

BOUTIN GIBSON DI GIUSTO HODELL INC.

Chris Gibson, SBN 073353
Maralee MacDonald, SBN 208699
555 Capitol Mall, Suite 1500
Sacramento, California 95814-4603
Tel. (916) 321-4444

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

Michael J. Quilling (Tex. Bar No. 16432300) – Admitted Pro Hac Vice
Brent J. Rodine (Tex. Bar No. 24048770) – Admitted Pro Hac Vice
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
Telephone: (214) 871-2100
Facsimile: (214) 871-2111

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

RECEIVER’S MOTION TO COMPEL
PAYMENT OF PREMIUM SHARE
FROM DAVID GREEN [RIC-J(1)]

Date: June 21, 2010
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 Green to pay his proportional share of premiums for the RIC-
5 J(1) policy. To date, the Receiver has paid 100% of those premiums since September 7, 2007,
6 for a total of \$7,500.00. 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, Green has not. Accordingly, Green has unjustly benefited by maintaining his
9 0.48% 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 11. To avoid unjust enrichment, the Court should compel Green to pay (1) \$36.00 to
13 the Receiver for Green's 0.48% share of the premiums paid to date; (2) Green's proportional
14 share of all future premiums on a quarterly basis as invoiced by the Receiver.¹ Should Green fail
15 to pay these obligations in a timely manner, the Court should order his ownership interest in the
16 RIC-J(1) policy forfeited to the receivership estate. In the event of forfeit, the Receiver would
17 replace Green's ownership interest in the RIC-J(1) policy with a claim against the receivership
18 estate in the amount of \$2,000.00 (the amount of the original investment).

19 12. 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 Green'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. Green currently has a contractual
24 right to 0.48% of death benefits from the RIC-J(1) policy even if the Receiver pays all of the
25

26 ¹ Green's share of the next premium payment will be \$36.00. That amount, however, will increase in the future
27 since premium obligations for the RIC-J(1) 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 Green advance notice
by an invoice.

1 premiums for that policy. This Court should impose upon Green an equitable obligation to pay
2 his share of the premiums, or else forfeit his ownership interest to the receivership estate in
3 exchange for a claim for \$2,000.00. Doing so would both serve the interests of equity and keep
4 the RIC-J(1) policy in force for the benefit of all defrauded investors.

5 13. Given the fact that Green 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 Green would be better off by a
8 forfeiture and allowance of a claim. At least that way he would have something – a claim – if he
9 or another person representing Green 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 David Green to pay \$36.00
12 to the Receiver for his share of the premiums, and pay his share of all future premiums to the
13 Receiver as they become due on pain of forfeiture of his ownership interest, and for such other
14 and further relief, general or special, at law or in equity, to which the Receiver may show himself
15 justly entitled.

16 Submitted this 14th day of May, 2010.

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
& LOWNDS, P.C.

22 Chris Gibson, SBN 073353
23 Maralee MacDonald, SBN 208699
24 BOUTIN GIBSON DI GIUSTO HODELL INC.
25 Attorneys for Receiver
26
27
28

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

CERTIFICATE OF CERTIFIED MAIL SERVICE

I hereby certify that on the 14th day of May, 2010, 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 RIC-J(1) Policy at his last known address:

David Green
1995 Wild Oak Lane
Chico, CA 95928

/s/ Michael J. Quilling
Michael J. Quilling

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2010, 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