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9 and the Harvey Family Trust  
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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

SECURITIES AND EXCHANGE COMMISSION

CASE NO.: 2:07-cv-01724 GEB CMK

Plaintiffs

v.

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

Defendants.

**REPLY IN SUPPORT OF MOTION  
OF GORDON HARVEY FOR  
LIMITED INTERVENTION AND  
FOR RETURN OF FUNDS**

[Declarations of Michael Quilling  
(Receiver), Gordon Harvey, Robert D.  
Rowlett, Simone Devenny and Sworn  
Statement of Bob Tamehiro filed  
concurrently herewith]

Date: March 9, 2009  
Time: 9:00 a.m.  
Judge: Garland E. Burrell, Jr.  
Courtroom: 10

**I.**  
**REPLY**

**A. All Parties Have Stipulated to the Return of Harvey’s Funds with the Exception of the SEC, Who is the Sole Opposer.**

1. Of all the parties to this Action, only one, the Securities and Exchange Commission (“SEC”) has opposed this Motion. In fact, all of the other parties, including the Court appointed Receiver, Michael Quilling, have agreed to the return of Mr. Harvey’s third investment with Secure Investment Services, Inc. (“SIS”) and have even entered into a stipulation and proposed order for the return of those funds. [See Stipulation Filed on 02/19/2009 at Court Docket No. 466.] Now, after months and months of ongoing discussions and being provided responses to their inquiries through the Receiver, the SEC brings its Opposition to the Motion. [Opposition at Docket No. 468.] The Opposition, however, is misguided, misleading and based on a misunderstanding of the facts such that each of the arguments presented must fail.

**B. This Court Has Already Ordered the Funds of the Only Similarly Situated Investor Be Returned.**

2. This Court has already ordered that the funds of the only other similarly situated investor, Elke Katsuren, (“Katsuren”) be returned. [See Stipulation and Order for Receiver to Return Funds to Katsuren Family Trust, Docket No. 343.] The Stipulation and Order states in pertinent part, that Katsuren’s funds should be returned to her on the basis that her check “was not finally paid to Secure Investment Services, Inc.’s bank account as of the time that the Order Appointing Temporary Receiver was issued by the Court.” [*Id.*]. All of the parties herein, with the exception of the SEC, signed the Stipulation and Order for Return of Funds. [*Id.*]. The SEC, however, did not oppose the return of Katsuren’s funds and filed a Statement of Non-Opposition. [See Statement of Non-Opposition, Docket No. 329]. Katsuren’s funds were returned to her in late October, 2008.

1 3. Harvey's claim for return of his third investment payment to SIS is identical to  
2 Katsuren's claim in all essential elements. Harvey, like Katsuren, deposited a check in the amount  
3 of \$200,000.00 for the benefit of SIS at a Wells Fargo Bank on August 22, 2007. [See Declaration  
4 of Gordon Harvey, ¶ 2.] Harvey's check, like Katsuren's, was received by his bank, Bank of  
5 America, on August 23, 2007. [See Declaration of Robert Rowlett to the Motion, ¶¶ 5-6, Docket  
6 No. 455; see also Sworn Statement of Bob Tamehiro ("Tamehiro Statement") filed concurrently  
7 herewith] Harvey's check, like Katsuren's, was posted to his account and provisionally paid on  
8 August 23, 2007. [See Tamehiro Statement; see also Cal. U. Comm. Code § 4215(a)]. Pursuant to  
9 Cal. U. Com. Code §§4104(a)(10) and 4215(a)(3) the check did not become "finally paid" until  
10 midnight on August 24, 2007, after the Order Appointing Temporary Receiver was issued by the  
11 Court.  
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14 4. These facts should be the only evidence necessary to prove that Harvey's third  
15 investment of funds with SIS be returned to him, on the same legal basis that Katsuren's funds were  
16 returned to her. [See Declaration of Michael Quilling ("Quilling Decl."), ¶ 5.] To deny Harvey  
17 relief in this matter, when the only other similarly situated investor has already been granted the  
18 same requested relief, would be inequitable.  
19

