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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE:
CHARLES SCHWAB CORPORATION
SECURITIES LITIGATION.

No. C 08-01510 WHA

This Document Relates
To All Cases.

**ORDER DENYING TIMOTHY L.
GARCIA AND NANCY R. LONG'S
UNTIMELY REQUEST TO OPT
OUT OF THE CLASS**

This order addresses the motion filed by class members Timothy L. Garcia and Nancy R. Long seeking permission to opt out of the class after the applicable deadline (Dkt. No. 777).

The standard for determining whether a class member should be allowed to opt out of a class action after the applicable exclusion deadline has passed is whether the class member's failure to meet the deadline is the result of "excusable neglect." *See Silber v. Mabon*, 18 F.3d 1449, 1454-55 (9th Cir.1994). This standard allows courts, "where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control." *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 388 (1993). When evaluating whether "excusable neglect" applies, the Ninth Circuit instructs courts to consider the "degree of compliance with the best practicable notice procedures; when notice was actually received and if not timely received, why not; what caused the delay, and whose responsibility was it; how quickly the belated opt out request was made once notice was received; how many class members want to opt out; and whether allowing a belated opt out would

United States District Court
For the Northern District of California

1 affect either the settlement or finality of the judgment.” *Silber*, 18 F.3d at 1455 (internal footnote
2 omitted). Additionally, the court should consider the danger of prejudice to the opposing party,
3 and whether the movant acted in good faith. *Pioneer*, 507 U.S. at 395.

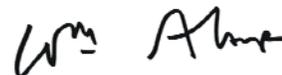
4 This order finds that the facts and circumstances underlying this request do *not* support a
5 finding of excusable neglect under Ninth Circuit law. *First*, it is clear from the motion that class
6 members Garcia and Long had actual notice of the class action as well as the December 28 opt-
7 out deadline. Indeed, they freely admit that they received the class certification notice and were
8 aware of the obligation to opt out (if they so desired) (Br. 2). *Second*, the only excuse provided
9 by movants is that “[t]he compressed time frame [caused by their filing separate claims against
10 Schwab] and the 2009 holiday season caused Movants to send their Written Request For
11 Exclusion From Class Action Lawsuit to the Notice Administrator very close to the deadline
12 established by the Court” (Br. 3). Since the class action notice clearly stated that opt-out requests
13 had to be *received* by the stated deadline, this delay by class members Garcia and Long resulted
14 in their opt-out request being untimely.

15 Under the factors that govern the determination of excusable neglect, this order finds that
16 the reasons set forth by class members Garcia and Long are insufficient to show excusable
17 neglect. If such excuses were deemed legally sufficient to warrant exclusion, a landslide of
18 similar untimely opt-out requests would likely follow. The prejudice to Schwab that would result
19 from granting such requests — especially on the eve of preliminary approval of a \$200 million
20 settlement — would be tremendous, since the settlement was negotiated with a stable class
21 membership in mind. The reasons stated in the instant motion are insufficient to overcome this
22 prejudice, and do not amount to excusable neglect under these circumstances.

23 For these reasons, the motion must be **DENIED**.

24
25 **IT IS SO ORDERED.**

26
27 Dated: May 26, 2010.



28
WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE