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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 17 **FOR THE COUNTY OF LOS ANGELES**

19 INSURANCE COMMISSIONER OF THE
 STATE OF CALIFORNIA,

20 Applicant,

21 v.

22 GOLDEN STATE MUTUAL LIFE
 23 INSURANCE COMPANY, a California
 corporation,

24 Respondent.

Case No. BS123005
 Assigned to Hon. Ann I. Jones, Dept. 86

[APPLICATION NO. 1 - MURALS]

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 APPLICATION FOR ORDERS
 AUTHORIZING LIQUIDATOR TO SELL
 TWO MURALS TO SMITHSONIAN
 NATIONAL MUSEUM OF AFRICAN
 AMERICAN HISTORY AND CULTURE**

[Filed concurrently with Notice, Evidence and
 Proposed Order]

Date: March 28, 2011
 Time: 9:30 a.m.
 Dept: 86

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I.

INTRODUCTION

This Memorandum supports the application by the Insurance Commissioner as Liquidator (“Liquidator”) of Golden State Mutual Life Insurance Company (“Golden State”) seeking Court approval to sell two removable murals owned by Golden State to the Smithsonian National Museum of African American History and Culture in Washington D.C. (“Smithsonian”), pursuant to the terms of the Murals Sale Agreement by and between the Liquidator and the Smithsonian, a copy of which is attached hereto as Exhibit 1. The murals are identified as (1) “*The Negro in California History: Exploration and Colonization*”, by Charles Alston, and (2) “*The Negro in California History: Settlement & Development*”, by Hale Woodruff (collectively, “Murals”).

Specifically, the Liquidator requests that the Court issue the following Orders:

1. An Order authorizing the Liquidator to sell the Murals to the Smithsonian pursuant to the terms of the Murals Sale Agreement by and between the Liquidator and the Smithsonian;
2. An Order confirming that the Murals are the property of Golden State and that they may be sold free and clear of any claims of adverse claimants and/or creditors; and
3. An Order authorizing the Liquidator to take any and all actions necessary to accomplish the purposes of the Orders requested above.

The Murals were commissioned by Golden State in 1947, painted in New York and placed in Golden State’s headquarters in Los Angeles in 1949. The Murals depict the contributions of African Americans to California’s history. The first mural depicts the years 1527 to 1850, and the second depicts the years 1850 to 1949. The Murals are currently located in Golden State’s former headquarters in Los Angeles, pursuant to a stipulation with the owner of said building.

In furtherance of his statutory duties, the Liquidator (when he was Golden State’s Conservator) commenced a Request for Proposals (“RFP”) process dated June 25, 2010, in which persons and entities interested in purchasing the Murals were required to submit proposals to the Conservator for the purchase of the Murals. The Smithsonian and five others submitted proposals for the purchase of the Murals. Court approval of this application should be granted because the Liquidator’s selection of the Smithsonian’s proposal to purchase the Murals is within the

1 Liquidator's discretion, is geared toward maximizing Golden State's liquidation value and is in
2 the best interests of Golden State's creditors, for the following reasons:

3 1. The sale of the Murals to the Smithsonian best complies with the RFP;

4 2. The Smithsonian's proposed purchase price of \$750,000 in total for the two Murals
5 exceeds the liquidation value of the Murals and is equal to the price offered by the other highest
6 priced proposal that complied with the RFP;

7 3. The Smithsonian's size, financial strength and reputation are excellent, thereby
8 providing assurance that the sale will timely close after Court approval;

9 4. The terms of sale are consistent with the historical importance of the Murals, as the
10 Smithsonian intends to display the Murals as signature pieces in its new National Museum of
11 African American History and Culture ("NMAAHC Museum"), to be located on The National
12 Mall, Constitution Avenue, NW, between 14th and 15th Street, in the shadow of the Washington
13 Monument and in view of all major sites representing the Nation's history;

14 5. By selling the Murals to the Smithsonian the Murals will be placed in an optimal
15 environment to ensure the long-term preservation and public display of the Murals;

16 6. Golden State's creditors will benefit from the payment of the \$750,000 purchase
17 price for the Murals in that receipt of the sale's proceeds will increase the money available for
18 distribution to Golden State's creditors in accordance with claim priority set forth in Insurance
19 Code § 1033;

20 7. Continuing to hold the Murals in hope of getting a better price over time amounts
21 to speculation in the art market, which is inconsistent with prudent management of the assets of
22 Golden State in liquidation;

23 8. The other five proposals submitted to the Conservator through the RFP process are
24 not superior to the Smithsonian's proposal; and

25 9. The claim to ownership of the Murals by the building owner, Community Impact
26 Development II, LLC ("CID"), is without merit. As set forth in the Orders requested above, this
27 application requests that the Court confirm that Golden State is the owner of the Murals.
28

1 over \$3 million (\$5,721,154 in assets - \$9,291,895 in liabilities = \$-3,570,741). (Wilson Dec., ¶¶
2 12-13.)

3 The Order of Liquidation directs the Insurance Commissioner to liquidate and wind up the
4 business of Golden State, and, just as with the Order Appointing Conservator, authorized him to
5 sell, transfer or otherwise dispose of Golden State's personal property at its reasonable market
6 value; provided, however, for personal property sales where the market value of the property
7 involved exceeds \$20,000, Court approval of the sale is necessary. (Order of Liquidation, ¶¶ 1, 2
8 and 8, Exhibit 5; see also Insurance Code § 1037(d).)

9 **B. Conservator's Rehabilitation Plan and Sale of Golden State's Insurance Business.**

10 In October 2009, based on Golden State's financial condition and its operational
11 capabilities, the Conservator determined that the business operations of Golden State were not
12 sustainable and that the best course of action for Golden State's policyholders and creditors was
13 for the Conservator to position Golden State for a sale, merger or an assumption of its insurance
14 book of business by a third party. (Wilson Dec., ¶ 8; and Order Approving The Conservator's
15 Rehabilitation Plan, Exhibit 3.) Thereafter, on September 2, 2010, the Conservator and IA
16 American Life Insurance Company ("IA American") closed an Assumption Reinsurance
17 Agreement dated May 7, 2010 and Agreement And Plan Of Rehabilitation For Golden State
18 Mutual Life Insurance Company dated May 7, 2010, which were approved by this Court on June
19 24, 2010. (Wilson Dec., ¶¶ 8-11; Order Approving The Conservator's Rehabilitation Plan,
20 Exhibit 3; and Notice of Closing Rehabilitation Plan, Exhibit 4.)

21 As a result of closing the Assumption Reinsurance Agreement and Agreement And Plan
22 Of Rehabilitation, all of Golden State's in-force life, health and disability insurance policies and
23 annuity contracts were transferred to IA American, such that as of January 1, 2010, all of Golden
24 State's in-force policyholders and annuity contract holders became policyholders and annuity
25 contract holders of IA American, and certain assets and liabilities remained with Golden State.
26 Certain policyholder claims remain pending with Golden State's estate and are potential Priority 2
27 claims under Insurance Code § 1033. (Wilson Dec., ¶¶ 8-11; and Order Approving The
28 Conservator's Rehabilitation Plan, Exhibit 3.)

1 **C. Retained Assets and Liabilities for Administration by Golden State's Estate.**

2 As stated above, Golden State's estimated liabilities of \$9,291,895 exceed its estimated
3 remaining assets of \$5,721,154 by over \$3 million (\$5,721,154 in assets - \$9,291,895 in liabilities
4 = \$-3,570,741). (Wilson Dec., ¶¶ 13-15.)

5 Specifically, as of September 30, 2010, assets retained by Golden State total
6 approximately \$5,721,154 and include:

- 7 a. Cash and cash equivalents of \$3,090,716;
- 8 b. Prepaid deposit held of \$75,000;
- 9 c. Receivable due from reinsurers of approximately \$253,807;
- 10 d. Reinsurance recoverable due from Long Term Disability reinsurer of
11 approximately \$35,471;
- 12 e. Real estate valued at approximately \$1,512,960; and
- 13 f. Artwork and murals whose value is at least \$753,200. (Wilson Dec., ¶¶ 14 and 18;
14 and Golden State's Balance Sheet, Exhibit 6.)

15 Liabilities, as of September 30, 2010, retained by Golden State are estimated to be at least
16 approximately \$9,291,895 and include the following estimates of possible claims which may be
17 asserted:

- 18 a. Amounts withheld for accounts of others of \$712,113, which includes amounts
19 owed to IA American and amounts deposited pursuant to the Liquidator's RFP
20 process for the purchase of Golden State's murals and art collection;
- 21 b. Unclaimed funds of \$282,444;
- 22 c. Accrued liabilities of \$630,802;
- 23 d. Pension Plan liability of \$5,260,000, which is the difference between the estimated
24 liability of \$13,550,000 if the plan is terminated as of September 30, 2010, and the
25 fair value of the plan's assets of \$8,460,000 as of September 30, 2010, plus early
26 retirement subsidies of \$170,000;
- 27 e. Obligations under Certificates of Contribution including accrued interest totaling
28 \$2,406,536; and

1 f. Non-contractual liability to Golden State’s policyholders as mutual owners of
2 Golden State, who retain their § 1033 priority 9 rights. (Wilson Dec., ¶¶ 15 and
3 18; and Golden State’s Balance Sheet, Exhibit 6.)

4 The above estimates of potential liabilities which may be asserted against Golden State are
5 not an admission that a particular liability or amount of the liability is actually due. Instead, the
6 above estimates are listed only to establish the amount of potential liabilities which may be
7 asserted against Golden State. (Wilson Dec., ¶ 17.)

8 The Liquidator currently is monetizing Golden State’s remaining assets for distribution to
9 Golden State’s creditors pursuant to the claim priority and asset distribution procedures set forth
10 in Insurance Code § 1011 *et seq.* (Wilson Dec., ¶ 16.)

11 **D. Golden State’s Artwork, Removable Murals and Historical Materials.**

12 As stated above in the listing of assets, Golden State has artwork with an estimated
13 liquidation value of at least \$753,200. Over the years Golden State accumulated a collection of
14 artwork by African and African American artists including the Murals. In 2007, Golden State
15 conducted an auction of a substantial portion of its collection, selling 94 works of art for a total of
16 \$1.54 million. After the 2007 sale of 94 works of art, Golden State retained the Murals and 121
17 paintings, sculptures, photographs and mixed-media pieces that were not sold in the 2007 auction.
18 An inventory of the art collection with photographs is attached as Exhibit 7. (Wilson Dec., ¶ 19
19 and Inventory, Exhibit 7; and Declaration of Michael R. Weiss (“Weiss Dec.”), ¶ 3, and Excerpts
20 from Swann Galleries’ website, Exhibit 8.)

21 The Murals were commissioned by Golden State in 1947, painted in New York, shipped
22 to Los Angeles, and placed in the building’s lobby in 1949. The Murals depict the contributions
23 of African Americans to California’s history. The first mural depicts the years 1527 to 1850, and
24 the second depicts the years 1850 to 1949. Each mural is oil on canvas, measures approximately
25 16 feet, 5 inches by 9 feet, 3 inches, and is removable. The murals are currently located in
26 Golden State’s former headquarters, pursuant to a stipulation with the owner of said building.
27 (1948 Mural Contracts, Exhibits 31 and 32; 1949 Documents re Murals, Exhibit 34; 1949
28 Photographs and film on DVD of Murals installation, Exhibits 20, 21 and 33; Wilson Dec., ¶ 20;

1 Appraisals, Exhibits 9 and 10; Murals Brochure, Exhibit 11; Article on Murals, Exhibit 12; and
2 Stipulation, Exhibit 25.)

3 **E. Conservator’s Request for Proposals to Sell Artwork and Murals.**

4 In November 2009, based on Golden State’s financial condition and in furtherance of his
5 statutory duties to monetize Golden State’s Murals and artworks, the Conservator extended the
6 existing Sales Agreement with Swann Galleries to sell the Murals with a reserve price of \$2.2
7 million. Starting in April 2009, Golden State had retained Swann Galleries to attempt to sell the
8 Murals. Swann Galleries is the same gallery that conducted the 2007 auction of 94 works of art.
9 Swann Galleries was not able to sell the Murals, and the Sales Agreement expired on February
10 28, 2010. (Wilson Dec., ¶ 21 and Swann Galleries Sales Agreement, Exhibit 13.)

11 Thereafter, on June 25, 2010, the Conservator commenced a RFP process in which
12 persons and entities interested in purchasing the Murals, the unsold 121 works of art and/or
13 historical materials were required to submit proposals to the Conservator. (Wilson Dec., ¶ 22;
14 and RFP, Exhibit 14.) All prospective bidders were required to submit proposals in a specified
15 format by July 30, 2010, and were subject to strict financial and disclosure requirements to ensure
16 the successful completion of any sales. Specifically, in pertinent part, the RFP required the
17 following:

18 **III. INFORMATION FOR BIDDERS**

19 **A. Request for Proposal Deadline**

20 All proposals for the purchase of GSM’s art and/or historical materials, in whole or
21 in individual items, must be in writing, comply with the instructions and
22 requirements set forth herein including payment of 25% of the proposed purchase
23 price for each item, and be received by GSM by 4:00 p.m., PST, Thursday, July
24 30, 2010....

25 **IV. INSTRUCTIONS FOR SUBMITTING PROPOSALS AND**
26 **PROPOSAL CONTENT REQUIREMENTS**

27 **Each proposal/bid must be submitted on the form provided.** Additional pages
28 may be attached if necessary. Proposals must be complete in all aspects. A
proposal may be rejected if it is conditional or incomplete in any respect. The
following must be submitted with your proposal:

- 1. Name, address and telephone number of bidder or bidders. For business

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entities, the following must be provided:

- a. Official registered name (Corporate, D.B.A., Partnership, etc.), address, main telephone number, facsimile numbers and e-mail address.
 - b. Contact person, title, address (if different from above address) and direct telephone number and e-mail address.
 - c. Person authorized to contractually bind the bidding organization for any proposal submitted pursuant to the RFP.
2. Identification of each item to be purchased by use of the attached inventory.
 3. Purchase offer amount for each item to be purchased.
 4. Any additional terms or conditions requested by the bidder.
 5. **Payment of 25% of the proposed purchase price for each item, payable to “Golden State Mutual Life Insurance Company in Conservation.”** This payment will be (i) returned to unsuccessful bidders after the selection of a winning bidder, or (ii) retained by GSM if the bidder is selected as the winning bidder and the transaction is not consummated within the time required due to an act or omission within the control of the bidder, or (iii) returned to the selected bidder if the transaction is not consummated due to an act or omission within the control of GSM or the Conservator, or (iv) applied to the purchase price. All interest earned on the payment will be retained by the Conservator to partially cover the expenses of the RFP process.
 6. Disclosure of any relationships, current or past, with GSM or the Conservator or their staff or representatives. The Conservator considers it to be a potential conflict of interest if a bidder or any of its personnel have current and/or prior business transactions or relationships with GSM, the Conservator or their staff or representatives, and therefore requires disclosure of any such transactions or relationships. In addition, the Conservator considers it a potential conflict of interest for a bidder to use any of the persons or firms, or any of the persons working for the persons or firms, listed below, regardless of the location of their offices, in connection with any aspect of this RFP, which are currently advising the Conservator on the RFP or other matters affecting GSM. Potential bidders are required to obtain a written waiver or consent from the Conservator with respect to any conflicts that exist or arise in connection with the RFP process prior to submission of a proposal.... (RFP, Exhibit 14.)

The RFP also advised bidders that by submitting a proposal the bidder acknowledges and agrees to the Conservator’s broad powers and authorities:

THE CONSERVATOR IS UNDER NO AFFIRMATIVE OBLIGATION TO SELL GSM’S ART OR HISTORICAL MATERIALS OR ANY PART THEREOF, AND MAY, IN HIS SOLE DISCRETION, REJECT ANY OR ALL BIDS RECEIVED, IN WHOLE OR IN PART; CONTINUE OR DISCONTINUE THIS REQUEST FOR PROPOSALS WITHOUT LIABILITY TO ANY BIDDER

1 OR POTENTIAL BIDDER; REQUEST CLARIFICATION, ADDITIONAL
2 INFORMATION AND/OR NEW BIDS FROM SOME OR ALL BIDDERS;
3 MAKE COUNTER OFFERS TO SOME OR ALL BIDS; ACCEPT BIDS BASED
4 UPON FACTORS OTHER THAN THE HIGHEST PRICE; SELECT ONE OR
5 MORE BIDS SUBJECT TO FURTHER NEGOTIATIONS AND/OR
6 APPROVAL OF THE LOS ANGELES SUPERIOR COURT; AND/OR TAKE
7 ANY OTHER ACTION THAT THE CONSERVATOR DEEMS
8 APPROPRIATE.

9 ...

10 **V. DISCLAIMERS, DISCLOSURES AND GENERAL TERMS**

11 4. By submitting a proposal for the purchase of GSM's art or historical
12 materials, each bidder acknowledges and agrees that the Conservator is under no
13 affirmative obligation to sell, transfer or otherwise dispose of GSM's art or
14 historical materials or any part thereof, and may, at his sole discretion:

- 15 • Reject any or all bids received, in whole or in part, and/or continue or
16 discontinue this RFP process without liability to any bidder or potential
17 bidder;
- 18 • Request clarification, additional information and/or new bids and/or
19 proposals from some or all bidders;
- 20 • Make counter offers to some or all bids;
- 21 • Accept bids based upon factors other than the highest price;
- 22 • Select one or more bids subject to further negotiations and/or approval of
23 the Los Angeles Superior Court;
- 24 • Respond to bids with additional conditions and requirements, even if such
25 have not been stated herein;
- 26 • Accept more than one bid in order to place the entire collection;
- 27 • Seek any requisite court approval(s); and/or
- 28 • Take any other action that the Conservator deems appropriate.

1 The Conservator hereby disclaims having any obligations to bidders or
2 others with respect to the manner or process through which this RFP is conducted,
3 and each bidder, by its submission of a proposal, hereby acknowledges and agrees
4 that it shall have no rights, claims or other actions against the Conservator, GSM,
5 or any of their respective consultants, representatives, staff or professional
6 advisors, based on the manner or process through which this RFP is conducted or
7 the results thereof. (RFP, Exhibit 14.)

8 On August 9, 2010, due to continuing interest in the art collection, murals and historical
9 materials, the Conservator extended the deadline to submit proposals to August 31, 2010.
10 (Wilson Dec., ¶ 23; and Letter from Conservator dated August 9, 2010, Exhibit 15.)

11 On October 14, 2010, in conclusion of his efforts to evaluate and clarify proposals, the
12 Conservator advised all bidders and all known prospective bidders to "remove any contingencies
13 imposed by them on their proposals and ensure that their proposals fully comply with the RFP's
14 instructions including, without limitation, payment of 25% of the proposed purchase price for
15

1 each item by no later than October 29, 2010.” (Wilson Dec., ¶ 24; and Letter dated October 14,
2 2010, Exhibit 16.)

3 **F. Selection Criteria.**

4 As stated in the RFP, all proposals and prospective bidders were subject to strict financial
5 and disclosure requirements to ensure the successful completion of any sales, and were evaluated
6 based upon several factors including, without, limitation, (1) financial aspects of the proposal,
7 including purchase price and terms of payment; (2) size, financial strength and professional
8 reputation of bidder; (3) amount of the collection bidder is willing to purchase; and (4) intended
9 use and disposition of the items purchased. (Wilson Dec., ¶ 25.) Specifically, the RFP stated the
10 Selection Consideration as follows:

11 **B. Selection Consideration**

12 All proposals submitted in the required format will be given consideration by the
13 Conservator who, in his sole discretion, will decide whether to accept or reject any
14 particular proposal. Factors that may be considered by the Conservator in
15 selecting a proposal include, without limitation, the following, presented in no
16 particular order of significance:

- 17 • Financial aspects of the proposal, including purchase price and terms of
18 payment;
- 19 • Size, financial strength and professional reputation of bidder;
- 20 • Amount of the Collection bidder is willing to purchase; and
- 21 • Intended use and disposition of the items purchased. (RFP, Exhibit 14.)

22 **G. Smithsonian’s Proposal.**

23 The Smithsonian’s original proposal had a purchase price for the two Murals of \$500,000.
24 After discussion with the Conservator’s staff, the Smithsonian increased its proposal’s purchase
25 price for the two Murals to \$750,000. The Smithsonian provided a letter from its Director
26 confirming that the Smithsonian has authorized the funds to purchase the Murals. Based on the
27 Smithsonian’s size, financial strength and funds authorization, and after the Smithsonian’s
28 request, the Conservator waived the 25% deposit to accommodate the Smithsonian’s established
federal purchase order procedures to expend federal funds. (Wilson Dec., ¶ 26; and
Smithsonian’s Proposal, Exhibit 17.)

1 The Smithsonian's proposal detailed the intended use and disposition of the Murals,
2 stating that the Smithsonian intends to display the Murals as signature pieces in its new
3 NMAAHC Museum to be located on The National Mall. (Wilson Dec., ¶ 26; and Smithsonian's
4 Proposal, Exhibit 17.)

5 On January 20, 2011, the Conservator entered into a Murals Sale Agreement with the
6 Smithsonian. The Murals Sale Agreement is contingent upon (1) written approval by this Court
7 and (2) resolution and confirmation of Golden State's ownership of the Murals. (Wilson Dec., ¶
8 27; and Murals Sale Agreement, Exhibit 1.)

9 **H. Other Proposals.**

10 The other proposals submitted to the Conservator for the purchase of the Murals included
11 (1) a proposal with a purchase price of \$1 million without the required 25% deposit and
12 contingent upon the bidder undertaking a 12-month capital campaign to raise the \$1,000,000
13 purchase price (2) a proposal with a purchase price of \$750,000 from an art gallery on behalf of
14 an individual purchaser for a private collection, (3) a proposal with a purchase price of \$600,000,
15 also without the 25% deposit and contingent upon the bidder's identification of funding for the
16 purchase, (4) a proposal with a purchase price of \$350,000, without the 25% deposit, and (5) a
17 proposal for the purchase of the Murals and the entire art collection without specifying a purchase
18 price and without the 25% deposit. (Wilson Dec., ¶ 28.)

19 **I. Appraisal Reports.**

20 The Conservator commissioned and received an Appraisal Report dated July 28, 2010, for
21 Golden State's art collection including the Murals from Certified Appraiser Eric Hanks. The
22 Appraisal Report evaluated the fair market value of the Murals at "the price at which the property
23 would change hands between a willing buyer and a willing seller, neither being under any
24 compulsion to buy or sell and both having reasonable knowledge of relevant facts," which was
25 \$2.5 million per Mural for a total of \$5 million for both Murals. Here, however, the Liquidator is
26 obligated to sell the Murals in order to liquidate Golden State's assets for distribution to Golden
27 State's creditors. (Wilson Dec., ¶¶ 29-30; and July 28 Appraisal, Exhibit 9.)

28

1 Accordingly, in order to estimate the liquidation value of the Murals, the Conservator
 2 commissioned and received a second Appraisal Report dated October 8, 2010, from Mr. Hanks
 3 which appraised the liquidation value of the Murals and certain of the works of art. As stated by
 4 Mr. Hanks in his October 8 Appraisal, “liquidation value” is defined by the Appraisers
 5 Association of America as “the price realized in a sale situation under forced or limiting
 6 conditions and under time constraints.” Based on this valuation criteria, the October 8, 2010
 7 Appraisal appraised the Murals’ liquidation value at \$350,000 per Mural for a total of \$700,000
 8 for both Murals. (Wilson Dec., ¶¶ 29-31; October 14 Appraisal, Exhibit 10, pp. 3, 4 and 8-9.)

9 **J. The Murals are Removable.**

10 Both Appraisal Reports confirm that the Murals are removable from Golden State’s
 11 former headquarters located at 1999 West Adams Boulevard in Los Angeles (the “Building”).
 12 Specifically, the Appraisal Reports state the Murals are “detachable from the wall” and that
 13 “according to Gylbert Garvin Coker in an exhibition catalogue titled *Charles Alston: Artist and*
 14 *Teacher*, the mural was created in a studio on 158th and Broadway, New York City” and “[a]
 15 photograph in that catalogue shows Alston and Hale Woodruff painting their respective large
 16 canvases in the studio.” (October 8, 2010 Appraisal, pp. 4 and 9, and July 28, 2010 Appraisal, pp.
 17 8 and 41, Exhibits 9 and 10.)

18 In addition, two proposals received by Golden State in 2008 and a renewal of one of the
 19 proposals in October 2010 to remove the Murals from the Building confirm that the Murals are
 20 removable. The first proposal, entitled “Mural Proposal”, dated November 10, 2008 and renewed
 21 on October 28, 2010, provides a price to remove the Murals from the Building and reinstall them
 22 in another location, and states:

23 There are two oil paintings on canvas marouflaged (glued continuously) to the east
 24 and west walls, each 9’3” x 17’ The adhesive [attaching the Murals to the
 25 Building’s walls] was tested behind an already peeled area along the left side of
 26 the door jamb where the molding has been loosened. The adhesive is likely wheat
 27 starch paste or a commercial wall paper paste and it peels easily. Light percussion
 28 by running the hand along the wall indicates that there are many areas that are
 detached. . . . [¶] A fresh peel test along the left side of the door reveals relatively
 easy detachment from the wall.

(Mural Proposal, Exhibit 18; Wilson Dec., ¶ 32.)

1 The second proposal, entitled Proposal For Treatment, dated October 26, 2008, also states that the
2 Murals can be removed from the Building's walls and remounted in another location, and
3 provides a price to complete said removal and remounting. (Proposal For Treatment, Exhibit 19;
4 Wilson Dec., ¶ 33.)

5 Further, documents from 1949 and photographs and a film from 1949 (converted to DVD)
6 showing the installation of the Murals confirm that the Murals were painted in New York, then
7 shipped to Los Angeles, and then installed on the Building's walls and not painted on the walls.
8 (1949 Documents, 1949 Documents, Photographs and DVD of Film and screen shots, Exhibits
9 20, 21, 33 and 34, Weiss Dec., ¶¶ 6-8, 18-19.)

10 **K. Notice Of This Application.**

11 The Liquidator has provided written notice of this application to all persons and entities
12 known to him that may have a substantial, unsatisfied claim that may be affected by the this
13 application and any Court Orders pertaining thereto, regardless of whether the persons or entities
14 are a party to this action or have appeared in it, in compliance with California Rules of Court Rule
15 3.1184(c). Said persons and entities include the Smithsonian, the five other bidders who
16 submitted proposals for the purchase of the Murals, the Building owner Community Impact
17 Development II, LLC which claims ownership of the Murals, Pension Benefit Guaranty
18 Corporation, National Organization of Life and Health Insurance Guaranty Associations,
19 Certificate of Contribution holders, and several persons and community groups who have
20 contacted the Conservator or have otherwise expressed interest in the sale of the Murals. Such
21 persons and entities are listed on the Service List attached at the end of the Notice for this
22 Application. (Weiss Dec., ¶ 20; and Proof of Service.)

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III.

ARGUMENT

There is good cause for the Court to authorize the sale of the Murals to the Smithsonian.

A. The Sale Is Consistent With The Conservator’s And Liquidator’s Authorities And Discretion Under The Court’s Orders, The Insurance Code And Case Law.

First, the Order Appointing Conservator directed the Insurance Commissioner as Conservator to conduct the business of Golden State or so much thereof as the Conservator may deem appropriate, and authorized him to sell, transfer or otherwise dispose of Golden State’s personal property at its reasonable market value; provided, however, for personal property sales where the market value of the property involved exceeds \$20,000, Court approval of the sale is necessary. (Order Appointing Conservator, ¶¶ 1, 7 and 8, Exhibit 2; see also Insurance Code § 1037(d) [quoted below].) Similarly, the Order Appointing Liquidator directs the Insurance Commissioner to liquidate and wind up the business of Golden State, and, just as with the Order Appointing Conservator, authorized him to sell, transfer or otherwise dispose of Golden State’s personal property at its reasonable market value; provided, however, for personal property sales where the market value of the property involved exceeds \$20,000, Court approval of the sale is necessary. (Order of Liquidation, ¶¶ 1, 2 and 8, Exhibit 5; see also Insurance Code § 1037(d) [quoted below].)

Second, the sale is consistent with the Conservator’s and Liquidator’s authorities under the Insurance Code, which grants broad powers to the Insurance Commissioner as conservator and liquidator of insurance companies to sell, transfer or otherwise dispose of the insurer’s property “upon such terms and conditions as the commissioner may deem proper.” Most notably, Insurance Code § 1037, entitled “Powers of commissioner as conservator or liquidator,” provides in pertinent part:

Upon taking possession of the property and business of any person in any proceeding under this article, the commissioner, exclusively and except as otherwise expressly provided by this article, either as conservator or liquidator:

(a) [Conservation of assets; conduct of business.] Shall have authority to collect all moneys due that person, and to do such other acts as are necessary or

1 expedient to collect, conserve, or protect its assets, property, and business, and to
2 carry on and conduct the business and affairs of that person or so much thereof as
to him or her may seem appropriate.

3

4 (d) [Acquisition and disposition of property.] Shall have authority without
notice, to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon,
5 or otherwise dispose of or deal with, any real or personal property of that person at
its reasonable market value, or, in cases other than acquisition, sale, or transfer on
6 the basis of reasonable market value, upon such terms and conditions as the
commissioner may deem proper. However, no transaction involving real or
7 personal property shall be made where the market value of the property involved
exceeds the sum of twenty thousand dollars (\$20,000) without first obtaining
8 permission of the court, and then only in accordance with any terms that court may
prescribe.

9

10 (f) [Lawsuits, execution of instruments.] May, for the purpose of executing
and performing any of the powers and authority conferred upon the commissioner
11 under this article, in the name of the person affected by the proceeding or in the
commissioner's own name, . . . execute, acknowledge and deliver any and all
12 deeds, assignments, releases and other instruments necessary and proper to
effectuate any sale of any real and personal property or other transaction in
13 connection with the administration, liquidation, or other disposition of the assets of
the person affected by that proceeding;

14

15 [General powers.] The enumeration, in this article, of the duties, powers
and authority of the commissioner in proceedings under this article shall not be
16 construed as a limitation upon the commissioner, nor shall it exclude in any
manner his or her right to perform and to do such other acts not herein specifically
17 enumerated, or otherwise provided for, which the commissioner may deem
18 necessary or expedient for the accomplishment or in aid of the purpose of such
proceedings.

19
20 Third, California case law supports the broad grant of powers accorded the Insurance
21 Commissioner to sell an insurer's assets when he is conserving, rehabilitating, and/or liquidating
22 insurance companies. For instance, in *In Re Executive Life Insurance Company* (1995) 32
23 Cal.App.4th 344, the Court of Appeal noted that:

24 The Commissioner is an officer of the state (*Caminetti v. Pac.*
25 *Mutual L. Ins. Co.* (1943) 22 Cal.2d 344, 354 [139 P.2d 908]) who, when
he or she is a conservator, exercises the state's police power to carry
26 forward the public interest and to protect policyholders and creditors of the
insolvent insurer. (*Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal.2d
27 307, 330-331 [74 P.2d 761].)

