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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,

13
14 Applicant,

15 v.

16 GOLDEN STATE MUTUAL LIFE
INSURANCE COMPANY, a California
17 corporation,

18 Respondent.

Case No. BS123005

Assigned to Hon. David P. Yaffe, Dept. 86

**CONSERVATOR'S MOVING PAPERS
AND APPLICATION RE: ORDER TO
SHOW CAUSE AND FOR ORDERS
APPROVING REHABILITATION PLAN
OF GOLDEN STATE MUTUAL LIFE
INSURANCE COMPANY AND
AUTHORIZING CONSERVATOR TO
ENTER INTO RELATED
AGREEMENTS WITH IA AMERICAN
LIFE INSURANCE COMPANY:
(1) AGREEMENT AND PLAN OF
REHABILITATION;
(2) ASSUMPTION REINSURANCE
AGREEMENT;
(3) SERVICE AGREEMENT; AND
(4) NOVATION AGREEMENT; AND
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Filed concurrently with Proposed Order and
Declarations of David E. Wilson, Joseph B.
Holloway, Jr., Patrik Guindon, Todd
Donovan, Sheridan Carver and Michael R.
Weiss]

Date: June 24, 2010

Time: 9:30 a.m.

Dept: Dept 86

Judge: Honorable David P. Yaffe

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3. Golden State Mutual – IA American Rehabilitation Agreement
4. Golden State Mutual – IA American Assumption Reinsurance Agreement
5. Golden State Mutual – IA American Service Agreement
6. Golden State Mutual – IA American Novation Agreement
7. Golden State Mutual Court Order Dated 05-12-10
8. Golden State Mutual Notice of Order to Show Cause

1 **I. INTRODUCTION.**

2 The following moving papers and application seek Court approval for Applicant Steve
3 Poizner, Insurance Commissioner of the State of California, in his capacity as Conservator
4 (“Conservator”) of Golden State Mutual Life Insurance Company in Conservation (“Golden
5 State”), to enter into a plan of rehabilitation for Golden State with IA American Life Insurance
6 Company (“IA American”). The rehabilitation plan involves four agreements: (1) Agreement
7 and Plan of Rehabilitation, (2) Assumption Reinsurance Agreement, (3) Service Agreement and
8 (4) Novation Agreement, which are attached to the Declaration of David E. Wilson as Exhibits 3,
9 4, 5 and 6. The four agreements are collectively referred to herein as “Rehabilitation Plan.”

10 Upon the closing of the Rehabilitation Plan, all persons and entities having in-force life,
11 health or disability insurance policies or annuity contracts with Golden State will become
12 policyholders or annuity contract holders of IA American, effective January 1, 2010, under an
13 express assumption of their insurance policies and annuity contracts and all contractual policy and
14 annuity liabilities. As a result of this assumption, all claims for contractual life, health and
15 disability insurance policy and annuity contract benefits will be deemed satisfied by the
16 assumption and IA American will be solely responsible to pay all claims on said policies and
17 contracts. The policy and annuity liabilities assumed by IA American total approximately \$71
18 million and are detailed in the Assumption Reinsurance Agreement, attached as Exhibit 4.

19 As part of the closing of the transactions contemplated by the Rehabilitation Plan,
20 projected to occur by approximately September 2010, IA American will pay an \$11 million
21 ceding commission to Golden State for the assumption of the policy and annuity contract
22 liabilities, which will be paid in the form of a credit to Golden State against transferred liabilities;
23 the Conservator will transfer approximately \$60 million of Golden State’s assets to IA American;
24 and IA American will assume approximately \$71 million of Golden State’s liabilities. The actual
25 amount of transferred assets will be equal to the difference between the policy liabilities and the
26 \$11 million ceding commission. The assets to be transferred are detailed in the Closing Schedule
27 of Transferred Assets set forth in Exhibit 1.24 to the Agreement and Plan of Rehabilitation,
28 attached as Exhibit 3.

1 During the time period between January 1, 2010, and the closing of the transactions
2 contemplated by the Rehabilitation Plan, and the time period between the closing of the
3 transactions and the administrative transfer of the insurance policies and annuity contracts to IA
4 American, IA American will pay certain expense allowances to Golden State for the maintenance
5 and servicing of the insurance policies and annuity contracts to be assumed by IA American. The
6 expense allowances and terms of the servicing and maintenance are set forth in the Assumption
7 Reinsurance Agreement and Service Agreement, attached as Exhibits 4 and 5.

8 Assets not transferred by the Conservator to IA American shall remain with the
9 conservation estate of Golden State. The Conservator intends to marshal the retained assets for
10 distribution in accordance with California Insurance Code, Article 14, § 1010 *et seq.* All claims
11 of any kind or nature, other than policyholder and annuity contract holder claims for policy and
12 annuity contract benefits, will be made and administered against Golden State in accordance with
13 Insurance Code, Article 14, § 1010 *et seq.* Following the closing of the Rehabilitation Plan, it is
14 likely that further orders of conservation and/or liquidation will be requested for Golden State,
15 and a proof of claims process will be established in accordance with Insurance Code § 1010 *et*
16 *seq.* and § 1033.

17 The Conservator recommends the approval of the transactions and agreements set forth in
18 the Rehabilitation Plan because the transactions and agreements are fair, rational and in the best
19 interests of Golden State's policyholders, annuity contract holders, creditors, certificate of
20 contribution holders and owners of mutual life insurance policies. The Conservator's
21 recommendation is based on the following:

22 1. IA American's proposal substantially satisfied all of the key components of the
23 Conservator's Request for Proposal selection criteria. Specifically, IA American is rated "A-" by
24 insurance rating firm A.M. Best Company; IA American is owned by Industrial Alliance
25 Insurance and Financial Services which is the fourth largest Canadian life insurer; IA American's
26 bid is to assume all of the in-force policies and annuity contracts of Golden State and the two
27 coinsurance policies; IA American is willing to accept Golden State's assets including its bonds,
28 stocks and mortgage loan portfolio; and IA American's bid and \$11 million ceding commission

1 are greater than the bids submitted by the other bidders, which, in turn, will increase the potential
2 that Golden State's creditors, certificate of contribution holders and owners of mutual life
3 insurance policies will be repaid;

4 2. By the assumption and transfer to IA American of Golden State's in-force life,
5 health and disability insurance policies and annuity contracts, Golden State's in-force
6 policyholders and annuity contract holders are assured that their existing policies and annuity
7 contracts will be maintained, thereby enabling them to enjoy continuous coverage and benefits
8 without having to re-enter the insurance and annuity markets at presumably higher age and
9 therefore higher price points;

10 3. Due to IA American's financial strength, Golden State's in-force policyholders
11 and annuity contract holders are assured that 100% of their policy and annuity contract benefits
12 will be paid, including death benefits, annuity payments and health and disability payments;

13 4. With the \$11 million ceding commission, Golden State's creditors, certificate of
14 contribution holders and owners under mutual life insurance policies will benefit in that Golden
15 State will retain significant assets, thereby enabling them to have a much greater potential to be
16 repaid;

17 5. The other four proposals submitted to the Conservator through the RFP process are
18 not superior to the Rehabilitation Plan discussed herein; and

19 6. An immediate liquidation of Golden State is not a better alternative to the
20 Rehabilitation Plan because without the \$11 million ceding commission, it is unlikely 100% of
21 Golden State's policy and annuity contract liabilities payable under Golden State's policies and
22 annuity contracts would be paid, which in turn means that Golden State would not have any
23 remaining money to satisfy its obligations to pay creditors or repay its certificate of contribution
24 holders.

