

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE)	
COMMISSION,)	2:07-cv-01724-GEB-CMK
)	
Plaintiff,)	<u>ORDER</u> ¹
)	
v.)	
)	
SECURE INVESTMENT SERVICES, INC.;)	
AMERICAN FINANCIAL SERVICES, INC.;)	
LYNDON GROUP, INC.; KIMBERLY)	
SNOWDEN; and LINDA NEUHAUS, in her)	
capacity as the administrator and)	
personal representative of the)	
estate of Donald Neuhaus,)	
)	
Defendants.)	
_____)	

Plaintiff moves for summary judgment on its claims that Defendant Kimberly Snowden ("Snowden") engaged in a fraudulent scheme

¹This matter was submitted without oral argument in accordance with Local Rule 78-230(c), which prescribes: "No party shall be entitled to be heard in opposition to a motion at oral arguments if opposition to the motion has not been timely filed by that party."

1 in violation of Section 17(a) of the Securities Act of 1933, Section
2 10(b) of the Exchange Act of 1934 and Exchange Act Rule 10(b)-5), and
3 registration requirements in Sections 5 of the Securities Act of 1933.
4 Plaintiff also seeks an order permanently enjoining Snowden from
5 violating these anti-fraud and registration provisions, and an order
6 requiring her to disgorge her "ill-gotten" gains. (Pl. Mot. at 2:24.)
7 Plaintiff further requests partial final judgment be entered against
8 Snowden under Federal Rule of Civil Procedure 54(b).

9 Snowden failed to timely oppose the motion. Snowden filed a
10 motion to stay this action, which was denied. Lastly, Snowden's
11 counsel has moved for an order allowing him to withdraw as attorney of
12 record for Snowden.

13 Non-Controverted Factual Showing

14 "Starting no later than 2001, []Snowden, Donald F. Neuhaus
15 ("Neuhaus"), Secure Investment Services, Inc. ("SIS"), American
16 Financial Services, Inc. ("AFS"), and Lyndon Group, Inc. ("Lyndon
17 Group") (collectively the "corporate defendants" or individually as
18 "corporate defendant"), operated a business of offering and selling
19 fractionalized interests in life insurance policies, an investment
20 called 'bonded life settlements' or 'bonded senior settlements.'" (Plaintiff's Statement of Facts "SOF" ¶ 1.) Snowden and Neuhaus (her
21 father) used the corporate defendants to operate the business at
22 various times. (Id. ¶ 2.) "Defendants fractionalized and sold 52
23 policies to approximately 660 investors in over 20 states and obtained
24 approximately \$31.1 million in investor proceeds. The combined total
25 return promised to investors was approximately \$51.8 million." (Id. ¶
26 3.)
27 3.)

28 / / /

1 Internet websites, advertisements, mailings, and seminars
2 were used to solicit investors and communicate with them. (Id. ¶ 4.)
3 Defendants acquired the life insurance policies from brokers by paying
4 a fraction of the policy's face amount. (Id. ¶ 5.)

5 As the investment was structured and represented to
6 investors by Defendants, when the insured on the policy died, each
7 investor would receive a return in the form of a pro rata share of the
8 policy death benefit that equaled the investor's original investment
9 plus a profit. (Id. ¶ 6.) For the insured on each policy, Defendants
10 provided investors with a purported life expectancy estimate
11 purportedly prepared by a physician. (Id. ¶ 7.) These estimates
12 typically projected that the insured would die in six years or less.
13 (Id. ¶ 8.) Many of the investments were purportedly "bonded." (Id.
14 ¶ 9.)

15 As the investment was structured and represented to
16 investors by Defendants, if the insured outlived the life expectancy,
17 then, after a waiting period of 3 to 12 months, the bonding company
18 would pay each investor an amount equal to the share of the policy
19 death benefit the investor would otherwise receive from the insurance
20 company upon the death of the insured. (Id. ¶ 10.) Defendants
21 provided investors with copies of the bonds. (Id. ¶ 11.) Once a
22 policy was sold to investors, premiums on the policy had to be paid to
23 prevent it from lapsing before the insured passed away, a lapse being
24 an event that would cause the insurance company to not pay policy
25 benefits. (Id. ¶ 12.)

26 Snowden served as an officer and director for each corporate
27 defendant and "also as the Director of Operations and Controller for
28 the business." (Id. ¶ 13.) Additionally, "Snowden maintained the

1 financial records for the business, including a "QuickBooks"
2 accounting software that recorded money flows into and out of the
3 business; she exercised control over the bank accounts used in the
4 business; and she wrote most of the checks to pay policy premiums."
5 (Id. ¶ 14.)

6 Snowden signed agent agreements with sales agents who
7 typically solicited investors. (Id. ¶ 15.) Also, Snowden herself
8 offered and sold the investment directly to investors. (Id. ¶ 16.)

9 To effect their investments, investors signed purchase
10 agreements between them and one of the corporate defendants. (Id. ¶
11 17.) Snowden signed purchase agreements. (Id. ¶ 18.)

12 After sales were completed, Snowden signed letters to
13 investors acknowledging receipt of their purchase agreements and their
14 investments and stating the returns the investors would receive. (Id.
15 ¶ 19.)

16 Snowden knew that when a policy was sold to investors, the
17 corporate defendants should have set aside a portion of those
18 investors' purchase funds that was sufficient to pay future premiums
19 on the policy for the period of the life expectancy plus the waiting
20 period. (Id. ¶ 20.) Snowden represented to investors both orally and
21 in writing that funds would be set aside in this manner. (Id. ¶ 21.)

22 The purchase agreements typically contained the following
23 representations to investors of which Snowden was familiar, and she
24 signed purchase agreements containing the quoted representations
25 ("typical purchase agreement language"):

26 / / /

27 / / /

28 / / /

1 a. "All of the following costs associated with
2 the purchase of an interest of [sic] a policy are
3 included in the investment amount: . . . A premium
4 payment for a minimum of one year beyond the
5 projected life expectancy of the insured, or until
6 the policy is purchased by the bonding company,
7 whichever comes first."

8 b. "SIS [or another corporate defendant] may
9 escrow funds for future premium payments for a
10 minimum of twelve (12) months beyond the projected
11 life expectancy of the insured, or longer at SIS's
12 discretion . . ."; and

13 c. "Future premiums, for a minimum of the life
14 expectancy of the insured plus twelve (12) months,
15 or longer at the [sic] SIS's discretion, shall be
16 paid by SIS . . ." (Id. ¶ 22.)

17 The corporate defendants were responsible for paying policy
18 premiums through the life expectancy and the waiting period. (Id. ¶
19 23.) Snowden was familiar with the terms of the purchase agreements.
20 (Id. ¶ 24.) Snowden signed purchase agreements with the
21 representations in paragraph 22 above. (Id. ¶ 25.) In fact, future
22 premiums were not "included in the investment amount" paid by
23 investors because Defendants commingled investor funds immediately
24 upon receiving them and used them to pay premiums on any policy they
25 previously sold, to purchase any policy, to pay sales commissions for
26 any policy, and to cover any other expense of the business. (Id. ¶
27 26.)

28 Because of such practices, as of June 1, 2005, SIS was
obligated to pay at least \$869,013 in premiums on policies the
business had previously sold if the insureds lived until the end of
the waiting period. (Id. ¶ 27.) SIS held no funds as of this date.
(Id. ¶ 28)

As of June 30, 2007, SIS was obligated to pay at least \$3.1
million in premiums on previously sold policies if the insureds lived

1 until the end of the waiting period. SIS was also liable for \$1
2 million in self-insurance on two policies for which AFS purported to
3 act as the bonding company. (Id. ¶ 29.) As of this date, SIS had
4 \$162,295.08 in available cash. (Id. ¶ 30.)

5 In effect, Defendants' business was a Ponzi scheme.
6 Defendants depended on raising new funds from investors in new
7 policies to pay premiums on previously sold policies. Premiums could
8 be "paid by" the corporate defendants as stated in the purchase
9 agreements, and policies could be kept from lapsing, only if
10 Defendants raised new money. (Id. ¶ 31.)