1 (In Re Executive Life, supra, at p. 356.) The Court then went on to explain that:

2 In exercising this power, the Commissioner is vested with broad discretion.
3 (Commercial Nat. Bank v. Superior Court [(1993)] 14 Cal.App.4th [393] at p.
4 402.) This discretion is subject to statutory limitations (see id. at p. 409) and the
5 requirement that the exercise of discretion be neither arbitrary nor improperly
6 discriminatory. (Carpenter v. Pacific Mut. Life Ins. Co., supra, 10 Cal.2d at p.
7 329.) The Commissioner as conservator of the insolvent insurer is also a trustee for
8 the benefit of all creditors and other persons interested in the insolvency estate.
9 ([Insurance Code] § 1057.)

10 (In Re Executive Life, supra, at p. 356.)
11 The Court concluded that:

12 . . . The trial court reviews the Commissioner's actions under the abuse of
13 discretion standard. (Commercial Nat. Bank v. Superior Court, supra, 14
14 Cal.App.4th 393, 398): was the action arbitrary, i.e. unsupported by a rational
15 basis, or is it contrary to specific statute, a breach of the fiduciary duty of the
16 conservator as trustee, or improperly discriminatory?

17 (In Re Executive Life, supra, at p. 358.)

18 **B. The Sale Is Rational, Geared Toward Maximizing Golden State's Estate Value And**
19 **In The Best Interests Of Golden State's Creditors.**

20 The Liquidator recommends the Smithsonian's proposal for the sale of the Murals because
21 the Smithsonian's proposal best satisfied the RFP's selection criteria and the sale of the Murals to
22 the Smithsonian is fair, rational and in the best interests of Golden State's creditors. The
23 Liquidator's recommendation is based on the following:

24 First, the Smithsonian's proposal has a total purchase price of \$750,000 for the two
25 Murals, which exceeds the appraised liquidation value for the Murals of \$700,000 stated in the
26 October 8, 2010, Appraisal and is equal to the price offered by the other highest priced proposal
27 that complied with the RFP. Although the July 28, 2010 Appraisal estimates the fair market value
28 of the Murals at \$5 million, the efforts to sell the Murals first through Swann Galleries and then
through the RFP yielded only the offers described in this Application. The Murals were offered
for sale through Swann Galleries without success from April 2009 through February 28, 2010.
Then the Conservator marketed the Murals through his RFP. Then, by letter dated October 14,
2010, in conclusion of his efforts to evaluate and clarify proposals, he advised all bidders and all

1 known prospective bidders to “remove any contingencies imposed by them on their proposals and
2 ensure that their proposals fully comply with the RFP’s instructions including, without limitation,
3 payment of 25% of the proposed purchase price for each item by no later than October 29, 2010.”
4 As a result of all of these efforts, the highest credible amount offered to purchase the Murals was
5 \$750,000. (Wilson Dec., ¶¶ 24, 26, 28 and 36; Smithsonian Proposal, Exhibit 17; Murals Sale
6 Agreement, Exhibit 1; October 8, 2010 Appraisal, pp. 4 and 9, and July 28, 2010 Appraisal, pp. 8
7 and 41, Exhibits 9 and 10; and Letter dated October 14, 2010, Exhibit 16.)

8 Second, the Smithsonian’s size, financial strength and professional reputation is excellent.
9 The Smithsonian is the world’s largest museum and research complex, consisting of 19 museums
10 and galleries, the National Zoological Park and nine research facilities. The Smithsonian
11 provided a letter from its Director confirming that the Smithsonian has authorized the funds to
12 purchase the Murals. Further, due to the Smithsonian’s financial strength and its confirmation
13 that it has authorized the funds to purchase the Murals, the Liquidator and Golden State’s
14 creditors are assured that upon the Court’s approval the Smithsonian will be able to pay the
15 \$750,000 purchase price and complete the purchase. (Wilson Dec., ¶ 37; and Smithsonian
16 Proposal, Exhibit 17.)

17 Third, the Smithsonian intends to display the Murals as signature pieces in its new
18 NMAAHC Museum. The NMAAHC Museum is part of the Smithsonian Institution and will be
19 the first national museum dedicated to the African American experience. The Murals will be
20 housed in the NMAAHC Museum and cared for by the Smithsonian Institution’s Museum
21 Conservation Institute. As such, the Liquidator believes that the Murals will be placed in an
22 optimal environment to maintain their condition and at the same time keeping the Murals
23 accessible to the public for many years to come. With Smithsonian-wide programs enjoying an
24 annual visitorship of over 30 million people, the Liquidator believes that the Smithsonian and its
25 NMAAHC are in a unique position to ensure the long-term preservation and public display of the
26 Murals. (Wilson Dec., ¶ 38; and Smithsonian Proposal, Exhibit 17.)

27 Fourth, Golden State’s creditors will benefit from the payment of the \$750,000 purchase
28 price in that receipt of the sale’s proceeds will increase the money available for distribution to

1 Golden State’s creditors in accordance with claim priority set forth in Insurance Code § 1033.
2 (Wilson Dec., ¶ 39.)

3 Fifth, continuing to hold the Murals in hope of getting a better price over time amounts to
4 speculation in the art market, which is inconsistent with prudent management of the assets of
5 Golden State in liquidation. Similarly, continuing to hold the Murals to permit a capital campaign
6 to seek funds for their purchase provides no assurance to the liquidation estate that such a
7 campaign will succeed or will produce a more favorable price for the Murals. (Wilson Dec., ¶
8 40.)

9 Sixth, the other five proposals submitted to the Conservator (now Liquidator) through the
10 RFP process are not superior to the Smithsonian’s proposal. The proposal with a \$1 million
11 purchase price without the required 25% deposit and contingent upon the bidder undertaking a
12 12-month capital campaign to raise the \$1,000,000 purchase price, did not provide any assurance
13 that the money would be paid and the transaction would be completed, exposing Golden State to
14 the potential of extended delays in monetizing its assets and the potential of wasting Golden
15 State’s limited assets if the Liquidator recommends the sale and the sale is not completed.¹ The
16 proposal with a purchase price of \$750,000 from an art gallery is on behalf of a private collector.
17 The proposal with a purchase price of \$600,000, also without the 25% deposit and contingent
18 upon the bidder’s identification of funding for the purchase, is less than the \$750,000 offered by
19 the Smithsonian and does not provide any assurance that the purchase price would be paid and the
20 transaction would be completed. Similarly, the proposal with a purchase price of \$350,000, also
21 without the 25% deposit, is substantially below the \$750,000 offered by the Smithsonian. Finally,
22 the proposal for the purchase of the Murals and the entire art collection without specifying a
23 purchase price and without the 25% deposit, does not comply with the RFP and does not provide
24 any assurance that the purchase price would be paid and the transaction would be completed.
25 (Wilson Dec., ¶ 41.)