25 For these reasons and the reasons set forth below, the Conservator requests that the Court
26 approve the Rehabilitation Plan, authorize the Conservator to enter into the four agreements
27 forming the Rehabilitation Plan, and issue the orders requested in Section VII below and in the
28 Proposed Order filed concurrently with this application.

1 **II. FACTUAL BACKGROUND.**

2 **A. Golden State's Insurance Business Operations.**

3 Golden State is a mutual life insurance company organized and existing under and by
4 virtue of the laws of the State of California, with its principal place of business and home office
5 located at 1999 West Adams Boulevard in Los Angeles, California 90018-3514. Golden State
6 was authorized to transact the business of life, health and disability insurance and annuities, and
7 has in force approximately 120,000 life, health and disability insurance policies and annuity
8 contracts. Golden State's business focus has been to provide said insurance products to the
9 minority middle income marketplace with a geographic emphasis in California, Texas, North
10 Carolina, Michigan and Illinois. (Declaration of David E. Wilson ("Wilson Dec."), ¶ 6.)

11 Golden State's insurance business includes a portfolio of individual term and whole life
12 insurance products with annuity riders on a participating basis. Approximately three-fourths of
13 its recurring premiums are life-related, with the balance principally in fixed premium deferred
14 annuities. Within its life product line, approximately three-fourths of life premiums are
15 traditional whole life participating policies with the remainder being term insurance. In addition
16 to its life and annuity lines, Golden State issued a small number of individual accident and health
17 insurance policies, as well as pre-need insurance policies, and in early 2009, issued a small
18 number of Universal Life insurance policies. (Wilson Dec., ¶ 7.)

19 Golden State also participated in an assumed reinsurance program whereby it assumes
20 group life insurance from a number of Fortune 500 companies as part of their corporate
21 affirmative action programs to offer their business to companies specializing in minority markets.
22 In November 2006, Golden State entered into a 100% coinsurance agreement with Mutual of
23 Detroit Insurance Company for a block of approximately 26,600 paid up life insurance policies.
24 The reserves on these policies totaled approximately \$10.8 million. Similarly, in October 2008,
25 Golden State entered into a 100% coinsurance agreement with Southern Financial Life Insurance
26 Company for a block of approximately 15,500 small paid up life insurance policies. The reserves
27 on these policies totaled approximately \$10.2 million. These two coinsurance agreements and the
28 obligations thereunder are to be assumed by IA American pursuant to the Rehabilitation Plan.

1 (Wilson Dec., ¶ 8.)

2 **B. Order Appointing Conservator of Golden State.**

3 On September 30, 2009, Los Angeles Superior Court Judge David P. Yaffe issued an
4 Order Appointing Conservator And Restraining Order (“Order Appointing Conservator”) which,
5 among other items, appointed the Commissioner as Conservator of Golden State; vested title of
6 Golden State’s assets in the Conservator; directed the Conservator to take possession of Golden
7 State’s books, records, and assets, and to conduct, as conservator, the business of Golden State;
8 and provided the Conservator with certain powers and authorities set forth in the Order. (Order
9 Appointing Conservator, attached as Exhibit 1 to Wilson Dec. and Wilson Dec., ¶ 9.)

10 Golden State was conserved because as of June 30, 2009, Golden State was financially
11 impaired pursuant to Insurance Code § 988 and deemed to be operating in a hazardous financial
12 condition in that its reported paid-in capital and surplus of assets in excess of liabilities was
13 \$1,650,693 instead of the required \$5,000,000. Golden State could no longer continue its
14 operations without conservation because it lacked sufficient paid-in capital and surplus to ensure
15 policyholder safety. (Wilson Dec., ¶ 10.)

16 **C. Golden State’s Significant Assets.**

17 Golden State’s significant assets, as of December 31, 2009, are set forth in Exhibit 2
18 hereto and include:

- 19 1. A portfolio of investment grade bonds valued in accordance with the National
20 Association of Insurance Commissioners (“NAIC”) practices and procedures manual at
21 approximately \$27,174,203;
- 22 2. A portfolio of investment grade stocks valued in accordance with NAIC practices
23 and procedures manual at approximately \$4,369,313;
- 24 3. An annualized premium book of insurance business of approximately \$9 to 10
25 million;
- 26 4. A commercial mortgage loan portfolio consisting of 66 loans having a principal
27 total balance of approximately \$24,570,047. The portfolio is concentrated predominately in
28 California and has an average interest rate of approximately 7.5%;

1 5. Eight commercial office buildings located throughout the country valued at
2 approximately \$2.2 million; and

3 6. Artwork including two removable murals valued at approximately \$2.2 to \$4.0
4 million and reflected on the quarterly financial statement as a non-admitted asset. (Wilson Dec.,
5 ¶ 11(a)-(f) and Exhibit 2.)

6 **D. Golden State's Significant Liabilities.**

7 Golden State's significant liabilities, as of December 31, 2009, also are set forth in Exhibit
8 2 hereto and include:

- 9 1. Policy reserves of \$71,526,141;
- 10 2. Monthly loss from operations of over \$400,000;
- 11 3. Home office operating expenses including rent, maintenance expenses, property
12 tax payments and other expenses totaling approximately \$212,925 per month;
- 13 4. District offices' operating expenses including rent, maintenance expenses,
14 property tax payments and other expenses totaling approximately \$62,000 per month;
- 15 5. Employee compensation expenses including agency operations totaling
16 approximately \$281,570 per month; and
- 17 6. Under-funded employee retirement plan benefits of \$3,298,332 as of December
18 31, 2009. (Wilson Dec., ¶ 12(a)-(f) and Exhibit 2.)

19 **E. Request For Proposals To Sell Or Merge The Business With A Third Party.**

20 Based on Golden State's financial condition and its current operational capabilities, in
21 October 2009, the Conservator determined that the business operations of Golden State are not
22 sustainable, determined that the best course of action for Golden State's policyholders and
23 creditors is for the Conservator to position Golden State for a sale, merger or an assumption of its
24 insurance book of business by a third party, and commenced a Request for Proposals Process to
25 evaluate and recommend proposals for the contemplated sale, merger or assumption of Golden
26 State's insurance business. (Wilson Dec., ¶ 13 and Declaration of Joseph B. Holloway, Jr.
27 ("Holloway Dec.", ¶ 8.)

28 //

1 During November 2009, the Conservator prepared a comprehensive bid and request for
2 proposal package for the purpose of soliciting interest from potential bidders for the purchase of
3 Golden State’s in-force blocks of life, annuity and health business (including bids for the sale of
4 the entire company). (Wilson Dec., ¶ 14 and Holloway Dec., ¶ 9.) Since Golden State is an
5 insurer regulated under the insurance laws of the State of California and subject to oversight (and
6 now conservation) by the California Insurance Commissioner, the Conservator did not simply
7 seek the highest bidder, as that has the potential of causing a future conservation or liquidation of
8 Golden State. (Wilson Dec., ¶ 14.) As such, solicitations were sent on an invitation-only basis to
9 forty-one potential bidders identified as organizations that write business similar to Golden State,
10 that have the required financial strength for such a purchase, and that indicated an interest in
11 Golden State. Thirteen potential bidders submitted the required solicitation responses to receive
12 further information. (Wilson Dec., ¶ 14 and Holloway Dec., ¶ 9.)

13 On December 14, 2009, the Conservator sent a more detailed Request for Proposal
14 (“RFP”) package to the thirteen interested parties. The RFP package contained detailed
15 information concerning Golden State and established a timeline for undertaking due diligence
16 evaluations, receipt of proposals, selection of recommended bidder(s), negotiation and execution
17 of purchase, assumption and other necessary agreements, and submission to the Court for
18 evaluation and approval. In January 2010, potential bidders visited Golden State’s offices and
19 conducted due diligence evaluations. Thereafter, on January 29, 2010, five companies submitted
20 bids. The bidding process successfully generated bids from qualified, capable insurers, through a
21 competitive process. (Wilson Dec., ¶ 15 and Holloway Dec., ¶ 10.)

22 All five prospective bidders were subject to strict financial and operation disclosure
23 requirements to ensure the successful transition of Golden State’s business. Specifically, each bid
24 was evaluated based upon a defined set of criteria that included the following considerations:

- 25 1. Whether the potential bidder seeks to acquire all of Golden State’s insurance
26 business;
- 27 2. Whether the potential bidder is currently licensed in the jurisdictions in which
28 Golden State is licensed to conduct business;

1 3. Whether the potential bidder is willing to accept Golden State’s bonds, stocks and
2 mortgage loan portfolio;

3 4. The size, financial strength and ratings of the potential bidder;

4 5. Whether the potential bidder would seek policy restructuring;

5 6. The potential bidder’s experience and infrastructure to administer the types of
6 business to be assumed from Golden State; and

7 7. Compliance with all financial and legal requirements associated with the RFP
8 process as well as adequate pricing for the assets required to be transferred to the bidder. (Wilson
9 Dec., ¶ 16 and Holloway Dec., ¶ 11.)

10 **F. IA American’s Proposal.**

11 IA American was the only bidder that substantially satisfied all key components of the
12 selection criteria. As noted above, IA American is rated “A-” by insurance rating firm A.M. Best
13 Company; IA American is owned by Industrial Alliance Insurance and Financial Services which
14 is the fourth largest Canadian life insurer; IA American’s bid is to assume all of the in-force
15 policies and annuity contracts of Golden State and the two coinsurance policies; IA American is
16 willing to accept Golden State’s assets including its bonds, stocks and mortgage loan portfolios;
17 and IA American’s bid and \$11 million ceding commission are greater than the bids submitted by
18 the other bidders, which, in turn, will increase the potential that Golden State’s creditors,
19 certificate of contribution holders and owners of mutual policies will be repaid. (Wilson Dec., ¶
20 17, Holloway Dec., ¶ 12, and Declaration of Patrik Guindon, ¶ 6.)

21 On February 26, 2010, the Conservator entered into a letter of intent to negotiate a
22 reinsurance agreement and plan of rehabilitation with IA American to transfer all of Golden
23 State’s in-force policies to IA American. Thereafter, the Conservator and IA American
24 negotiated the Rehabilitation Plan for Golden State which includes the four agreements submitted
25 here for approval: (1) Agreement and Plan of Rehabilitation, (2) Assumption Reinsurance
26 Agreement, (3) Service Agreement and (4) Novation Agreement, which are attached as Exhibits
27 3, 4, 5 and 6. (Wilson Dec., ¶¶ 20-21 and Exhibits 3-6.)

28 //

1 **G. Other Proposals.**

2 The other proposals submitted to the Conservator included (1) the purchase of the
3 corporate shell after all assets and liabilities have been extinguished, (2) a merger with a
4 financially inferior C+ rated insurer by A.M. Best, (3) a merger with a B+ rated company only
5 after the Conservator undertook the time and significant expense to demutualize Golden State,
6 and (4) the assumption of Golden State’s in-force life insurance policies by a B- rated company
7 for a ceding commission of \$8.7 million, which is \$2.3 million less than the ceding commission
8 to be paid by IA American. Each of these proposals was carefully considered, and the
9 Conservator is grateful to each of the bidders for their proposals. None of these proposals are
10 superior to IA American’s proposal. (Wilson Dec., ¶¶ 18-19 and Holloway Dec., ¶¶ 13-14.)

11 **H. Notice Of This Application And The Rehabilitation Plan.**

12 As set forth in the Court’s May 12, 2010 Order Granting Application For Order To Show
13 Cause And Orders Concerning The Hearing And Notice For The Approval Of The Conservator’s
14 Rehabilitation Plan And Related Agreements, attached as Exhibit 7 to Declaration of Michael R.
15 Weiss (“Weiss Dec.”), the Conservator has provided written notice of this application, the Order
16 to Show Cause issued by the Court on May 12, 2010, the Rehabilitation Plan and the agreements
17 forming the Rehabilitation Plan, to Golden State’s policyholders, annuity contract holders,
18 certificate of contribution holders, creditors, employees and all persons and entities known to the
19 Conservator that may have a substantial, unsatisfied claim that may be affected by the Order to
20 Show Cause, the Rehabilitation Plan, the Conservator’s Application for approval of the
21 Rehabilitation Plan, and any Court Orders pertaining thereto, regardless of whether the persons or
22 entities are a party to this action or have appeared in it, in compliance with California Rules of
23 Court Rule 3.1184(c) (collectively, “Affected Persons”). (Exhibit 8; Weiss Dec., ¶¶ 4-5;
24 Declaration of Todd Donovan, ¶¶ 3-7; and Declaration of Sheralin Carver, ¶¶ 3-5.)

25 Said notice was provided by a mailing sent by first class mail to the Affected Persons on
26 May 19, 2010. (Exhibit 8; Weiss Dec., ¶¶ 4-5; Declaration of Todd Donovan, ¶¶ 3-7; and
27 Declaration of Sheralin Carver, ¶¶ 3-5.) Additional copies of the Notice Documents and
28 Application were sent to persons and entities identified on separately filed proofs of service.

1 **III. AGREEMENT AND PLAN OF REHABILITATION.**

2 **A. The Full Plan.**

3 Copies of the four agreements comprising the Rehabilitation Plan are attached to the
4 Declaration of David E. Wilson as Exhibits 3, 4, 5 and 6, and are incorporated herein by this
5 reference. The four agreements can be reviewed and downloaded at
6 www.caclo.org/GoldenStateMutual/RehabilitationPlan. Anyone requiring a full and detailed
7 understanding of the terms and provisions of the Rehabilitation Plan should carefully read the
8 documents and consult with attorneys, accountants, consultants or other professionals of their
9 own choosing. The Conservator and his representatives, attorneys and employees cannot provide
10 advice, legal or otherwise, to policyholders, creditors or other interested persons concerning the
11 Rehabilitation Plan. While an overview and summary of the key components of the
12 Rehabilitation Plan follows below, by its very nature a summary does not contain complete
13 details and there is no substitute for a complete and careful review of the documents.