20 C. **Harvey's Motion was Not Untimely and Should Not Be Denied on That Basis.**

21 5. The Opposition first argues that Harvey's Motion fails to satisfy the timeliness  
22 requirements for Motions to Intervene. Given the continuous and ongoing efforts by the parties to  
23 resolve this issue by stipulation and without the bringing of a motion, including the request by the  
24 Receiver, Michael Quilling to not bring the motion, this argument is disingenuous and simply not  
25 supported by the facts. Moreover, the Opposition neglects to point out that no one will be  
26 prejudiced by the alleged un-timeliness.  
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1           6.       The SEC complains that Harvey waited 18 months to file his motion to intervene. This  
2 argument is misleading and fails to acknowledge the diligent, ongoing efforts between Harvey and the  
3 Receiver to try to avoid bringing this Motion. Nonetheless, the Ninth Circuit has concluded that  
4 mere lapse of time alone is not determinative. *County of Orange v. Air California*, 799 F.2d 535,  
5 537 (9<sup>th</sup> Cir. 1986) quoting *United States v. State of Oregon*, 745 F.2d 550, 552 (9<sup>th</sup> Cir. 1984).  
6  
7 Rather, the Ninth Circuit has set forth three factors which it considers in determining the timeliness  
8 of a motion to intervene:

9                   (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the  
10                   prejudice to other parties; and (3) the reason for and length of the delay.

11 *County of Orange v. Air California*, 799 F.2d 535, 537 (9<sup>th</sup> Cir. 1986) quoting *United States v. State*  
12 *of Oregon*, 745 F.2d 550, 552 (9<sup>th</sup> Cir. 1984).

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14           **(1) No parties will be prejudiced by the granting of Harvey's motion in limited  
intervention and return of funds.**

15           7.       Harvey has requested a limited intervention in this matter for the sole issue of deciding  
16 whether or not the funds he submitted for his third investment with SIS should be returned to him.  
17 Harvey is not requesting full party status, and therefore would have no right to engage in any motion  
18 practice or discovery other than for the limited purposes set forth in his Motion.  
19

20           8.       Harvey has endeavored to provide evidentiary support for every piece of information  
21 requested by the Receiver and SEC. [See Quilling Decl., ¶ 4; see also Declaration of Robert  
22 Rowlett, ¶ 3]. However, should the SEC so desire, Harvey is willing to stipulate to reopen discovery  
23 for the limited purpose of allowing the SEC to conduct discovery in connection with its opposition.  
24 The granting of this motion or the reopening of discovery for the limited purpose stated above, will  
25 not cause any delay in the trial schedule herein, and will not prejudice any party.  
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1 9. Furthermore, all the other parties to this litigation, with the exception of the SEC, have  
2 agreed to the return of Harvey's funds and have signed a stipulation and proposed order to that effect  
3 which is on file with this Court. [See Stipulation and Proposed Order, Docket No. 466]. There can  
4 be no prejudice to parties who have already stipulated and agreed to the requested action.  
5

6 **(2) The SEC has been aware of Harvey's claims herein since shortly after the**  
7 **inception of this case and any statements to the contrary are misleading.**

8 10. There is no basis in fact to the SEC's claim that Harvey "sat in silence regarding his  
9 current claim until only weeks ago" and failed to provide oral or written notice of his claim "as  
10 Katsuren did." On the contrary, the Receiver and SEC have been aware of Harvey's claims since  
11 shortly after the inception of the SEC's case against SIS.

12 11. In late September or early October 2007, Harvey contacted attorney Simone Devenny  
13 ("Devenny") concerning his investments with SIS, particularly the funds he had deposited on the eve  
14 of the SEC action. [See Declaration of Simone Devenny ("Devenny Decl.", ¶ 2] Harvey requested  
15 that Devenny write to Michael Quilling, the Receiver in this action, in an effort to obtain a return of  
16 his funds without the necessity of court intervention or the costs associated with litigation. [*Id.*]  
17