26
27 ¹ On February 22, 2011 (the day notice this Application was being served), the bidder for the \$1 million proposal
28 submitted a letter to the Liquidator offering to pay “up to a limit of \$4 million”, conditioned again on a 12-month
capital campaign, subject to an unknown minimum purchase price to be negotiated, and without the required 25%
deposit or any assurance that the funds could be raised and paid.

1 In sum, the sale of the Murals to the Smithsonian is fair, rational and in the best interest of
2 Golden State’s creditors; and therefore, should be approved by the Court.

3 **C. CID’s Ownership Claim To The Murals Should Be Rejected.**

4 In 1948 Golden State hired the two muralists to paint the Murals. The contracts provided
5 that Golden State owns the Murals. (1949 Mural Contracts, Art. 4, p. 2, Exhibits 31 and 32.) In
6 1949, the Murals were painted in New York, shipped to Los Angeles and then installed in Golden
7 State’s headquarters located at 1999 West Adams Boulevard in Los Angeles, previously
8 referenced as the “Building”. (1949 Mural Documents, 1949 photographs and film of installation,
9 Exhibits 20, 21, 33 and 34.) From 1949 through 2005, Golden State owned the Building. In
10 2005, Golden State sold the Building to EN Realty Associates, LLC (“EN Realty”), but expressly
11 excluded the Murals from the sale and maintained ownership of the Murals. (Purchase
12 Agreement, p. 1, Exhibit 22.) In 2008, EN Realty then transferred the Building to West Adams
13 Investment Trust. (Objection to Request for Proposal, p. 2:13-14, Exhibit 23.) In 2009, West
14 Adams Investment Trust sold the Building to CID. (Grant Deed, Exhibit 24.)

15 CID claims that it owns the Murals because the Murals are purportedly “fixtures” to the
16 Building and that CID’s “purchase price” for the Building purportedly reflected the value of the
17 Murals. (Objection, p. 2:18-21, Exhibit 23.) In response to CID’s claims, the Liquidator issued
18 subpoenas for documents and depositions. Documents were received from and depositions were
19 taken of CID, CID’s current and former members, and CB Richard Ellis who performed an
20 appraisal of the Building for CID’s purchase of the Building. In order to maintain the status quo
21 (which is that the Murals are in the Building) pending a determination of ownership, the
22 Liquidator, Golden State and CID agreed, among other things, to allow the Murals to remain in
23 the Building until such time that this Court confirms Golden State’s ownership of the Murals.
24 (Stipulation And Order Regarding Non-Removal Of Lobby Murals, p. 1, item No. 2, Exhibit 25.)

25 As discussed below, based on the discovery conducted and the evidence presented by
26 CID, CID’s claims are not supported by evidence and are without merit. As such, the Court
27 should issue an Order determining that the Murals are the property of Golden State and that they
28 may be sold free and clear of any claims of adverse claimants and/or creditors including CID.

1 1. This Court has jurisdiction to confirm Golden State’s ownership of the Murals.

2 This Court in a summary order to show cause proceeding has jurisdiction to determine the
3 rights of Golden State and CID and conclude that Golden State owns the Murals and CID does
4 not.

5 First, pursuant to Insurance Code § 1058, where, as here, the receiver has possession or
6 constructive possession of the asset to be adjudicated, this receivership court has jurisdiction over
7 the asset and the court may use the summary procedure of an order to show cause to determine
8 ownership of the asset. (Insurance Code § 1058, entitled “Jurisdiction of court,” states “In any
9 proceeding pending under the provisions of this article, the court in which such proceeding is
10 pending shall have jurisdiction to hear and determine, in such proceeding, all actions or
11 proceedings then pending or thereafter instituted by or against the person affected by a proceeding
12 under this article.”; see also, *Maloney v. Rhode Island Ins. Co.* (1953) 115 Cal.App.2d 238, 249-
13 251 (“It is elementary that, even a receivership court, has power to proceed summarily to recover
14 assets already constructively within the receiver's possession, or to hold an agent for failure to
15 remit such asset. [Citation] ‘As to third persons and neither officers of the court, nor parties to
16 the suit, possession or custody by the court seems to be the determining factor as to whether a
17 summary or plenary suit must be brought. Possession need not be physical possession but may be
18 and sometimes is constructive possession. If the court has such possession then the court can
19 protect its possession by summary process even against their persons.’”); and *Gillespie v.*
20 *California Standard Indemnity Company* (1989) 212 Cal.App.3d 1351 (Commissioner's use of the
21 summary procedure to compel bank to turn over conserved insurer’s funds did not violate bank's
22 right to procedural due process.).)

23 Here, the Liquidator and Golden State maintain possession of the Murals because,
24 pursuant to the Stipulation and Order filed with this Court, CID agreed that “by allowing the
25 Murals to remain in the Building until such time that the Court [*defined as this Court*] determines
26 whether Golden State or [CID] owns the Murals, the Conservator [now Liquidator] and Golden
27 State have not voluntarily parted with or relinquished control of the Murals.” (Stipulation And
28 Order Regarding Non-Removal Of Lobby Murals, p. 1, item No. 2, Exhibit 25.)

1 Second, pursuant to said Stipulation, CID agreed to the jurisdiction of this Court in that
2 CID agreed that the “Murals will remain in the Building until such time that the Court [*defined as*
3 *this Court*] determines whether Golden State or [CID] owns the Murals.” (Stipulation And Order
4 Regarding Non-Removal Of Lobby Murals, p. 1, item No. 1, Exhibit 25.)

5 2. The Murals were contractually excluded from the 2005 sale of the Building from
6 which CID’s ownership is derived.

7 CID’s objection amounts to an allegation of a competing claim of ownership, without any
8 contract, chain of title or bill of sale to support the allegation. CID asserts that the Murals are
9 fixtures to the Building which are now owned by it as the building owner. The facts of this matter
10 and the law of fixtures rebut the assertion.

