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11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

13 INSURANCE COMMISSIONER OF THE  
14 STATE OF CALIFORNIA,

15 Applicant,

16 v.

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

19 Respondent.

Case No. BS123005  
The Hon. Joanne O'Donnell, Dept. 86

**MEMORANDUM IN SUPPORT OF  
APPLICATION FOR ORDERS  
APPROVING:**

**(1) LIQUIDATOR'S DETERMINATIONS  
TO NOT HANDLE CLAIMS IN  
PRIORITY CLASSES 2 – 9 AND NOT  
UNDERTAKE A PROOF OF CLAIMS  
PROCESS;**

**(2) LIQUIDATOR'S DETERMINATIONS  
TO TERMINATE THE LIQUIDATION  
AND DISCHARGE THE LIQUIDATOR;**

**(3) LIQUIDATOR'S STATEMENT OF  
ASSETS AND LIABILITIES; AND**

**(4) LIQUIDATOR'S EXPENSES**

[Filed concurrently with Notice, Evidence,  
Proof of Service and Proposed Order]

Date: November 20, 2015  
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1 **I. INTRODUCTION.**

2 By this Application the Insurance Commissioner of the State of California in his statutory  
3 capacity as Liquidator ("Liquidator") of Golden State Mutual Life Insurance Company ("Golden  
4 State") seeks the following Court Orders:

5 (1) An Order approving the Liquidator's determinations that Golden State possesses  
6 insufficient assets to permit distribution to creditors in Priority Classes 2 through 9 of Insurance  
7 Code § 1033 and, therefore, pursuant to Insurance Code § 1021(c)(1), the Liquidator will not  
8 handle claims against Golden State in those classes or undertake a proof of claims process (i.e.,  
9 there will be no claims allowed or paid after Priority Class 1 Expenses of Administration);

10 (2) An Order approving the Liquidator's determinations that Golden State possesses  
11 insufficient assets to fully pay its expenses of administration in Priority Class 1 of Insurance Code  
12 § 1033 and, therefore, pursuant to Insurance Code § 1021(c)(2), it is necessary to terminate  
13 Golden State's liquidation and discharge the Liquidator;

14 (3) An Order terminating Golden State's liquidation and discharging the Insurance  
15 Commissioner as Golden State's Liquidator upon the Liquidator filing a Declaration of  
16 Compliance confirming receipt of final payment from the Los Angeles County Arts Commission  
17 for its purchase of Golden State's Art Collection and the Liquidator's payment of any remaining  
18 expenses incurred to close the liquidation;

19 (4) An Order approving the Liquidator's Statement of Assets and Liabilities dated as of  
20 August 31, 2015, attached hereto as Exhibit "4" hereto; and

21 (5) An Order approving the expenses incurred by the Liquidator to his appointed  
22 consultants and vendors for the period January 1, 2015 through August 31, 2015, and approving  
23 the Liquidator's estimates of his final expenses for the period September 1, 2015 through the  
24 termination of Golden State's liquidation.

25 Notice of this application was provided (1) by publication in the Los Angeles Times on  
26 Sunday and Monday, October 11 and 12, 2015, in compliance with "notice of publication"  
27 requirements in Insurance Code §§ 1021 and 1022, and (2) in writing by U.S. Mail to all persons  
28 who have routinely been provided notice of the Liquidator's Court applications and to all persons

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1 and entities known to him that may have a substantial, unsatisfied claim that may be affected by  
2 this application and any Court Orders pertaining thereto, regardless of whether the persons or  
3 entities are a party to this action or have appeared in it, in compliance with California Rules of  
4 Court Rule 3.1184(c). [Publication (Ex. 9); Declaration of Michael R. Weiss ("Weiss Dec."), ¶ 7;  
5 and Proof of Service.]

6 **II. STATEMENT OF FACTS: SUMMARY OF GOLDEN STATE'S CONSERVATION**  
7 **AND LIQUIDATION.**

8 **A. Company Background.**

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

17 **B. Conservation, Transfer of Policies, and Liquidation.**

18 Prior to 2009, Golden State experienced financial difficulties when its assets and  
19 investments proved inadequate to support the reserves it required to meet its obligations. On  
20 September 30, 2009, Los Angeles Superior Court Judge David P. Yaffe ordered and appointed the  
21 Insurance Commissioner to serve as Golden State's Conservator due to Golden State's financial  
22 impairment. The Order Appointing Conservator and Restraining Order ("Order Appointing  
23 Conservator"), among other things, appointed the Commissioner as Conservator of Golden State,  
24 vested title of Golden State's assets in the Conservator, directed the Conservator to take  
25 possession of Golden State's books, records, and assets, directed the Conservator to conduct the  
26 business of Golden State, and provided the Conservator with certain powers and authorities set  
27 forth in the Order. Golden State was placed into conservation because as of June 30, 2009,  
28 Golden State was financially impaired pursuant to Insurance Code § 998 and deemed to be

1 operating in a hazardous financial condition in that its reported paid-in capital and surplus of  
2 assets in excess of liabilities was \$1,650,693 instead of the required \$5,000,000. As such, Golden  
3 State could no longer continue its operations without conservation because it lacked sufficient  
4 paid-in capital and surplus to ensure policyholder safety. [Pearce Dec., ¶¶ 7-9; Order Appointing  
5 Conservator (Ex. 1).]