11 Snowden knew of the financial condition of the business.
12 She knew that investor funds were commingled and used to pay any
13 premium or other expense, and that premiums on previously sold
14 policies were paid with new funds from investors in other policies.
15 (Id. ¶ 32.) Snowden did not inform potential investors or investors
16 of the Ponzi scheme or ensure that the sales agents did so. (Id. ¶
17 33.) If investors had known about the Ponzi scheme, they would not
18 have invested. (Id. ¶ 34.)

19 In 2005 and 2006, Snowden signed letters to several
20 individuals who had already paid to become investors in a specific
21 policy, offering them a different, new policy to invest in. (Id. ¶
22 35.) By the time Snowden sent the letters, however, these
23 individuals' money had already been spent on premiums for other
24 policies previously sold and on general business expenses. (Id. ¶
25 36.)

26 Snowden knew the money had been spent because she recorded
27 the expenditures in the QuickBooks program she maintained. (Id. ¶
28 37.) Snowden's letters offering the new policy did not inform the

1 individuals that their money had already been spent. (Id. ¶ 38.) The
2 individuals accepted Snowden's offer and became investors in the new
3 policy, which was purchased with new investor funds. (Id. ¶ 39.)
4 SIS raised approximately \$2 million from investors in a policy known
5 as the Perillo policy during the period of August 2005 to June 2006.
6 (Id. ¶ 40.) These funds were commingled with funds raised from
7 investors in other policies, and spent in part to pay premiums on
8 other policies. (Id. ¶ 41.) Snowden knew about these premium
9 payments because she recorded them in the QuickBooks program she
10 maintained. (Id. ¶ 42.)

11 Starting in late 2006, SIS raised about \$1.7 million from
12 would-be investors in a policy on an insured named Altrogge ("the
13 Altrogge policy"). (Id. ¶ 43.) These funds were commingled with
14 funds raised from investors in other policies spent in part to pay
15 premiums on other policies. (Id. ¶ 44.) The funds were also spent in
16 part to pay claims of investors in a policy for which AFS purported to
17 act as the bonding company. Snowden executed documents used to pay
18 these claims and entered the transaction in the records of the
19 business. (Id. ¶ 45.) The expenditures of the Altrogge policy
20 investor funds were recorded by Snowden in the QuickBooks program she
21 maintained. (Id. ¶ 46.) SIS never acquired the Altrogge policy.
22 (Id. ¶ 47.) Snowden sent letters to investors telling them they had
23 become co-owners of the Altrogge policy and stating the returns the
24 investors would receive from their investment in the policy. (Id. ¶
25 48.)

26 Snowden sold directly to investor Routon, who, along with
27 his wife, invested \$100,000 in the Keul policy in December 2004
28 through the Routon Family Trust. (Id. ¶ 49.) Snowden met with

1 Routon at least four times in her office to discuss the investment and
2 also discussed it with him by telephone. Routon told Snowden told
3 that he wanted a safe investment, that he had been seriously injured
4 in a vehicle accident, and that the money he had to invest was to pay
5 for his son's college. (Id. ¶ 50.)

6 Snowden explained to Routon how the investment program
7 worked. She explained the terms of the purchase agreement to him.
8 She assured him that the investment was totally safe. (Id. ¶ 51.)
9 Snowden told Routon that for the policy he and his wife invested in, a
10 reserve would be established that was sufficient to pay future policy
11 premiums until the date when the bond would pay out if the insured was
12 still alive at the end of the life expectancy. (Id. ¶ 52.) As
13 reflected in the QuickBooks program maintained by Snowden, none of
14 Routon's money was reserved for future premiums. (Id. ¶ 53.)

15 Before Snowden's sale to Routon, in February 2003, the
16 California Department of Corporations ordered Neuhaus and AFS to cease
17 selling the investments that are the subject of this case. (Id. ¶
18 54.) Snowden was aware of this order. (Id. ¶ 55.) She did not
19 disclose the order to Routon. (Id. ¶ 56.) She also did not disclose
20 the order to other investors or potential investors or ensure that
21 others disclosed it. (Id. ¶ 57.) Investors would not have invested
22 if they had been told about the order. (Id. ¶ 58.)