18 12. On October 11, 2007, attorney Devenny forwarded correspondence to the Receiver  
19 setting forth Harvey's claims and legal arguments. [See Devenny Decl., ¶ 3; see also Quilling Decl.,  
20 ¶ 2.] Devenny argued that Harvey's funds were provisional and not "finally paid" at the time of the  
21 Freeze Order and that Harvey's claims were distinguishable from those of the other investors. [See  
22 Devenny Decl., ¶ 3 and Exhibit 12 attached thereto.] Harvey also sent the court-approved claim  
23 forms to the Receiver for all three of his investments. [See Harvey Decl., ¶ 4.] Additionally, the  
24 Receiver was aware of Harvey's claims since shortly after the inception of this case through  
25 conversations with Katsuren. [See Quilling Decl., ¶ 2]. Therefore, the SEC's allegation that they  
26 were unaware of Harvey's claims "until only weeks ago" is misleading to this Court.  
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1 13. Devenny also represented Katsuren during that time period and was engaged by Katsuren  
2 to further communicate and correspond with the SEC and Receiver. [See Devenny Decl., ¶ 4; see  
3 also Quilling Decl., ¶ 2]. Harvey was aware of the similarity of facts with the other investor and  
4 Devenny's general continued efforts. [See Harvey Decl., ¶ 5.] Devenny was informed by the  
5 Receiver that they viewed Harvey's claims in a different light than Katsuren, because of his alleged  
6 receipt of commissions for selling policies to other individuals. [Devenny Decl., ¶ 4.] Although  
7 most of the communications and correspondence with the Receiver over the ensuing months was  
8 regarding the other investor's claim, it was understood that once a decision was reached regarding  
9 that claim, Harvey's claims would have to be addressed because of the nearly identical fact  
10 situations. [*Id.* at ¶ 4.]  
11

12 14. Furthermore, Rowlett communicated with the Receiver and the SEC regarding Harvey's  
13 claims shortly after the filing of Katsuren's motion. [See Rowlett Decl., ¶ 3; see also Quilling Decl.,  
14 ¶ 4.] Thereafter, Rowlett continued to communicate with the Receiver on almost a weekly basis  
15 through the date of the filing of the Motion herein. [See Rowlett Decl., ¶ 7; see also Quilling Decl., ¶  
16 4.] The Receiver indicated that he was communicating with the SEC regarding Harvey's claims  
17 throughout the entirety of this time. [Rowlett Decl., ¶ 7.]  
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20 **(3) Any delay in the filing of the Motion was a direct result of the Receiver and**  
21 **SEC's delay in reviewing Harvey's claims and was at the specific request of the**  
22 **Receiver.**

23 15. In its Opposition, the SEC complains that Harvey failed to give a credible explanation for  
24 his failure to request intervention at the same time as Katsuren. On the contrary, the reasons for any  
25 delay were set forth in the Declaration of Robert Rowlett attached to the Motion of Gordon Harvey  
26 and the Harvey Family Trust for Limited Intervention and for Return of Funds (the "Motion"). [See  
27 Declaration of Robert Rowlett, Docket No. 455, ¶¶ 2-3.] Additionally, the SEC is aware of the  
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1 reasons for any delay in filing, in that any delay was caused in substantial part by their delay in  
2 reaching a decision during the negotiation of this matter and the filing was put on hold in order to  
3 allow them additional time to review the matter at the specific request of the Receiver. For the SEC  
4 to now complain about the delay they caused is disingenuous.

5  
6 16. At the time of the filing of Katsuren's Motion for Limited Intervention, Rowlett was in  
7 the process of preparing Harvey's motion. [See Rowlett Decl., ¶ 3] Rowlett intended to file  
8 Harvey's motion shortly after the filing of Katsuren's. [*Id.* at ¶ 4.] However, prior to Harvey's  
9 motion being finalized, the parties stipulated to the return of Katsuren's funds based on the fact that  
10 the funds were not "finally paid" at the time the Order Appointing Temporary Receiver was issued  
11 by the Court. [*Id.* at ¶ 5.] Because the facts of both Katsuren and Harvey's claims were identical in  
12 respect to the timing of the final payment of their funds, it was believed that an agreement and  
13 stipulation could also be reached regarding Harvey's claims. [*Id.* at ¶ 5; see also Quilling Decl., ¶ 5]

