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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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ORDER OF
LIQUIDATION AND ORDERS AND
INJUNCTIONS IN AID OF
LIQUIDATION FOR GOLDEN STATE
MUTUAL LIFE INSURANCE COMPANY
BY APPLICANT INSURANCE
COMMISSIONER**

[Filed concurrently with Notice of OSC and
Motion, Declarations and Proposed Order]

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TABLE OF CONTENTS

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

	<u>Page</u>
I. INTRODUCTION	1
A. Summary	1
B. Factual Overview	1
C. Requested Orders	2
II. FACTUAL BACKGROUND.....	3
A. Golden State’s Insurance Business Operations.....	3
B. Order Appointing Conservator of Golden State	3
C. Conservator’s Request For Proposals To Sell Or Merge Golden State’s Business With A Third Party	4
D. Rehabilitation Plan and Sale of Golden State’s Insurance Business	4
E. Retained Assets and Liabilities for Administration by Golden State’s Estate.....	5
1. Assets	5
2. Liabilities	6
3. Net Deficiency	7
F. Current Operations.....	7
G. Golden State’s Artwork, Removable Murals and Historical Materials	8
III. STATUTORY SCHEME AND AUTHORITY FOR CONSERVATION AND LIQUIDATION OF CALIFORNIA INSURANCE COMPANIES.....	9
A. Conservation	9
B. Liquidation.....	10
C. Orders and Powers of Commissioner	10
D. Effect of Liquidation.....	12
E. Notice of Liquidation Order to Claimants and Claims Bar Date.....	12
F. Claim Filing Procedures	12
IV. ARGUMENT	13
A. The Conservator Is Entitled to an Order of Liquidation.....	13

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

B. The Conservator Is Entitled to an Order Establishing a Claims Bar Date..... 14

C. The Conservator Is Entitled to the Orders Requested Below in Aid of the Liquidation..... 14

V. CONCLUSION AND REQUESTED ORDERS 14

A. Liquidation, Administration and Operation 14

B. Injunctions and Other Orders..... 18

C. Creditors and Setting of Claims Bar Date..... 21

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

TABLE OF AUTHORITIES

Page

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14 Cal.App.4th 393, 39813

Low v. Golden Eagle Ins. Co. (2002)
101 Cal.App.4th 1354, 136713

Statutes

Insurance Code

Section 998.....3

Section 1010.....1, 2, 5, 6, 9, 10, 16, 21

Section 1011.....9, 10, 15, 16, 17, 18, 19

Section 1016.....2, 10, 12, 13, 15, 19

Section 1019.....2, 12, 21

Section 1020.....11, 18, 19, 20, 21

Section 1021.....12, 13, 14

Section 1022.....12

Section 1023.....2, 13, 21

Section 1024.....3, 13, 21

Section 1025.5.....21

Section 1032.....13

Section 1033.....7, 13

Section 1035.....10, 17

Section 1036.....10, 17

Section 1037.....10, 11, 15, 16, 17, 18, 19, 20, 21

Federal

11 U.S.C. 109(b)(2)9

1 **I. INTRODUCTION.**

2 **A. Summary.**

3 This Memorandum supports the Conservator’s motion for orders to liquidate and wind up
4 Golden State Mutual Life Insurance Company (“Golden State”). As discussed below, Golden
5 State was conserved due to financial impairment, its insurance business was successfully
6 transferred to another insurance company, and now its estimated liabilities exceed its estimated
7 remaining assets by over \$3 million. Thus, further conservation of Golden State would be futile
8 and liquidation is required to marshal and monetize Golden State’s remaining assets for orderly
9 distribution to Golden State’s creditors pursuant to Insurance Code¹ § 1010 *et seq.*

10 **B. Factual Overview.**

11 On September 30, 2009, Judge David P. Yaffe appointed Applicant Steve Poizner,
12 Insurance Commissioner of the State of California, to serve as Golden State’s Conservator
13 (“Conservator”) pursuant to an Order Appointing Conservator And Restraining Order (“Order
14 Appointing Conservator”). The Order Appointing Conservator was necessary because as of June
15 30, 2009, Golden State was financially impaired pursuant to § 988 and deemed to be operating in
16 a hazardous financial condition in that its reported paid-in capital and surplus of assets in excess
17 of liabilities was \$1,650,693 instead of the required \$5,000,000.

18 Thereafter, on September 2, 2010, the Conservator closed an assumption reinsurance
19 transaction with IA American Life Insurance Company (“IA American”) in which all of Golden
20 State’s in-force policyholders and annuity contract holders became policyholders and annuity
21 contract holders of IA American as of January 1, 2010. The assumption reinsurance transaction
22 was necessary because, due to Golden State’s financial impairment, Golden State’s business
23 operations were not sustainable and the Conservator determined that the best course of action for
24 Golden State’s policyholders and creditors was for Golden State’s policies and annuity contracts
25 to be transferred and assumed by IA American, with IA American paying an \$11 million ceding
26 commission to Golden State as payment for the business.

27 _____
28 ¹ Unless stated otherwise, all statutory references are to the California Insurance Code.

