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 15 Insurance Commissioner of the State of California

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

18 INSURANCE COMMISSIONER OF THE
 19 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. Joanne O'Donnell, Dept. 86

**NOTICE OF APPLICATION TO
 APPROVE SETTLEMENT AGREEMENT
 REGARDING MURAL OWNERSHIP
 LAWSUIT**

[Filed concurrently with Memorandum,
 Declarations and Proof of Service]

Date: December 6, 2013
 Time: 1:30 p.m.
 Dept: 86

1 **TO: (1) THE LOS ANGELES SUPERIOR COURT;**
2 **(2) ALL PERSONS AND ENTITIES KNOWN TO THE COMMISSIONER TO**
3 **HAVE A SUBSTANTIAL UNSATISFIED CLAIM THAT MAY BE AFFECTED**
4 **BY THE REQUESTED COURT ORDERS; AND**
5 **(3) ALL INTERESTED PARTIES.**

6 **PLEASE TAKE NOTICE** that on December 6, 2013, at 1:30 p.m., or as soon thereafter as
7 the parties may be heard, in Department 86 of the Los Angeles Superior Court for the State of
8 California, County of Los Angeles, located at 111 N. Hill Street, Los Angeles, California 90012
9 (“Court”), Applicant Insurance Commissioner of the State of California in his official statutory
10 capacity as Liquidator for Golden State Mutual Life Insurance Company (“Commissioner”) will
11 and hereby does submit this Application for:

- 12 1. An Order approving the General Release and Settlement Agreement (“Settlement
13 Agreement”) and authorizing the Commissioner to enter into the Settlement Agreement with
14 Community Impact Development II, LLC (“CID”) resolving the action entitled *Community Impact*
15 *Development II, LLC v. Insurance Commissioner of the State of California as Liquidator for Golden*
16 *State Mutual Life Insurance Company*, Los Angeles Superior Court Case No. BC462745; and
- 17 2. An Order authorizing the Commissioner to take any and all actions necessary to
18 accomplish the purposes of the Order requested herein.

19 **Grounds for the Application**

20 On June 2, 2011, pursuant to this Court’s authorization, CID sued the Commissioner in the
21 above referenced matter for quiet title and declaratory relief, contending that CID owns two murals
22 attached to the lobby walls of real property owned by CID and known as the Golden State Mutual
23 Life Insurance Company Building located at 1999 West Adams Boulevard in Los Angeles,
24 California (“Building”). The two murals are identified as (1) “*The Negro in California History:*
25 *Exploration and Colonization*” by Charles Alston and (2) “*The Negro in California History:*
26 *Settlement & Development*” by Hale Woodruff (collectively, “Murals”). The Murals are painted on
27 canvas and depict the contributions of African Americans to California’s history. The first mural
28 depicts the years 1527 to 1850, and the second depicts the years 1850 to 1949. Thereafter, on

1 December 21, 2011, the Commissioner filed a cross-complaint against CID seeking damages for
2 breach of lease, breach of covenant of good faith and fair dealing and declaratory relief.

3 In the Lawsuit, CID contended that it purchased the Murals with the Building at the time it
4 purchased the Building in 2009. The Commissioner, on behalf of Golden State, disputed CID's
5 contention and contended that the Murals are Golden State's personal property and that CID
6 breached the Lease Agreement between CID and Golden State by not permitting the Commissioner
7 to remove and sell the Murals. After over two years of litigation, during which the case was
8 reassigned and rescheduled for trial multiple times, one and a half days of mediation and an all-day
9 Mandatory Settlement Conference before the Lawsuit's assigned trial judge, the Hon. William F.
10 Fahey, the Commissioner and CID reached a full settlement of the Lawsuit and thereafter entered
11 into the Settlement Agreement attached as Exhibit 1 to the Memorandum filed separately with the
12 Court and available at the Insurance Commissioner's Conservation & Liquidation Office's website
13 at www.caclo.org/GoldenStateMutual.

14 Pursuant to the Settlement Agreement, the parties agreed to the following terms:

- 15 1. CID agreed to pay to Golden State the total sum of Five Hundred Fifty Thousand
16 Dollars (\$550,000) in settlement of the Lawsuit, hereinafter referred to as the "Settlement Sum."
- 17 2. The Commissioner and Golden State agreed to release any and all right, title and
18 interest in and to the Murals to CID.
- 19 3. Within thirty (30) days of October 3, 2013, the Settlement Sum is to be deposited
20 into an interest bearing blocked escrow account at First American Title Insurance Company, which
21 shall serve as the escrow agent, and proof of said deposit shall be provided to counsel for the
22 Commissioner. The terms of the escrow account are to provide that within five (5) days of CID
23 receiving notice of entry of a Court Order or Orders approving the Settlement Agreement, the
24 escrow agent shall pay the Settlement Sum to Golden State. The terms of the escrow account also
25 are to provide that the escrow is not revocable by CID unless this Court expressly declines to
26 approve the Settlement Agreement.
- 27 4. CID shall not sell or otherwise transfer ownership of the Murals separately from the
28 Building for a period of five years and six months. Said period expires on March 31, 2019.