14  
15 17. Shortly after the Katsuren matter was finalized, Rowlett contacted the Receiver to request  
16 a return of Harvey's funds based on the Stipulation and Order entered in the Katsuren matter. [See  
17 Rowlett Decl, ¶ 6; see also Quilling Decl., ¶ 4.] The filing of Harvey's motion to intervene was  
18 temporarily put off in order to attempt to reach an agreement without the necessity of court  
19 intervention. [Rowlett Decl, ¶ 6; see also Quilling Decl., ¶ 5.]

20  
21 18. Communications were exchanged between Rowlett and the Receiver on almost a weekly  
22 basis. [See Rowlett Decl, ¶ 7; see also Quilling Decl., ¶ 4.] In several of those communications, the  
23 Receiver indicated that the SEC was aware of the matter and was in the process of reviewing  
24 Harvey's claims. [See Rowlett Decl., ¶ 7] In mid-December 2008, Rowlett informed the Receiver  
25 that if a determination was not reached soon, he would have no choice but to bring Harvey's motion.  
26 [*Id.* at ¶ 9, and Exhibit 4 attached thereto.] In response, the Receiver apologized for his delay and  
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1 stated that he and the SEC would make a final determination in the first week in January and further  
2 requested that Rowlett hold off on the filing of a motion until after that time. [*Id.* at ¶ 10, and  
3 Exhibit 5 attached thereto.]

4 19. On January 9, 2009, the Receiver stated that he wanted to check one piece of  
5 information, but that he believed the parties would be able to file a stipulation the following week.  
6 [*Id.* at ¶ 12, and Exhibit 7 attached thereto.] On January 12, 2009, the Receiver confirmed that he  
7 did not see any reason to treat Harvey differently than Katsuren and he was going to seek the  
8 consent of the SEC to file the stipulation. [*Id.* at ¶ 13, and Exhibit 8 attached thereto.] Based on the  
9 Receiver's communications and request, the filing of the Motion was further delayed.  
10

11 20. Thereafter, the Receiver requested that Harvey provide a declaration from Bank of  
12 America. [See Rowlett Decl., ¶ 14; see also Quilling Decl., ¶ 4.] Rowlett had already been  
13 attempting to get a written statement from Bank of America concerning the status of Harvey's funds  
14 for months to no avail. [Rowlett Decl., ¶ 14; see also Quilling Decl., ¶ 4.] These efforts were then  
15 renewed and intensified. [*Id.* at ¶ 14.] Unfortunately, and apparently due to internal upheaval at  
16 Bank of America including numerous layoffs of relevant persons, the request was not deemed urgent  
17 enough for immediate action and was delayed. [*Id.* at ¶ 14.] Bank of America did however provide  
18 verbal confirmation of the provisional status of the funds to Rowlett. [See Rowlett Decl., ¶ 16; see  
19 also Rowlett Declaration attached to Motion, ¶¶ 6-8, Docket No. 455] Because a final agreement  
20 still had not been reached despite months of ongoing communications, Harvey filed his Motion on  
21 February 6, 2009 in order to preserve his claims and comply with the deadline for the filing of  
22 dispositive motions set forth in the Court's pre-trial scheduling order. Harvey points out, however,  
23 that he is not a party to this action, but rather an investor.  
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2       **(4) The SEC cannot legitimately complain about the stage of the proceeding at the**  
3       **time of Harvey's of the Motion.**

4       21. The SEC did not oppose Katsuren's Motion, which was filed 14 months after the  
5 initiation of this case, as untimely. In fact, they did not oppose Katsuren's motion at all. Therefore,  
6 it they would be hard pressed to argue Harvey's motion to be untimely if filed if it had been filed at  
7 or about the same time as Katsuren's motion. Rather, the Opposition complains that during the lapse  
8 of time between the filing of Katsuren's motion and the filing of Harvey's motion, the discovery  
9 deadline had passed and the case had reached the deadline for filing summary judgment motions.  
10 This argument however is misleading and inequitable.

