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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 AMENDED
MOTION TO COMPEL PAYMENT
OF PREMIUM SHARE FROM THE
ESTATE OF THE ESTATE OF
MILDRED F. PARKINSON [KEU-P]

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 Laurel Karsch, as representative of the Estate of Mildred F. Parkinson to pay her share of the premium on the KEU-P policy, and upon failure to pay her share of the premium, that the ownership and

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

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

BACKGROUND FACTS

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

4 2. Continuously throughout 2008, the Receiver has been contacting the investors
5 who hold small fractional ownership interests in the multiple owner policies, of which the KEU-
6 P policy is one, for the purpose of trying to convince those investors to transfer their ownership
7 interest to the Receiver. One of the partial owners of the policy is Mildred F. Parkinson
8 (“Parkinson”) who, according to the books and records of the insurance company owns a 1.6%
9 interest in the policy and is a beneficiary of the same percentage.

10 3. The Receiver is pleased to report to the Court that as of the filing of this amended
11 motion, a large number of the investors have executed forms transferring their ownership
12 interests in the KEU-P policy to the Receiver. In addition, four investors holding a combined
13 fractional ownership interest totaling 13.8% in the KEU-P policy have paid to the Receiver a
14 proportional share of the premium based on each investor’s fractional ownership and beneficial
15 interest in this policy. The Receiver has learned that Parkinson is now deceased and the
16 Receiver has discussed the matter with her daughter, Laurel Karsch (“Karsch”), who represents
17 that she is an heir and that there is no probate estate. Despite attempts to do so, the Receiver has
18 been unable to get Karsch to transfer her mother’s interest. Therefore, the Receiver can only
19 assume that Karsch refuses to transfer the Parkinson Estate’s interest.

20 4. Parkinson’s share of the premium on the KEU-P Policy since the time the
21 Receiver was appointed is \$105.60 and will be \$28.80 per quarter in the future.

22 5. Accordingly, the Receiver seeks an order from this Court compelling Laurel
23 Karsch, as the representative of the Estate of Mildred F. Parkinson, to pay the Receiver \$105.60
24 for her share of the premiums plus her percentage share of all additional premiums as they
25 become due. Should Karsch fail to do so, the Receiver seeks an order forfeiting Parkinson’s
26 ownership and beneficial interest in the KEU-P Policy to the receivership estate.

ARGUMENT AND AUTHORITIES

1
2 6. It is well-settled that District Courts have broad powers and wide discretion to
3 determine appropriate relief for federal equity receiverships. *Securities & Exchange Comm'n v.*
4 *Elliott*, 953 F.2d 1560, 1569-70 (11th Cir. 1992); *see also Securities & Exch. Comm'n v. Hardy*,
5 803 F.2d 1034, 1037 (9th Cir.1986). In applying equitable principles, courts in this district often
6 use the theories of unjust enrichment and quasi-contract to achieve equity when one party has
7 paid obligations benefiting another.

8 7. Unjust enrichment is not an independent cause of action, but a general principle
9 supporting various equitable remedies. *Mauro v. General Motors Corp.*, 2008 WL 2775004, *6
10 (E.D. Cal. Jul. 15, 2008); *Walker v. USAA Cas. Ins. Co.*, 474 F.Supp.2d 1168, 1174 (E.D. Cal.
11 2007). The elements supporting unjust enrichment are (1) the receipt of a benefit and (2) the
12 unjust retention of it at another's expense. *Weststyn Dairy 2 v. Eades Commodities Co.*, 280
13 F.Supp.2d 1044, 1057 (E.D. Cal. 2003). A "benefit" includes any advantage obtained by the
14 recipient or expenses paid on his behalf. *Ghirardo v. Antonioli*, 924 P.2d 996, 1003, 14 Cal.4th
15 39, 51 (Cal. 1996); *see also Process Specialties, Inc. v. Sematech, Inc.*, 2001 WL 36105562, *20
16 (E.D. Cal. 2001).

17 8. Courts often redress unjust enrichment under the theory of quasi-contract or
18 quantum meruit. Such relief does not require a contract and exists independent of the parties'
19 privity, intent, or promises. *Fid. & Deposit Co. of Md. v. Harris*, 360 F.2d 402, 409 (9th Cir.
20 1966); *McBride v. Boughton*, 123 Cal. App. 4th 379, 388 n.6 (2004). Courts will imply an
21 obligation to pay when one party, in equity and good conscience, should not be permitted to keep
22 a benefit without paying for it. *U.S. v. Healy Tibbitts Const. Co.*, 607 F.Supp. 540, 542 (N.D.
23 Cal. 1985) (citing DOBBS, REMEDIES 224 (West 1973); 66 Am.Jur.2d, §§ 2, 3). Equity will
24 typically require payment as measured by the benefit received. *Davis v. Leal*, 43 F.Supp.2d
25 1102, 1112 (E.D. Cal. 1999).