1 **C. Requested Orders.**

2 Now, through this liquidation motion, the Conservator seeks an order to liquidate and
3 wind up Golden State’s business, an order establishing a Claims Bar Date, and orders and
4 injunctions in aid of liquidation. These orders are appropriate and required because, pursuant to §
5 1016, the Conservator has determined that it would be futile for him to proceed as Conservator
6 since Golden State’s estimated liabilities of \$9,291,895 exceed its estimated remaining assets of
7 \$5,721,154 by over \$3 million (\$5,721,154 in assets - \$9,291,895 in liabilities = \$-3,570,741).
8 The specific orders requested are listed in the accompanying Notice for this motion and the
9 Conclusion at the end of this Memorandum. In pertinent part, the requested orders include:

- 10 1. An order that as of September 30, 2010, Golden State is insolvent and
11 remains insolvent today, such that it would be futile for the Conservator to
12 proceed as conservator; and therefore, sufficient grounds exist under §
13 1016 for entry of an order to liquidate and wind up Golden State;
- 14 2. An order that the Commissioner’s status as Conservator is terminated, he is
15 appointed Liquidator of Golden State as set forth in § 1016, and he is
16 directed as Liquidator to liquidate and wind up the business of Golden
17 State and to act in all ways and exercise all powers necessary for the
18 purpose of carrying out the liquidation;
- 19 3. An order that pursuant to § 1019 the rights and liabilities of claimants,
20 policyholders, shareholders, members and all other persons interested in the
21 assets of Golden State are fixed as of the date of entry of the order to
22 liquidate Golden State;
- 23 4. An order that all claims against Golden State, including without limitation
24 those claims which in any way affect or seek to affect any of the assets of
25 Golden State, wherever or however such assets may be owned or held,
26 must be filed no later than December 31, 2011 (the “Claims Bar Date”),
27 together with proper proofs thereof, in accordance with § 1010 *et seq.*
28 including § 1023;

1 5. An order that, except for persons deemed to have filed claims against
2 Golden State pursuant to § 1024, any claims not filed by the Claims Bar
3 Date shall be conclusively deemed forever waived; and

4 6. Additional orders and injunctions in aid of the liquidation.

5 **II. FACTUAL BACKGROUND.**

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

7 Golden State is a mutual life insurance company organized and existing under and by
8 virtue of the laws of the State of California. Golden State's principal place of business and home
9 office is located at 1999 West Adams Boulevard in Los Angeles, California 90018-3514 through
10 December 31, 2010. Golden State was authorized to transact the business of life, health and
11 disability insurance and annuities, and had in force approximately 120,000 life, health and
12 disability insurance policies and annuity contracts. Golden State's business focus had been to
13 provide said insurance products to the minority middle income marketplace with a geographic
14 emphasis in California, Texas, North Carolina, Michigan and Illinois. (Declaration of David E.
15 Wilson ("Wilson Dec."), ¶ 6.)

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

17 On September 30, 2009, Judge Yaffe issued his Order Appointing Conservator which,
18 among other items, appointed the Commissioner as Conservator of Golden State; vested title of
19 Golden State's assets in the Conservator; directed the Conservator to take possession of Golden
20 State's books, records, and assets; directed the Conservator to conduct, as conservator, the
21 business of Golden State; and provided the Conservator with certain powers and authorities set
22 forth in the Order. (Order Appointing Conservator, Wilson Dec., ¶ 7 and Exhibit 1 thereto.)

23 Golden State was conserved because as of June 30, 2009, Golden State was financially
24 impaired pursuant to § 988 and deemed to be operating in a hazardous financial condition in that
25 its reported paid-in capital and surplus of assets in excess of liabilities was \$1,650,693 instead of
26 the required \$5,000,000. Golden State could no longer continue its operations without
27 conservation because it lacked sufficient paid-in capital and surplus to ensure policyholder safety.
28 (Wilson Dec., ¶ 8.)

1 **C. Conservator’s Request For Proposals To Sell Or Merge Golden State’s**
2 **Business With A Third Party.**

3 In October 2009, based on Golden State’s financial condition and its operational
4 capabilities, the Conservator determined that the business operations of Golden State were not
5 sustainable and that the best course of action for Golden State’s policyholders and creditors was
6 for the Conservator to position Golden State for a sale, merger or an assumption of its insurance
7 book of business by a third party. In furtherance of these determinations, the Conservator
8 commenced a Request for Proposals process to solicit, evaluate and recommend proposals for the
9 contemplated sale, merger or assumption of Golden State’s insurance business. (Wilson Dec., ¶
10 9.)

11 **D. Rehabilitation Plan and Sale of Golden State’s Insurance Business.**

12 In May 2010, as a result of the Request for Proposals process, the Conservator negotiated
13 a plan of rehabilitation and assumption reinsurance agreement for Golden State with IA
14 American, in which the Conservator agreed subject to Court approval to transfer all of Golden
15 State’s in-force policies, annuities and policy liabilities to IA American. The plan of
16 rehabilitation and assumption reinsurance agreement is comprised of four agreements, which are:
17 (1) Agreement and Plan of Rehabilitation; (2) Assumption Reinsurance Agreement; (3) Service
18 Agreement; and (4) Novation Agreement (collectively referred to as “Rehabilitation Plan”).
19 (Wilson Dec., ¶ 10.)

20 On June 24, 2010, Judge Yaffe approved the Rehabilitation Plan and authorized the
21 Conservator to enter into the four agreements with IA American. Thereafter, on September 2,
22 2010, the Conservator and IA American closed the Assumption Reinsurance Agreement and
23 Agreement And Plan Of Rehabilitation. (Wilson Dec., ¶ 11 and Exhibit 2 thereto.)

24 As a result of closing the Assumption Reinsurance Agreement and Agreement And Plan
25 Of Rehabilitation, as of January 1, 2010, the in-force policyholders and annuity contract holders
26 of Golden State became policyholders and annuity contract holders of IA American, all
27 policyholder policy claims and annuity contract claims for contractual insurance policy and
28 annuity benefits including approximately \$71 million in reserves were transferred to IA

1 American, the Conservator transferred assets from Golden State to IA American valued at
2 approximately \$60 million, and the Conservator was credited with a ceding commission totaling
3 \$11 million. The policyholders and annuity contract holders, and their claims, were thus
4 transferred to the new company, IA American. (Wilson Dec., ¶ 12.)

5 Assets not transferred by the Conservator to IA American remained with Golden State and
6 are being marshaled and monetized. Once marshaled and monetized, these assets will be used to
7 pay claims against Golden State. All claims of any kind or nature against Golden State, other
8 than policyholder and annuity contract holder claims for policy and annuity contract benefits, will
9 be made and administered against Golden State in accordance with the claim administration and
10 priority procedures set forth in § 1010 *et seq.* (Wilson Dec., ¶ 12.)

11 The assets transferred to IA American included the following:

- 12 a. Golden State's commercial mortgage portfolio having a net book value of
13 \$20,744,141. A loss provision of \$4,084,557 was established against the book
14 value of Golden State's mortgage portfolio of \$24,828,698 as of October 31, 2009,
15 so that the mortgage portfolio transferred to IA American at its book value at
16 closing less \$4,084,557, *i.e.*, \$20,744,141;
- 17 b. Golden State's bond portfolio having a book adjusted carrying value of
18 \$28,597,221 as of January 22, 2010;
- 19 c. Golden State's Contract Loans having a book value of \$4.2 million;
- 20 d. Golden State's Net Deferred Premiums having a book value of \$2.3 million; and
- 21 e. Golden State's preferred Stocks having a net book value of approximately
22 \$3,467,139. The Preferred Stocks were valued at 90% of book value. (Wilson
23 Dec., ¶¶ 13 and 14 and Exhibit 3.)

24 **E. Retained Assets and Liabilities for Administration by Golden State's Estate.**

25 **1. Assets.**

26 Assets retained by Golden State after the closing of the agreements with IA American on
27 September 2, 2010, total approximately \$5,721,154 as of September 30, 2010. The Conservator
28

1 is currently monetizing these assets for distribution to Golden State's creditors pursuant to § 1010
2 *et seq.* The assets include the following:

- 3 a. Cash and cash equivalents of \$3,090,716;
- 4 b. Prepaid deposit held of \$75,000;
- 5 c. Receivable due from reinsurers of approximately \$253,807;
- 6 d. Reinsurance recoverable due from Long Term Disability reinsurer of
7 approximately \$35,471;
- 8 e. Real estate valued at approximately \$1,512,960; and
- 9 f. Artwork and murals whose value is at least \$753,200. (Wilson Dec., ¶ 15 and
10 Exhibit 4.)

11 **2. Liabilities.**

12 Liabilities retained by Golden State after the closing of the agreements with IA American
13 include all non-policyholder claims of any kind or nature against Golden State. Such liabilities
14 currently are estimated to be at least approximately \$9,291,895 as of September 30, 2010, and
15 include the following estimates of possible claims which may be asserted:

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

1 Golden State, who retain their § 1033 priority 9 rights. (Wilson Dec., ¶ 16 and
2 Exhibit 4.)

3 In addition to the above estimated liabilities, estate administrative expenses are anticipated
4 to accrue at the rate of approximately \$900,000 per year (\$75,000 per month) during liquidation
5 in 2011. (Wilson Dec., ¶ 17.)

6 The above estimates of potential liabilities which may be asserted against Golden State are
7 not an admission that a particular liability or amount of the liability is actually due. Instead, the
8 above estimates are listed only to establish the amount of potential liabilities which may be
9 asserted against Golden State. (Wilson Dec., ¶ 18.)

10 **3. Net Deficiency.**

11 As detailed above, Golden State's estimated liabilities exceed its estimated remaining
12 assets by \$3,570,741 (\$9,291,895 - \$5,721,154). (Wilson Dec., ¶ 19, and Exhibit 4.)

13 **F. Current Operations.**

14 The Conservator's staff continues to manage Golden State's day-to-day operations,
15 marshal its assets and reduce its expenses and liabilities. The Conservator has determined that the
16 best course of action for Golden State's creditors is to further reduce operating expenses by
17 permanently closing Golden State's operations, terminating remaining employees, and liquidating
18 and winding down Golden State's business. In furtherance of this course of action, the
19 Conservator has undertaken the following actions:

20 (1) Employee terminations. Employee terminations have been on-going since the
21 beginning of conservation and are scheduled to continue through December 31, 2010. At this
22 time, only four Golden State employees remain and they are scheduled to be terminated on
23 December 31, 2010.

24 (2) Home office lease termination and closure. The lease for Golden State's home
25 office located at 1999 West Adams Boulevard in Los Angeles is scheduled to terminate on
26 December 31, 2010. The Conservator is on schedule to vacate the premises no later than
27 December 31, 2010. Upon vacating Golden State's home office, Golden State's operations will
28

1 be managed from the Commissioner's Conservation & Liquidation Office located in San
2 Francisco, California.

3 (3) District offices closures. At the time of conservation, Golden State had district
4 offices located in California, Illinois, North Carolina, Michigan and Texas. As of November 15,
5 2010, all district offices have been closed and all leases have been terminated. (Wilson Dec., ¶
6 20.)