23 During the period of September 18, 2001 through August 17,
24 2007, Snowden received \$574,518.45 from the corporate defendants.
25 Because the corporate defendants' only source of income was investor
26 money, the \$574,518.45 came from investors. (Id. ¶ 59.)

27 Defendants managed the investment program, as detailed below
28 (Id. ¶ 60.):

1 a. As they raised funds from investors,
2 Defendants located, negotiated for, and acquired a
3 life insurance policy to fractionalize and sell.

4 b. Snowden ensured that the policy was not
5 oversold to investors.

6 c. Defendants chose the bonding company for the
7 policy and paid for the bond.

8 d. Upon selling a policy to investors,
9 Defendants recorded the investors as beneficiaries
10 and owners of the policy on the insurance
11 company's records. If required, Defendants would
12 instead make the investors beneficiaries of a
13 trust that held the investor's policy interests.

14 e. Snowden and Neuhaus thereafter controlled
15 payment of policy premiums, at times deciding to
16 pay other business expenses instead of making
17 timely premium payments, and deciding to cover
18 premiums not with cash but with cash value that
19 had accumulated in the policy.²

20 f. Defendants retained a firm to monitor the
21 health and status of the insured and file any
22 claim for policy benefits, and the firm reported
23 back to an employee of the corporate defendants on
24 a quarterly basis.

25 g. Finally, Defendants submitted and pursued any
26 claim against the bonding company.

27 The investors were passive participants in the investment
28 program, with their role limited to signing purchase documents and
29 paying for the investment. (*Id.* ¶ 61.) Lastly, no registration
30 statement was on file with the Commission or in effect with respect to
31 Defendants' offers and sales of the investments.

32 Analysis

33 The uncontroverted facts show the investments sold by
34 Defendants constitute securities under the federal securities law.
35 See SEC v. Rubera, 350 F.3d 1084, 1090 (9th Cir. 2003) (stating "To

36 ² "Cash value" refers to funds that can accumulate within a
37 policy and are held by the insurance company. Cash value is an asset
38 that belongs to the owners of the policy, and generally can be loaned to
the owner or used to pay premiums in lieu of cash payments. (Eme Decl.
Exh. 22 Par. 16-19.)

1 establish a claim for violation of federal securities law, it is
2 necessary to show that the violation involved a "security" as defined
3 by the Securities Acts [;and,] distill[ing] [the] definition [of a
4 security] into a three-part test requiring (1) an investment of money
5 (2) in a common enterprise (3) with an expectation of profits produced
6 by the efforts of others." (internal citations and quotations
7 omitted).

8 Whether Snowden Violated the Anti-Fraud Provisions

9 Plaintiff contends the uncontroverted facts show Snowden
10 violated the anti-fraud provisions of the federal securities laws.
11 "Under [the antifraud] provisions . . . [Plaintiff] must prove three
12 basic elements: (1) [that Snowden made] misrepresentations or
13 omissions of material fact[]; (2) with the requisite mental state;
14 and (3) in connection with a purchase, offer, or sale of securities."
15 SEC v. Yuen, 2005 U.S. Dist. LEXIS 41231 (C.D. Cal. 2005).

16 The uncontroverted facts show Snowden misrepresented to
17 numerous investors that portions of their investments would be set
18 aside for the purpose of paying future premiums. Further, Snowden
19 told investors in the Altrogge policy that SIS owned this policy and
20 that their investments were put towards this policy. However, SIS
21 never owned the Altrogge policy. These misstatements and omissions
22 were material because investors relied upon these misstatements and
23 omissions in making their investments. Finally, the uncontroverted
24 facts show Snowden knew the investors' funds were being misused yet
25 she continued to misrepresent the truth to investors. Accordingly,
26 Plaintiff's motion on this claim is granted.

