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

13 SECURITIES AND EXCHANGE COMMISSION,

14 Plaintiff,

15 v.

16 SECURE INVESTMENT SERVICES, INC.,
17 AMERICAN FINANCIAL SERVICES, INC.,
18 LYNDON GROUP, INC., and KIMBERLY A.
19 SNOWDEN,

20 Defendants.

Case No. 2:07-CV-1724-GEB-CMK

PLAINTIFF'S STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT
AGAINST KIMBERLY A. SNOWDEN
PURSUANT TO LOCAL RULE 56-
260(a)

Date: March 9, 2009

Time: 9:00 a.m.

Judge: Garland E. Burrell, Jr.

Courtroom: 10

21 **STATEMENT OF FACTS**

22 In support of its Motion for Summary Judgment Against Defendant Kimberly A.
23 Snowden, Plaintiff Securities and Exchange Commission ("Commission") submits this statement
24 of facts pursuant to Local Rule 56-260(a).
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1 **I. Defendants' Investment Program Generally**

2 1. Starting no later than 2001, Defendants Kimberly A. Snowden ("Snowden"),
3 Donald F. Neuhaus ("Neuhaus"), Secure Investment Services, Inc. ("SIS"), American Financial
4 Services, Inc. ("AFS"), and Lyndon Group, Inc. ("Lyndon Group") operated a business of
5 offering and selling fractionalized interests in life insurance policies, an investment called
6 "bonded life settlements" or "bonded senior settlements." (Declaration of Thomas J. Eme in
7 Support of Plaintiff's Motion for Summary Judgment Against Kimberly A. Snowden ("Eme
8 Decl.") Exh. 2 Par. 2, 11, Exh. 3 at 8-9, 16-20, 64, Exh. 23 Par. 3; Expert Report of Milo H.
9 Segner, Jr. ("Segner Report") Par. 8.)

10 2. Snowden and Neuhaus, her father, used SIS, AFS, and Lyndon Group
11 (collectively the "corporate defendants") to operate the business at various times. (Eme Decl.
12 Exh. 2 Par. 8, Exh. 3 at 8-9, 16, 20.)

13 3. Defendants fractionalized and sold 52 policies to approximately 660 investors in
14 over 20 states and obtained approximately \$31.1 million in investor proceeds. (Eme Decl. Exh.
15 2 Par. 11, Exh. 23 Par. 3.) The combined total return promised to investors was approximately
16 \$51.8 million. (Eme Decl. Exh. 23 Par. 3.)

17 4. Internet websites, advertisements, mailings, and seminars were used to solicit
18 investors and communicate with them. (Eme Decl. Exh. 2 Par. 12, Exh. 7 Tab A, Exh. 8 Tabs B-
19 D, Exh. 13, Exh. 18-19.)

20 5. Defendants acquired the life insurance policies from brokers by paying a fraction
21 of the policy's face amount. (Eme Decl. Exh. 2 Par. 13.)

22 6. As the investment was structured and represented to investors by Defendants,
23 when the insured on the policy died, each investor would receive a return in the form of a pro
24 rata share of the policy death benefit that equaled the investor's original investment plus a profit.
25 (Eme Decl. Exh. 2 Par. 13, Exh. 6 Tab A, Exh. 8 Tab C, Exh. 12-13, Exh. 17, Exh. 19.)

1 7. For the insured on each policy, Defendants provided investors with a purported
2 life expectancy estimate purportedly prepared by a physician. (Eme Decl. Exh. 2 Par. 14, Exh. 3
3 at 26-27, Exh. 12 at Master Purchase Agreement p. 2 par. 5.)

4 8. These estimates typically projected that the insured would die in six years or less.
5 (Eme Decl. Exh. 12 at Master Purchase Agreement p. 1; Segner Report Par. 24 and Exh. 16.)

6 9. Many of the investments were purportedly “bonded.” (Eme Decl. Exh. 2 Par. 31,
7 33, Exh. 3 at 24-27; Segner Report Par. 9.)

