

**IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

ADRI MARC S.A. TRS.,

CIVIL NOTICE NO.: 2025-88-AP-01

Plaintiff

vs.

DEPARTMENT OF ENVIRONMENTAL
RESOURCE MANAGEMENT,

Defendants.

**RESPONSE TO ORDER TO SHOW CAUSE WHY APPEAL SHOULD NOT BE DISMISSED FOR
FAILURE TO FILE INITIAL BRIEF**

COMES NOW, Plaintiff, ADRI MARC S.A. TRS., by and through undersigned counsel and files this response to the Order to Show Cause Why Appeal Should Not Be Dismissed for Failure to File Initial Brief and state as follows:

1. On October 6, 2025, the Plaintiff Filed a Notice of Appeal.
2. One October 20, 2025 , The Clerk of the Court and Comptroller provided a deadline to file our Initial Brief on 12/25/25 .
3. Unfortunately, due to the confusion the undersigned's assistant, Elizabeth Cabrera, who is no longer with the firm, never diaried the deadline to file an initial brief.
4. On January 16, 2026, the undersigned received notification an Order to Show Cause Why Appeal Should Not Be Dismissed for Failure to File Initial Brief.
5. It is Plaintiff's position the Order to Show Cause should be set aside.

MEMORANDUM OF LAW

“Upon Motion and upon such terms are just, the Court may relieve a party or a party’s legal representative from a final judgment, decree, order or proceeding for the following reasons:

(1) mistake, inadvertence, surprise or excusable neglect. “ Fla.R.Civ.P. Rule 1.540. Courts have often recognized “where inaction results from clerical or secretarial error, reasonable misunderstanding, a system gone awry or any other of the foibles to which human nature is heir, then upon timely application, accompanied by a reasonable credible explanation the matter should be permitted to be heard on the merits. It is a gross abuse of discretion for the trial court to rule otherwise.” *Gateway Am. Bank of Fla. v. Lucky Jet Corp.*, 720 So2d 1141 (Fla. 4th DCA 1998).

The primary job of the undersigned’s legal assistant, Elizabeth Cabrera, was managing the calendar. This included not only scheduling, but also calendaring all due dates, hearings, trial dates, calendar calls etc. It was her job, alone, to make sure all trial orders and any and all deadlines were properly diaried onto the undersigned’s calendar.

In the case at hand, the undersigned has demonstrated **excusable neglect** and a meritorious defense. *See City of Pembroke Pines v. Zitnick*, 792 So.2d 677, 678 (Fla. 4th DCA 2001) (reversing denial of motion to set aside order compelling arbitration where counsel's failure to attend hearing was result of secretarial scheduling error); *Shurgard Storage Ctrs., Inc. v. Parker*, 755 So.2d 695, 696 (Fla. 4th DCA 1999) (finding that company's administrative mishandling and misrouting of complaint between offices

was a “clear case” of **excusable neglect**); *Al Hendrickson Toyota, Inc. v. Yampolsky*, 695 So.2d 948 (Fla. 4th DCA 1997) (“[T]he established case law deems that calendaring errors are regarded as **excusable neglect**.”); *Heller v. Geneco, Inc.*, 661 So.2d 950, 951 (Fla. 4th DCA 1995) (commenting that a “secretarial error in failing to calendar a hearing for an attorney” warrants relief under Rule 1.540(b)); *Hall v. Byington*, 421 So.2d 817, 818 (Fla. 4th DCA 1982) (noting that an attorney's failure to note the date properly on his calendar is recognized as **excusable neglect**); *Supro Corp. v. Bridwell*, 361 So.2d 734, 735 (Fla. 4th DCA 1978) (concluding that counsel's failure to appear at trial because his file had been misplaced demonstrates **excusable neglect**); *Travelers Ins. Co. v. Bryson*, 341 So.2d 1013, 1015 (Fla. 4th DCA 1977) (counsel who failed to properly note on calendar the date of a hearing demonstrated **excusable neglect**, as “[c]ounsel's absence from the hearing was a mistake, or inadvertent or **excusable neglect**”); *Crystal Lake Golf Course, Inc. v. Kalin*, 252 So.2d 379, 380-81 (Fla. 4th DCA 1971) (concluding that attorney's failure to attend a pretrial conference which was caused by secretary's failure to diary the hearing is **excusable neglect**); *Wilson v. Woodward*, 602 So.2d 547, 549 (Fla. 2d DCA 1992) (party demonstrated **excusable neglect** for failure to attend hearing, where attorney's secretary did not calendar the hearing pursuant to a notice of hearing).

The pleadings in this matter should not be stricken as Plaintiff has supplied sufficient facts and circumstances to support their position of excusable neglect. As expressed, Ms. Cabrera failed to diary the deadline to file our initial brief. It should be further noted that this matter is beyond the statute of limitations. The striking of the pleadings would be highly prejudicial as it would essentially extinguish Plaintiff's right to have this matter

heard on the merits due to a secretarial error. Defendant will not be prejudiced by setting aside this Order to Show Cause.

Accordingly, Plaintiff respectfully requests this Honorable Court set aside the Order to Show Cause and establish a new deadline of 10 days to file an initial brief.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this pleading was filed and served on all parties of record via the E-Portal System on this 16th day of January, 2026.

FORREST SYGMAN, P.A.

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/s/ Forrest Sygman

By: _____
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