14 **B. Overview of Rehabilitation Plan.**

15 Under the Rehabilitation Plan, as of January 1, 2010, the in-force policyholders and
16 annuity contract holders of Golden State will become policyholders and annuity contract holders
17 of IA American, all policyholder policy claims and annuity contract claims for contractual
18 insurance policy and annuity benefits including approximately \$71 million in reserves will be
19 transferred to IA American, the Conservator will transfer assets from Golden State to IA
20 American valued at approximately \$60 million, and the Conservator will be credited with a
21 ceding commission totaling \$11 million. The policyholders and annuity contract holders, and
22 their claims, will thus be transferred to a new company, IA American. Assets not transferred by
23 the Conservator to IA American will remain with the conservation estate of Golden State and will
24 be marshaled, monetized and distributed in accordance with the administration and priority
25 procedures set forth in California Insurance Code, Article 14, § 1010 *et seq.* All claims of any
26 kind or nature, other than policyholder and annuity contract holder claims for policy and annuity
27 contract benefits, will be made and administered against Golden State in accordance with
28 Insurance Code, Article 14, § 1010 *et seq.* Following the closing of the Rehabilitation Plan, it is

1 likely that further orders of conservation and/or liquidation will be requested for Golden State,
2 and a proof of claims process will be established in accordance with Insurance Code § 1010 *et*
3 *seq.* (Wilson Dec., ¶¶ 22-23 and Exhibits 3, 4, and 6.)

4 Assuming all court and regulatory approvals, IA American shall close the Rehabilitation
5 Plan with the Conservator 65-days after Court approval, which is projected at this time to be
6 approximately September 2010. (Wilson Dec., ¶ 23 and Exhibits 3, 4 and 6.)

7 **C. Key Components of the Rehabilitation Plan.**

8 **1. Assumption of Golden State's Policy Liabilities by IA American.**

9 Under the Rehabilitation Plan, and specifically the Assumption Reinsurance Agreement
10 attached as Exhibit 4, effective January 1, 2010, the in-force policyholders and annuity contract
11 holders of Golden State will become policyholders and annuity contract holders of IA American
12 under an express assumption by IA American of their policies and contracts and all contractual
13 policy and annuity liabilities associated with said policies and contracts. As such, all policy and
14 annuity holder claims for contractual insurance policy benefits and annuity payments will be
15 deemed satisfied by the assumption and IA American will be solely responsible to pay said claims
16 and annuity payments. (Wilson Dec., ¶¶ 22-23 and Exhibits 3, 4 and 6.)

17 These policy and annuity liabilities include, without limitation, all contractual liabilities
18 and obligations concerning Golden State's in-force policies and annuity contracts as of January 1,
19 2010, issued or directly assumed by Golden State, including without limitation those liabilities for
20 which Golden State maintains reserves of approximately \$70,801,894 as of December 31, 2009,
21 consisting of health reserves in the amount of approximately \$209,715, annuity deposit reserves
22 in the amount of approximately \$15,497,429, paid up life reserves in the amount of approximately
23 \$54,370,643, Supplementary Contracts without Life Contracts reserves in the amount of
24 approximately \$599,380, and dividend accumulations reserves in the amount of approximately
25 \$124,727. (Wilson Dec., ¶¶ 22-23 and Exhibits 3, 4 and 6.)

26 The assumption of Golden State's policy liabilities by IA American is intended to be a full
27 satisfaction of any policyholder's and annuity holder's claims against Golden State. All policies
28 and contracts assumed by IA American will be subject in all respects to the same terms and

1 conditions of the policies and contracts as issued or directly assumed by Golden State, and IA
2 American will accept and assume said policies and contracts subject to all defenses, set-offs and
3 counterclaims to which Golden State would be entitled with respect to such policies and
4 contracts. Further, IA American also agrees to reinstate any policy which on the closing date by
5 its terms was entitled to reinstatement, provided that all requirements necessary to procure
6 reinstatement of such a policy under its terms are fulfilled to the satisfaction of IA American
7 which shall not be unreasonably withheld. Upon such reinstatement of any lapsed policy, it will
8 for all purposes be treated by IA American as if it had been in force from the date on which it
9 lapsed, except that it shall be subject to all the terms and conditions of the Rehabilitation Plan as
10 may be pertinent to the class of the policy in which it was or should have been included. In
11 addition, appropriate arrangements will be made at closing to deal with any pending claims, if
12 any, on policies no longer in-force, to ensure those policyholders' claims are properly
13 adjudicated, and, where valid, paid. (Exhibits 3 and 4.)

14 However, policy and annuity holders will have no rights against IA American, and IA
15 American assumes no liability, for any pre-assumption liabilities for tort, extra-contractual
16 damages, general creditor claims or other claims, other than those policy and annuity claims
17 expressly assumed in the Rehabilitation Plan. Further, IA American does not assume and will not
18 be liable for any liabilities that are not based on or arise out of the contractual terms of the
19 policies and annuity contracts. (Exhibits 3 and 4.)

20 The policies and contracts to be assumed by IA American include the two coinsurance
21 agreements identified as 100% Coinsurance Agreement with reinsurer Mutual of Detroit
22 Insurance Company effective on or about December 1, 2006, and 100% Coinsurance Agreement
23 with reinsurer Southern Financial Life Insurance Company effective on or about October 31,
24 2008. As soon as possible after the closing of the Rehabilitation Plan, IA American shall deliver
25 an assumption certificate to Golden State's policy and annuity holders substantially in the form
26 attached as Exhibit 2.1.4 to the Assumption Reinsurance Agreement. (Wilson Dec., ¶ 26 and
27 Exhibits 3, 4 and 6.)

28 //

1 **2. Transfer of Certain of Golden State’s Assets to IA American.**

2 To facilitate the Rehabilitation Plan, IA American will credit to Golden State a ceding
3 commission in the amount of \$11 million and the Conservator will cause Golden State to transfer
4 to IA American without recourse certain assets agreed to be transferred as Transferred Assets in
5 the Assumption Reinsurance Agreement. Pursuant to the Rehabilitation Plan, the amount of
6 Transferred Assets equals the amount of policy and annuity liabilities assumed by IA American
7 minus the \$11 million ceding commission. Thus, for purposes of example only, for the currently
8 estimated policy and annuity liabilities of \$71 million, transferred assets will equal \$60 million
9 [\$71 million policy and annuity liabilities - \$11 million ceding commission = \$60 million
10 transferred assets]. Policy and annuity liabilities may fluctuate prior to closing of the
11 Rehabilitation Plan in the event policies or annuity contracts are added to the Closing Schedule of
12 Policies. (Wilson Dec., ¶ 23 and Exhibits 3 and 4.)

13 The Transferred Assets are listed in a document entitled Closing Schedule of Assets
14 Transferred attached as Exhibit 1.24 to the Assumption Reinsurance Agreement. (Exhibit 4.)