6 On September 2, 2010, after receiving Court approval, the Conservator and IA American  
7 Life Insurance Company ("IA American") closed an Assumption Reinsurance Agreement in  
8 which all of Golden State's in-force insurance policies and annuity contracts were successfully  
9 transferred to solvent insurer IA American, such that Golden State's in-force policyholders and  
10 annuity contract holders became policyholders and annuity contract holders of IA American as of  
11 January 1, 2010 at no loss or coverage reduction for policyholders or annuity contract holders.  
12 The transaction involved the transfer to IA American of approximately \$71 million in reserve  
13 liability and approximately \$60 million in Golden State's assets including Golden State's  
14 commercial mortgage portfolio, bond portfolio, stock portfolio and other assets. The transaction  
15 was necessary because, due to Golden State's financial impairment, Golden State's business  
16 operations were not sustainable and the Conservator determined that the best course of action for  
17 Golden State's in-force policyholders, annuity contract holders and creditors was for Golden  
18 State's policies and annuity contracts to be transferred and assumed by IA American, with IA  
19 American paying an \$11 million ceding commission to Golden State as payment for the business.  
20 [Pearce Dec., ¶ 10; Order (Ex. 2).]

21 Thereafter, on January 28, 2011, Los Angeles Superior Court Judge Ann I. Jones  
22 terminated the Commissioner's status as Conservator and ordered and appointed the  
23 Commissioner to serve as Golden State's Liquidator. The Commissioner was appointed to serve  
24 as Golden State's Liquidator because Golden State was and remains insolvent in that, as of  
25 September 30, 2010, Golden State's estimated liabilities of \$9,291,895 exceeded its estimated  
26 remaining assets of \$5,721,154 by over \$3.5 million. The Order Appointing Liquidator, among  
27 other things, placed Golden State into liquidation, vested title to Golden State's assets in the  
28 Liquidator, directed the Liquidator to liquidate and wind up Golden State's business, authorized

1 the Liquidator to sell, transfer or otherwise dispose of Golden State's assets and property at their  
2 reasonable market values, and provides the Liquidator with broad discretion and authorities to  
3 complete Golden State's liquidation. [Pearce Dec., ¶ 11; and Order Appointing Liquidator (Ex. 3),  
4 ¶¶ 1, 2, 32; and see also Insurance Code § 1037(d).]

5 **C. Major Accomplishments.**

6 Golden State's conservation and liquidation have been complex and challenging, and the  
7 Liquidator's staff has worked diligently to address and resolve the numerous issues presented by  
8 Golden State's severe financial impairment and hazardous operating condition which necessitated  
9 its conservation and liquidation. The liquidation of Golden State was no simple or uncontested  
10 matter and, instead, required the services of sophisticated and experienced professionals. To that  
11 end, a team of experienced professionals, clerks and assistants were assembled to address the  
12 issues unique to Golden State (collectively, "Liquidator's Staff"). [Pearce Dec., ¶ 12.]

13 As a result of the work performed by the Liquidator's staff, the Liquidator successfully (1)  
14 transferred Golden State's 120,000 policies with over \$71 million in reserve liability to a  
15 financially solvent insurer, IA American, at no loss or coverage reduction to policyholders or  
16 annuity contract holders, (2) secured insurance guarantee coverage for those policyholders and  
17 disabled persons not transferred to IA American, (3) maintained employee pension plan benefits  
18 and provided employment transition assistance for Golden State's employees, (4) transferred all of  
19 Golden State's pre-conservation, substantially under-funded pension plan obligations to the  
20 Pension Benefit Guaranty Corporation ("PBGC") at no loss of benefits to plan participants, (5)  
21 wound-down the company's extensive multi-state operations, offices and liabilities including  
22 vacating and removing all property from Golden State's home and regional offices, (6) negotiated  
23 commercial office lease amendments and terminations regarding Golden State's numerous office  
24 locations, (7) resolved all litigations and claims against Golden State and its assets including  
25 employee claims, broker and agent claims, policy disputes, pre-conservation third party claims,  
26 and ownership claims to Golden State's assets including historical murals and works of art, (8)  
27 marketed and sold Golden State's assets including numerous office buildings, art collection and  
28 other assets, (9) prepared, filed and served over 25 applications seeking Court approval of all

1 major actions taken by the Liquidator, nearly all of which were approved, and (10) completed  
2 many additional actions essential to Golden State's liquidation. [Pearce Dec., ¶ 13.]

3 Absent the successful transfer of Golden State's policies to financially solvent insurer IA  
4 American, the majority of Golden State's 120,000 policies would have been subject to the  
5 statutory benefit limitations and reductions imposed by state insurance guaranty associations,  
6 including the requirement that policy benefit payments be limited to "eighty percent" of benefits  
7 (i.e., 20% loss of benefits) under California Guaranty Act and Insurance Code § 1067.02(c).  
8 Similarly, without securing the insurance guarantee coverage for the policyholders and disabled  
9 persons that were not transferred to IA American, their policies and disability benefits would  
10 likely remain unpaid indefinitely due to the severity of Golden State's insolvency. [Pearce Dec., ¶  
11 14.]

