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KENNY, SNOWDEN &
NORINE

A LAW CORPORATION
P.O. BOX 994608
REDDING, CA 96099-4608

(530) 225-8990

FAX: (530) 225-8944

JONZ NORINE, SBN: 182220

Attorneys for Defendant Kimberly A. Snowden

UNITED STATES DISTRICT COURT

FOR THE 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-LEW-CMK

**DEFENDANT'S REPLY TO
PLAINTIFF'S REPLY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

Date: March 9, 2009

Time: 9:00 a.m.

Judge: Garland E. Burrell, Jr.

Courtroom: 10

REPLY TO PLAINTIFF'S REPLY FILED MARCH 2, 2009

On March 2, 2009, defense counsel for Kimberly Snowden filed two motions with the Court, a Motion to Stay Civil Action and a Motion to Withdraw as Counsel of Record. The Motion to Stay Civil Action was both the response to the Motion for Summary Judgment as well as a request for a continuance of the hearing on the motion. The Motion to Withdraw as Counsel of Record is unrelated to the Motion for Summary Judgment.

Local Rule 78-230 allows for request for continuances of hearings on the motion calendar to be made to the Judge on whose calendar the matter is set at least five court days prior to the scheduled

1 hearing date. With the hearing on March 9, 2009, such a request filed on March 2, 2009, would be
2 timely.

3 Defendant Kimberly Snowden's Motion to Stay Civil Action Pending Determination of
4 Criminal Action is effectively a request for a continuance: first, because it requests a stay or
5 continuance of the entire case pending the determination of the associated criminal action, and second,
6 because the motion includes an alternative request for a continuance to allow Ms. Snowden additional
7 time to weigh the potential consequences of waiving her Fifth Amendment rights in attempting to
8 respond to the voluminous motion for summary judgment filed by the Securities and Exchange
9 Commission.

10 Ms. Snowden's ability to respond meaningfully to the Motion for Summary Judgment is
11 substantially frustrated by her constitutional right to not be forced to testify against herself, which is
12 essentially what the Securities and Exchange Commission appears to be attempting to do. There is a
13 strong policy in favor of decisions made on the merits under the Federal Rules of Civil Procedure.
14 *Eitel v. McCool* (9th Cir. 1986) 782 F.2d 1470, 1472; *Pena v. Seguros La Commercial, S.A.* (9th Cir.
15 1985) 770 F.2d 811, 814.

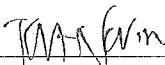
16 These strong policy considerations of protecting an individual's constitutional rights and in
17 favoring decisions on the merits suggest that the equitable course of action would be to continue the
18 hearing on the motion for summary judgment to allow a determination of the Motion to Stay Civil
19 Action and, if necessary, to then allow Ms. Snowden to prepare an opposition to the motion for
20 summary judgment.

21 A continuance would work no prejudice to plaintiff. Although the Securities and Exchange
22 Commission might be eager to obtain a judgment, they will be prevented from executing on the
23 judgment by operation of the Bankruptcy stay.

24 WHEREFORE, Defendant Kimberly Snowden respectfully repeats the request that the hearing
25 on plaintiff's Motion for Summary Judgment be continued.

26 Dated: March 4, 2009

KENNY, SNOWDEN & NORINE

27 
28 _____
JONZ NORINE
Attorneys for Defendant Kimberly Snowden

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