27 / / /

28 / / /

1 Whether Snowden Violated the Registration Provisions

2 Plaintiff also argues the uncontroverted facts show Snowden
3 violated the registration provisions of the federal securities laws.
4 "To establish this claim, [Plaintiff] must point to evidence that: (1)
5 no registration statement was in effect as to the securities; (2)
6 [Snowden] sold or offered to sell the securities; and (3) the sale or
7 offer was made through interstate commerce." Berckelely Inv. Group,
8 Ltd. v. Colkitt, 455 F.3d 195, 212 (3rd Cir. 2006). The
9 uncontroverted facts show that no registration statement was ever
10 filed with Plaintiff for the securities sold by Defendants; and that
11 Snowden played a key role in selling these investments. Therefore,
12 Plaintiff's motion is granted on this claim.

13 Whether Snowden Should be Permanently Enjoined

14 Plaintiff also seeks to obtain a permanent
15 injunction, [Plaintiff] ha[s] the burden of
16 showing there [i]s a reasonable likelihood of
17 future violations of the securities laws . . .
18 [T]here is no per se rule requiring the issuance
19 of an injunction upon the showing of [a] past
20 violation, but . . . the existence of past
21 violations may give rise to an inference that
22 there will be future violations; and the fact that
23 the defendant is currently complying with the
24 securities laws does not preclude an injunction.

25 In predicting the likelihood of future violations,
26 [courts] assess the totality of the circumstances
27 surrounding the defendant and h[er] violations,
28 and [] consider such factors as (1) the degree of
scienter involved; (2) the isolated or recurrent
nature of the infraction; (3) the defendant's
recognition of the wrongful nature of his conduct;
(4) the likelihood, because of defendant's
professional occupation, that future violations
might occur; (5) and the sincerity of his
assurances against future violations.

26 United States SEC v. Fehn, 97 F.3d 1276, 1295-1296 (9th Cir.
27 1996) (internal quotations and citations omitted).

28 Plaintiff has not shown an injunction is necessary.
Therefore, this portion of the motion is denied.

1 Whether Snowden Should Be Disgorged of Her Ill-Gotten Gains

2 Plaintiff also seeks an order requiring Snowden to disgorge
3 her ill-gotten gains from violations of the securities laws. This
4 equitable remedy "is designed to deprive a wrongdoer of unjust
5 enrichment, and to deter others from violating securities laws by
6 making violations unprofitable." SEC v. First Pac. Bancorp, 142 F.3d
7 1186, 1191 (9th Cir. 1998) (internal quotations and citations omitted).
8 The uncontroverted facts show Snowden received \$574,518.45 in investor
9 money from the corporate fraud scheme. Further, Plaintiff has
10 proffered uncontested evidence that it should be awarded prejudgment
11 interest of \$53,103.32. Therefore, Snowden shall pay a total of
12 \$627,621.77 in disgorgement and prejudgment interest.

13 Partial Final Judgment

14 Plaintiff also requests partial final judgment be entered
15 against Snowden under Rule 54(b). However, Plaintiff has not shown
16 sufficient justification for entry of partial final judgment.

17 Snowden's Counsel's Motion to Withdraw

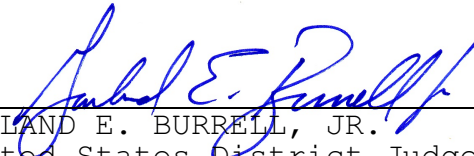
18 Lastly, on March 2, 2009, Snowden's counsel filed a motion
19 to withdraw as Snowden's attorney. However, in light of the present
20 status of this case this request appears moot and is therefore denied.

21 Conclusion and Order Vacating Final Pretrial
22 Conference Requiring Status Report

23 For the reasons stated, Plaintiff's motion is granted and
24 denied in part and Snowden's Counsel's motion to withdraw is denied.
25 Since Plaintiff's summary judgment motion has been granted, the final
26 pretrial conference scheduled for June 22, 2009 is vacated. Further,
27 a status report shall be filed within twenty (20) days of the date on
28

1 which this Order is filed in which the status of this action shall be
2 explained, including the remedies issues involved in the entity
3 defendants.

4 Dated: May 22, 2009

5
6 
7 _____
8 GARIAND E. BURRELL, JR.
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28