11       22. In support of this argument, they cite *Stupak-Thrall v. Glickman*, 226 F.3d 467 (6<sup>th</sup> Cir.  
12 2000). In *Stupak-Thrall*, the Court found that to allow the movants to intervene at that stage in the  
13 proceedings, after discovery and other deadlines had passed, would cause a delay in the final  
14 disposition of the case and would result in prejudice to the other parties. Notably, the Court also  
15 found that the stated purpose of the intervention was met by the filing of an amicus curiae brief and  
16 the movants' claims were adequately represented by other parties. Thus, *Stupak-Thrall* was not  
17 decided solely on the basis of the delay in filing, but on the conclusion of the Court that intervention  
18 would prejudice the other parties and that the movants' interests were adequately protected without  
19 the need to allow intervention.  
20

21       23. The present case is clearly distinguishable from *Stupak-Thrall*. Here, unlike *Stupak-*  
22 *Thrall*, Harvey's claims are not adequately represented by other parties, the filing of an amicus curiae  
23 brief would be inappropriate and there would no prejudice to any other party. Additionally, here,  
24 unlike *Stupak-Thrall*, the filing of the motion was put on hold at the request of the Receiver in order  
25 to allow additional time for the SEC to review the claims.  
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1           **(5) The cases cited in support of the untimely argument are distinguishable from the**  
2           **facts of this case and do not apply.**

3           24. The cases cited in the Opposition are distinguishable from the present action. In the cited  
4 cases, the Court determined that to allow intervention would cause prejudice to the other parties.  
5 Here, no prejudice has or will occur. The Court also determined in those cases that to allow  
6 intervention at that stage in the proceedings would cause a delay in the final disposition of the case.  
7 Here, where only a limited intervention is sought for the purposes, there can be no delay in the final  
8 disposition. Additionally, those cases were decided on other factors, in addition to the delay in filing,  
9 none of which is present here. Lastly, in none of the cases cited, did the party opposing the Motion  
10 have a hand in causing a delay in the filing, as occurred here. [See Rowlett Decl., ¶¶ 11-14.]  
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12           **D. The SEC's Argument that Harvey Failed to Stop-Payment on His Check is Incorrect.**

13           25. The Opposition made several references to Harvey's failure to request a stop-payment  
14 and the SEC uses this purported fact to distinguish him from Katsuren. In fact, the SEC goes so far  
15 as to say that they did not oppose Katsuren's Motion on the basis of her stop-payment order, but are  
16 now opposing Harvey's on the basis of their incorrect conclusion that he did not seek to issue a stop-  
17 payment on his check no. 1032. However, Harvey did in fact request a stop-payment order shortly  
18 after being notified of the SEC's actions against SIS, which would have been around the same time  
19 that Katsuren requested her stop-payment order. [See Harvey Decl., ¶ 3; see also Motion, Docket No.  
20 458, ¶ 12].  
21

22           26. Immediately after learning of the SEC's filing of this action in the early evening hours of  
23 August 24, 2007, Harvey contacted Bank of America and requested that they issue a stop-payment  
24 order on his check no. 1032. [See Harvey Decl., ¶ 3.] Unfortunately, Harvey, like Katsuren, was  
25 informed by his bank that it was too late to issue the stop-payment order. [*Id.*]  
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1 **E. Harvey has provided evidentiary support that his check was not finally paid until after**  
2 **the freeze order was entered.**

3 27. The SEC argues that because Harvey did not provide a declaration from Bank of  
4 America, he fails to prove the provisional status of his funds. Despite diligent efforts to secure  
5 same, Harvey was unable to obtain a sworn declaration from Bank of America prior to the filing of  
6 his Motion. [See Rowlett Decl., ¶ 14; see also Quilling Decl., ¶ 4.] The SEC and Receiver were  
7 aware of the difficulties Harvey was having in obtaining a declaration. [*Id.*] In contrast to the  
8 statement made in the Opposition, both the Receiver and SEC were invited to join in a conference  
9 call with Ms. Laurie Jung, in house counsel for Bank of America, to discuss the provisional status of  
10 Harvey's check no. 1032 and to specifically confirm that check no. 1032 was not finally paid until  
11 the "midnight deadline" on August 24, 2008 as stated in the Motion. [See Rowlett Decl., ¶ 16; see  
12 also Quilling Decl., ¶ 4.] The SEC failed to respond to the offer and Receiver informed Rowlett that  
13 a call with bank counsel was unnecessary because the dates on the check were sufficient evidence  
14 and that he would stipulate to the return of the funds. [See Rowlett Decl. at ¶ 16.]