15 The Transferred Assets include the following:

- 16 1. Golden State’s commercial mortgage portfolio having a net book value of
17 \$20,744,121. A loss provision of \$4,084,557 has been established against the
18 book value of Golden State’s mortgage portfolio of \$24,828,698 as of October 31,
19 2009, so that the mortgage portfolio shall be transferred at its book value at closing
20 less \$4,084,577, *i.e.*, \$20,744,121 (assuming no transfers of mortgages prior to
21 closing);
- 22 2. Golden State’s bond portfolio having an approximate market value of \$28.6
23 million as of January 22, 2010;
- 24 3. Golden State’s Contract Loans having an approximate book value of \$4.2 million;
- 25 4. Golden State’s Net Deferred Premiums having an approximate book value of \$2.3
26 million; and

27 //

28 //

- 1 5. Preferred Stocks having a net book value of approximately \$3,467,139. The
2 Preferred Stocks are valued at 90% of book value. (Wilson Dec., ¶ 27(a)-(e) and
3 Exhibits 3 and 4.)

4 **3. Retention by Golden State of Certain of Golden State's Assets and**
5 **Liabilities.**

6 The Conservator will retain after the closing substantial assets of Golden State for the
7 administration of the conservation of Golden State. Apart from the assets identified to be
8 transferred to IA American in the Closing Schedule of Transferred Assets set forth in the
9 Assumption Reinsurance Agreement, IA American will have no right or interest in the non-
10 transferred assets. The retained, non-transferred assets include the following:

- 11 1. Cash of approximately \$7 million;
12 2. Real estate valued at approximately \$2.2 million; and
13 3. Artwork and murals valued at approximately \$2.2 million. (Wilson Dec.,
14 ¶ 28(a)-(c).)

15 In addition, other than policyholder claims for contractual policy benefits and rights, all
16 other claims of any kind or nature against Golden State will not be assumed by IA American and,
17 therefore, will remain with the conservation estate of Golden State. Such non-assumed liabilities,
18 currently estimated to be \$8 to 10 million from September 30, 2009 through the close of the
19 estate, include the following estimates:

- 20 1. Priority 1 estate administration expenses;
21 2. Priority 5 tax obligations;
22 3. Priority 7 under-funded employee retirement plan benefits of \$3,298,332 as of
23 December 31, 2009;
24 4. Priority 7 general creditor claims of an unknown amount not believed to be
25 material;
26 5. Priority 7 extra-contractual policy liability claims of an unknown amount not
27 believed to be material;
28 6. Priority 8 certificate of contribution holders of \$2,142,649;

- 1 7. Priority 9 ownership claims of mutual policyholders; and
2 8. Any other claims not assumed by IA American. (Wilson Dec., ¶¶ 25 and 29(a)-(h)
3 and Exhibit 4.)

4 For clarity, policyholders will retain their rights, if any, as mutual owners of Golden State,
5 so that if there are assets of Golden State remaining after all other creditors and the certificate of
6 contribution holders are paid, existing policyholders of Golden State shall retain their California
7 Insurance Code § 1033 priority 9 rights. Also, the distribution of assets from the conservation
8 estate will be governed by California Insurance Code, Article 14, § 1010 *et seq.* including § 1033.
9 (Exhibit 3.)

10 **4. Administration of Golden State’s Retained Assets and Liabilities.**

11 The assets and liabilities of Golden State not transferred to IA American will be
12 monetized by the Conservator and subject to the claim priority and asset distribution procedures
13 set forth in Insurance Code § 1010 *et seq.* including § 1033. Following the closing of this
14 transaction with IA American, it is likely that further orders of conservation and/or liquidation
15 will be requested for Golden State, and a proof of claims process and claims bar date will be
16 established in accordance with California Insurance Code § 1010 *et seq.* (Wilson Dec., ¶ 25 and
17 Exhibit 3.)

18 **5. Servicing of Golden State’s Policies Prior To And After Closing.**

19 During the time period between January 1, 2010, and the closing of the transactions
20 contemplated by the Rehabilitation Plan, and the time period between the closing of the
21 transactions and the administrative transfer of the insurance policies and annuity contracts to IA
22 American, IA American will pay certain expense allowances to Golden State for Golden State to
23 continue to perform maintenance, premium collection, claim processing and servicing of the
24 insurance policies and annuity contracts to be assumed by IA American. The expense allowances
25 and terms of the servicing and maintenance are set forth in the Assumption Reinsurance
26 Agreement and Service Agreement, attached as Exhibits 4 and 5. (Wilson Dec., ¶ 24 and
27 Exhibits 4 and 5.)

28 //

1 **6. Employees of Golden State.**

2 IA American has agreed to work with the Conservator to identify any employees of
3 Golden State whom IA American wishes to hire to work for IA American. Although IA
4 American is not obligated to hire any employee of Golden State, the Conservator is optimistic
5 that IA American may do so. (Wilson Dec., ¶ 30.)

6 **7. Conditions Precedent to Closing of Transactions.**

7 Prior to the closing and effectiveness of the Rehabilitation Plan, the following conditions
8 precedent, among others as set forth in the agreements, are required to be satisfied: (a) the
9 agreements forming the Rehabilitation Plan and transactions contemplated therein must be
10 approved and authorized by this Court, the California Department of Insurance, and any other
11 necessary governmental agencies; (b) IA American must have attained all required permits for the
12 transactions contemplated in the Rehabilitation Plan; and (c) there shall not have been any
13 material adverse changes affecting IA American’s financial condition or ability to close the
14 Rehabilitation Plan. (Exhibits 3 and 4.)

15 **IV. BENEFITS AND RISKS OF THE REHABILITATION PLAN.**

16 **A. Benefits of the Rehabilitation Plan.**

17 The primary benefits of the Rehabilitation Plan are the following:

- 18 1. 100% of policy and annuity liabilities including death benefits, annuity payments
19 and health payments payable under Golden State’s in-force policies and annuity contracts, will be
20 paid;
- 21 2. It allows for the continuation of life insurance policies and annuity contracts
22 currently in place, so that policy and annuity holders can enjoy continuous coverage and benefits
23 without having to re-enter the insurance market at presumably higher age and therefore higher
24 price points; and
- 25 3. It enables Golden State to retain significant assets to pay liabilities and claims to
26 the benefit of Golden State’s certificate of contribution holders, mutual policyholders and
27 creditors. (Wilson Dec., ¶ 31.)

28 //

1 **B. Risks of the Rehabilitation Plan.**

2 The primary risks of the Rehabilitation Plan are the following:

3 1. IA American is an insurance company and there is risk associated with any
4 insurance operation. While there can be no absolute guarantee that a well capitalized company
5 assuming a book of long term business will never experience financial difficulty in the future, the
6 Conservator is confident that such risks have been properly considered and reasonably addressed;

7 2. Due to the limited retained assets to pay liabilities and ownership (not policy
8 benefits) claims of Golden State’s mutual policyholders and creditors, such policyholders and
9 creditors may not be paid, in whole or in part; and

10 3. Litigation, appeals and future economic conditions could affect the results of the
11 Rehabilitation Plan. (Wilson Dec., ¶ 32.)

