

BOUTIN GIBSON DI GIUSTO HODELL INC.

Chris Gibson, SBN 073353
Maralee MacDonald, SBN 208699
555 Capitol Mall, Suite 1500
Sacramento, California 95814-4603
(916) 321-4444

QUILLING, SELANDER, CUMMISKEY & LOWNDS, P.C.

Michael J. Quilling (Tex. Bar No. 16432300) – Admitted Pro Hac Vice
D. Dee Raibourn, III (Tex. Bar No. 24009495) – Admitted Pro Hac Vice
Brent J. Rodine (Tex. Bar No. 24048770) – Admitted Pro Hac Vice
2001 Bryan Street, Suite 1800
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Attorneys for Michael J. Quilling
Receiver of Defendants Secure Investment Services, Inc.,
American Financial Services, Inc., and Lyndon Group, Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

SECURE INVESTMENT SERVICES, INC.,
AMERICAN FINANCIAL SERVICES, INC.,
LYNDON GROUP, INC., DONALD F. NEUHAUS,
and KIMBERLY A. SNOWDEN,

Defendants.

Case No. 2:07-cv-01724 GEB CMK

**NOTICE OF MOTION FOR
AUTHORIZATION TO ABANDON
THE BER-E&B(2) POLICY**

Date: July 28, 2008

Time: 9:00 a.m.

Courtroom: 10

TO THE PARTIES AND ALL COUNSEL OF RECORD:

On July 28, 2008 at 9:00 a.m., or as soon thereafter as the matter may be heard before the
Honorable Garland E. Burrell, Jr., at the U.S. District Court for the Eastern District of California,

1 501 I Street, Department 10, Sacramento, California, Michael J. Quilling, the Receiver appointed
2 in these proceedings (“Receiver”), will move this Court for an Order authorizing Receiver to
3 abandon the receivership estate’s ownership interest in the BER-E&B(2) Policy.
4

5 The motion will be based upon this Notice, Receiver’s Motion for Authorization to
6 Abandon the BER-E&B(2) Policy and Declaration of Michael J. Quilling in support of the
7 motion, on the papers on file in this matter and the evidence, testimony or argument received by
8 the Court during the hearing on the motion. A proposed order is submitted contemporaneously
9 with this motion.

10 Dated: June 11, 2008.

11 Respectfully submitted,

12 **BOUTIN GIBSON DI GIUSTO HODELL INC.**
13

14
15 By: /s/ Maralee MacDonald
16 Maralee MacDonald

17 **QUILLING, SELANDER, CUMMISKEY**
18 **& LOWNDS, P.C.**

19 Michael J. Quilling (Tex. Bar No. 16432300)
20 D. Dee Raibourn, III (Tex. Bar No. 24009495)
21 Brent J. Rodine (Tex. Bar No. 24048770)

22 Attorneys for Receiver of Defendants Secure
23 Investment Services, Inc., American Financial
24 Services, Inc., and Lyndon Group, Inc.
25
26
27
28

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Defendants.

Case No. 2:07-cv-01724 GEB CMK

**MOTION FOR AUTHORIZATION
TO ABANDON THE BER-E&B(2)
POLICY**

Hearing Date: July 28, 2008

Time: 9:00 a.m.

Judge: Hon. Garland E. Burrell, Jr.

TO THE HONORABLE GARLAND E. BURRELL, JR., UNITED STATES DISTRICT JUDGE:

Michael J. Quilling, the Receiver appointed in these proceedings (“Receiver”), files this Motion for Authorization to Abandon the BER-E&B(2) Policy and in support would show the following:

1 1. By Orders dated August 24, 2007 and October 30, 2007, the Receiver was
2 appointed by this Court and charged with having, *inter alia*, “complete and exclusive control,
3 possession and custody of all receivership assets.” Those Orders specifically appointed the
4 Receiver for Lyndon Group, Inc. and the other entities in this case.
5

6 2. One of the assets over which the Receiver assumed control by virtue of the
7 foregoing Orders was life insurance policy number L053968800 in the face amount of
8 \$447,019.00 issued by Allmerica Financial insuring the lives of BER-E&B(2) (“Policy”).¹ This
9 is a second-to-die Policy which means that no benefits are paid while either insured is living.
10 The Receiver has determined that one of the insureds is deceased on this second-to-die Policy.
11