15  
16 28. Harvey has now obtained a sworn statement from Bank of America regarding the status  
17 of his check on the specific dates in question. [See Sworn Statement of Bob Tamehiro ("Tamehiro  
18 Statement")]. Bank of America was unwilling to specifically state when check no. 1032 was finally  
19 paid and thus the property of SIS on the basis that those terms required an interpretation of the law  
20 and they refused to provide any legal conclusions. [See Rowlett Decl., ¶ 16.]

21  
22 29. However, a bank statement regarding whether or not the funds were provisional or finally  
23 paid as of a certain date and time are unnecessary. The provisional status of the funds is determined  
24 by statute, Cal. U. Comm. Code § 4215(a). The copy of the check attached to Harvey's Declaration  
25 to his Motion clearly shows the dates of endorsement of the check for both Wells Fargo and Bank of  
26

1 America. [See Exhibit 3 attached to the Declaration of Gordon Harvey (“Harvey Decl.”), Docket  
2 No. 459.]

3 30. Harvey’s check no. 1032 was endorsed by Wells Fargo on August 22, 2007, the date of  
4 deposit. [*Id.*] The check was received and endorsed by Bank of America on August 23, 2007. [*Id.*]  
5 The check was posted to Harvey’s account and settlement was made on August 23, 2007. [See  
6 Tamehiro Statement]. Pursuant to the statutory regulations as set forth in Harvey’s Motion and the  
7 SEC’s Opposition, the payment of the check by Bank of America on August 23, 2007 was  
8 provisional pursuant to the laws of the State of California. Cal. U. Com. Code § 4301(a).  
9

10 31. Pursuant to the laws of the State of California, Harvey had a right to stop-payment of the  
11 check on August 24, 2007. Cal. U. Com. Code § 4303(a) And pursuant to the laws of the State of  
12 California, the check did not become “finally paid” until midnight on August 24, 2007. Cal. U. Com.  
13 Code §§4104(a)(10) and 4215(a)(3). Based on the laws of the State of California concerning check  
14 processing, these dates and times could not have been earlier. Therefore, the status of the check as  
15 being provisional at the time of the freeze order in this case is a question of law, not fact, and a  
16 declaration from a banking officer interpreting the law would be of no additional benefit to the parties  
17 herein.  
18

19 32. Furthermore, the SEC’s argument that SIS had Harvey’s funds from check no. 1032 in  
20 its account on August 22, 2007 is misleading. Wells Fargo had only posted the deposit on  
21 08/22/2007, the same as Katsuren’s check which was deposited the same day. [See Exhibit 4 to  
22 Opposition, Docket No. 468.] Posting of a deposit to a bank account is far different from having  
23 funds finally paid and yours.  
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1 **F. The SEC’s argument that it would inequitable to return Harvey’s third investment**  
2 **because he failed to inform the court he received \$21,700.00 in commissions for**  
3 **obtaining investors is misleading and incorrect.**

4 33. The Opposition incorrectly argues that it is inequitable for Harvey to receive a complete  
5 return investment, in part because he “failed to tell the Court that he received \$21,700 in commission  
6 payments from SIS for obtaining investors who have been injured.” On the contrary, the commission  
7 payments to which the SEC refers were not for selling SIS policies to other investors, but rather are  
8 return commissions Harvey received from his own prior investments. [See Harvey Decl. ¶¶ 15-17.]  
9 To be clear, in addition to the policy at issue here, Harvey had earlier invested in two separate SIS  
10 policies totaling Three Hundred Ten Thousand Dollars (\$310,000.00). [*Id.* at ¶¶ 16-17] Harvey is not  
11 making a claim for a return of those funds in this Motion.