8 10. As the investment was structured and represented to investors by Defendants, if
9 the insured outlived the life expectancy, then, after a waiting period of 3 to 12 months, the
10 bonding company would pay each investor an amount equal to the share of the policy death
11 benefit the investor would otherwise receive from the insurance company upon the death of the
12 insured. (Eme Decl. Eme Decl. Exh. 2 Par. 14, 31, Exh. 3 at 25-26, Exh. 6 Tab A at LR 000053,
13 000060, Exh. 8 Tab C at CC 000198-99, Exh. 12 at Master Purchase Agreement p. 6 and
14 Purchase Addendum p. 3, Exh. 17 at SIS 010080, 010085; Segner Report Par. 9.)

15 11. Defendants provided investors with copies of the bonds. (Eme Decl. Exh. 2 Par.
16 14, Exh. 16 at pp. SIS 007864, IRS 001503, and REC 001698.)

17 12. Once a policy was sold to investors, premiums on the policy had to be paid to
18 prevent it from lapsing before the insured passed away, a lapse being an event that would cause
19 the insurance company to not pay policy benefits. (Eme Decl. Exh. 2 Par. 15, Exh. 3 at 26-27,
20 Exh. 22 Par. 14.)

21 **II. Snowden Had a Key Role in the Scheme**

22 13. Snowden served as an officer and director for each of the corporate defendants
23 and also as the Director of Operations and Controller for the business. (Eme Decl. Exh. 3 at 10-
24 11, 17-19, 64, Exh. 4, Exh. 13-15.)

25 14. Snowden maintained the financial records for the business, including a
26 “QuickBooks” accounting software program that recorded money flows into and out of the
27 business; she exercised control over bank accounts used in the business; and she wrote most of
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1 the checks to pay policy premiums. (Eme Decl. Exh. 3 at 11-12, 58-64, 72, 74-75, 114-115;
2 Segner Report Par. 35.)

3 15. Snowden signed agent agreements with sales agents who typically solicited
4 investors. (Eme Decl. Exh. 2 Par. 12, Exh. 5.)

5 16. Also, Snowden herself offered and sold the investment directly to investors.
6 (Eme Decl. Exh. 2 Par. 11, Exh. 4, Exh. 6-7, Exh. 18.)

7 17. To effect their investments, investors signed purchase agreements between them
8 and one of the corporate defendants. (Eme Decl. Exh. 6 Tab A, Exh. 8 Tabs A-D, Exh. 12, Exh.
9 17, Exh. 21.)

10 18. Snowden signed purchase agreements. (Eme Decl. Exh. 6 Tab A at LR 000061,
11 Exh. 8 Tab C at CC 000199, Exh. 17 at SIS 010081, 010086, Exh. 21 at SIS 003665, 003695.)

12 19. After sales were completed, Snowden signed letters to investors acknowledging
13 receipt of their purchase agreements and their investments and stating the returns the investors
14 would receive. (Eme Decl. Exh. 7 Tab A, Exh. 8 Tabs C-D, Exh. 13, 16, 18, 19.)

15 **III. Snowden Defrauded Investors**

16 20. Snowden knew that when a policy was sold to investors, the corporate defendants
17 should have set aside a portion of those investors' purchase funds that was sufficient to pay
18 future premiums on the policy for the period of the life expectancy plus the waiting period.
19 (Eme Decl. Exh. 3 at 59-60, 89-95, 97-98, Exh. 6 at Par. 6, Exh. 16 at pp. SIS 007863, IRS
20 001502, REC 001697.)

21 21. Snowden represented to investors both orally and in writing that funds would be set
22 aside in this manner. (Eme Decl. Exh. 6 Par. 6, Exh. 16 at pp. SIS 007863, IRS 001502, REC
23 001697.)

24 22. The purchase agreements typically contained the following representations to
25 investors:

- 26 • "All of the following costs associated with the purchase of an interest of [sic] a policy are
27 included in the investment amount: . . . A premium payment for a minimum of one year
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1 beyond the projected life expectancy of the insured, or until the policy is purchased by
2 the bonding company, whichever comes first.”