12 **V. RECOMMENDATION OF THE CONSERVATOR.**

13 As set forth in Section I, the Conservator recommends this Rehabilitation Plan with IA
14 American because the Rehabilitation Plan and the agreements comprising the Rehabilitation Plan
15 are fair, rational and in the best interests of Golden State’s policyholders and creditors. The
16 Conservator’s recommendation is based on the following:

17 1. IA American’s proposal substantially satisfied all of the key components of the
18 Conservator’s Request for Proposal selection criteria. Specifically, IA American is rated “A-” by
19 insurance rating firm A.M. Best Company; IA American is owned by Industrial Alliance
20 Insurance and Financial Services which is the fourth largest Canadian life insurer; IA American’s
21 bid is to assume all of the in-force policies and annuity contracts of Golden State and the two
22 coinsurance policies; IA American is willing to accept Golden State’s assets including its bonds,
23 stocks and mortgage loan portfolios; and IA American’s bid and \$11 million ceding commission
24 are greater than the bids submitted by the other bidders, which, in turn, will increase the potential
25 that Golden State’s creditors, certificate of contribution holders and mutual policyholders will be
26 repaid (Wilson Dec., ¶¶ 17 and 33(a); Declaration of Patrik Guindon, ¶ 6);

27 2. By the assumption and transfer to IA American of Golden State’s in-force life,
28 health and disability insurance policies and annuity contracts, Golden State’s in-force

1 policyholders and annuity contract holders are assured that their existing policies and annuity
2 contracts will be maintained, thereby allowing Golden State's policyholders and annuity contract
3 holders to enjoy continuous coverage and benefits without having to re-enter the insurance and
4 annuity markets at presumably higher age and therefore higher price points (Wilson Dec., ¶¶
5 31(a)(b) and 33(b));

6 3. Due to IA American's financial strength, Golden State's in-force policyholders
7 and annuity contract holders are assured that 100% of their policy and annuity contract benefits
8 including death benefits, annuity payments and health and disability payments, will be paid
9 (Wilson Dec., ¶ 33(c));

10 4. With the \$11 million ceding commission, Golden State's creditors, certificate of
11 contribution holders and owners under mutual life insurance policies will benefit in that Golden
12 State will retain significant assets, thereby enabling them to have a much greater potential to be
13 repaid (Wilson Dec., ¶ 33(d)); and

14 5. The other four proposals submitted to the Conservator through the RFP process are
15 not superior to the Rehabilitation Plan discussed herein. The proposal for the purchase of the
16 corporate shell after all assets and liabilities had been extinguished was premature and offered no
17 benefits to policyholders and annuity holders and, therefore, at this time was not in the best
18 interest of Golden State's policyholders, annuity holders and creditors. The proposal to merge
19 Golden State into a financially inferior C+ rated insurer would not have assured Golden State's
20 policyholders of continued policy benefits or payment of policy liabilities. Similarly, the
21 proposal to merge Golden State into a B+ rated company only after the Conservator undertook
22 the time and significant expense to demutualize Golden State, would not have provided Golden
23 State's policyholders, annuity holders and creditors with the same potential of having their policy
24 liabilities and claims paid, and the post-merger capital and surplus of the new company would not
25 have been sufficient for that company to obtain a certificate of authority to conduct insurance
26 business in California. Finally, the proposal to have Golden State's policies assumed by a B-
27 rated company for a ceding commission of approximately \$8.7 million, which is \$2.3 million less
28 than the ceding commission to be paid by IA American, did not provide the same level of

1 financial strength and payment potential to policyholders and creditors as provided by the
2 proposed Rehabilitation Plan with IA American (Wilson Dec., ¶ 33(e) and Holloway Dec., ¶ 14);
3 and

4 6. An immediate liquidation of Golden State is not a better alternative to the
5 Rehabilitation Plan because without the \$11 million ceding commission, it is unlikely 100% of
6 Golden State’s policy liabilities payable under Golden State’s policies would be paid; which in
7 turn means that Golden State would not have any remaining money to satisfy it’s obligations to
8 fully fund it employee retirement plan, to pay creditors, to repay its certificate of contribution
9 holders, and to pay its other obligations (Holloway Dec., ¶¶ 15 and 16, and Wilson Dec., ¶ 33(f)).

10 In sum, the Conservator believes that entering into the Rehabilitation Plan is fair, rational
11 and in the best interest of Golden State’s policyholders, annuity holders and creditors.

12 **VI. STATUTORY AUTHORITY FOR THE REHABILITATION PLAN.**

13 **A. Entry Into The Rehabilitation Plan Is Consistent With The Conservator’s**
14 **Authority Set Forth In The Order Appointing Conservator.**

15 The Order Appointing Conservator directs the Insurance Commissioner as Conservator to
16 conduct the business of Golden State or so much thereof as the Conservator may deem
17 appropriate, and authorizes the Conservator to sell or transfer Golden State’s property upon such
18 terms as the Conservator may deem proper with Court approval. Specifically, the Order
19 Appointing Conservator states in pertinent part:

20 1. The Commissioner is appointed Conservator of Golden State (hereinafter
21 “Conservator”) and is directed to conduct the business of Golden State or so much thereof
as he may deem appropriate (Insurance Code §§ 1011 and 1037(a)).

22 8. The Conservator is authorized to acquire, hypothecate, encumber, lease,
23 improve, sell, transfer, abandon, or otherwise dispose of or deal with, any real or personal
24 property of Golden State at its reasonable market value, or, in cases other than acquisition,
25 sale, or transfer on the basis of reasonable market value, upon such terms and conditions
as the Conservator may deem proper, where the market value of the property involved
does not exceed the sum of twenty thousand dollars (\$20,000) (Insurance Code §
1037(d)).

26 (Order Appointing Approval, ¶¶ 1 and 8, Exhibit 1.)

27 //

28 //

1 **B. The Rehabilitation Plan Is Consistent With The Conservator’s Authority**
2 **Under The Insurance Code, Which Grants Broad Powers To The Insurance**
3 **Commissioner As Conservator Of Conserved Insurance Companies.**

4 Insurance conservation proceedings are special proceedings subject to the provisions of
5 the California Insurance Code. (*Garamendi v. Golden Eagle Insurance Company* (2005) 128
6 Cal.App.4th 452.)

7 Insurance Code § 1037, entitled “Powers of commissioner as conservator or liquidator,”
8 provides in pertinent part:

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

11 (a) [Conservation of assets; conduct of business.] Shall have authority to
12 collect all moneys due that person, and to do such other acts as are necessary or
expedient to collect, conserve, or protect its assets, property, and business, and to
13 carry on and conduct the business and affairs of that person or so much thereof as
to him or her may seem appropriate.

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

20 (f) [Lawsuits, execution of instruments.] May, for the purpose of executing
and performing any of the powers and authority conferred upon the commissioner
21 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
22 deeds, assignments, releases and other instruments necessary and proper to
effectuate any sale of any real and personal property or other transaction in
23 connection with the administration, liquidation, or other disposition of the assets of
the person affected by that proceeding;

24 [General powers.] The enumeration, in this article, of the duties, powers
and authority of the commissioner in proceedings under this article shall not be
25 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
26 enumerated, or otherwise provided for, which the commissioner may deem
necessary or expedient for the accomplishment or in aid of the purpose of such
27 proceedings.