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

11 10. Through this motion, the Receiver asks the Court to exercise its equitable powers
12 in a similar manner and compel Karsch to pay her late mother, Parkinson's proportional share of
13 premiums for the KEU-P policy. To date, the Receiver has paid 100% of those premiums since
14 September 7, 2007, for a total of \$6,600.00. While other joint owners of this policy have either
15 (1) agreed to transfer their interest to the Receiver in exchange for the Receiver's payment of the
16 premiums and a claim against the estate, or (2) paid to the Receiver their share of the premiums
17 based on their fractional ownership and beneficial interest, neither Parkinson nor Karsch have
18 done either. Accordingly, Karsch, through her mother's estate, has unjustly benefited by
19 maintaining her 1.6% ownership without paying a proportional share of the premiums. *See* CAL.
20 CIV. CODE § 3521 ("No person can be permitted to enjoy the benefits of a transaction while
21 rejecting the burdens of it.").

22 11. To avoid unjust enrichment, the Court should compel Karsch as the representative
23 of the Parkinson Estate to pay (1) \$105.60 to the Receiver for Parkinson's 1.6% share of the
24 premiums paid to date and (2) Parkinson's proportional share of all future premiums on a
25 quarterly basis as invoiced by the Receiver.¹ Should Karsch fail to pay these obligations on

26 _____
27 ¹ Parkinson's share of the next premium payment will be \$28.80. That amount, however, will increase in the future
28 since premium obligations for the KEU-P policy are scheduled to increase annually. At this time, the Receiver does

1 behalf of Parkinson's Estate in a timely manner, the Court should order her ownership interest in
2 the KEU-P policy forfeited to the receivership estate. In the event of forfeit, the Receiver would
3 replace Parkinson's ownership interest in the KEU-P policy with an allowed claim against the
4 receivership estate in the amount of \$10,000.00 (the amount of the original investment).

5 12. As noted above, the Court has "broad powers and wide discretion to determine the
6 appropriate relief in an equity receivership." *Elliott*, 953 F.2d at 1569-70. This includes the
7 discretionary authority to deny Parkinson's ordinary contract rights when they are "inimical to
8 receivership purposes." *See U.S. v. Vanguard Inv. Co., Inc.*, 6 F.3d 222, 226 (4th Cir. 1993).
9 That is exactly what the Receiver asks the Court to do here. Parkinson, and her heir(s) currently
10 have a contractual right to 1.6% of death benefits from the KEU-P policy even if the Receiver
11 pays all of the premiums for that policy. This Court should impose upon Parkinson, through her
12 heir(s), an equitable obligation to pay her share of the premiums or else forfeit her ownership
13 interest to the receivership estate in exchange for an allowed claim for \$10,000.00. Doing so
14 would both serve the interests of equity and keep the KEU-P policy in force for the benefit of all
15 defrauded investors.

16 13. Given the fact that Karsch has not responded and would not be in position to
17 protect the policy from lapsing if the Receiver seeks court permission to abandon the policy and
18 does not pay the next premium, one can certainly argue that Parkinson's heir(s) would be better
19 off by a forfeiture and allowance of a claim. At least that way the heir(s) of Mildred F.
20 Parkinson would have something – a claim – if Laurel Karsch or any other heir(s) of Mildred F.
21 Parkinson's estate ever comes forward.

22 WHEREFORE, premises considered, the Receiver requests that upon final hearing and
23 consideration of this matter, that the Court issue an order compelling Laurel Karsch, as
24 representative of the Estate of Mildred F. Parkinson, to pay \$105.60 to the Receiver plus her
25

26 not know how much those future premium obligations will be and, therefore, would give Karsch, as the
27 representative of Parkinson's Estate, advance notice by an invoice.

1 share of all future premiums as they become due on pain of forfeiture of her ownership interest,
2 and for such other and further relief, general or special, at law or in equity, to which the Receiver
3 may show himself justly entitled.

4 Submitted this 21st day of May, 2009.

5 Respectfully submitted,

6 */s/ Michael J. Quilling*

7 MICHAEL J. QUILLING (Tex. Bar No. 16432300)
8 BRENT J. RODINE (Tex. Bar No. 24048770)
9 QUILLING, SELANDER, CUMMISKEY
10 & LOWNDS, P.C.
11 Chris Gibson, SBN 073353
12 Maralee MacDonald, SBN 208699
13 BOUTIN GIBSON DI GIUSTO HODELL INC.
14 Attorneys for Receiver

15 **CERTIFICATE OF CERTIFIED MAIL SERVICE**

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

21 The Estate of Mildred F. Parkinson
22 c/o Laurel Karsch
23 1513 Solano Street
24 Corning, CA 96021

25 */s/ Michael J. Quilling*

26 Michael J. Quilling

