

EXHIBIT B

Janet Presson (“Ms. Presson”) is a former customer of SCB who allegedly falls within Category 3 of the enumerated categories in the Joint Motion.¹ The Joint Motion would allow SCB to keep any money received from Ms. Presson for the purchase of coins and bullion, and would relieve the Receiver from acting pursuant to the terms of the contract by delivering the coins and bullion. Allowing this inequity to occur is both inconsistent with the Receiver’s own logic and contrary to Ms. Presson’s rights under the Uniform Commercial Code. It is simply fundamentally unfair to allow some claimants to benefit from their rights under the UCC, and receive the coins and bullion ordered, while ignoring other claimant’s rights under the UCC to exercise their rights to cancellation and seek a refund of their payment. Lastly, according to the Receiver’s own admissions, SCB was apparently untainted by fraud, Ms. Presson should not, simply based on her contract with SCB, be left as a creditor of the entire Stanford Receivership Estate. Accordingly, the Joint Motion must be denied as it relates to the treatment of these Category 3 Claimants.

I. FACTUAL BACKGROUND

1. On or around February 13, 2009, Janet Presson (“Ms. Presson”) entered into a contract with Stanford Coins and Bullion, Inc. (“SCB”) to purchase approximately \$30,000.00 of coins and bullion from SCB’s current inventory. As required under the terms of the contract, Ms. Presson sent payment to SCB and SCB received such payment on or around February 13, 2009.

¹ The Joint Motion seeks to place certain SCB claimants into six different categories. *See* Docket No. 654. Ms. Presson falls under Category 3: Paid Contracts to Deliver Coins That are not in the Receiver’s Possession (the “Category 3 Claimants”). Ms. Presson reserves her right to contest the propriety of her categorization. Ms. Presson bought simple 1 oz. gold bars on February 13, 2009. According to the Receiver’s filings, it appears that those gold bars may both exist and be identifiable. Ms. Presson may need some limited discovery on this issue to determine the appropriate categorization of her claim.

2. On February 16, 2009, after SCB had received Ms. Presson's payment, this court entered a Temporary Restraining Order, Order Freezing Assets, Order Requiring an Accounting, Order Requiring Preservation of Documents and Order Authorizing Expedited Discover ("TRO") and an Order Appointing a Receiver, Ralph S. Janvey, over all property assets and records of Defendants, and all entities which Defendants own or control. SCB is wholly-owned by Stanford Group Holdings, Inc., which in turn is wholly-owned by R. Allen Stanford, an individual defendant. Therefore, SCB is part of the receivership estate and is subject to the TRO and Receivership Order.

3. On July 29, 2009, Ralph S. Janvey, as Receiver for Defendants and all Stanford-related entities (the "Receiver") and John J. Little, the court-appointed examiner (the "Examiner") filed their Joint Motion Regarding Coin and Bullion Claims. *See* Docket No. 654. This Joint Motion was not served on Ms. Presson.

4. According to the Joint Motion, there are approximately \$27.5 million in coins and bullion being held by SCB, most of which are claimed by individual customers. In the Joint Motion, the Receiver and the Examiner seek Court approval to divide the outstanding coin and bullion holdings and transactions into six (6) different groups, and take certain actions regarding releasing outstanding coin and bullion claims, liquidation and rejection to the different groups. *See* Docket No. 654.

5. Of the enumerated categories in the Joint Motion, Ms. Presson is alleged to be a member of Category 3, meaning before the receivership, Ms. Presson ordered approximately \$30,000.00 worth of coins and/or bullion from SCB. SCB received Ms. Presson's payment for the coins and/or bullion prior to the appointment of the Receiver,

but SCB alleges it does not have in its possession the coins and bullion sufficient to fill Ms. Presson's order. *See* Category 3 in Docket No. 654.

