

BOUTIN GIBSON DI GIUSTO HODELL INC.

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Attorneys for Michael J. Quilling
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
SHOWCASE FINANCIAL SERVICES,
INC. PROFIT SHARING PLAN [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 Showcase Financial Services, Inc. Profit Sharing Plan to pay its share of the premium on the DAM-A policy, and upon failure to pay its share of the premium, that its ownership and beneficial interest

1 in the policy be automatically forfeited and be replaced by an allowed claim on the receivership
2 estate for \$75,000.00 in its favor.

3 The motion will be based upon Receiver's Motion and Brief in Support, the papers on file
4 in this matter and any testimony or argument received by the Court during the hearing on the
5 motion. A proposed order is submitted contemporaneously with this motion.

6 Respectfully submitted,

7 BOUTIN GIBSON DI GIUSTO HODELL INC.
8

9 Dated: May 21, 2009.

By /s/ Maralee MacDonald
10 Maralee MacDonald
11 Attorneys for Receiver of Defendants
12 Secure Investment Services, Inc.,
13 American Financial Services, Inc., and
14 Lyndon Group, Inc.

15 **CERTIFICATE OF CERTIFIED MAIL SERVICE**

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

20 Showcase Financial Services, Inc. Profit Sharing Plan
21 8 Laguna Point Road
22 Chico, CA 95928

23 /s/ Michael J. Quilling
24 Michael J. Quilling
25
26
27
28

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RECEIVER’S MOTION TO COMPEL
PAYMENT OF PREMIUM SHARE
FROM SHOWCASE FINANCIAL
SERVICES, INC. PROFIT SHARING
PLAN [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 7. 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 8. 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 9. 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 10. Through this motion, the Receiver asks the Court to exercise its equitable powers
4 in a similar manner and compel Showcase Financial to pay its proportional share of premiums
5 for the DAM-A policy. To date, the Receiver has paid 100% of those premiums since September
6 7, 2007, for a total of \$21,600.00. While other joint owners of that policy have agreed to transfer
7 their interest to the Receiver in exchange for the Receiver's payment of the premiums and a
8 claim against the estate, Showcase Financial has not. Accordingly, Showcase Financial has
9 unjustly benefited by maintaining its 7.50% ownership without paying a proportional share of the
10 premiums. *See* CAL. CIV. CODE § 3521 ("No person can be permitted to enjoy the benefits of a
11 transaction while rejecting the burdens of it.").

12 11. To avoid unjust enrichment, the Court should compel Showcase Financial to pay
13 (1) \$1,620.00 to the Receiver for Showcase Financial's 7.50% share of the premiums paid to date
14 and (2) Showcase Financial's proportional share of all future premiums on a quarterly basis as
15 invoiced by the Receiver.¹ Should Showcase Financial fail to pay these obligations in a timely
16 manner, the Court should order its ownership interest in the DAM-A policy forfeited to the
17 receivership estate. In the event of forfeit, the Receiver would replace Showcase Financial's
18 ownership interest in the DAM-A policy with an allowed claim against the receivership estate in
19 the amount of \$75,000.00 (the amount of the original investment).

20 12. As noted above, the Court has "broad powers and wide discretion to determine the
21 appropriate relief in an equity receivership." *Elliott*, 953 F.2d at 1569-70. This includes the
22 discretionary authority to deny Showcase Financial's ordinary contract rights when they are
23 "inimical to receivership purposes." *See U.S. v. Vanguard Inv. Co., Inc.*, 6 F.3d 222, 226 (4th
24 Cir. 1993). That is exactly what the Receiver asks the Court to do here. Showcase Financial

25 ¹ Showcase Financial's share of the next premium payment will be \$1,620.00. That amount, however, will increase
26 in the future since premium obligations for the DAM-A policy are scheduled to increase annually. At this time, the
27 Receiver does not know how much those future premium obligations will be and, therefore, would give Showcase
28 Financial advance notice by an invoice.

1 currently has a contractual right to 7.50% of death benefits from the DAM-A policy even if the
2 Receiver pays all of the premiums for that policy. This Court should impose upon Showcase
3 Financial an equitable obligation to pay its share of the premiums or else forfeit its ownership
4 interest to the receivership estate in exchange for an allowed claim for \$75,000.00. Doing so
5 would both serve the interests of equity and keep the DAM-A policy in force for the benefit of
6 all defrauded investors.

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

13 WHEREFORE, premises considered, the Receiver requests that upon final hearing and
14 consideration of this matter, that the Court issue an order compelling Showcase Financial
15 Services, Inc. Profit Sharing Plan to pay \$1,620.00 to the Receiver plus its share of all future
16 premiums as they become due on pain of forfeiture of its ownership interest, and for such other
17 and further relief, general or special, at law or in equity, to which the Receiver may show himself
18 justly entitled.

19 Submitted this 21st day of May, 2009.

20 Respectfully submitted,

21 /s/ Michael J. Quilling

22 MICHAEL J. QUILLING (Tex. Bar No. 16432300)
23 BRENT J. RODINE (Tex. Bar No. 24048770)
24 QUILLING, SELANDER, CUMMISKEY
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25 Chris Gibson, SBN 073353
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27 BOUTIN GIBSON DI GIUSTO HODELL INC.
28 Attorneys for Receiver

