

(the “Examiner”) filed their Joint Motion Regarding Coin and Bullion Claims. *See* Docket No. 654.

2. Any response to the Joint Motion was to be filed on or around August 20, 2009.

3. According to the Receiver and the Examiner, there are approximately \$27.5 million in coins and bullion being held by Stanford Coins and Bullion, Inc. (“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.

4. Janet Presson (“Ms. Presson”) is a member of one of the six groups that are subject to the Joint Motion¹. Before the receivership, Ms. Presson ordered approximately \$30,000.00 worth of coins and/or bullion from SCB. *See* Category 3 in Docket No. 654. SCB received Ms. Presson’s payment for the coins and/or bullion literally just four days before the Receiver was appointed. *See* Declaration of Lucas Presson, attached hereto as Exhibit A and incorporated herein by reference.

5. Ms. Presson requests this court allow her additional time to respond to the Joint Motion. Ms. Presson filed this motion to extend time as soon as she became aware

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.

of the need for additional time, which was after the deadline to respond. Ms. Presson's Response in Opposition to the Joint Motion is attached hereto as Exhibit B.

II. ARGUMENT

6. A court may grant a request for an extension of time filed after the deadline to respond if the motion to extend time shows proof of good cause, and the failure to act timely was the result of excusable neglect. *See* Fed. R. Civ. P. 6(b)(2).

7. In determining whether there is excusable neglect, the court should consider the following: (1) the prejudice to the nonmovant, (2) the length of the delay and its potential impact on the judicial proceedings, (3) the reason for the delay and whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith. *See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S. Ct. 1489, 1498 (1993); *see also Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 162 n. 8 (5th Cir. 2006). The question of whether a party has demonstrated excusable neglect is "an equitable one, taking account of all relevant circumstances surrounding the party's omission." *See Pioneer Inv. Servs. Co.*, 507 U.S. at 395.

8. This court should grant Ms. Presson's request for an extension of time to respond to the Joint Motion because equity requires it. There is good cause to allow an extension of time to respond to the Joint Motion, as Ms. Presson, a party contracting for the purchase of coins and bullion from SCB, was never served with the Joint Motion, and had no notice of it, or its deadline for response.

A. The Receiver and the Examiner will not be Prejudiced by the Extension of Time Given to Ms. Presson.

9. The first factor to be considered in making the equitable determination of whether there has been excusable neglect is the type of prejudice sustained by the non-movant. *See Adams*, 465 F.3d at 162, n. 8. The Receiver and the Examiner will not be prejudiced by the extension of time given. There have been no resources wasted by either the Receiver or the Examiner due to Ms. Presson's failure to respond, and there will be no prejudice to either the Receiver or the Examiner if the court grants the extension. In fact, it would be more prejudicial to not allow the extension of time. Ms. Presson was never given notice of the Joint Motion and the deadline required. Moreover, the court has not ruled on the Joint Motion yet. Nor has the Joint Motion been set for a hearing. The Receiver and Examiner will not be prejudiced if this court allows the late filing of Ms. Presson's Response to the Joint Motion.

B. The Length of Delay will be Minimal and Minimally Impact the Judicial Proceedings.

10. The extension of time will not negatively impact the judicial proceedings. To date, there has been no Order entered as to the Joint Motion, and it has not been set for hearing. Ms. Presson has attached her proposed Response in Opposition to the Joint Motion to this Motion for Leave. As there has been no Order signed by the Court regarding the Joint Motion, and there has been no hearing set for the Joint Motion, there is very little delay which would impact the judicial proceedings.

C. The Delay was not Within the Reasonable Control of Ms. Presson.

11. The third factor clearly weighs in favor of granting the extension. Ms. Presson was unaware of the Receiver's Motion until early September 2009, which was

after any deadline for response to the Joint Motion. *See* Exhibit A. As soon as Ms. Presson discovered the Joint Motion, she, through her son, Lucas Presson, sought to employ legal representation. *See* Exhibit A. Although Ms. Presson had submitted her claim to the Receivership Estate in April 2009 regarding the coins and bullion ordered, Ms. Presson was not served with the Joint Motion and had no knowledge that anything had been filed that sought to reject the contract she had with SCB. *See* Exhibit A.

12. Importantly, Ms. Presson was lead to believe by Paul Montgomery (“Mr. Montgomery”), a numismatist working for the Receiver, that she did not need to take any action until after the objection deadline expired. *See* Exhibit A. After contacting her Congresswoman, Jo Ann Emerson, Ms. Presson was contacted by Mr. Montgomery on June 5, 2009. *See* Exhibit A. Mr. Montgomery informed Mr. Lucas Presson, Ms. Presson’s son, that the Receiver had possession of all the gold bars that she had purchased and asked Ms. Presson to contact him in 30 days for an update. *See* Exhibit A. After 30 days, Mr. Presson contacted Mr. Montgomery on behalf of his mother and was again told to contact him in another 30 days for another update. *See* Exhibit A.

13. Finally, in September, 2009, Mr. Montgomery informed Mr. Presson that Ms. Presson’s gold was not in the Receiver’s possession, had not arrived at the SCB building and advised Mr. Presson that his mother should seek legal counsel. *See* Exhibit A. At no time after its filing was Ms. Presson served with the Joint Motion. *See* Exhibit A. If Ms. Presson had been served, or advised that a response needed to be filed, the Joint Motion, she would have timely filed a response. *See* Exhibit A.

14. The reason Ms. Presson delayed in responding was beyond her control. Ms. Presson did not have control over who was served with the Joint Motion and, more

importantly, she was misled by Mr. Montgomery into believing that no action needed to be taken. *See* Exhibit A. Because Ms. Presson had no notice of the filing of the Joint Motion, and had no control over the service of the Joint Motion, and was apparently affirmatively misinformed by one of the Receiver's agents about the status of the receivership proceedings, her failure to file a response must be deemed as excusable neglect.

D. At all times, Ms. Presson has Acted in Good Faith.

15. The final factor, whether the movant acted in good faith, clearly supports granting the extension. At all times, Ms. Presson has acted in good faith. As soon as Ms. Presson was aware of the proceedings, she hired legal counsel to represent her interests. *See* Exhibit A. Ms. Presson acts in good faith in the filing of this Motion for Leave, and her subsequent Response in Opposition to the Joint Motion. There can be no showing of bad faith on the part of Ms. Presson.

III. CONCLUSION

16. Janet Presson respectfully requests that this court grant the Motion for Leave, and allow her to respond to the Joint Motion, attached as Exhibit B. The failure to respond was clearly excusable neglect, as Ms. Presson did not have notice of the Joint Motion until after the deadline for response. Further, due to the affirmative representations of the Receiver's agent, Ms. Presson believed she was not required to do anything at this point in time. There was no prejudice to the Receiver or Examiner, and these proceedings will not be delayed if Ms. Presson is granted an extension of time.

WHEREFORE, PREMISES CONSIDERED, Janet Presson requests that this court grant her Motion for Leave to Extend the Time to File her Response to the Joint

Motion of the Receiver and the Examiner Regarding Coin and Bullion Claims, and grant such other and further relief to which she may be justly entitled.

DATED: September 18, 2009.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Counsel for Janet Presson attempted to contact David T. Arlington, attorney for Receiver, but was unable to do so, and is thus unable to say whether the Receiver opposes this Motion. Accordingly, this Motion is opposed.

/s/Kerry Ann Miller

Kerry Ann Miller

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.

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