12 3. Books and records available to the Receiver indicate that prior to the appointment
13 of the Receiver, Lyndon Group, Inc. caused itself and 4 other individuals and entities to be
14 registered as partial owners of the Policy on the records of Allmerica Financial. The ownership
15 interest percentage of each was calculated based on the amount invested by each investor. Each
16 investor was also registered as a partial beneficiary of the death benefits available under the
17 Policy. A schedule of the ownership interests held by each investor is set forth in Exhibit 1
18 attached hereto. As reflected, Lyndon Group, Inc. retained an ownership interest of only
19 5.702287%, which translates into the right to receive \$25,490.31 upon the death of the remaining
20 insured.
21

22 4. The annual premium with respect to the Policy which is paid on a quarterly basis
23 for 2008 is \$36,000.00. Despite only owning 5.702287% of the Policy, since his appointment
24 through April 30, 2008, the Receiver has paid 100% of the premium required when due for a
25 total of \$30,652.57 during the period. Although the premium for 2009 and subsequent years is
26

27 ¹ In order to protect the identity of the insured from those who may be interested in their early death, the
28 Receiver will use an identifier comprised of the first three letters of the last name and the first letter of the first
name. John Smith = SMI-J. If the policy covers two individuals, John and Sally Smith, the identifier is SMI-
J&S. If there are multiple policies on the insured a number designation follows – SMI-J&S(1).

1 not known, generally premiums increase each year on average between 4 and 5 percent
2 depending on the age of the insured and the company.

3 5. With multiple owners and beneficiaries, the Policy has no value on the market,
4 cannot be sold and, in its current state, the Policy is worthless to the receivership. If, however,
5 all partial ownership interests were transferred to the receivership then, if necessary, the Policy
6 could be sold and the funds contributed to the pool of funds to be shared by all investors [see
7 Dkt. No. 56 – Order Pooling Assets]. Accordingly, on March 18, 2008 the Receiver began
8 sending a letter to each partial owner of the Policy requesting that they transfer their ownership
9 interest to the receivership in exchange for a claim against the receivership. A sample of the
10 letter is attached as Exhibit 2. As of June 6, 2008, a total of 2 different investors holding an
11 aggregate of 43.740576% of the Policy ownership have signed and returned forms transferring
12 their interest to the receivership. Those investors are listed on the schedule attached hereto as
13 Exhibit 3 as are the investors who have not returned their forms. Combined with the percentage
14 already held by the receivership, the Receiver now controls 49.442863% of the Policy.
15

16
17 6. In an effort to encourage the remaining investors to transfer their interest, the
18 Receiver began calling some of the owners to see if he could answer any questions they might
19 have. When contacted, several of the owners were hostile and flatly refused to consider the
20 matter and vowed to never cooperate with the Receiver. Accordingly, it has become abundantly
21 clear to the Receiver that continued efforts to obtain complete ownership of the Policy is an
22 exercise in futility and does not justify further expenditure of effort and fees by the receivership.
23

24 7. Thus, a couple of options exist as to how to proceed with the Policy to-wit: (1)
25 leave things as they are; (2) have the Receiver bill each investor for their share of the premiums
26 as they become due; or (3) have the receivership abandon its interest in the Policy and leave the
27 remaining owners to fend for themselves. Each option is discussed below.
28

1 8. Option 1. Leaving things as they are does not make sense, financial or otherwise,
2 for the receivership. The receivership has and will have to continue to borrow funds under its
3 line of credit to pay 100% of the premium when the receivership only owns 5.702287% of the
4 Policy. In addition, the receivership will continue paying \$50.00 per month to National Viatical,
5 Inc. to monitor the Policy, the health of the insured and process premiums in addition to fees and
6 expenses relating to legal counsel. Moreover, since the Policy cannot be sold, there is no exit
7 strategy other than to await the death of the remaining insured and that could take years even
8 though the insured is 84 years of age. The out of pocket cost to the receivership has already
9 substantially exceeded the amount it will ever receive in death benefits.
10