- 3 • “SIS [or another corporate defendant] may escrow funds for future premium payments
4 for a minimum of twelve (12) months beyond the projected life expectancy of the
5 insured, or longer at SIS’s discretion . . .”; and
- 6 • “Future premiums, for a minimum of the life expectancy of the insured plus twelve (12)
7 months, or longer at the [sic] SIS’s discretion, shall be paid by SIS . . .”

8 (Eme Decl. Exh. 2 Par. 16, Exh. 6 Tab A at LR 000051-53, Exh. 8 Tab A at CC 000192-93, Exh.
9 12 at Master Purchase Agreement pp. 4-6.)

10 23. The corporate defendants were responsible for paying policy premiums through
11 the life expectancy and the waiting period. (Id.; Eme Decl. Exh. 3 at 11-12, 58-59.)

12 24. Snowden was familiar with the terms of the purchase agreements. (Eme Decl.
13 Exh. 6 Par. 5.)

14 25. Snowden signed purchase agreements with the representations in paragraph 22
15 above. (Eme Decl. Exh. 6 Tab A at LR 000051-53, 000061, Exh. 8 Tab C at CC 000192-193,
16 199, Exh. 17 at SIS 010078-80, 010081, 010086, Exh. 21 at SIS 003646-48, 003665, 003687-89,
17 003695.)

18 26. In fact, future premiums were not “included in the investment amount” paid by
19 investors because Defendants commingled investor funds immediately upon receiving them and
20 used them to pay premiums on *any* policy they previously sold, to purchase *any* policy, to pay
21 sales commissions for *any* policy, and to cover *any* other expense of the business. (Eme Decl.
22 Exh. 3 at 62, 91-98, 101-02, 110-111, 114-115; Segner Report Par. 6, 14-16, 19-22, 26-32.)

23 27. Because of such practices, as of June 1, 2005, SIS was obligated to pay at least
24 \$869,013 in premiums on policies the business had previously sold if the insureds lived until the
25 end of the waiting period. (Segner Report Par. 24.)

26 28. SIS held no funds as of this date. (Id.)

27 29. As of June 30, 2007, SIS was obligated to pay at least \$3.1 million in premiums
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1 on previously sold policies if the insureds lived until the end of the waiting period. (Id.) SIS
2 was also liable for \$1 million in self-insurance on two policies for which AFS purported to act as
3 the bonding company. (Id. at Par. 6, 24)

4 30. As of this date, SIS had \$162,295.08 in available cash. (Id. Par. 24.)

5 31. In effect, Defendants' business was a Ponzi scheme. (Segner Report Par. 6, 11-
6 32; Eme Decl. Exh. 23 Par. 4-5.) Defendants depended on raising new funds from investors in
7 new policies to pay premiums on previously sold policies. (Eme Decl. Exh. 23 Par. 4.)
8 Premiums could be "paid by" the corporate defendants as stated in the purchase agreements, and
9 policies could be kept from lapsing, only if Defendants raised new money. (Segner Report Par.
10 6, 8, 24; Eme Decl. Exh. 23 Par. 4-5.)

11 32. Snowden knew of the financial condition of the business. (Segner Report Par.
12 36.) She knew that investor funds were commingled and used to pay any premium or other
13 expense, and that premiums on previously sold policies were paid with new funds from investors
14 in other policies. (Eme Decl. Exh. 3 at 62, 91-98, 101-02, 110-111.)

15 33. Snowden did not inform potential investors or investors of the Ponzi scheme or
16 ensure that the sales agents did so. (Eme Decl. Exh. 3 at 79-80, 96-97, Exh. 6 at Par. 6-7, Exh. 7
17 at Par. 5, Exh. 8 at Par. 5, Exh. 11 at 14-16, 23-27.)

18 34. If investors had known about the Ponzi scheme, they would not have invested.
19 (Eme Decl. Exh. 6 Par. 6-7, Exh. 7 Par. 5, Exh. 11 at 14-16, 23-27.)