6. Pursuant to the Joint Motion, the Receiver and the Examiner seek to obtain an order approving the rejection of Ms. Presson's contract and the repudiation of SCB's obligation to obtain and deliver the previously ordered coins and bullion. *See* Docket No. 654. The Receiver and the Examiner allege the Receiver is entitled to keep the \$30,000.00 payment received before the Receivership from Ms. Presson, simply because SCB did not mark the coins and bullion for delivery. As Ms. Presson has a right of cancellation pursuant to the UCC, the contracts with certain Category 3 Claimants should be cancelled, and the purchase price refunded.

II. ARGUMENTS AND AUTHORITIES

A. Ms. Presson has a Right to Cancel the Contract.

7. Where, as in this case, the seller fails to make delivery of goods, the buyer may cancel the contract and recover the purchase price which has been paid, and any other damages for non-delivery. *See* TEX. BUS. & COM. CODE §2.711(a); *see also* *Toshiba Machine Co. v. SPM Flow Control, Inc.*, 180 S.W.3d 761, 776 (Tex.App.-Fort Worth 2005, pet. dismiss'd).

8. When a seller fails to deliver goods, the buyer is entitled to recover as much of the contract price as he has paid. *See* *Aztec Corp. v. Tubular Steel, Inc.*, 758 S.W.2d 793, 799 (Tex.App.-Houston [14th Dist.] 1998, no writ). In other words, the UCC provides Ms. Presson a right to refund. Ms. Presson fulfilled her obligations under the contract for the sale of gold by paying the purchase price of \$29,170.00. However, SCB failed to make delivery of the gold under the contract because the Receivership TRO was

entered the day before the shipment was to occur. Pursuant to her rights as a buyer under the UCC, Ms. Presson should be entitled to receive from SCB the purchase price for the gold.

9. The Receiver argues in the Joint Motion that it should not be required to continue the business of SCB. The Receiver also argues that it has no obligation to trace the funds of a particular creditor or customer. Neither of these assertions are relevant to the situation present before the Court. *First*, Ms. Presson does not contest the Receiver's decision to discontinue the business of SCB and that argument is frankly irrelevant to the analysis. *Second*, the Receiver's obligation to trace is neither difficult nor burdensome in the context of individual orders. Pursuant to Sales Order #S5517, Ms. Presson purchased 30 1 oz. Miscellaneous Gold Bars. *See* Sales Order attached as **Exhibit 1**. Ms. Presson paid a total of \$29,170.00 for the gold. Ms. Presson wired the funds on February 13, 2009 from her bank account at Wood and Huston Bank. *See* Wire Transfer Request attached as **Exhibit 2**. Because Ms. Presson (and presumably all Category 3 claimants) simply want to exercise their statutory rights under the UCC to cancel the contract and seek a refund, the "tracing" necessary to get the right money to the proper parties consists entirely of looking at the paid sales orders and refunding those amounts. As the Receiver notes in the Joint Motion, Category 3 claimants consist entirely of 26 customers. Frankly, it is unfathomable to Ms. Presson that it would be so unduly burdensome or difficult for the Receiver to refund these funds such that this Court should bless what appears to be a case of discretionary laziness. Ms. Presson has rights under the UCC to cancel the contract. She desires to do so and seeks a refund of her monies. The Court

should permit her to do so and order the Receiver to refund the monies to those claimants that have fully paid for coins or bullion and which orders the Receiver cannot fulfill.

B. Equity Requires Ms. Presson's Contract be Cancelled.

10. Pursuant to the Order Appointing Receiver, the Receiver is entrusted with the full power of an equity receiver under common law. *See* Docket No. 10. However, it would be inequitable to allow the Receiver to cherry pick which groups of coin and bullion claimants may use the provisions of the UCC. Buyers who have paid in full for coins and bullion in the possession of the Receiver are classified in the Joint Motion as Category 2 Claimants. *See* Docket No. 654. Indeed, the Receiver admits that, under the UCC, the Category 2 Claimants have the right to recover the coins and bullion because (1) the goods have been identified with the contract made between the parties, (2) the buyer has paid all or part of the purchase price and (3) the goods have been purchased for "personal, family or household purposes." *See* TEX. BUS. & COM. CODE §2.502; *See* Docket No. 654, Page 5.