28 //

1 Similarly, Insurance Code § 1043, entitled “Power to mutualize, reinsure, or rehabilitate
2 insurer; employment of commissioner or deputies,” states in pertinent part:

3 In any proceeding under this article, the commissioner, as conservator or as
4 liquidator, may, subject to the approval of said court, and subject to such liens as
5 may be necessary mutualize or reinsure the business of such person, or enter into
6 rehabilitation agreements.

7 [Approval of investments.] Such rehabilitation or reinsurance agreements
8 shall provide that, subsequent to the date thereof and for such period of time as the
9 commissioner may determine, no investment or reinvestment of the assets of the
10 person rehabilitated or reinsured shall be made without first obtaining the written
11 approval of the commissioner. (Insurance Code §1043.)

12 **C. Case Law Supports The Broad Powers Granted To The Conservator.**

13 California case law supports the broad grant of powers accorded the Insurance
14 Commissioner when he is conserving, rehabilitating, and/or liquidating insurance companies. For
15 example, in *In Re Executive Life Insurance Company* (1995) 32 Cal.App.4th 344, the Court of
16 Appeal noted that:

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

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

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

(*In Re Executive Life, supra*, at p. 356.)

The Court concluded that:

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

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

2 As to rehabilitation plans, the California Supreme Court has held that a plan of
3 rehabilitation must provide each policyholder and creditor no less than what the policyholder or
4 creditor would receive through a liquidation. (Carpenter v. Pacific Mut. Life Ins. Co., supra, 10
5 Cal.2d at pp. 335-336.) Here, each policyholder and creditor will receive a policy from IA
6 American, a company with a stronger financial position than Golden State, while each creditor
7 will receive the right to make a claim against the retained asset pool which is greater than it
8 would be in a liquidation. (Holloway Dec., ¶¶ 15 and 16, and Wilson Dec., ¶ 33(f).)

9 **D. This Order to Show Cause Procedure Is Authorized By California Law.**

10 The Court has jurisdiction over Golden State’s policyholders, annuity holders and other
11 Affected Persons for purposes of the Order to Show Cause and this application for approval of the
12 Rehabilitation Plan. Insurance Code § 1043 states in pertinent part:

13 In any proceeding under this article, the commissioner, as
14 conservator or as liquidator, may, subject to the approval of said
15 court, and subject to such liens as may be necessary mutualize or
reinsure the business of such person, or enter into rehabilitation
agreements.

16 In the 1936 Pacific Mutual Life Insurance Company insolvency, the Los Angeles Superior
17 Court followed an order to show cause procedure nearly identical to the order to show cause
18 procedure requested here. As discussed in *Padway v. Pacific Mutual Life Insurance Company of*
19 *California*, 42 F.Supp. 569, 571, (E.D. Wis. 1942), the Insurance Commissioner as Conservator
20 filed in the Los Angeles Superior Court a “Petition for Approval of Rehabilitation and
21 Reinsurance Agreement.” Upon the filing of said petition, the Court issued an order to show
22 cause ordering as follows:

23 all persons interested or claiming to be interested herein
24 either as policy holders or stockholders of the Old Company or
25 otherwise, to appear on October 19, 1936, to show cause, if any
26 they or any of them have, why the said court should not: (a) ratify
27 the acts of the Conservator in forming the New Company and
28 purchasing its capital stock; (b) ratify the transfer theretofore made
of the assets of the Old Company to the New Company; (c) ratify
the Rehabilitation and Reinsurance Agreement, with such
amendments as may be proposed prior to or at the hearing,
proposed to be executed between the Conservator and the New
Company, and authorize the Conservator to execute and enter into
said Agreement; (d) authorize and direct the Conservator to

1 transfer and assign to the New Company all of the assets of the Old
2 Company, excepting the capital stock of the New Company and
3 rights or claims of the Old Company as specified; (e) authorize and
4 direct the Conservator to perform and carry out said Rehabilitation
5 and Reinsurance Agreement; (f) reserve and retain jurisdiction of
6 the proceedings for the purpose of doing any other act or making
7 any other order, etc., in respect to said Agreement; (g) ratify all the
8 acts of the Conservator; (h) ratify an order entered by the court on
9 August 17, 1936. (*Id.*, at p. 571.)

6 The order to show cause expressly provided that (1) only notice of the OSC was to be
7 given by first class mail to policyholders and stockholders and (2) the OSC and the Rehabilitation
8 and Reinsurance Agreement was to be given to each state's Insurance Commissioner.
9 Specifically, the order to show cause provided:

10 (a) By mailing, not later than October 3, 1936, by first-class mail, postage
11 fully prepaid, to the Insurance Commissioner, or equivalent official, of each State
12 and Territory of the United States in which said The Pacific Mutual Life Insurance
13 Company of California did business on July 22, 1936, and of the District of
14 Columbia, a copy of the within Order to Show Cause, together with a copy of said
15 Rehabilitation and Reinsurance Agreement;

14 (b) By mailing, not later than October 3rd, 1936, to each policyholder and
15 stockholder of The Pacific Mutual Life Insurance Company of California
16 appearing as such on the books and records of said company on July 22, 1936, a
17 notice of the time, date, place and purpose of the hearing on the within Order to
18 Show Cause * * *. (*Id.*, at pp. 571-572.)

17 Thereafter, the petition for approval of the Rehabilitation and Reinsurance Agreement was
18 heard, granted and affirmed by the California and United States Supreme Courts. (*Carpenter v.*
19 *Pacific Mutual Life Insurance Company of California* (1937) 10 Cal.2d 307; and *Neblett v.*
20 *Carpenter* (1938) 305 U.S. 297.)

21 The holding of *Padway* also is applicable here. In *Padway*, a policyholder challenged the
22 order to show cause procedure, contending that he was not bound since "he was not a resident of
23 California and did not personally appear in said proceedings in the Superior Court of Los Angeles
24 County." (*Id.*, at p. 574.) The United States District Court rejected the challenge, holding that the
25 non-resident was bound by the OSC procedure and stating:

26 The important question before this Court in these
27 proceedings is: 'Are the plaintiff and other non-resident policy
28 holders of the Old Company, who did not appear personally in the
proceedings before the Superior Court of Los Angeles County,
bound by the proceedings in said California court?'

1 It is apparent that the proceedings commenced by the
2 Insurance Commissioner of California in the Superior Court of Los
3 Angeles County were necessary for the protection of the policy
4 holders and creditors of the Old Company. In the proceedings in
5 that Court, due notice of all hearings and reasonable opportunities
6 to be heard, were given to all interested parties, including the
7 plaintiff. . . . The Supreme Court affirmed the acts of the
8 Insurance Commissioner and the orders of the Superior Court.
9 *Carpenter v. Pacific Mutual Life Insurance Company of*
10 *California*, 10 Cal.2d 307, 74 P.2d 761. In its opinion the Supreme
11 Court of California said:

12 . . .
13 Section 382 of the California Code of Civil Procedure
14 provides, among other things, as follows: ‘When the question is
15 one of a common or general interest, of many persons, or when the
16 parties are numerous, and it is impractical to bring them all before
17 the court, one or more may sue or defend for the benefit of all.’