7 **G. Golden State's Artwork, Removable Murals and Historical Materials.**

8 Over the years Golden State amassed a collection of art by African and African American
9 artists, and accumulated a large amount of historical materials. Golden State's art collection and
10 historical materials include two removable murals on canvas, approximately 120 paintings,
11 sculptures, photographs and mixed-media pieces, and numerous documents, photographs and
12 recordings relating to Golden State, its history and founders. An inventory of the art collection
13 with photographs can be viewed at www.caclo.org/GoldenStateMutual/ArtCollection. (Wilson
14 Dec., ¶ 21.) The owner of the building at 1999 West Adams Blvd. in Los Angeles used for
15 Golden State's home office claims ownership of the two removable murals on the grounds that
16 the murals purportedly are fixtures and that the owner purportedly believed its 2009 purchase of
17 the building included the purchase of the murals. The Conservator denies the claim because,
18 among other reasons, the murals were expressly excluded from the sale of the building in 2005
19 prior to the owner's purchase of the building and the murals are not fixtures since they are
20 removable.

21 To monetize Golden State's artwork, murals and historical materials including the two
22 removable murals, the Conservator has undertaken a Request for Proposals process in which
23 persons and entities interested in purchasing Golden State's art and/or historical materials are
24 required to submit proposals to the Conservator for such purchase or purchases. The Request for
25 Proposals also can be viewed at www.caclo.org/GoldenStateMutual/ArtCollection. Due to
26 continuing interest in the artwork, murals and historical materials, the Conservator continued the
27 Request for Proposals process twice, most recently through October 29, 2010. At this time, the
28 Conservator is evaluating the proposals received and intends to make recommendations to the

1 Court in the next 30 to 60 days. All sales of Golden State’s artwork and historical materials
2 having a market value of \$20,000 or more require the approval of this Court, and all such
3 recommendations and proposals are contingent on this required approval. (Wilson Dec., ¶ 22.)

4 **III. STATUTORY SCHEME AND AUTHORITY FOR CONSERVATION AND**
5 **LIQUIDATION OF CALIFORNIA INSURANCE COMPANIES.**

6 Impaired and insolvent insurance companies are precluded from seeking relief in
7 bankruptcy. (11 U.S.C. § 109(b)(2) (“A person may be a debtor under chapter 7 of this title only
8 if such person is not . . . a domestic insurance company”).) Instead, California, like most states,
9 has statutory proceedings subjecting impaired and insolvent insurers to orderly conservation,
10 rehabilitation and/or liquidation. California’s statutory proceedings are codified in Insurance
11 Code § 1010 *et seq.* The following summarizes California’s statutory scheme pertinent to the
12 conservation and liquidation of Golden State at this time.

13 **A. Conservation.**

14 Pursuant to § 1011, the Insurance Commissioner is authorized to obtain an *ex parte*
15 order appointing him Conservator of insurers regulated by him whenever certain
16 conditions enumerated in § 1011 are shown to exist, including without limitation that an
17 insurer is “found, after an examination, to be in such condition that its further transaction
18 of business will be hazardous to its policyholders, or creditors, or to the public” or that “a
19 domestic insurer does not comply with the requirements for the issuance to it of a
20 certificate of authority, or that its certificate of authority has been revoked.” (§ 1011(d)
21 and (h).) Specifically, § 1011 states in pertinent part:

22 The superior court of the county in which the principal office of a person
23 described in Section 1010 is located shall, upon the filing by the
24 commissioner of the verified application showing any of the following
25 conditions hereinafter enumerated to exist, issue its order vesting title to all
26 of the assets of that person, wheresoever situated, in the commissioner or
27 his or her successor in office, in his official capacity as such, and direct the
28 commissioner forthwith to take possession of all of its books, records,
property, real and personal, and assets, and to conduct, as conservator, the
business of said person, or so much thereof as to the commissioner may
seem appropriate, and enjoining said person and its officers, directors,
agents, servants, and employees from the transaction of its business or
disposition of its property until the further order of said court:

...

1 (d) That such person is found, after an examination, to be in such condition
2 that its further transaction of business will be hazardous to its
policyholders, or creditors, or to the public.

3 . . .
4 (h) That a domestic insurer does not comply with the requirements for the
issuance to it of a certificate of authority, or that its certificate of authority
has been revoked. . . .

5 Upon filing of the *ex parte* application and with the requisite factual showing, the court
6 “shall” issue an order vesting title of the insurer's assets in the Commissioner as conservator and
7 enjoining the insurer from further transaction of business, in order to conserve the insurer’s
8 existing assets. (§ 1011.) As conservator, the Commissioner is vested with title to all of the
9 insurer’s assets, is authorized to take possession of the insurer’s assets and business and to
10 conduct so much of its business as he deems appropriate, is authorized to appoint deputy
11 commissioners, is authorized to employ legal counsel and clerks and assistants, and is given broad
12 authorities and powers concerning the conserved insurer and the handling of its assets and
13 liabilities. (§ 1010 *et seq.*, including without limitation §§ 1011, 1035, 1036 and 1037.)

14 **B. Liquidation.**

15 If at any time after conservation it appears to the Commissioner as conservator that it
16 would be futile to proceed as conservator, he may apply to the Court for an order to liquidate and
17 wind up the insurer’s business. (§ 1016.) Section 1016 states:

18 If at any time after the issuance of an order under section 1011, or if at the time of
19 instituting any proceeding under this article, it shall appear to the commissioner
20 that it would be futile to proceed as conservator with the conduct of the business of
21 such person, he may apply to the court for an order to liquidate and wind up the
22 business of said person. Upon a full hearing of such application, the court may
make an order directing the winding up and liquidation of the business of such
person by the commissioner, as liquidator, for the purpose of carrying out the order
to liquidate and wind up the business of such person.

23 **C. Orders and Powers of Commissioner.**

24 In aid of the conservation or liquidation proceedings, the court is authorized to issue
25 whatever orders are necessary to carry out the conservatorship or liquidation, including
26 “injunctions or orders as may be deemed necessary to prevent” certain occurrences including:

- 27 (a) Interference with the commissioner or the proceeding.
28 (b) Waste of assets of such person.
(c) The institution or prosecution of any actions or proceedings.