11. While Category 2 Claimants are allowed the benefit of their specific remedy under the UCC (the right to recover the goods paid for), Category 3 Claimants are not permitted to their specific rights under the UCC, namely, to cancel the contract for non-delivery. Instead, the Category 3 Claimants are left as creditors of the entire Receivership Estate. Equity would require that if one group of claimants to the coins and bullion are allowed their specific remedy under the UCC, that all groups are entitled to their potential UCC remedies.

C. It is Inequitable to Require Ms. Presson to be a Creditor of the Entire Stanford Receivership Estate.

12. The only connection Ms. Presson has to this Receivership Estate is that Ms. Presson purchased coins and bullion from SCB. It appears undisputed that some of SCB's assets are not part of any fraudulent scheme or ponzi-related activity. Joseph A. Frisard, former President of SCB until the Receiver's takeover, in his declaration to this court swore that "SCB operated its business in a manner completely distinct from Stanford International Bank, Stanford Group Company, or any other defendant entity named in this lawsuit. SCB has absolutely nothing to do with the same of CDs in Antigua. Mr. Stanford and his other entities never exercised any control over SCB or the way it handled client assets. Everything SCB did strictly complied with client instructions." *See* Declaration of Joseph A. Frisard, Docket No. 614, Exhibit A.

13. Because the assets of SCB are untainted by the fraud that require this Receivership, it would be inequitable to require Ms. Presson to become a creditor of the Stanford Receivership Estate, because she bought gold from an entity controlled by one of the Defendants. SCB, the entity that Ms. Presson sought to do business with, is untainted by fraudulent activity or ponzi-schemes. The Receiver should not now be allowed to keep the purchase price Ms. Presson paid for the gold and she should not be left as a creditor of the entire Stanford Receivership estate.

III. CONCLUSION

14. Janet Presson respectfully requests that this court deny the Joint Motion of the Receiver and the Examiner Regarding Coin and Bullion claims as it relates to Category 3 individuals, as defined by the Joint Motion. Pursuant to her rights under the UCC, Ms. Presson has a right to cancel the contract with SCB for the non-delivery of the

coins and bullion, and receive back from SCB the purchase price that was paid. Further, the Joint Motion treats coin and bullion purchasers inequitably, by allowing the provisions of the UCC to apply to the Category 2 Claimants, while ignoring the UCC's specific remedy that is given to Category 3 Claimants; namely, a refund right. Lastly, it would be an unfair result for Ms. Presson to wind up as a creditor of the entire Stanford Receivership Estate for purchasing gold from an entity that is untainted by fraud. For these reasons, the Joint Motion should be denied as it relates to Category 3 Claimants, the customers who had their payments received before the Receivership, but SCB does not have possession of the coins and bullion to complete the orders.

WHEREFORE, PREMISES CONSIDERED Janet Presson requests that this court deny the Joint Motion of the Receiver and the Examiner Regarding Coin and Bullion Claims and Assets as to the treatment of certain Category 3 Claimants, and grant such other and further relief to which she may be justly entitled.

DATED: September 18, 2009.

Respectfully submitted,

ROCHELLE MCCULLOUGH, LLP

By: /s/ Sean J. McCaffity
Sean J. McCaffity
State Bar No. 24013122
325 N. St. Paul, Suite 4500
Dallas, Texas 75201
Telephone: (214) 953-0182
Facsimile: (214) 953-0185

ATTORNEYS FOR JANET PRESSON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a notice of the foregoing document was served electronically upon each party who is a registered user of the electronic delivery service (ECF) under Fed. R. Civ. P. 5(b)(2)(E) and by US Mail on the parties listed below on this 18th day of September, 2009.