20 35. In 2005 and 2006, Snowden signed letters to several individuals who had already
21 paid to become investors in a specific policy, offering them a different, new policy to invest in.
22 (Declaration of Milo H. Segner, Jr. in Support of Plaintiff's Motion for Summary Judgment
23 Against Kimberly A. Snowden ("Segner Decl.") Par. 11-24.)

24 36. By the time Snowden sent the letters, however, these individuals' money had
25 already been spent on premiums for other policies previously sold and on general business
26 expenses. (Segner Decl. Par. 12-13, 18-19, 22-24.)

27 37. Snowden knew the money had been spent because she recorded the expenditures
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1 in the QuickBooks program she maintained. (Segner Decl. Par. 12, 18, 22; Segner Report Par.
2 33; Eme Decl. Exh. 3 at 58, 62-64.)

3 38. Snowden's letters offering the new policy did not inform the individuals that their
4 money had already been spent. (Segner Decl. Exh. A-C.)

5 39. The individuals accepted Snowden's offer and became investors in the new
6 policy, which was purchased with new investor funds. (Segner Decl. Par. 14, 20, 23, 24.)

7 40. SIS raised approximately \$2 million from investors in a policy known as the
8 Perillo policy during the period of August 2005 to June 2006. (Segner Report Par. 21.)

9 41. These funds were commingled with funds raised from investors in other policies,
10 and spent in part to pay premiums on other policies. (Id.)

11 42. Snowden knew about these premium payments because she recorded them in the
12 QuickBooks program she maintained. (Segner Decl. Par. 8; Segner Report Par. 33; Eme Decl.
13 Exh. 3 at 58, 62-64.)

14 43. Starting in late 2006, SIS raised about \$1.7 million from would-be investors in a
15 policy on an insured named Altrogge ("the Altrogge policy"). (Segner Report Par. 22; Eme
16 Decl. Exh. 11 at 9-13, Exh. 13.)

17 44. These funds were commingled with funds raised from investors in other policies
18 spent in part to pay premiums on other policies. (Eme Decl. Exh. 3 at 91; Segner Report Par.
19 22.)

20 45. The funds were also spent in part to pay claims of investors in a policy for which
21 AFS purported to act as the bonding company. (Segner Report Par. 26-32.) Snowden executed
22 documents used to pay these claims and entered the transaction in the records of the business.
23 (Segner Report Par. 26, 28, 29, 34.)

24 46. The expenditures of the Altrogge policy investor funds described in paragraphs 44
25 and 45 were recorded by Snowden in the QuickBooks program she maintained. (Segner Decl.
26 Par. 8; Segner Report Par. 33; Eme Decl. Exh. 3 at 58, 62-64.)

27 47. SIS never acquired the Altrogge policy. (Eme Decl. Exh. 23 Par. 6.)
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1 48. Snowden sent letters to investors telling them they had become co-owners of the
2 Altrogge policy and stating the returns the investors would receive from their investment in the
3 policy. (Eme Decl. Exh. 13, 19.)

4 49. Snowden sold directly to investor Routon, who, along with his wife, invested
5 \$100,000 in the Keul policy in December 2004 through the Routon Family Trust. (Eme Decl.
6 Exh. 6.)

7 50. Snowden met with Routon at least four times in her office to discuss the
8 investment and also discussed it with him by telephone. Id. Routon told Snowden told that he
9 wanted a safe investment, that he had been seriously injured in a vehicle accident, and that the
10 money he had to invest was to pay for his son's college. Id.

11 51. Snowden explained to Routon how the investment program worked. Id. She
12 explained the terms of the purchase agreement to him. Id. She assured him that the investment
13 was totally safe. Id.

14 52. Snowden told Routon that for the policy he and his wife invested in, a reserve
15 would be established that was sufficient to pay future policy premiums until the date when the
16 bond would pay out if the insured was still alive at the end of the life expectancy. Id.

17 53. As reflected in the QuickBooks program maintained by Snowden, none of
18 Routon's money was reserved for future premiums. (Segner Decl. Par. 9-10.)

19 54. Before Snowden's sale to Routon, in February 2003, the California Department of
20 Corporations ordered Neuhaus and AFS to cease selling the investments that are the subject of
21 this case. (Eme Decl. Exh. 2 Par. 34, Exh. 20.)

22 55. Snowden was aware of this order. (Eme Decl. Exh. 3 at 107.)

23 56. She did not disclose the order to Routon. (Eme Decl. Exh. 6 Par. 8.)

24 57. She also did not disclose the order to other investors or potential investors or
25 ensure that others disclosed it. (Eme Decl. Exh. 3 at 107, Exh. 7 Par. 6, Exh. 11 at 16-17.)

26 58. Investors would not have invested if they had been told about the order. (Eme
27 Decl. Exh. 6 Par. 8, Exh. 7 Par. 6, Exh. 11 at 16-17.)

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1 **IV. Snowden Received over \$500,000 in Investor Funds**

2 59. During the period of September 18, 2001 through August 17, 2007, Snowden
3 received \$574,518.45 from the corporate defendants. (Segner Decl. Par 25.) Because the
4 corporate defendants' only source of income was investor money, (Eme Decl. Exh. 3 at 107), the
5 \$574,518.45 came from investors.

6 **V. Defendants Managed the Investment Program**

7 60. Defendants managed the investment program, as detailed below:

8 a. As they raised funds from investors, Defendants located, negotiated for, and
9 acquired a life insurance policy to fractionalize and sell. (Eme Decl. Exh. 2 Par. 13; Eme
10 Decl. Exh. 3 at 8-9, 25, 94, Exh. 4, Exh. 18; Segner Report Par. 6, 14-16; Segner Decl.
11 Par. 11-24 and Exh. A-C.)

12 b. Snowden ensured that the policy was not oversold to investors. (Eme Decl.
13 Exh. 3 at 11.)

14 c. Defendants chose the bonding company for the policy and paid for the bond.
15 (Eme Decl. Exh. 2 Par. 33, Exh. 3 at 27-31, 34, 36-41, 43, 52, 55, 61.)

16 d. Upon selling a policy to investors, Defendants recorded the investors as
17 beneficiaries and owners of the policy on the insurance company's records. (Eme Decl.
18 Exh. 2 Par. 13, Exh. 3 at 9.) If required, Defendants would instead make the investors
19 beneficiaries of a trust that held the investor's policy interests. (Eme Decl. Exh. 6 Tab A
20 LR 000049, Exh. 12 at Master Purchase Agreement p. 2.)

21 e. Snowden and Neuhaus thereafter controlled payment of policy premiums, at
22 times deciding to pay other business expenses instead of making timely premium
23 payments, and deciding to cover premiums not with cash but with cash value that had
24 accumulated in the policy.¹ (Eme Decl. Exh. 3 at 11-12, 60-62, 74-77.)

25
26 ¹ "Cash value" refers to funds that can accumulate within a policy and are held by the insurance
27 company. Cash value is an asset that belongs to the owners of the policy, and generally can be
28 loaned to the owner or used to pay premiums in lieu of cash payments. (Eme Decl. Exh. 22 Par.
16-19.)

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f. Defendants retained a firm to monitor the health and status of the insured and file any claim for policy benefits, and the firm reported back to an employee of the corporate defendants on a quarterly basis. (Eme Decl. Exh. 3 at 12-13.)

g. Finally, Defendants submitted and pursued any claim against the bonding company. (Eme Decl. Exh. 3 at 27, 43, 97.)

61. The investors were passive participants in the investment program, with their role limited to signing purchase documents and paying for the investment. (Eme Decl. Exh. 3 at 109-110.)

VI. Lack of Registration

62. No registration statement was on file with the Commission or in effect with respect to Defendants' offers and sales of the investments. (Eme Decl. Exh. 9.)

Dated: February 4, 2009

Respectfully submitted,

/s/ Thomas J. Eme
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