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- (d) The obtaining of preferences, judgments, attachments, or other liens against such person or its assets.
- (e) The making of any levy against any such person or its assets.
- (f) The sale or deed for nonpayment of taxes or assessments levied by any taxing agency of property
- (g) Any managing general agent or attorney in fact from withholding from the commissioner any books, records, accounts, documents or other writing relating to the business of such person; provided, however, that, if by contract or otherwise any of the same are the property of such an agent or attorney, the same shall be returned when no longer necessary to the commissioner or at any time the court after notice and hearing shall so direct. (§ 1020.)

Further, § 1037, entitled “Powers of commissioner as conservator or liquidator,” provides broad powers to the Commissioner as Conservator. Section 1037 states 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 expedient to collect, conserve, or protect its assets, property, and business, and to carry on and conduct the business and affairs of that person or so much thereof as to him or her may seem appropriate.

...
(d) [Acquisition and disposition of property.] Shall have authority without 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 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 commissioner may deem proper. However, no transaction involving real or 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 permission of the court, and then only in accordance with any terms that court may prescribe.

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

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

1 **D. Effect of Liquidation.**

2 Upon the issuance of an order of liquidation, for purposes of claim administration, § 1019
3 fixes the *rights and liabilities* of the insolvent insurer and of its creditors, policyholders,
4 shareholders, members and all other persons interested in the insurer’s assets as of the date of
5 liquidation. Section 1019 states:

6 Upon the issuance of an order of liquidation under section 1016, the rights and
7 liabilities of any such person [i.e., the insolvent insurer] and of creditors,
8 policyholders, shareholders and members, and all other persons interested in its
9 assets, including the State of California, shall, unless otherwise directed by the
court, be fixed as of the date of the entry of the order in the office of the clerk of
the county wherein the application was made.

10 **E. Notice of Liquidation Order to Claimants and Claims Bar Date.**

11 Upon issuance of an order to liquidate the insurer, the Commissioner as Liquidator is
12 required to publish in newspapers notice to the insurer’s policyholders, creditors, shareholders
13 and all other persons interested in the insurer’s assets, and establish a claims bar date by which
14 claimants are required to file their claims against the insurer. (§§ 1021(a) and 1022.) Section
15 1021(a) states:

16 Upon the making of an order to liquidate the [insurer’s business], the
17 commissioner shall publish notice to [the insurer’s] policyholders, creditors,
18 shareholders, and all other persons interested in [the insurer’s] assets. The order
19 and the notice shall require claimants to file their claims with the commissioner,
together with proper proofs thereof, within six months to one year, at the
commissioner's discretion, after the date of first publication of such notice, in the
manner specified in [§ 1010 et seq].

20 Pursuant to § 1022, the notice must be “published in a newspaper of general circulation ...
21 in the county in which the proceeding is pending, and in the Counties of Alameda, Los Angeles,
22 Sacramento, San Diego, San Francisco, and Santa Clara, not less than once a week for four
23 consecutive weeks.” (§ 1022.)

24 **F. Claim Filing Procedures.**

25 Anyone having an interest in the insurer’s assets may file a claim. (§ 1021(a).) Claimants
26 have until the Claims Bar Date to file a claim, which is set six months to one year, at the
27 Commissioner’s discretion, from the date the notice is first published to file their claims. (§
28 1021(a).) The “particulars” of the claim must be set forth on “the form prescribed by the

1 Commissioner”, stating the statutory required content. (§ 1023.) Claims not filed in the manner
2 prescribed and within the time provided in § 1021 “shall not be entitled to filing or allowance, and
3 no action may be maintained thereon.” (§ 1024.)

4 “Proceedings under the insurance insolvency laws are ‘special proceedings’ for which
5 express findings of fact and conclusions of law are not required.” (*Low v. Golden Eagle Ins. Co.*
6 (2002) 101 Cal.App.4th 1354, 1367.) If the Commissioner rejects a claim, the claimant may apply
7 to the Court “for an order to show cause why the claim should not be allowed.” (§ 1032.) If the
8 Commissioner accepts the claim, the claimant is subject to distribution priorities established in §
9 1033 and the requirement that claimants in the same class are entitled to share pro rata in
10 distributions to the class. (§ 1033; and *Commercial National Bank in Shreveport v. Superior*
11 *Court* (1993) 14 Cal.App.4th 393, 398.) The distribution priorities established in § 1033 provide
12 that funds available are distributed in the following order:

- 13 (1) Expense of administration.
- 14 (2) All claims of the California Insurance Guarantee Association or the California
15 Life and Health Insurance Guarantee Association, and associations or entities
16 performing a similar function in other states, together with claims for refund of
17 unearned premiums and all claims under insurance and annuity policies or
18 contracts, including funding agreements, of an insolvent insurer that are not
19 covered claims.
- 20
- 21 (3) Claims having preference by the laws of the United States.
- 22 (4) Unpaid charges due under the provisions of Section 736.
- 23 (5) Taxes due to the State of California.
- 24 (6) Claims having preference by the laws of this state.
- 25 (7) Claims of creditors not included in paragraphs (1) to (6), inclusive.
- 26 (8) Certificates of contribution, surplus notes, or similar obligations, and premium
27 refunds on assessable policies.
- 28 (9) The interests of shareholders or other owners in any residual value in the
estate.

22 **IV. ARGUMENT.**

23 **A. The Conservator Is Entitled to an Order of Liquidation.**

24 In accordance with the requirements of § 1016, the Conservator has determined that it
25 would be futile to proceed as Conservator and is hereby applying to the Court for an order to
26 liquidate and wind up Golden State’s business. The Conservator’s determination is based on the
27 facts that (1) Golden State’s insurance business was successfully transferred to another insurance
28 company, IA American, and (2) Golden State’s estimated liabilities of \$9,291,895 exceed its

1 estimated remaining assets of \$5,721,154 by over \$3 million; specifically \$3,570,741 (\$9,291,895
2 - \$5,721,154). While the final liquidation of assets and claims will achieve a more precise figure,
3 the Conservator moves the Court for an order of liquidation now because under the current
4 estimates, Golden State is insolvent.

5 Accordingly, the Conservator is entitled to an order to liquidate and wind up the business
6 of Golden State's business.

7 **B. The Conservator Is Entitled to an Order Establishing a Claims Bar Date.**

8 In accordance with § 1021(a), upon issuance of an order to liquidate the insurer, the
9 Commissioner as Liquidator is required to establish a claims bar date by which claimants are
10 required to file their claims against the insurer. (§ 1021(a).) The date of the Claims Bar Date is
11 within the Conservator's discretion. To allow sufficient time for all of Golden State's
12 policyholders, creditors and shareholders, as well as all other persons interested in Golden State's
13 assets, to file proper claims with the Liquidator, the Conservator has selected December 31, 2011
14 as the Claims Bar Date, which is eleven months from the date of this hearing. (Wilson Dec., ¶
15 23.)

16 **C. The Conservator Is Entitled to the Orders Requested Below in Aid of the**
17 **Liquidation.**

18 The statutory authority for the various orders and injunctions requested below, and in the
19 Notice for this Motion and the Proposed Order Appointing Liquidator, are set forth at the end of
20 each requested order and injunction. Pursuant to the cited statutes, the Conservator requests that
21 the Court issue the requested orders.

22 **V. CONCLUSION AND REQUESTED ORDERS.**

23 For the reasons and based on the authorities set forth herein, there is good cause for the
24 Court to issue the requested order of liquidation for Golden State and the following orders:

25 **A. Liquidation, Administration and Operation**

26 1. As of September 30, 2010, Golden State is insolvent and remains insolvent today,
27 and it would be futile for the Commissioner to proceed as Conservator; and therefore, sufficient
28

1 grounds exist in accordance with § 1016 for entry of an order of liquidation of Golden State. (§
2 1016.)

3 2. The Commissioner's status as Conservator is terminated, he is appointed
4 Liquidator of Golden State as set forth in § 1016, and he is directed as Liquidator to liquidate and
5 wind up the business of Golden State and to act in all ways and exercise all powers necessary for
6 the purpose of carrying out this Order. (§ 1016.)

7 3. Title to all of the assets of Golden State, wheresoever situated, shall remain vested
8 in the Commissioner, now as Liquidator, or his successor in office, in his official capacity as
9 such, including without limitation real and personal property, deposits, certificates of deposit,
10 bank accounts, mutual funds, securities, contracts, rights of actions, books, records and other
11 assets of any and every type and nature, wheresoever situated, presently in Golden State's
12 possession and/or those which may be discovered hereafter. (§§ 1011, 1016 and 1037 General
13 Powers.)

14 4. All funds and assets, including without limitation deposits, certificates of deposit,
15 bank accounts, securities, and mutual fund shares of Golden State, in various financial depository
16 institutions, including without limitation banks, savings and loan associations, industrial loan
17 companies, mutual funds and/or stock brokerages, wheresoever situated, are subject to withdrawal
18 only upon direction or order by the Liquidator. (§§ 1011, 1016 and 1037 General Powers.)

19 5. The Liquidator is authorized to collect all moneys due to Golden State, and to do
20 such other acts as are necessary or expedient to collect, conserve, protect and/or liquidate Golden
21 State's assets, property and business. (§ 1037(a).)

22 6. The Conservator is authorized to collect all debts due and claims belonging to
23 Golden State and to have the authority to sell, compound, compromise, or assign, for the purpose
24 of collection upon such terms and conditions as the Liquidator deems best, any bad or doubtful
25 debts. (§ 1037(b).)

26 7. The Liquidator is authorized to compound, compromise or in any other manner
27 negotiate settlements of claims against Golden State upon such terms and conditions as the
28 Liquidator shall deem to be most advantageous to the estate of Golden State. (§ 1037(c).)

1 8. The Liquidator is authorized, without permission of the court and without notice,
2 to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of
3 or deal with, any real or personal property of Golden State at its reasonable market value, or, in
4 cases other than acquisition, sale, or transfer on the basis of reasonable market value, upon such
5 terms and conditions as the Liquidator may deem proper, provided the market value of the
6 property involved does not exceed the sum of twenty thousand dollars (\$20,000). (§ 1037(d).)

7 9. The Liquidator is authorized to transfer to a trustee or trustees, under a voting trust
8 agreement, the stock of Golden State heretofore or hereafter issued to the Liquidator in
9 connection with a rehabilitation or reinsurance agreement, or any other proceeding under § 1010
10 *et seq.* (§ 1037(e).)

11 10. The Liquidator is authorized, for the purpose of executing and performing any of
12 the powers and authority conferred upon the Liquidator under § 1010 *et seq.*, in the name of
13 Golden State or in the Liquidator's own name, to initiate, prosecute and/or defend any and all suits
14 and other legal proceedings, legal or equitable, and to execute, acknowledge and deliver any and
15 all deeds, assignments, releases and other instruments necessary and proper to effectuate any sale
16 of any real and personal property or other transaction in connection with the administration,
17 liquidation or other disposition of the assets of Golden State, in this or other states as may appear
18 to him necessary to carry out his functions as Liquidator. (§ 1037(f) and 1037 General Powers.)