David T. Arlington
Robert I. Howell
Kevin M. Sadler
Baker Botts, LLP
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701

Timothy S. Durst
Baker Botts, LLP
2001 Ross Avenue, Suite 600
Dallas, Texas 75201

John J. Little
Little Pedersen Fankhauser, LLP
901 Main Street, Suite 4110
Dallas, Texas 75202

David B. Reece
J. Kevin Edmunson
Stephen J. Korotash
Michael D. King
D. Thomas Keltner
U.S. Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, Texas 76102

Ruth Schuster
Shannon W. Conway
Patton Boggs
2100 Ross Avenue, Suite 3000
Dallas, Texas 75201

Jeff Tillotson
Chris J. Akin
Lynn Tillotson Pinker & Cox, LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201

David M. Finn
Milner & Finn
2828 N. Harwood
Suite 1950, LB 9
Dallas, Texas 75201

/s/Sean J. McCaffity
Sean J. McCaffity

Stanford Coins & Bullion, Inc.: Sales Order #S5517

1 message

agerasimchuk@stanfordeagle.com <agerasimchuk@stanfordeagle.com>

Fri, Feb 13, 2009 at 4:16 PM

Reply-To: "agerasimchuk@stanfordeagle.com"
<transactions.681800.137226_user_37682.7fa2d358ce@transactions.netsuite.com>
To: lucaspresson@gmail.com



STANFORD COINS & BULLION
5050 Westheimer Road
Houston TX 77056
United States

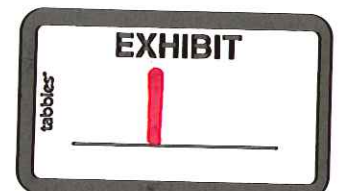
Sales Order
Date 2/13/2009
Order # S5517
Account Executive Andrei Feldman
Ship Via USPS Priority Registered - Bull

Bill To	Ship To
Ms. Janet K Presson	Ms. Janet K Presson
c/o Lucas W. Presson	c/o Lucas W. Presson
2245 Kent Drive	2245 Kent Drive
Cape MO 63701	Cape MO 63701
United States	United States

Item	Quantity Description	Sales Price	Amount
10ZMGB	30 1 oz. Miscellaneous Gold Bar	971.50	29,145.00
		Subtotal	29,145.00
		Shipping Cost (USPS Priority Registered - Bull)	25.00
		Total	\$29,170.00

All work is complete!

Stanford Coins & Bullion guarantees 100% satisfaction on all rare coin sales. If for any reason you are not satisfied with your rare coin purchase, return for a full refund (minus the cost of shipping) within seven days after taking possession of the coin(s). Due to market volatility, sales of bullion, world gold, and raw U.S. generic coin (s) are final.



WOOD AND HUSTON BANK
OUTGOING WIRE TRANSFER REQUEST

*DATE 2.13.09 *TIME RECEIVED 1:58 AM PM
TIME PROCESSED _____ AM PM WIRE # _____

*CUSTOMER NAME (Originator) Janet P. Presson

*STREET ADDRESS 2245 Kent Dr.

*CITY, STATE, ZIP CODE Cape Girardeau mo 63701

*SOCIAL SECURITY # _____ *ACCOUNT # _____

*ID. PRESENTED MOD *METHOD OF PAYMENT: CHECK _____ DEBIT OTHER _____

*TELEPHONE 573-450-7332 *REQUEST TYPE: PERSON LETTER _____ PHONE _____

*TRANSFER AMOUNTS \$ 30,000.00

*FEE \$ 10.00

*TOTAL \$ 30010.00

*RECEIVING BANK Trustmark National Bank

SHORT NAME _____ *ROUTING # _____

*ADDRESS & PHONE 4200 Westheimer, Suite 101
(If at all Possible) Houston, TX 77027 281-315-1171

BENEFICIARY FI N/A

BENEFICIARY FI ABA# N/A

*NAME OF BENEFICIARY Stanford Coins + Bullion

ADDRESS OF BENEFICIARY unknown

*ACCOUNT NUMBER OF BENEFICIARY _____

SPECIAL INSTRUCTIONS _____

*CUSTOMER SIGNATURE Janet P. Presson

*PREPARED BY [Signature] ENTERED BY _____

VERIFIED BY _____ BANK WIRE MADE THRU _____