12 34. Additionally, the amount of the commission payments Harvey purportedly received on  
13 those policies is also incorrect and was overstated. [*Id.* at ¶ 18.] Because those amounts are for  
14 policies purchased by Harvey which are not at issue here, any reduction for commissions received on  
15 those policies would be more properly applied to the pro rata distributions for those policies  
16 themselves. Harvey has not received any commissions or other monies from the policy at issue here.

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19 **G. Harvey had and timely invoked his contractual right of rescission based on the contracts**  
20 **entered with SIS.**

21 35. The Opposition argues that “Harvey’s potential right of rescission under his purchase  
22 agreement ...does not give him any right to repayment than other investors” and “All of the injured  
23 investors have potential claims against the estate based on ...violations of federal securities laws” is  
24 misleading and incorrect.

25 36. The contractual purchase documents, however, gave Harvey 10 days after the funding of  
26 the investment to rescind the purchase agreement. This contractual right of rescission may have been  
27 available to other investors for the 10 day period following their investments with SIS. The fact that  
28

1 they chose not to rescind their agreements within the allowable 10 day time period should not be  
2 cause for denying Harvey his contractual rights. Harvey's claims therefore are unique from other  
3 investors whose contractual right of rescission had expired prior to the initiation of the SEC action.  
4

5 **H. Irrespective of the timing, Harvey's third investment should be returned based on his**  
6 **unique equitable right of rescission.**

7 37. Harvey also has a unique claim for an equitable right of rescission which is different  
8 from other investors. SIS was not a typical Ponzi scheme as set forth in the Motion. In a typical  
9 Ponzi scheme, all the so-called "profits" paid to investors are actually funds received from new  
10 investors. That is not the case here.

11 38. Here, the defendants were actually operating the business they portrayed to investors. It  
12 has been evidenced through various filings with this Court, that prior to the filing of this action by the  
13 SEC, the insurance policies invested in by the investors were in fact purchased by SIS. [See Exhibit 1  
14 to Receiver's Interim Report for the Period Ended April 30, 2008] Additionally, ownership interests  
15 in those policies were placed in the names of the individual investors, when allowed by the policies  
16 and procedures of the insurance companies. [See Exhibit 3 to Receiver's Interim Report for the Period  
17 Ended April 30, 2008]  
18

19 39. This is where Harvey's claim differs from those of other investors. The policy Harvey  
20 contracted for was never purchased. To our knowledge, this is the only policy for which SIS received  
21 funds but did not purchase the contracted for policy (presumably due to the timing of the SEC  
22 action.) The other investors with SIS received consideration for their investment, i.e. their policies  
23 were in fact purchased. In many instances, the other investors were given the option of opting out of  
24 the Receivorship estate. By opting out and making the remaining policy premiums on their own, they  
25 are likely to receive a greater return than the pro rata distribution contemplated by the Receiver.  
26 Harvey, though he would likely have been an individual who was listed as a direct owner and  
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1 beneficiary with the insurance company had his policy actually been purchased, does not have the  
2 option of opting out and paying the additional premiums with his own funds in hopes of a higher  
3 return. This situation, which only applies to a few investors who purchased interests in the same  
4 policy as Harvey, make them unique from all the other investors.

5  
6 40. The Courts recognize that the facts of the case should determine the result for each  
7 individual claimant. See *SEC v. Elliott*, 953 F.2d 1556, 1560 (11th Cir. 1992). Because Harvey's  
8 facts are clearly different from the other investors, he is entitled to be treated based on those facts  
9 which mandate the return of his final investment of funds.

10 **CONCLUSION**

11 For the reasons stated above, the Court should grant Harvey's Limited Motion to Intervene  
12 and order a return of his funds at issue herein.

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14  
15 DATED: March 2, 2009

ROWLETT LAW GROUP

16  
17 /s/ Robert D. Rowlett  
18 ROBERT D. ROWLETT  
19 Attorney for Intervenor, Gordon Harvey and  
20 The Harvey Family Trust  
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