3d 262, 263 (Fla. 1st DCA 2021). Three Case Management Deadlines fell inside that stay. One of them required the "Filing and Resolution of All Pretrial Motions" by September 27, 2026. No motion could be resolved on that date. The Court had no power to rule.

The stay lifted with sixteen days left before the October 17 deadlines. Those sixteen days were the only time the parties had to meet a written discovery deadline the CMO had built around four months of merits activity.

Plaintiffs read the docket the same way. They served nothing before the stay. They served nothing in the sixteen days after it. Their first papers came on October 19, 2026, after the deadline had passed. Plaintiffs' conduct is not a reason to deny a reset. It is proof that one is needed.

A party that, through no fault of its own, cannot complete discovery within the court's schedule is entitled to serious consideration of a timely request for more time. "Denying a party a timely extension to obtain necessary, material discovery that, through no fault of its own, the party was unable to obtain during the discovery period may constitute a departure from the essential requirements of the law" *City of Sweetwater v. Mejia*, 316 So. 3d 769, 770 (Fla. 3d DCA 2021).

The motion in *Sweetwater* failed because it offered only boilerplate. It did not explain why the discovery was needed, from whom, or why it had not been done during the discovery period. *Id.* at 770-71 & n.2. Even so, the Third District noted that the trial court could have granted it, "and perhaps the better practice would have been to do so." *Id.* at 771. This motion explains each point, below.

C. The Motion Meets Every Requirement of Rule 1.200(e)(3) and Paragraph 5 of the CMO

Basis and when it became known. Fla. R. Civ. P. 1.200(e)(3)(A); CMO ¶ 5(A). The basis is the docket recited above: the arbitration motion, the ruling and reconsideration, the appeal, and the Third District's stay. The full need for a reset became known on October 1, 2026, when the stay lifted with five deadlines passed or imminent. Defendants raised the reset with Plaintiffs on October 20, 2026. When Plaintiffs refused, Defendants filed this motion two days later.

Whether the motion is opposed. Fla. R. Civ. P. 1.200(e)(3)(B); CMO ¶ 5(B). The motion is opposed. Plaintiffs' counsel refused to agree to an extension of the Case Management Deadlines.

Specific dates requested, and whether agreed. Fla. R. Civ. P. 1.200(e)(3)(C); CMO ¶ 5(C). Defendants request the dates in the table below. Plaintiffs have not agreed to them. With one exception, each proposed date is the current CMO date plus 124 days, the period from entry of the

CMO on May 30, 2026 to the lifting of the stay on October 1, 2026. Where that arithmetic lands on a weekend, Defendants propose the preceding Friday or the following Monday, so that every deadline falls on a business day.

The exception is initial disclosures. Disclosures require no discovery from anyone. Defendants propose November 20, 2026, less than a month from the filing of this motion, rather than a date in January 2027.

Deadline	Current CMO Date	Proposed Date
Rule 1.280(a) Initial Discovery Disclosures	09-27-2026	11-20-2026
Filing and Resolution of All Objections to Pleadings	09-27-2026	01-29-2027
Filing and Resolution of All Pretrial Motions	09-27-2026	01-29-2027
Propounding Requests for Production, Requests to Admit and Interrogatories	10-17-2026	02-18-2027
Initial Scheduling and Setting Depositions	10-17-2026	02-18-2027
Adding Parties	11-01-2026	03-05-2027
Witness and Exhibit List	11-16-2026	03-19-2027
Inspections/Examinations	11-16-2026	03-19-2027
Fact Discovery Completion (Including Depositions)	12-06-2026	04-09-2027
Expert Disclosure	12-16-2026	04-19-2027
Expert Discovery Completion	01-30-2027	06-03-2027
Filing and Service of Motions for Summary Judgment	02-24-2027	06-28-2027
Dispositive Motions	02-24-2027	06-28-2027
Resolution of All Pretrial Motions (Motions in Limine and Daubert) and Jury Instructions	02-24-2027	06-28-2027
ADR/Mediation	02-24-2027	06-28-2027
Projected Trial Date	05-25-2027	09-27-2027

Actions and dates that will allow Defendants to meet the new deadlines. Fla. R. Civ. P. 1.200(e)(3)(D); CMO ¶ 5(D). Defendants will take the following steps on the following dates:

(1) Defendants will serve their Rule 1.280(a) initial disclosures on or before November 20, 2026.

(2) Defendants will serve their first interrogatories, requests for production, and requests for admission on or before December 18, 2026, two months before the proposed propounding deadline.

(3) Defendants will respond to Plaintiffs' written discovery as set out in Section III.E below.

(4) Defendants will propose dates for the depositions of the parties on or before January 15, 2027, so that depositions may be set by the February 18, 2027 scheduling deadline and completed before fact discovery closes on April 9, 2027.

