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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11 SACRAMENTO DIVISION

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13 SECURITIES AND EXCHANGE COMMISSION,

14 Plaintiff,

15 v.

16 SECURE INVESTMENT SERVICES, INC.,
17 AMERICAN FINANCIAL SERVICES, INC.,
LYNDON GROUP, INC., LINDA NEUHAUS in her
18 capacity as administrator and personal representative
of the estate of Donald F. Neuhaus, and KIMBERLY
19 A. SNOWDEN,

20 Defendants.
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Case No. 2:07-CV-01724-GEB-CMK

PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
MEMORANDUM IN SUPPORT OF
MOTION FOR VOLUNTARY
DISMISSAL OF CLAIMS AGAINST
THE ESTATE OF DONALD F.
NEUHAUS

Date: Nov. 14, 9:00 a.m.

Time: 9:00 a.m.

Judge: Garland E. Burrell, Jr.

Courtroom: 10

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23 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**

24 **MOTION FOR VOLUNTARY DISMISSAL**

25 Plaintiff Securities and Exchange Commission ("Commission") provides this
26 memorandum in support of its motion for an order of voluntary dismissal without prejudice of all
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1 claims against the estate of deceased defendant Donald F. Neuhaus (“Neuhaus”), pursuant to
2 Federal Rule of Civil Procedure 41(a)(2).

3 The Commission filed this action against Neuhaus, Kimberly A. Snowden, and three
4 corporate entities in August 2007. The complaint alleges that Neuhaus and the other defendants
5 raised at least \$25 million from investors in a fraudulent scheme of selling fractionalized
6 interests in life insurance policies, and that Neuhaus personally received at least \$500,000 from
7 the scheme. The Commission sought emergency relief including a temporary restraining order,
8 an asset freeze, and the appointment of a temporary receiver. The Court granted this relief the
9 day after the Commission filed the case. Thereafter, the Court granted the Commission a
10 preliminary injunction and made the appointment of the receiver permanent, without opposition
11 from Neuhaus. The case is currently in discovery and set for trial in August 2009.

12 On December 5, 2007, the Receiver filed a Statement of Fact of Death reporting that
13 Neuhaus had died. The Commission thereafter filed a motion asking the Court to substitute
14 Neuhaus’s wife, Linda Neuhaus, as a defendant in her capacity as the administrator and personal
15 representative of Neuhaus’s estate. No party opposed the motion, and the Court granted it on
16 March 25, 2008. On July 8, 2008, the Receiver filed a Statement of Fact of Death reporting that
17 Linda Neuhaus had also died. The attorney who represented Linda Neuhaus in the probate
18 proceedings for Neuhaus’s estate has reported to the Commission’s counsel that no new
19 representative for the estate will be appointed. The Commission does not intend to attempt to
20 substitute a new representative defendant for Neuhaus’s estate.

21 Before his death, Neuhaus transferred his residence and certain other property to the
22 Receiver. After conferring with the Receiver and the probate attorney, the Commission’s
23 counsel has concluded, based on currently available evidence, that the estate contains no
24 significant assets from which a money judgment could be collected.

25 Accordingly, the Commission makes this motion under Federal Rule of Civil Procedure
26 41(a)(2) asking the Court to dismiss without prejudice all of the Commission’s claims against the
27 estate of Neuhaus. The Commission seeks a dismissal without prejudice to preserve the
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1 possibility of reasserting its claims should facts indicating that the estate has significant assets
2 later come to light.

3 Under Federal Rule of Civil Procedure 41(a)(2), a dismissal without prejudice is
4 appropriate “unless the defendant will face ‘some plain legal prejudice’ from the dismissal.”
5 Fourth Shipmoor Assoc. v. Lee, 1996 WL 735574, *1 (E.D. Cal. Oct. 22, 1996)(quoting
6 Hamilton v. Firestone Tire & Rubber Co., 679 F.2d 143, 145 (9th Cir. 1982)). A dismissal
7 without prejudice at this stage of the litigation would not prejudice Neuhaus’s estate.

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9 Dated: October 3, 2008

Respectfully submitted,

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11 /s/ Thomas J. Eme
12 THOMAS J. EME
13 One of the attorneys for Plaintiff
14 SECURITIES AND EXCHANGE COMMISSION
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