

the time prescribed shall constitute a waiver thereof.”); Super. R. Civ. P. 34(b)(2) (requiring responses and objections within forty days to requests for production).²

Although the Green Defendants filed the instant motion for an extension of time (which is essentially a motion for a protective order), they did not obtain a protective order excusing the timely service of any objections. While the mere pendency of a motion for a protective order may sometimes avert the imposition of discovery sanctions under Rule 37(b) such as entry of a default, see Super. R. Civ. P. 37(d), the mere pendency of such a motion does not preserve untimely objections to discovery requests. See Sturdevant v. Sears, Roebuck & Co., 32 F.R.D. 426, 428 n.1 (W.D. Mo. 1963) (“The filing of the application for an extension of time [to answer interrogatories] does not stay the running of the time, nor extend the time, for the filing of objections.”); In re Toilet Seat Antitrust Litig., No. MDL 75-184, 1978 WL 1309, at *2 (E.D. Mich. Feb. 22, 1978) (“The mere filing of a motion for an extension of time within which to respond to interrogatories, not acted upon by the court, does not in and of itself extend the time limits set by the Rules. Failure to object within the time fixed by the Rules is a waiver of any objection.”) (citing Sturdevant).

The Plan Receiver also files this response to set the record straight on a couple points.

² Super. R. Civ. P. 34(b)(2) provides in relevant part:

The party upon whom the request is served shall serve a written response within forty (40) days after the service of the request. . . . The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection, copying, testing, or sampling will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. . . .

Super. R. Civ. P. 34(b)(2).

First, the Green Defendants contend that their discovery production was due on October 30, 2020. That is incorrect. As noted *supra*, the Green Defendants' discovery production was due on October 29, 2020.

Second, although the Plan Receiver does not object to granting the requested extension of time as discussed *supra*, the Plan Receiver notes that no explanation has been given, either to him or to the Court, for why the extension is actually necessary.³ The Green Defendants have not carried their burden under Super. R. Civ. P. 6(b) to establish "cause shown" to obtain an enlargement of the time for responding to Plaintiff's discovery requests.

Respectfully submitted,

Stephen Del Sesto as Receiver,

By his Attorney,

/s/ Max Wistow

Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
WISTOW, SHEEHAN & LOVELEY, PC
61 Weybosset Street
Providence, RI 02903
401-831-2700 (tel.)
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

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³ The most the Green Defendants state by way of explanation is: "Defendants currently have responses prepared that are being reviewed by their clients in California for completeness and accuracy." See Green Defendants' motion at 2.

CERTIFICATE OF SERVICE

I hereby certify that, on the 9th day of November, 2020, I filed and served the foregoing document through the electronic filing system on the following users of record:

Robert D. Fine, Esq.
Andre S. Digou, Esq.
Chace Rутtenberg & Freedman LLP
One Park Row, Suite 300
Providence, RI 02903
rfine@crfillp.com
adigou@crfillp.com

Vincent A. Indeglia, Esq.
Ryan J. Lutrario, Esq.
Jaclyn A. Cotter, Esq.
Indeglia & Associates
300 Centerville Road
The Summit East, Suite 320
Warwick, RI 02886
vincent@indegliawalaw.com
rlutrario@indegliawalaw.com
jaclyn.cotter@indegliawalaw.com

W. Mark Russo, Esq.
Ferrucci Russo P.C.
55 Pine Street, 3rd Floor
Providence, RI 02903
mrusso@frlawri.com

Thomas S. Hemmendinger, Esq.
Sean J. Clough, Esq.
Lisa M. Kresge, Esq.
Ronald F. Cascione, Esq.
Brennan Recupero Cascione Scungio
McAllister LLP
362 Broadway
Providence, RI 02909
themmendinger@brscsm.com
sclough@brscsm.com
lkresge@brscsm.com
rcascione@brscsm.com

Preston Halperin, Esq.
Christopher J. Fragomeni, Esq.
Shechtman Halperin Savage, LLC
1080 Main Street
Pawtucket, RI 02860
phalperin@shslawfirm.com
cfragomeni@shslawfirm.com

Mark W. Freel, Esq.
Samantha Vasques, Esq.
Locke Lord LLP
2800 Financial Plaza
Providence, RI 02903-2499
mark.freel@lockelord.com
Samantha.vasques@lockelord.com

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/s/ Benjamin Ledsham