11 9. Option 2. The Receiver has also considered the possibility of continuing to
12 conduct the business of the Policy and cover future premium requirements by requesting that the
13 Court order that individual investors pay their respective percentage of the premium when due.
14 Several investors have told the Receiver that they do not have the financial ability to pay their
15 share of the premium. But even if they could, such an alternative will be extremely burdensome
16 to the receivership in terms of legal fees and will not bring any benefit to the receivership unless
17 the insured were to die before the conclusion of the receivership because there is no ability to sell
18 the Policy instead of continuing to hold it. Again, the receivership has already paid substantially
19 more in premium than it will ever recover in death benefits.
20

21 10. Option 3. The only alternative which makes financial sense for the receivership is
22 for the Receiver to abandon the estate's 5.702287% ownership interest and to allow the other
23 partial owners to formulate their own devices by which to obtain funds to timely pay the
24 premium. Unfortunately, the likely reality of such a scenario is that the Policy will lapse very
25 quickly due to nonpayment of premium because many of the investors have indicated to the
26 Receiver that they simply do not have the financial ability to continue paying premiums for
27 even a short period of time much less throughout the continued lifetime of the remaining insured.
28

1 It is indeed unfortunate that the refusal of a few investors will likely bring about a complete loss
2 of the investment of all of them, but there is simply no way around the current stalemate which
3 exists.

4
5 11. The Receiver requests the Court schedule an evidentiary hearing to allow a
6 complete record to be developed which justifies the action requested by the Receiver and to
7 allow interested investors who hold ownership interests in the Policy to present their positions to
8 the Court. If, at the conclusion of the hearing, the Court decides that the Receiver should be
9 allowed to abandon the receivership estate's interest in the Policy, the Receiver will provide to
10 each such owner a list of contact information for each known investor holding an interest in the
11 Policy so that they can try to organize to save the Policy from lapsing. The Receiver will also
12 serve a copy of this motion upon each investor who holds an ownership interest in the Policy and
13 notify them of any hearing date.

14
15 WHEREFORE, PREMISES CONSIDERED, the Receiver requests that the Court
16 schedule an evidentiary hearing to consider the Receiver's request to abandon the receivership
17 estate's ownership interest in the BER-E&B(2) Policy and for such other and further relief,
18 general or special, at law or in equity, to which the Receiver may show himself justly entitled.

19 Dated: June 11, 2008.

Respectfully submitted,

20
21
22 /s/ Michael J. Quilling

MICHAEL J. QUILLING (Tex. Bar No. 16432300)
D. DEE RAIBOURN, III (Tex. Bar No. 24009495)
BRENT J. RODINE (Tex. Bar No. 24048770)

23
24
25 Attorneys for Receiver
26 QUILLING, SELANDER, CUMMISKEY &
27 LOWNDS, P.C.
28

MARALEE MacDONALD
BOUTIN GIBSON DI GIUSTO HODELL INC.
Attorneys for Receiver

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of June, 2008, a copy of this motion was served on all interested parties through the Court's electronic filing system. In addition, a copy of this motion was served on the following investors named as owners of the BER-E&B(2) Policy by U.S. Certified Mail, Return Receipt Requested:

John Lee Gregg, III
904 Wiladonda
La Canada, CA 91011

William J. Hughes
1065 43rd Street
Sacramento, CA 95819

Hannah Edwards
63 Live Oak Drive
Petaluma, CA 97952

Jock & Karenda Wilson
PO Box 958
New Castle, CA 95658

/s/ Michael J. Quilling
Michael J. Quilling

Exhibit “1”

BER-E&B(2)

Investor	Ownership Interest	Amount Invested
*Hannah Edwards	23.6072040%	\$ 65,955.45
John Lee Gregg, III	28.1867210%	\$ 78,750.00
William J. Hughes	22.3704130%	\$ 50,000.00
Michael J. Quilling, Receiver	5.7022870%	\$ -
Jock & Karenda Wilson	20.1333720%	\$ 50,000.00
TOTAL	99.9999970%	\$ 244,705.45

*Investment is held for the benefit of Investor by Millennium Trust Company LLC as Custodian of the IRA account which was used to fund the investment.