19 11. The Liquidator is authorized to divert, take possession of and secure all mail of
20 Golden State and to effect a change in the rights to use any and all post office boxes and other
21 mail collection facilities used by Golden State. (§§ 1011 and 1037 General Powers.)

22 12. The Liquidator is authorized, without permission of the court and without notice,
23 to invest and reinvest, in such manner as the Liquidator may deem suitable for the best interests of
24 the policyholders and/or creditors of Golden State, such portions of the funds and assets of
25 Golden State in his possession as do not exceed the amount of the reserves required by law to be
26 maintained by Golden State as reserves for life insurance policies, annuity contracts,
27 supplementary agreements incidental to life business, and reserves for non-cancelable disability
28 policies, and which funds and assets are not immediately distributable to creditors, provided the

1 investment or reinvestment to be made does not exceed the sum of one hundred thousand dollars
2 (\$100,000), except that the Liquidator, without permission of the court and without notice, may
3 make investments or reinvestments in excess of \$100,000, but not exceeding \$5,000,000 per
4 investment or reinvestment, if such investments or reinvestments are part of Golden State's
5 existing investments or are made pursuant to the investment guidelines of the Commissioner's
6 Conservation & Liquidation Office including investments and reinvestments through an
7 investment pool consisting exclusively of assets from conserved and/or liquidating estates. (§
8 1037(g) and General Powers.)

9 13. The Liquidator is authorized, in his discretion, without permission of the court and
10 without notice, to pay or defer payment of some or all claims, expenses, liabilities and/or
11 obligations of Golden State, in whole or in part, accruing prior and/or subsequent to his
12 appointment as Liquidator. (§§ 1011 and 1037 General Powers.)

13 14. The Liquidator is authorized to appoint and employ under his hand and official
14 seal, special deputy commissioners and/or legal counsel, as his agents, and to employ clerks
15 and/or assistants, and to give to each of them those powers that the Liquidator deems necessary.
16 (§§ 1035(a) and 1036.)

17 15. The Liquidator is authorized to fix the costs of employing special deputy
18 commissioners, legal counsel, clerks, and/or assistants, and all expenses of taking possession of,
19 conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and
20 property of Golden State, subject to the approval of the court, and to pay such costs out of the
21 assets of Golden State to the Liquidator and others including without limitation expenses, expense
22 allocations, administrative costs, administrative overhead, and costs incurred and/or allocated by
23 the Conservation & Liquidation Office, and if there are insufficient funds to pay such costs, then
24 to pay such costs out of the Insurance Fund pursuant to Insurance Code § 1035. (§§ 1035(a),
25 1036 and 1037 General Powers.)

26 16. The Liquidator is authorized to assume or reject, or to modify, any executory
27 contract, including without limitation, any lease, rental or utilization contract or agreement
28 (including any schedule to any such contract or agreement), and any license or other arrangement

1 for the use of computer software of business information systems, to which Golden State is a
2 party or as to which Golden State agrees to accept an assignment of such contract, not later than
3 120 days of the date of the Order Appointing Conservator, unless such date is extended by
4 application to and further order of this Court, and if not expressly assumed by the Conservator
5 within that time then such executory contract is deemed rejected. (§ 1037 General Powers.)

6 17. The Liquidator is authorized to terminate compensation arrangements with
7 employees, to enter into new compensation arrangements with employees including arrangements
8 containing retention incentives, and to hire employees on such terms and conditions as he deems
9 reasonable. (§ 1037 General Powers.)

10 18. The Liquidator is vested with all the powers of the directors, officers and managers
11 of Golden State, whose authorities are suspended except as such powers may be re-delegated by
12 the Liquidator. (§ 1037 General Powers.)

13 **B. Injunctions and Other Orders**

14 19. Except upon the express authorization of the Liquidator, all persons are hereby
15 enjoined, including without limitation Golden State and its officers, directors, agents, servants,
16 and employees, from the transaction of Golden State's business or disposition of its property
17 including without limitation from disposing of, using, transferring, selling, assigning, canceling,
18 alienating, hypothecating or concealing in any manner or any way, or assisting any person in any
19 of the foregoing, of the property or assets of Golden State or property or assets in the possession
20 of Golden State, of any nature or kind, including without limitation claims or causes of action,
21 until further order of this Court and further, enjoining such persons from obstructing or interfering
22 with the Liquidator's conduct of his or her duties as Liquidator. (§§ 1011, 1020 and 1037.)

23 20. All persons are enjoined from instituting or prosecuting or maintaining any action
24 at law or suit in equity including without limitation actions or proceedings to compel discovery or
25 production of documents or testimony, and matters in arbitration, and from obtaining or
26 attempting to attain preferences, judgments, foreclosures, attachments or other liens of any kind
27 or nature, against Golden State, its assets, or the Liquidator, and from attaching, executing upon,
28 foreclosing upon, redeeming of, making levy upon, or taking any other legal proceedings against

1 any of the property and/or assets of Golden State, and from doing any act interfering with the
2 conduct of said business by the Liquidator, except after an order from this Court obtained after
3 reasonable notice to the Liquidator. (§§ 1011, 1020 and 1037 General Powers.)

4 21. All persons are enjoined from the sale or deed for nonpayment of taxes or
5 assessments levied by any taxing agency of property and/or assets of Golden State. (§ 1020(f).)

