

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO . 10-20434-CIV-O'SULLIVAN  
[CONSENT]

FERNANDO ARIAS, and all others  
similarly situated under 29 USC 216 (B),  
Plaintiff,

vs.

ALPINE TOWING, INC., LARRY J.  
SARAVIA and YULEXIS LLUVET,  
Defendants.

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**ORDER**

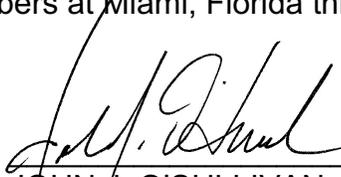
THIS MATTER is before the Court on the Defendants' Motion to Strike Plaintiff's Motion for Summary Judgment and for Sanctions (DE# 43, 11/11/10) and the Motion for Extension of Time Nunc Pro Tunc (DE# 45, 11/12/10) filed by the plaintiff. On July 26, 2010, the Court issued a Scheduling Order. See Order Setting Pretrial Conference and Trial Date (DE# 35, 7/26/10). Pursuant to the Scheduling Order, all pretrial motions including motions for summary judgment were due on November 10, 2010, 75-days prior to the January 24, 2011 trial date. Id. at 1. The defendants seek to strike the plaintiff's summary judgment motion and ask that the Court impose sanctions because the plaintiff filed his motion for summary judgment one day late. The plaintiff states that the one-day delay was due to a calendaring error. See Plaintiff's Response in Opposition to Defendant's Motion to Strike and for Sanctions (DE# 44 at 2, 11/12/10).

Pursuant to Fed. R. Civ. P. 6(b)(1)(B), if a request for enlargement of time is made after the deadline for the act to be done expires, the Court, at its discretion, may grant the enlargement of time where the failure to act was the result of excusable neglect. The Court finds that the plaintiff has established excusable neglect in failing to

timely file his motion for summary judgment. Moreover, the one-day delay will not prejudice the defendants. Accordingly, it is

ORDERED AND ADJUDGED that the Defendants' Motion to Strike Plaintiff's Motion for Summary Judgment and for Sanctions (DE# 43, 11/11/10) is **DENIED** and the Motion for Extension of Time Nunc Pro Tunc (DE# 45, 11/12/10) is **GRANTED**. The plaintiff's request for fees in responding to the defendant's motion to strike is also **DENIED**.<sup>1</sup>

**DONE AND ORDERED** in Chambers at Miami, Florida this **15th** day of November, 2010.

  
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JOHN J. O'SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

Copies provided to:  
All counsel of record

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<sup>1</sup> The Court further finds that the defendants' counsel did not make reasonable efforts to confer with the plaintiff's counsel when he sent an email to the plaintiff's counsel and waited approximately 24 minutes before filing the instant motion to strike. In the future, the parties shall adhere to the requirements of the Local Rules. Failure to do so, may result in sanctions.