

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 BAZZLE
JOHN WILSON [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 Bazzle John Wilson to pay his share of the premium on the DAM-A policy, and upon failure to pay his share

1 of the premium, that his ownership and beneficial interest in the policy be automatically forfeited
2 and be replaced by an allowed claim on the receivership estate for \$25,000.00 in his 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 his last known address:

20 Bazzle John Wilson
21 1291 Nunneley Road
22 Paradise, CA 95969

23 /s/ Michael J. Quilling
24 Michael J. Quilling
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Defendants.

Case No. 2:07-cv-01724 GEB CMK

RECEIVER’S MOTION TO COMPEL
PAYMENT OF PREMIUM SHARE
FROM BAZZLE JOHN WILSON
[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 Bazzle John Wilson
5 (“Wilson”) who, according to the books and records of the insurance company owns a 2.5%
6 interest in the policy 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 Wilson to transfer his interest. Therefore, the Receiver can only assume Wilson refuses to
11 transfer his interest.

12 3. Bazzle John Wilson’s share of the premium on the DAM-A Policy since the time
13 the Receiver was appointed is \$540.00 and will be \$540.00 per quarter in the future.

14 4. Accordingly, the Receiver seeks an order from this Court compelling Bazzle John
15 Wilson, to pay the Receiver \$540.00 for his share of the premiums plus his percentage share of
16 all additional premiums as they become due. Should Wilson fail to do so, the Receiver seeks an
17 order forfeiting Wilson’s ownership and beneficial interest in the DAM-A Policy to the
18 receivership estate.

19 **ARGUMENT AND AUTHORITIES**

20 5. It is well-settled that District Courts have broad powers and wide discretion to
21 determine appropriate relief for federal equity receiverships. *Securities & Exchange Comm’n v.*
22 *Elliott*, 953 F.2d 1560, 1569-70 (11th Cir. 1992); *see also Securities & Exch. Comm’n v. Hardy*,
23 803 F.2d 1034, 1037 (9th Cir.1986). In applying equitable principles, courts in this district often
24 use the theories of unjust enrichment and quasi-contract to achieve equity when one party has
25 paid obligations benefiting another.
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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
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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 Wilson to pay his proportional share of premiums for the DAM-
5 A policy. To date, the Receiver has paid 100% of those premiums since September 7, 2007, for
6 a total of \$21,600.00. While other joint owners of that policy have agreed to transfer their
7 interest to the Receiver in exchange for the Receiver's payment of the premiums and a claim
8 against the estate, Wilson has not. Accordingly, Wilson has unjustly benefited by maintaining
9 his 2.5% ownership without paying a proportional share of the premiums. *See* CAL. CIV. CODE §
10 3521 ("No person can be permitted to enjoy the benefits of a transaction while rejecting the
11 burdens of it.").

12 10. To avoid unjust enrichment, the Court should compel Wilson to pay (1) \$540.00
13 to the Receiver for Wilson's 2.5% share of the premiums paid to date and (2) Wilson's
14 proportional share of all future premiums on a quarterly basis as invoiced by the Receiver.¹
15 Should Wilson fail to pay these obligations in a timely manner, the Court should order his
16 ownership interest in the DAM-A policy forfeited to the receivership estate. In the event of
17 forfeit, the Receiver would replace Wilson's ownership interest in the DAM-A policy with an
18 allowed claim against the receivership estate in the amount of \$25,000.00 (the amount of the
19 original investment).

20 11. 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 Wilson's ordinary contract rights when they are "inimical to
23 receivership purposes." *See U.S. v. Vanguard Inv. Co., Inc.*, 6 F.3d 222, 226 (4th Cir. 1993).
24 That is exactly what the Receiver asks the Court to do here. Wilson currently has a contractual
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26 ¹ Wilson's share of the next premium payment will be \$540.00. 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 Wilson advance
notice by an invoice.

1 right to 2.5% of death benefits from the DAM-A policy even if the Receiver pays all of the
2 premiums for that policy. This Court should impose upon Wilson an equitable obligation to pay
3 his share of the premiums or else forfeit his ownership interest to the receivership estate in
4 exchange for an allowed claim for \$25,000.00. Doing so would both serve the interests of equity
5 and keep the DAM-A policy in force for the benefit of all defrauded investors.

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

11 WHEREFORE, premises considered, the Receiver requests that upon final hearing and
12 consideration of this matter, that the Court issue an order compelling Bazzle John Wilson to pay
13 \$540.00 to the Receiver plus his share of all future premiums as they become due on pain of
14 forfeiture of his ownership interest, and for such other and further relief, general or special, at
15 law or in equity, to which the Receiver may show himself justly entitled.

16 Submitted this 21st day of May, 2009.

17 Respectfully submitted,

18 /s/ Michael J. Quilling

19 MICHAEL J. QUILLING (Tex. Bar No. 16432300)
20 BRENT J. RODINE (Tex. Bar No. 24048770)
21 QUILLING, SELANDER, CUMMISKEY
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