Exhibit “2”



Michael J. Quilling
BOARD CERTIFIED
BUSINESS BANKRUPTCY LAW
AND CIVIL TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

Telephone: 214.871.2100
Facsimile: 214.871.2111

March 18, 2008

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Re: Case No. 2:07-CV-01724-LEW-CMK; Securities and Exchange Commission v. Secure Investments Services, Inc., American Financial Services, Inc., Lyndon Group, Inc., Donald F. Neuhaus, and Kimberly A. Snowden; U. S. District Court, Eastern District of California

Re: Insured Name:
Policy No.: L053968800

Dear

As you are probably aware, I am the Receiver appointed by the United States District Court for the Eastern District of California with respect to the above-referenced case. In connection with performing my duties I have taken possession of the books and records of the companies and have been administering the insurance policies (*i.e.*, paying the premiums and monitoring for the death of an insured). One of those policies is Policy No. L053968800 issued by Allmerica Financial covering the lives of

I am writing to you because the books and records I have reviewed indicate that you have an ownership interest equal to % of the death benefit associated with the policy. Since my appointment, I have been paying 100% of the premiums which are due with respect to the policy. The annual premium at this time is approximately \$36,000.00. When I was appointed, there was very little money available to pay premiums. In order to do so I have had to borrow the money from the bank. Although I have arranged to borrow a total of \$3 million if necessary, I cannot keep doing so forever so I am exploring other possibilities, including a sale of all or some of the policies.

In order for me to formulate a plan to get as much money back to investors as quickly as possible, I need your assistance. In particular, I ask that you sign the enclosed document where indicated and return it to me in the enclosed envelope. If you sign the document, you will be transferring your % ownership interest to me in my capacity as Receiver. If I can find a buyer for the policy the fact that you have transferred the interest to me will make the sale process

March 18, 2008

Page 2

much easier and faster. By transferring your interest to me you are giving up your ownership interest in the policy but you will have a claim for the principal amount you invested against the receivership estate. If you choose not to assign your interest, then, as more fully explained in the next paragraph, you will have to begin paying your share of the annual premium which right now is approximately \$. This amount will increase in the future and may have to be paid for many years depending on when the insured dies.

If you decide to sign and return the enclosed form, I will hold it until I hear back from all the other partial owners. If some of the owners indicate that they are not willing to sign the form, then I may very well abandon the policy and quit paying premiums, in which event partial owners such as you will have to find a way to pay the premiums yourselves. I hope that I do not have to take that course of action because I want to do as much as I can to help you receive as much of your investment as possible.

If you have any questions at all, please call me and I will be happy to discuss the matter with you. In the alternative, please feel free to contact Steve Harr, the Examiner appointed in these proceedings. As Examiner, his role is to communicate with investors regarding how their interests are impacted by what I do as Receiver. Mr. Harr's phone number is (214) 855-7500, and he can be contacted at www.examinersis.com.

Very truly yours,



Michael J. Quilling

MJQ/ja
Enclosures

cc: Tom Eme, Securities & Exchange Commission
Steve Harr, Examiner
Catrina Tipton, National Viatical, Inc.
Maralee MacDonald, Esq.

Exhibit “3”

BER-E&B(2)

Signed Transfer Forms Returned to Receiver

Investor	Ownership Interest
*Hannah Edwards	23.6072040%
Jock & Karenda Wilson	20.1333720%
SUB-TOTAL	43.7405760%
Michael J. Quilling, Receiver	5.7022870%
TOTAL	49.4428630%

*Investment is held for the benefit of Investor by Millennium Trust Company LLC as Custodian of the IRA account which was used to fund the investment.

BER-E&B(2)

Transfer Forms Not Returned to Receiver

Investor	Ownership Interest
John Lee Gregg, III	28.1867210%
William J. Hughes	22.3704130%
TOTAL	50.5571340%

1 **BOUTIN GIBSON DI GIUSTO HODELL INC.**
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11 Attorneys for Michael J. Quilling
Receiver of Defendants Secure Investment Services, Inc.,
12 American Financial Services, Inc., and Lyndon Group, Inc.

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA
15 SACRAMENTO DIVISION

16 SECURITIES AND EXCHANGE COMMISSION,

Case No. 2:07-cv-01724 GEB CMK

17 Plaintiff,

DECLARATION OF RECEIVER
MICHAEL J. QUILLING IN SUPPORT
OF MOTION FOR AUTHORIZATION
TO ABANDON THE BER-E&B(2)
POLICY

18 v.

19 SECURE INVESTMENT SERVICES, INC.,
20 AMERICAN FINANCIAL SERVICES, INC.,
21 LYNDON GROUP, INC., DONALD F. NEUHAUS,
and KIMBERLY A. SNOWDEN,

Hearing Date: July 28, 2008
Time: 9:00 a.m.
Judge: Hon. Garland E. Burrell, Jr.

22 Defendants.

23
24 Michael J. Quilling, the Receiver appointed in these proceedings, respectfully submits the
25 following Declaration in support of the Motion for Authorization to Abandon the BER-E&B(2)
26 Policy, and declares:
27
28

1 1. I am an attorney at law and a shareholder of Quilling, Selander, Cummiskey, &
2 Lownds, P.C. I am the Court appointed receiver and admitted *pro hac vice* in this matter. I
3 make this declaration based on my own personal knowledge and could competently testify
4 regarding the facts below if called to do so.

5
6 2. One of the assets over which I assumed control as Receiver is life insurance
7 policy number L053968800 in the face amount of \$447,019.00 issued by Allmerica Financial
8 insuring the lives of BER-E&B(2) ("Policy"). In order to protect the identity of the insured from
9 those who may be interested in their early death, I use an identifier comprised of the first three
10 letters of the last name and the first letter of the first name of the insured. This is a second-to-die
11 Policy which means that no benefits are paid while either insured is living. I have learned that
12 one of the insureds on this second-to-die Policy is deceased.

13
14 3. Books and records available to me indicate that prior to the appointment of the
15 Receiver, Lyndon Group, Inc. caused itself and 4 other individuals and entities to be registered as
16 partial owners of the Policy on the records of Allmerica Financial. The ownership interest
17 percentage of each was calculated based on the amount invested by each investor. Each investor
18 was also registered as a partial beneficiary of the death benefits available under the Policy. A
19 schedule of the ownership interests held by each investor is set forth in Exhibit 1 attached to the
20 Motion for Authorization to Abandon the BER-E&B(2) Policy. Exhibit 1 is true and correct to
21 the best of my knowledge. As reflected, Lyndon Group, Inc. retained an ownership interest of
22 only 5.702287%, which translates into the right to receive \$25,490.31 upon the death of the
23 insured. Transfer of this partial beneficial interest is in the process of being transferred into the
24 name of the receiver.
25
26
27
28

1 4. The annual premium with respect to the Policy which is paid on a quarterly basis
2 for 2008 is \$36,000.00. Despite only owning 5.702287% of the Policy, from August 24, 2007
3 through April 30, 2008, the receivership has paid 100% of the premium required when due for a
4 total of \$30,652.57 during the period. Although the premium for 2009 and subsequent years is
5 not known, generally premiums increase each year on average between 4 and 5 percent
6 depending on the age of the insured and the company.
7

8 5. With multiple owners and beneficiaries, the Policy has no value on the market,
9 cannot be sold and, in its current state, the Policy is worthless to the receivership. If, however,
10 all partial ownership interests were transferred to the receivership then, if necessary, the Policy
11 could be sold and the funds contributed to the pool of funds to be shared by all investors.
12

13 6. On March 18, 2008, I began sending a letter to each partial owner of the Policy
14 requesting that they transfer their ownership interest to the receivership in exchange for a claim
15 against the receivership. A true and correct copy of sample of the letter is attached as Exhibit 2
16 to the Motion for Authorization to Abandon the BER-E&B(2) Policy. As of June 6, 2008, a total
17 of 2 different investors holding an aggregate of 43.740576% of the Policy ownership have signed
18 and returned forms transferring their interest to the receivership. Those investors are listed on
19 the schedule attached to the Motion for Authorization to Abandon the BER-E&B(2) Policy as
20 Exhibit 3, as are the investors who have not returned their forms. Exhibit 3 is true and correct to
21 the best of my knowledge. Combined with the percentage already held by the receivership, as
22 Receiver, I now control 49.442863% of the Policy.
23