18 The Superior Court of Los Angeles County found, and so
19 decreed, that all policy holders of the Old Company were parties to
20 the proceedings before it by representation or otherwise. Plaintiff
21 has expressly admitted, under paragraph 38 of defendants' request
22 for admission, that plaintiff was represented in said proceedings in
23 the said Superior Court for Los Angeles County by class
24 representation.

25 . . .
26 The California proceedings were valid and constitutional;
27 the plaintiff was represented in said proceedings through virtual or
28 class representation, and full faith and credit must and will be
given by this Court to the orders and judgment of the said
California courts. [Citations.]

The Court is of the opinion that the plaintiff, as all ‘non-
can’ policy holders of the Old Company, was fairly and equitably
treated, and that his rights as a policy holder were adequately
protected in the proceedings of the Superior Court of Los Angeles
County, California, and that plaintiff is bound by said proceedings.
(*Id.*, at pp. 574-577.)

Similar challenges by policyholders were rejected by the Supreme Court of North
Carolina in the case of *Taylor v. Pacific Mutual Life Insurance Company of California*, 214 N.C.
770, 200 S.E. 882, and the Supreme Court of Illinois in the case of *Larson et al v. Pacific Mutual*
Life Insurance Company of California, 373 Ill. 614, 27 N.E.2d 458. In both cases, the Courts
held that the California proceeding was a class suit, the plaintiff in that action was represented in
that proceeding by class representation, and the order of the California court was binding upon
the plaintiffs. California Insurance Code § 1057 recognizes the representative role of the
Conservator by providing that the Commissioner is “deemed to be a trustee for the benefit of all
creditors and other persons interested in the estate of the person against whom the proceedings are

1 pending.” This representative capacity permits the Conservator to act as the virtual representative
2 of the interested parties.

3 Accordingly, this Court has jurisdiction over the Affected Persons for purposes of this
4 Order to Show Cause and the Conservator’s Rehabilitation Application for approval of the
5 Rehabilitation Plan.

6 **VII. CONCLUSION AND REQUESTED ORDERS.**

7 In sum, there is good cause for the Court to authorize the Conservator to enter into the
8 Rehabilitation Plan. Accordingly, for the reasons and based on the authorities set forth herein, the
9 Conservator requests that the Court grant this Application, approve the four agreements
10 comprising the Rehabilitation Plan, and issue the following orders:

11 1. This Court has subject matter jurisdiction over this matter pursuant to California
12 Insurance Code § 1010 *et seq*;

13 2. Notice of the Order to Show Cause, the Conservator’s application for approval of
14 the Rehabilitation Plan, and agreement comprising the Rehabilitation Plan was properly provided
15 to Golden State, its former board of directors, its approximately 120,000 policyholders and
16 annuity contract holders, its certificate of contribution holders, its employees and all other persons
17 and entities having a substantial, unsatisfied interest in Golden State known to the Conservator;
18 that the mailing to the Affected Persons was properly provided; and that the notices and mailings
19 comply with due process and with the requirements of California law;

20 3. The Conservator is authorized to enter into the Rehabilitation Plan consisting of
21 (1) Agreement and Plan of Rehabilitation, (2) Assumption Reinsurance Agreement, (3) Service
22 Agreement and (4) Novation Agreement in a form substantially similar to that filed with the
23 Application;

24 4. The Rehabilitation Plan and the agreements comprising the plan are authorized and
25 consistent with California Insurance Code § 1010 *et seq.*, including without limitation §§ 1037,
26 1043 and 1057, the Conservator’s discretion under those statutes, and both substantive and
27 procedural due process;

28 //

1 5. The Rehabilitation Plan and agreements comprising the plan, when contemplated,
2 are enforceable;

3 6. The Rehabilitation Plan and agreements comprising the plan are fair to Golden
4 State's policyholders, annuity contract holders, creditors, and all other persons and entities having
5 a substantial, unsatisfied interest in Golden State known to the Conservator;

6 7. The form of the Rehabilitation Plan and agreements are approved;

7 8. The policyholder and annuity contract liabilities shall be assumed and transferred
8 to IA American upon closing of the Rehabilitation Plan and agreements, such that, upon closing
9 of the agreements, Golden State's policies and annuity contracts shall be assumed by IA
10 American and the policyholders and annuity contract holders of such policies and contracts shall
11 have no further contractual claims against Golden State, other than any claim arising solely from
12 any equity ownership rights, if any, as mutual life insurance policyholders;

13 9. The entry into the Rehabilitation Plan and agreements provides each policyholder,
14 annuity contract holder and creditor of Golden State with a more favorable result than the other
15 proposals submitted to the Conservator and under an immediate liquidation of Golden State;

16 10. The Conservator is hereby authorized, in his discretion, to consummate and close
17 the transactions and agreements contemplated by the Rehabilitation Plan and agreements; in his
18 discretion, to make the asset and liability transfers contemplated by the Rehabilitation Plan and
19 agreements; and, in his discretion, to enter into such further agreements, modifications and
20 documents regarding the transfer and assumption of Golden State's policies and annuity
21 contracts, the closing of the Rehabilitation Plan and agreements, the provision for the
22 adjudication, defense, and payment of policy claims in the course of settlement, and the transfers
23 of assets contemplated therein, as he deems appropriate;

24 11. The Court's September 30, 2009, Order Appointing Conservator and Restraining
25 Order, and all stays and injunctions set forth therein, remain in full force and effect;

26 12. All policyholders, annuity contract holders, creditors, persons and entities are
27 enjoined and restrained from commencing or further prosecuting any suit or suit against IA
28 American seeking to impose liability upon IA American for any extra-contractual liabilities, tort

1 liabilities, statutory liabilities or other liabilities of Golden State which arise prior to the date of
2 IA American's assumption of Golden State's policies and annuity contracts;

3 13. All liabilities not assumed by IA American shall remain with Golden State;

4 14. All assets and liabilities of Golden State not transferred to IA American will
5 remain with and be monetized by the Conservator, and will be subject to the claim priority and
6 asset distribution procedures set forth in Insurance Code § 1010 *et seq.*;

7 15. Following the closing of the Rehabilitation Plan and agreements with IA
8 American, the Conservator shall maintain all rights to apply for further orders of conservation
9 and/or liquidation concerning Golden State and to apply for a proof of claims process to be
10 established in accordance with California Insurance Code § 1010 *et seq.*, including a claims bar
11 date and other procedures to distribute Golden State's retained assets in an orderly manner;

12 16. Nothing in the requested Order shall diminish the rights of the Conservator in this
13 matter;

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1 17. Upon the closing of the Rehabilitation Plan and agreements and transactions
2 contemplated therein with IA American, the Conservator will file with the Court a Notice of
3 Closing of Rehabilitation Plan within thirty days of such closing. If, for any reason, the
4 Conservator determines that a closing should not occur, then the Conservator will file a Status
5 Report advising the Court of same no later than thirty-days after making such a determination;
6 and

7 18. The Conservator is authorized to take any and all action necessary to accomplish
8 the purposes of the orders requested herein.

9 Dated: May 19, 2010

EDMUND G. BROWN JR.
Attorney General of California
FELIX LEATHERWOOD
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