1 5. The Settlement Agreement is subject to and requires the approval of this Court,
2 which is the Court overseeing Golden State's liquidation in the matter entitled *Insurance*
3 *Commissioner of the State of California v. Golden State Mutual Life Insurance Company* (LASC
4 Case No. BS123005) ("Liquidation Court").

5 6. The Parties are to bear their own costs and attorneys' fees.

6 There is good cause for the Court to issue the requested Orders.

7 First, the Settlement Agreement and the payment to Golden State of \$550,000 represents a
8 reasonable settlement of the Commissioner's and CID's claims in the Lawsuit and eliminates the
9 uncertainty of a potential judgment awarding the Murals to CID and against the Commissioner.
10 CID's complaint sought a declaration that the Murals are owned by CID and an award of attorney's
11 fees and expenses. If Judge Fahey determined that the Murals are owned by CID, then Golden State
12 would receive no money from CID and potentially would have to pay an award of attorney's fees
13 and expenses to CID previously estimated by CID to exceed \$400,000. If on the other hand Judge
14 Fahey determined that the Murals are owned by Golden State, then the Commissioner would need
15 to incur the cost of removing, storing and insuring the Murals at an estimated cost of at least
16 \$35,000 and then selling the Murals at an estimated administrative cost (including a commission or
17 sales fee) of at least \$25,000, for a combined cost of at least \$60,000. The Murals' combined
18 estimated liquidation value in accordance with the estate's most recent appraisal is \$700,000
19 (\$350,000 per Mural).

20 Second, the majority of the issues in the Lawsuit were framed for trial by Judge Gregory
21 Alarcon, the Lawsuit's former trial judge before re-assignment, in his Orders denying the Parties'
22 cross-motions for summary judgment. Based on Judge Alarcon's determinations in the Orders, the
23 Commissioner believes that resolutions at trial of the facts, issues, claims and defenses in the
24 Lawsuit would inevitably lead to an appeal, with the attendant costs and delay of an appeal. The
25 settlement avoids an appeal and its costs and delay.

26 Third, due to the passage of time and availability of witnesses, there are evidentiary issues
27 regarding proof of facts and issues. Neither side is assured of victory at trial.

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1 Fourth, the Settlement Agreement stops the further expenditure of Golden State's limited
2 assets on attorney's fees and expenses associated with the Lawsuit, the anticipated trial scheduled to
3 commence on October 21, 2013 prior to settlement, and anticipated appeal by the losing party.
4 Trial was anticipated to take two to three weeks. The anticipated fees and expenses associated with
5 trial and an appeal exceed \$150,000. Accordingly, absent settlement, the anticipated cost of
6 removing, securing and selling the Murals and the attorney's fees and expenses for trial and appeal,
7 assuming the Commissioner were in fact to prevail, exceeds \$210,000, resulting in a potential net
8 recovery of \$490,000 or less (\$700,000 liquidation value minus at least \$210,000 in expenses)
9 which is approximately \$60,000 less than the \$550,000 Settlement Sum to be paid by CID pursuant
10 to the Settlement Agreement.

11 Fifth, the Settlement Agreement is consistent with the Commissioner's authority under the
12 Insurance Code and California case law, which grants the Commissioner broad powers to settle
13 claims against Golden State. Insurance Code § 1037 and the Court's Order Appointing Liquidator
14 provide that the Commissioner as Golden State's liquidator shall have the authority to "compromise
15 or in any other manner negotiate settlements of claims against" Golden State "upon such terms and
16 conditions as the commissioner shall deem to be most advantageous to the estate of the person
17 being administered or liquidated."

18 In sum, the Commissioner's settlement of the Lawsuit for \$550,000 and an agreement that
19 the Murals will not be removed from the Building for at least 5½ years is reasonable, rational,
20 geared toward maximizing Golden State's liquidation estate value, and is in the best interests of
21 Golden State's creditors.

22 **Copies of Commissioner's Application and Supporting Evidence and Documents**

23 Copies of the Commissioner's Notice and Memorandum with evidence supporting this
24 application can be reviewed and downloaded at the Insurance Commissioner's Conservation &
25 Liquidation Office's website at www.caclo.org/GoldenStateMutual.

26 **Response or Opposition to Application**

27 Any response or opposition to this Application shall be filed with the Court and served by
28 mail or e-mail to Golden State's attorney Michael R. Weiss, with supporting evidence, on or before

1 November 21, 2013. The Liquidator shall file any replies, with supporting evidence, on or before
2 November 27, 2013. The address for Golden State's attorney Michael R. Weiss for service is:


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4 Michael R. Weiss
5 Epstein Turner Weiss, A Professional Corporation
6 633 W. Fifth Street, Suite 3330
7 Los Angeles, California 90071
8 Telephone: (213) 861-7487
9 Facsimile: (213) 861-7488
10 Email: mrw@epsteinturnerweiss.com.

11 No action is required on your part if you do not oppose this Application.

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DATE: October 28, 2013

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By: 
MICHAEL R. WEISS
Attorneys for Applicant
INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA