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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 REPLY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT AGAINST KIMBERLY
A. SNOWDEN

Date: March 9, 2009

Time: 9:00 a.m.

Judge: Garland E. Burrell, Jr.

Courtroom: 10

21 **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

22 On February 4, 2009, Plaintiff Securities and Exchange Commission ("Commission")
23 filed a motion seeking summary judgment against Defendant Kimberly A. Snowden
24 ("Snowden"). The motion sought a finding of liability against Snowden, an order permanently
25 enjoining her from future violations of the federal securities laws, and an order requiring her to
26 pay disgorgement with prejudgment interest. Under Local Rule 78-230(c), Snowden had until
27 February 23, 2009, to file her opposition to the motion and serve it on the Commission. To date,
28 Snowden has not filed or served any opposition, and no other party has opposed the motion.

1 The Commission has received notice that on February 25, 2009, Snowden and her
2 husband filed for Chapter 13 bankruptcy protection in the U.S. Bankruptcy Court for the Eastern
3 District of California. Snowden's bankruptcy filing and the automatic stay provisions of the
4 Bankruptcy Code do not prevent the Court from ruling on the Commission's summary judgment
5 motion. Section 362(b)(4) of the Bankruptcy Code provides that "the commencement or
6 continuation of an action or proceeding by a governmental unit . . . to enforce such governmental
7 unit's . . . police and regulatory power" is exempt from the automatic stay. 11 U.S.C. §
8 362(b)(4). Under this exception, the Commission may prosecute its case to judgment, but may
9 not execute on a money judgment during the pendency of the stay. See id. at § 362(b)(4) and (5).
10 The reason for the exception is that bankruptcy should not be "a haven for wrongdoers." See In
11 re Universal Life Church, Inc., 128 F.3d 1294, 1297 (9th Cir. 1997); see also SEC v. Elmas
12 Trading Corp., 620 F. Supp. 231, 240-41 (D. Nev. 1985). Thus, the automatic stay "should not
13 prevent governmental regulatory, police and criminal actions from proceeding." Universal Life
14 Church, 128 F.3d at 1297. In particular, courts treat Commission actions to enforce the federal
15 securities laws and seeking injunctive relief and disgorgement as effectuating public interests and
16 thus exempt from the automatic stay provisions. See, e.g., SEC v. First Fin. Group of Texas, 645
17 F.2d 429, 437-440 (5th Cir. 1981); Elmas Trading, 620 F. Supp. at 240-41; SEC v. Towers Fin.
18 Corp., 205 B.R. 27, 29-32 (S.D.N.Y. 1997); SEC v. Bilzerian, 146 B.R. 871, 872-74 (Bankr.
19 M.D. Fla. 1992).

20 Based on the foregoing, the Commission respectfully requests that the Court grant the
21 summary judgment motion.

22
23 Dated: March 2, 2009

Respectfully submitted,

24 /S/ Thomas J. Eme

25 THOMAS J. EME

26 JOHN S. YUN

LLOYD A. FARNHAM

Attorneys for Plaintiff

27 SECURITIES AND EXCHANGE COMMISSION