24 7. In an effort to encourage the remaining investors to transfer their interest, I, along
25 with other attorneys in my office at my direction, began calling some of the owners to see if I
26 could answer any questions they might have. When contacted by me, several of the owners were
27
28

1 hostile and flatly refused to consider the matter and vowed to never cooperate with me or the
2 receivership. Based on these refusals, I believe that continued efforts to obtain complete
3 ownership of the Policy is an exercise in futility and does not justify further expenditure of effort
4 and fees by the receivership.

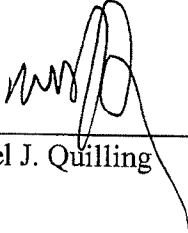
5
6 8. If the receivership were to continue to pay premiums on the Policy, the premiums
7 would be funded by the receivership's line of credit.

8
9 9. In addition, the receivership would need to continue paying \$50.00 per month to
10 National Viatical, Inc. to monitor the Policy, the health of the insured, and process premiums, in
11 addition to fees and expenses relating to legal counsel. The remaining insured on the Policy is
12 84 years of age. The out of pocket cost to the receivership has already substantially exceeded the
13 amount it will ever receive in death benefits on the Policy.

14
15 10. I have been notified that several investors cannot afford to pay their share of the
16 premiums on the Policy.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct of my own personal knowledge except those matters stated on
19 information and belief, and as to them, I believe them to be true.

20 Executed on June 11, 2008, at Dallas, Texas.

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22 
23 _____
24 Michael J. Quilling
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CERTIFICATE OF SERVICE

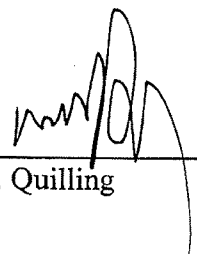
I hereby certify that on the 11th day of June, 2008, a copy of this motion was served on all interested parties through the Court's electronic filing system. In addition, a copy of this motion was served on the following investors named as owners of the BER-E&B(2) Policy by U.S. Certified Mail, Return Receipt Requested:

John Lee Gregg, III
904 Wiladonda
La Canada, CA 91011

William J. Hughes
1065 43rd Street
Sacramento, CA 95819

Hannah Edwards
63 Live Oak Drive
Petaluma, CA 97952

Jock & Karendia Wilson
PO Box 958
New Castle, CA 95658



Michael J. Quilling

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA
3 SACRAMENTO DIVISION

4 SECURITIES AND EXCHANGE COMMISSION,

Case No. 2:07-cv-001724 GEB CMK

5 Plaintiff,

**[PROPOSED] ORDER
AUTHORIZING ABANDONMENT
OF THE BER-E&B(2) POLICY**

6 v.

7 SECURE INVESTMENT SERVICES, INC.,
8 AMERICAN FINANCIAL SERVICES, INC.,
9 LYNDON GROUP, INC., DONALD F. NEUHAUS,
and KIMBERLY A. SNOWDEN,

10 Defendants.

11
12 The matter having come before the Court on Receiver Michael J. Quilling's Motion for
13 Authorization to Abandon the BER-E&B(2) Policy, the Court, having considered the motion, the
14 attached exhibits, the pleadings on file and evidence, testimony and argument received by the
15 Court during the hearing on the motion, and the Court finding good cause therefore,

16 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Receiver's
17 motion is GRANTED and the Receiver is authorized to abandon the receivership estate's interest
18 in the life insurance policy number L053968800 in the face amount of \$447,019.00 issued by
19 Allmerica Financial, referred to in Receiver's motion as the BER-E&B(2) Policy.

20 SIGNED this _____ day of _____, 2008.

21
22
23 _____
24 UNITED STATES DISTRICT JUDGE
25 HONORABLE GARLAND E. BURRELL, JR.
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