6 22. Except with leave of court issued after a hearing in which the Liquidator has
7 received reasonable and statutory notice, all persons are enjoined from accelerating the due date
8 of any obligation or claimed obligation, exercising any right of set-off, taking, retaining, retaking
9 or attempting to retake possession of any real or personal property, withholding or diverting any
10 rent or other obligation, and doing any act or other thing whatsoever to interfere with the
11 possession of or management by the Liquidator of the property and assets, owned or controlled,
12 by Golden State or in the possession of Golden State or in any way interfering with the Liquidator
13 or interfering in any manner during the pendency of this proceeding with the exclusive
14 jurisdiction of this Court over Golden State. (§§ 1020 and 1037 General Powers.)

15 23. All persons are enjoined from the waste of the assets of Golden State. (§ 1020.)

16 24. Golden State and all officers, directors, agents and employees of Golden State are
17 ordered to deliver to, and immediately make available to, the Liquidator all assets, books,
18 accounts, records, information, computers, tapes, discs, writings, other recordings of information,
19 equipment and other property of Golden State, wheresoever situated, in said person's custody or
20 control and further, and are directed the aforesaid to disclose verbally, or in writing if requested
21 by the Liquidator, the exact whereabouts of the foregoing items if such items are not in the
22 possession, custody or control of said persons. (§§ 1011, 1016, 1020 and 1037 General Powers.)

23 25. Golden State and all officers, directors, trustees, employees or agents of Golden
24 State, or any other person, firm, association, partnership, corporate parent, holding company,
25 affiliate or other entity in charge of any aspect of Golden State's affairs, either in whole or in part,
26 and including but not limited to banks, savings and loan associations, financial or lending
27 institutions, brokers, stock or mutual associations, or any parent, holding company, subsidiary or
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1 affiliated corporation or any other representative acting in concert with Golden State, are ordered
2 to cooperate with the Liquidator in the performance of his or her duties. (§ 1037 General Powers.)

3 26. All persons who maintain records for Golden State, pursuant to written contract or
4 any other agreement, are ordered to maintain such records and to deliver to the Liquidator such
5 records upon his request. (§§ 1020 and 1037 General Powers.)

6 27. All agents of Golden State, and all brokers who have done business with Golden
7 State, are ordered to make all remittances of all funds collected by them or in their hands directly
8 to the Liquidator. (§§ 1020 and 1037 General Powers.)

9 28. All persons having possession of any lists of policyholders, escrow holders,
10 mortgages or mortgagees of Golden State are ordered to deliver such lists to the Liquidator and all
11 persons are enjoined from using any such lists or any information contained therein without the
12 consent of the Liquidator. (§§ 1020 and 1037 General Powers.)

13 29. Golden State and its officers, directors, agents, servants, employees, successors,
14 assigns, affiliates, and other persons or entities under their control and all persons or entities in
15 concert or participation with Golden State, and each of them, are ordered to turn over to the
16 Liquidator all records, documentation, charts and/or descriptive materials of all funds, assets,
17 property (owned beneficially or otherwise), and all other assets of Golden State wherever situated,
18 and all books and records of accounts, title documents and other documents in their possession or
19 under their control, which relate, directly or indirectly, to assets or property owned or held by
20 Golden State or to the business or operations of Golden State. (§§ 1020 and 1037 General
21 Powers.)

22 30. Any and all provisions of any agreement entered into by and between any third
23 party and Golden State, including by way of illustration, but not limited to, the following types of
24 agreements (as well as any amendments, assignments, or modifications thereto), are stayed, and
25 the assertion of any and all rights and remedies relating thereto are also stayed and barred, except
26 as otherwise ordered by this Court, and this Court shall retain jurisdiction over any cause of action
27 that has arisen or may otherwise arise under any such provision: financial guarantee bonds,
28 promissory notes, loan agreements, security agreements, deeds of trust, mortgages,

1 indemnification agreements, subrogation agreements, subordination agreements, pledge
2 agreements, assignments of rents or other collateral, financial statements, letters of credit, leases,
3 insurance policies, guaranties, escrow agreements, management agreements, real estate brokerage
4 and rental agreements, servicing agreements, attorney agreements, consulting agreements,
5 easement agreements, license agreements, franchise agreements, or employment contracts that
6 provide in any manner that selection, appointment or retention of a conservator, receiver or trustee
7 by any court, or entry of any order such as hereby made, shall be deemed to be, or otherwise
8 operate as, a breach, violation, event of default, termination, event of dissolution, event of
9 acceleration, insolvency, bankruptcy, or liquidation. (§§ 1020 and 1037 General Powers).

10 **C. Creditors and Setting of Claims Bar Date**

11 31. The rights and liabilities of claimants, policyholders, shareholders, members and
12 all other persons interested in the assets of Golden State are fixed as of the date of entry of the
13 Order. (§ 1019.)

14 32. Any and all claims against Golden State, including without limitation those claims
15 which in any way affect or seek to affect any of the assets of Golden State, wherever or however
16 such assets may be owned or held, must be filed no later than December 31, 2011 (the “Claims
17 Bar Date”), together with proper proofs thereof, in accordance with the provisions of § 1010 *et*
18 *seq.* including without limitation § 1023. The proof of claim must be timely filed on the form
19 provided by the Liquidator, together with proper proofs thereof, and must be supplemented with
20 such further information as the Liquidator requests, in accordance with § 1023(f). Except for
21 persons deemed to have filed claims against Golden State in accordance with the provisions of §
22 1010 *et seq.* including without limitation § 1024 and § 1025.5, any claims not filed by the Claims
23 Bar Date shall be conclusively deemed forever waived. (§ 1024.)

24 33. For such other and further relief as may be proper or necessary.

25 34. The Liquidator is authorized to take any and all action necessary to accomplish the
26 purposes of this Order and the Orders requested herein.

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DATE: December 16, 2010

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