

**BOUTIN GIBSON DI GIUSTO HODELL INC.**

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**QUILLING, SELANDER, CUMMISKEY & LOWNDS, P.C.**

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Receiver of Defendants Secure Investment Services, Inc.,  
American Financial Services, Inc., and Lyndon Group, Inc.

UNITED STATES DISTRICT COURT

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 GEB CMK

NOTICE OF RECEIVER’S MOTION  
TO COMPEL PAYMENT OF  
PREMIUM SHARE FROM TRACY  
ELLING [DAM-A]

Date: June 22, 2009  
Time: 9:00 a.m.  
Department: 10

TO: THE PARTIES AND ALL COUNSEL OF RECORD:

On June 22, 2009 at 9:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Garland E. Burrell, Jr., at the U.S. District Court for the Eastern District of California, 501 I Street, Sacramento, California, Michael J. Quilling, the Receiver appointed in these proceedings, (“Receiver”), will move this the Court to issue an order to compel Tracy Elling to pay her share of the premium on the DAM-A policy, and upon failure to pay her share of the





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SECURE INVESTMENT SERVICES, INC.,  
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RECEIVER’S MOTION TO COMPEL  
PAYMENT OF PREMIUM SHARE  
FROM TRACY ELLING [DAM-A]

Date: June 22, 2009  
Time: 9:00 a.m.  
Department: 10

TO: THE HONORABLE GARLAND E. BURRELL, JR., UNITED STATES DISTRICT  
JUDGE:

Michael J. Quilling, the Receiver appointed in these proceedings (“Receiver”), files this  
Motion to Compel Payment of Premium Share and in support of such would show the following:

**BACKGROUND FACTS**

1. By Orders dated August 24, 2007 (Dkt. No. 27) and October 30, 2007 (Dkt. No.  
80), the Receiver was appointed by this Court.

1 1. Continuously throughout 2008, the Receiver has been contacting the investors  
2 who hold small fractional ownership interests in the multiple owner policies, of which the DAM-  
3 A policy is one, for the purpose of trying to convince those investors to transfer their ownership  
4 interest to the Receiver. One of the partial owners of the policy is Tracy Elling (“Elling”) who,  
5 according to the books and records of the insurance company owns a 1% interest in the policy  
6 and is a beneficiary of the same percentage.

7 2. The Receiver is pleased to report to the Court that as of the filing of this motion,  
8 all of the investors have executed forms transferring their ownership interests in the DAM-A  
9 policy to the Receiver. However, despite repeated efforts, the Receiver has been unable to get  
10 Elling to transfer her interest. Therefore, the Receiver can only assume Tracy Elling refuses to  
11 transfer her interest.

12 3. Tracy Elling’s share of the premium on the DAM-A Policy since the time the  
13 Receiver was appointed is \$216.00 and will be \$216.00 per quarter in the future.

14 4. Accordingly, the Receiver seeks an order from this Court compelling Tracy  
15 Elling, to pay the Receiver \$216.00 for her share of the premiums plus her percentage share of  
16 all additional premiums as they become due. Should Elling fail to do so, the Receiver seeks an  
17 order forfeiting Elling’s ownership and beneficial interest in the DAM-A Policy to the  
18 receivership estate.

19 **ARGUMENT AND AUTHORITIES**

20  
21 5. It is well-settled that District Courts have broad powers and wide discretion to  
22 determine appropriate relief for federal equity receiverships. *Securities & Exchange Comm’n v.*  
23 *Elliott*, 953 F.2d 1560, 1569-70 (11th Cir. 1992); *see also Securities & Exch. Comm’n v. Hardy*,  
24 803 F.2d 1034, 1037 (9th Cir.1986). In applying equitable principles, courts in this district often  
25 use the theories of unjust enrichment and quasi-contract to achieve equity when one party has  
26 paid obligations benefiting another.

1           6.       Unjust enrichment is not an independent cause of action, but a general principle  
2 supporting various equitable remedies. *Mauro v. General Motors Corp.*, 2008 WL 2775004, \*6  
3 (E.D. Cal. Jul. 15, 2008); *Walker v. USAA Cas. Ins. Co.*, 474 F.Supp.2d 1168, 1174 (E.D. Cal.  
4 2007). The elements supporting unjust enrichment are (1) the receipt of a benefit and (2) the  
5 unjust retention of it at another's expense. *Weststyn Dairy 2 v. Eades Commodities Co.*, 280  
6 F.Supp.2d 1044, 1057 (E.D. Cal. 2003). A "benefit" includes any advantage obtained by the  
7 recipient or expenses paid on his behalf. *Ghirardo v. Antonioli*, 924 P.2d 996, 1003, 14 Cal.4th  
8 39, 51 (Cal. 1996); *see also Process Specialties, Inc. v. Sematech, Inc.*, 2001 WL 36105562, \*20  
9 (E.D. Cal. 2001).

10           7.       Courts often redress unjust enrichment under the theory of quasi-contract or  
11 quantum meruit. Such relief does not require a contract and exists independent of the parties'  
12 privity, intent, or promises. *Fid. & Deposit Co. of Md. v. Harris*, 360 F.2d 402, 409 (9th Cir.  
13 1966); *McBride v. Boughton*, 123 Cal. App. 4th 379, 388 n.6 (2004). Courts will imply an  
14 obligation to pay when one party, in equity and good conscience, should not be permitted to keep  
15 a benefit without paying for it. *U.S. v. Healy Tibbitts Const. Co.*, 607 F.Supp. 540, 542 (N.D.  
16 Cal. 1985) (citing DOBBS, REMEDIES 224 (West 1973); 66 Am.Jur.2d, §§ 2, 3). Equity will  
17 typically require payment as measured by the benefit received. *Davis v. Leal*, 43 F.Supp.2d  
18 1102, 1112 (E.D. Cal. 1999).