(5) Defendants will disclose their experts, if any, by April 19, 2027.

(6) Defendants will confer with Plaintiffs on a mediator and will mediate on or before June 28, 2027.

D. The Reset Is Measured, Prejudices No One, and Keeps This Case on Its Merits

Defendants do not ask for open-ended delay. They ask for the same 124 days the docket took from the parties, and no more. The sequence and spacing of the CMO stay exactly as the Court set them. Plaintiffs receive every day of additional time that Defendants do.

The trial date in the CMO is a projection. "During the time a trial period is still a projection, the parties may seek to change the projected trial period through the process in subdivision (e)(3)." Fla. R. Civ. P. 1.200(e)(2). Defendants follow that process here. Moving the projected trial date to September 27, 2027 is the necessary result of resetting the deadlines that come before it.

No party is prejudiced. No written discovery has been answered. No deposition has been taken. No expert has been disclosed. The case stands where it would have stood if the CMO had issued on October 1, 2026.

The alternative is a case decided on a calendar instead of a record. Florida courts prefer “deciding a case on its merits rather than on a technicality.” *Polymer Extrusion Tech. Inc. v. Glasshape Mfg., Ltd.*, 374 So. 3d 34, 38 (Fla. 4th DCA 2023) (quoting *J.J.K. Int’l, Inc. v. Shivbaran*, 985 So. 2d 66, 69 (Fla. 4th DCA 2008)).

E. The Amended Order Should Address Plaintiffs’ October 19 Papers

If the Court grants this motion, Plaintiffs’ October 19, 2026 disclosures and discovery will fall within the amended deadlines. Defendants propose that the Amended CMO deem those papers served on the date the Amended CMO is entered, with depositions to be scheduled on mutually agreed upon dates, responses, objections, and privilege logs due within the time the Florida Rules of Civil Procedure allow, measured from that date.

That treatment applies one schedule to both sides. It also resolves the timeliness issue raised in the Motion to Strike and avoids any claim that requests for admission were admitted by operation of Rule 1.370(a) while the schedule was in dispute. If the Court denies this motion, the Motion to Strike should be granted for the reasons stated there.

F. Defendants Do Not Waive Their Right to Arbitrate

Defendants file this motion to comply with the CMO and to protect themselves against default while their appeal is pending. Nothing in this motion, and nothing Defendants do under an Amended CMO, waives their right to arbitrate, their pending appeal, or any defense. Defendants proceed in this Court because, absent a stay, the trial court may proceed with the case during review of a nonfinal order, but may not render a final order disposing of the cause without leave of the appellate court. Fla. R. App. P. 9.130(f). Defendants ask that the Amended CMO state that their participation is without waiver of those rights.

WHEREFORE, Defendants respectfully request that the Court (a) grant this motion; (b) enter an Amended Case Management Order setting the deadlines in the “Proposed Date” column of the table in Section III.C; (c) deem Plaintiffs’ initial disclosures, interrogatories, requests for production, with depositions to be scheduled on mutually agreed upon dates and requests for admission served on October 19, 2026 to have been served on the date the Amended Case Management Order is entered, with all responses, objections, and privilege logs due within the time the Florida Rules of Civil Procedure allow, measured from that date; (d) in the alternative, set a case management conference under Florida Rule of Civil Procedure 1.200(g) and (j) to reset the Case Management Deadlines; (e) provide that Defendants’ participation in proceedings under the Amended Case Management Order is without waiver of their right to arbitrate, their pending appeal, or any defense; and (f) grant such further relief as the Court deems just and proper.

Dated: October 22, 2026

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CERTIFICATE OF CONFERRAL

I HEREBY CERTIFY that, before filing this motion, I conferred with counsel for Plaintiffs by email on October 20 and 21, 2026, in a good-faith effort to agree on reasonable extensions of the Case Management Deadlines, and requested times to meet and confer. The extension was sought because of the motion practice on Defendants' Motion to Compel Arbitration, the pending interlocutory appeal, and the Third District Court of Appeal's stay of these proceedings from August 28 to October 1, 2026. Counsel for Plaintiffs refused to agree to any extension that did not leave the prior expired deadlines intact (despite Plaintiffs' own non-compliance). The motion is opposed. Defendants will set this motion for hearing immediately upon filing, as paragraph 5 of the Case Management Order requires.

By: */s/ Christopher David*
CHRISTOPHER M. DAVID

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 22, 2026, I electronically filed the foregoing document using Florida's eFiling Portal. I also certify that the foregoing document is being served this day on all parties of record via the E-service list associated with this action.

By: */s/ Christopher David*
CHRISTOPHER M. DAVID