11 Civil Code § 660 defines “fixture” as follows:

12 A thing is deemed to be affixed to land when it is attached to it by roots, as in the
13 case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or
14 permanently resting upon it, as in the case of buildings; or permanently attached to
15 what is thus permanent, as by means of cement, plaster, nails, bolts, or screws;
16 except that for the purposes of sale, emblements, industrial growing crops and
17 things attached to or forming part of the land, which are agreed to be severed
before sale or under the contract of sale, shall be treated as goods and be governed
by the provisions of the title of this code regulating the sales of goods. (Emphasis
added.)

18 Here, when Golden State sold the Building to EN Realty, Golden State wrote into the
19 Purchase Agreement that its Murals were excluded from the sale. In accordance with Civil Code
20 § 660, Golden State and EN Realty agreed that the Murals are severed from, and not included in,
21 the sale of the Building. Specifically, the 2005 Purchase Agreement by and between Golden State
22 and EN Realty for the purchase and sale of the Building, through which CID’s ownership of the
23 Building derives, expressly excluded the Murals from the sale of the Building:

24 [The sale of the Building] shall not include, and [Golden State] shall retain title to
25 and possession of, all personal property owned by [Golden State], whether located
26 on or about the Building or the Land or otherwise, including furniture, office
27 equipment, files and business records, business licenses and franchises, **artwork**
28 **(including removable murals)**, trademarks and service marks, tradenames owned
or used by [Golden State]. (Emphasis added, Purchase Agreement, p. 1, bottom of
paragraph 1, Exhibit 22.)

1 CID purchased the Building from West Adams Investment Trust, who purchased the
2 Building from EN Realty. (Grant Deed, Exhibit 24.) As such, CID’s interest in the Building and
3 in any fixtures to the Building are derived from EN Realty’s ownership of the Building and its
4 fixtures and can be no greater than EN Realty’s interest. Here, EN Realty agreed that the
5 Building’s purchase did not include the Murals – whether as fixtures or otherwise. Once
6 excluded, the Murals are not fixtures to the Building. (Civil Code § 660, the Murals are items
7 “agreed to be severed before sale or under the contract of sale.”) Thus, CID’s purchase of the
8 Building did not include the Murals – whether as fixtures or otherwise.

9 Accordingly, pursuant to Civil Code § 660, the Murals are not fixtures; and therefore,
10 CID’s claim to the contrary is without merit. To the extent CID actually believed that the Murals
11 were fixtures to the Building, then CID may have a claim against West Adams Investment Trust
12 as the seller of the Building to CID, but CID has no ownership claim here to the Murals.

13 3. The Murals are not fixtures to the Building because the Murals are removable.

14 In addition to the conclusion above, the Murals also are not fixtures to the Building
15 because they are removable from the Building. The Murals are oil on canvas, were painted in
16 New York City, shipped to Los Angeles and installed on the Building’s walls, as evidenced by the
17 1948 and 1949 contracts, documents, photographs and film of the installation. As stated by
18 Certified Appraiser Eric Hanks in both the July 28 and October 8 Appraisals and confirmed by
19 two 2008 proposals to remove the Murals, the murals are “detachable from the wall,” “[l]ight
20 percussion by running the hand along the wall indicates that there are many areas that are
21 detached” and “[a] fresh peel test along the left side of the door reveals relatively easy detachment
22 [of the Murals] from the wall.” (1948 and 1949 Contracts, Documents, Photographs and DVD of
23 Film depicting installation, Exhibits 20, 21, 31-34; October 8, 2010 Appraisal, pp. 4 and 9, and
24 July 28, 2010 Appraisal, pp. 8 and 41, Exhibits 9 and 10; Mural removal proposals, Exhibits 18
25 and 19; and see also Murals Brochure and Article on Murals, Exhibits 11 and 12.)
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1 4. CID's purchase price of the Building did not include the Murals.

2 The evidence about CID's purchase of the Building helps prove that CID did not believe
3 that its purchase included the valuable Murals. CID established its purchase price for the
4 Building based on the rental income of the Building, did not place a separate value on the Murals,
5 did not add any amount to the Building's purchase price based on the Murals, and admits that the
6 Murals were "not a factor in the determination of [CID's] price" for its purchase of the Building.
7 (Deposition Transcript of Essie Safaie, pp. 82:4-13, 88:25-94:12, 94:24-98:21, 100:16-22, Exhibit
8 26.) In fact, in calculating the Building's purchase price, CID did not "include anything with
9 respect to the murals", the Murals were "not a factor in the determination of [CID's] price" for its
10 purchase of the Building, and CID's personnel had no discussion with the seller about the value of
11 the Murals in calculating the "final purchase price" of \$9.7 million for the Building. (Safaie
12 Transcript, pp. 98:9-21, 100:16-22, Exhibit 26.)

13 Similarly, the Agreement of Purchase and Sale between CID and West Adams Investment
14 Trust makes no mention of the Murals, and CID admits that no one told CID that the Murals were
15 included in the purchase of the Building. (Agreement Of Purchase And Sale, Exhibit 29;
16 Deposition Transcript of Norman Harrower, pp. 42:25-43:9, Exhibit 27; and Safaie Transcript, pp.
17 35:22-37:14, Exhibit 26.)

18 Further, CID's appraiser Mark Steven Moniz with CB Richard Ellis testified that the
19 Murals were not discussed during his 2008 / 2009 appraisal of the Building, the subject of the
20 Murals did not "come up" until he recently received a subpoena in November 2010, the Murals
21 added no value to the appraised value of the Building, and that the appraised value of the Building
22 would be "the same" whether the Building had "white walls" or the Murals. (Deposition
23 Transcript of Mark Steven Moniz, pp. 13:25-16:2, 22:12-23:12 and 37:4-12, Exhibit 28 and
24 Summary Appraisal Report, Exhibit 30.)

25 Accordingly, contrary to CID's claims, CID's purchase price for the Building did not
26 include the Murals and did not reflect any value for the Murals.

27 In sum, CID's claim that it owns the Murals is without merit and should be rejected.

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IV.

CONCLUSION


There is good cause for the Court to grant this application and authorize the Liquidator to sell the Murals to the Smithsonian. Accordingly, the Liquidator requests that the Court grant this application and issue the following orders:

1. An Order authorizing the Liquidator to sell the Murals to the Smithsonian pursuant to the terms of the Murals Sale Agreement;
2. An Order confirming that the Murals are the property of Golden State and that they may be sold free and clear of any claims of adverse claimants and/or creditors; and
3. An Order authorizing the Liquidator to take any and all actions necessary to accomplish the purposes of these Orders.

DATE: February 22, 2011

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