19           8.       To prevent unjust enrichment, courts have upheld the right of one party to pay an  
20 obligation for another and seek restitution for that amount. For example, in *Page v. Podol*, 4  
21 Cal.App.2d 229 (1935), a separated couple held property together as joint tenants. When that  
22 property was sold, both parties became liable for the tax obligation. Plaintiff paid the entire tax  
23 obligation and filed a suit in equity to recover defendant's proportional share. The court noted  
24 that "[t]he soundness of this doctrine has been upheld by innumerable decisions of courts of the  
25 highest authority in many jurisdictions, and it is so obviously just and reasonable that it is matter  
26 of wonder that it should ever have been called in question." *Id.* The court reversed the decision  
27  
28

1 below and awarded plaintiff the right to recover a proportional share of the obligation owed by  
2 defendant.

3 9. Through this motion, the Receiver asks the Court to exercise its equitable powers  
4 in a similar manner and compel Elling to pay her proportional share of premiums for the DAM-A  
5 policy. To date, the Receiver has paid 100% of those premiums since September 7, 2007, for a  
6 total of \$21,600.00. While other joint owners of that policy have agreed to transfer their interest  
7 to the Receiver in exchange for the Receiver's payment of the premiums and a claim against the  
8 estate, Elling has not. Accordingly, Elling has unjustly benefited by maintaining her 1%  
9 ownership without paying a proportional share of the premiums. *See CAL. CIV. CODE* § 3521  
10 (“No person can be permitted to enjoy the benefits of a transaction while rejecting the burdens of  
11 it.”).

12 10. To avoid unjust enrichment, the Court should compel Elling to pay (1) \$216.00 to  
13 the Receiver for Elling's 1% share of the premiums paid to date and (2) Elling's proportional  
14 share of all future premiums on a quarterly basis as invoiced by the Receiver.<sup>1</sup> Should Elling fail  
15 to pay these obligations in a timely manner, the Court should order her ownership interest in the  
16 DAM-A policy forfeited to the receivership estate. In the event of forfeit, the Receiver would  
17 replace Elling's ownership interest in the DAM-A policy with an allowed claim against the  
18 receivership estate in the amount of \$10,000.00 (the amount of the original investment).

19 11. As noted above, the Court has “broad powers and wide discretion to determine the  
20 appropriate relief in an equity receivership.” *Elliott*, 953 F.2d at 1569-70. This includes the  
21 discretionary authority to deny Elling's ordinary contract rights when they are “inimical to  
22 receivership purposes.” *See U.S. v. Vanguard Inv. Co., Inc.*, 6 F.3d 222, 226 (4th Cir. 1993).  
23 That is exactly what the Receiver asks the Court to do here. Elling currently has a contractual  
24 right to 1% of death benefits from the DAM-A policy even if the Receiver pays all of the  
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26 <sup>1</sup> Elling's share of the next premium payment will be \$216.00. That amount, however, will increase in the future  
27 since premium obligations for the DAM-A policy are scheduled to increase annually. At this time, the Receiver  
28 does not know how much those future premium obligations will be and, therefore, would give Elling advance notice  
by an invoice.

1 premiums for that policy. This Court should impose upon Elling an equitable obligation to pay  
2 her share of the premiums or else forfeit her ownership interest to the receivership estate in  
3 exchange for an allowed claim for \$10,000.00. Doing so would both serve the interests of equity  
4 and keep the DAM-A policy in force for the benefit of all defrauded investors.

5 12. Given the fact that Elling will not respond and would not be in position to protect  
6 the policy from lapsing if the Receiver requests permission from the court to abandon the policy  
7 and does not pay the premium, one can certainly argue that Elling would be better off by a  
8 forfeiture and allowance of a claim. At least that way she would have something – a claim – if  
9 she or another person representing Elling ever surfaces.

10 WHEREFORE, premises considered, the Receiver requests that upon final hearing and  
11 consideration of this matter, that the Court issue an order compelling Tracy Elling to pay  
12 \$216.00 to the Receiver plus her share of all future premiums as they become due on pain of  
13 forfeiture of her ownership interest, and for such other and further relief, general or special, at  
14 law or in equity, to which the Receiver may show himself justly entitled.

15 Submitted this 21st day of May, 2009.

16 Respectfully submitted,

17 */s/ Michael J. Quilling*

18 MICHAEL J. QUILLING (Tex. Bar No. 16432300)  
19 BRENT J. RODINE (Tex. Bar No. 24048770)  
20 QUILLING, SELANDER, CUMMISKEY  
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21 Chris Gibson, SBN 073353  
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23 BOUTIN GIBSON DI GIUSTO HODELL INC.  
24 Attorneys for Receiver  
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**CERTIFICATE OF CERTIFIED MAIL SERVICE**

I hereby certify that on the 21st day of May, 2009, a copy of this motion was served on all interested parties through the Court's electronic filing system. In addition, a copy of this motion was served by U.S. Certified Mail, Return Receipt Requested on the following investor named as owner of the DAM-A Policy at her last known address:

Tracy Elling  
1749 Auburey Ct.  
Durham, CA 95938

/s/ Michael J. Quilling  
Michael J. Quilling

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21st day of May, 2009, a copy of this motion was served on all interested parties through the Court's electronic filing system. In addition, a copy of this motion was served on the following other persons by First Class U.S. Mail:

Bazzle John Wilson  
1291 Nunneley Road  
Paradise, CA 95969

Ernest Jeremias  
5022 17th Avenue, Apt. 1  
Brooklyn, NY 11204

/s/ Maralee MacDonald  
Maralee MacDonald