12 The Liquidator's work and efforts over the past 6 years have substantially reduced or  
13 resolved many of the liabilities the estate faced. The current liability to insurance guarantee  
14 associations for assuming non-transferred policy obligations and the liability to the PBGC for  
15 assuming Golden State's substantial pre-conservation un-funded pension obligations are estimated  
16 to be at least \$1,664,205 and at least \$5,124,832, respectively. The majority of these liabilities  
17 continue today because (1) the liability to state guarantee associations remains a valid claim due to  
18 their statutory obligation to pay coverage benefits owed under Golden State's non-assumed  
19 policies, and (2) the unfunded employee pension liability existed prior to conservation as a result  
20 of Golden State not fully paying its pension fund obligations. Such liabilities are Priority Class 2  
21 and Priority Class 7 liabilities under Insurance Code § 1033, respectively. [Pearce Dec., ¶¶ 15-16.]

22 **D. Golden State's Current Financial Condition.**

23 As of August 31, 2015, assets retained by Golden State total approximately \$203,041 and  
24 include the following: (1) cash and cash equivalents of \$163,041, and (2) Art Collection whose  
25 value is at least \$40,000. Golden State's sole remaining asset to liquidate is its Art Collection,  
26 which was approved for sale by the Court on August 28, 2015, to the Los Angeles County Arts  
27 Commission ("County") for \$65,000. The second and final payment of \$55,000 due from the  
28 County is to be paid on or before November 13, 2015, at which time ownership of the Art

1 Collection will be transferred to the County. The Art Collection is carried on Golden State's  
2 Statement of Assets and Liabilities at its pre-realized value of \$40,000. [Pearce Dec., ¶¶ 17-20.]

3 As of August 31, 2015, liabilities retained by Golden State currently are estimated to be at  
4 least approximately \$10,262,042 and include the following estimates of possible claims which  
5 may be asserted:

- 6 a. Unclaimed funds payable of \$257,017;
- 7 b. Accrued liabilities of \$768,965;
- 8 c. Liabilities of \$1,664,205 to insurance guarantee associations for their  
9 assumption of non-transferred policy obligations;
- 10 d. Pension Plan liability of \$5,127,622, which is the difference between the  
11 liability when the plan was terminated on December 31, 2010 and the plans  
12 assets at termination;
- 13 e. Obligations under Certificates of Contribution including accrued interest of  
14 \$2,444,234; and
- 15 f. Non-contractual liability to Golden State's policyholders as mutual owners  
16 of Golden State, who retain their Insurance Code § 1033 priority 9 rights.

17 [Pearce Dec., ¶¶ 21-22.]

18 Based on these amounts, as of August 31, 2015, Golden State's assets are inadequate to  
19 satisfy its remaining obligations in that Golden State's estimated net asset deficiency is at least  
20 \$10,059,001, which is the difference between Golden State's liabilities of \$10,262,042 and  
21 remaining estimated assets of \$203,041. Further, as of August 31, 2015, and pursuant to the  
22 authorities set forth in Insurance Code § 1035(a) and the Court's Order Appointing Liquidator,  
23 Golden State has received \$716,841 in administrative expense funding from the California  
24 Department of Insurance's Insurance Fund to pay Golden State's continuing liquidation  
25 administrative expenses. The Insurance Fund contains monies appropriated for the maintenance  
26 of the Department which pursuant to Insurance Code § 1035(a) can be used to pay an insolvent  
27 insurer's expenses of administration for the insurer's conservation and liquidation. The \$716,841  
28 received by Golden State to pay Golden State's administrative expenses is an unpaid Priority

1 Class 1 Expense of Administration against Golden State's remaining assets. Golden State's  
2 remaining assets, however, total only \$203,041 as of August 31, 2015, such that the Insurance  
3 Fund will not be repaid at least \$513,800. [Pearce Dec., ¶¶ 17-24; Statement of Assets and  
4 Liabilities (Ex. 4).]

5 **E. Determinations Based On Company's Current Financial Condition.**

6 Based on Golden State's current net asset deficiency, the Liquidator has made the  
7 following determinations:

8 1. Golden State will not possess sufficient assets to permit any distribution of money  
9 to any priority classes of claimants other than Priority Class 1 Expenses of Administration as set  
10 forth in Insurance Code § 1033(a)(1), because the current remaining asset value of \$203,041 is  
11 less than the Priority Class 1 liability of \$716,841 owed to the Insurance Fund, resulting in a  
12 current deficiency to the Insurance Fund of \$513,800. [Pearce Dec., ¶ 26.]

13 2. Based on this deficiency and pursuant to Insurance Code § 1021(c)(1), the  
14 Liquidator will not handle claims against Golden State's assets from claimants in distribution  
15 Priority Classes 2 through 9 under Insurance Code § 1033 (i.e., no claims after Priority Class 1  
16 Expenses of Administration), and will not undertake a proof of claims valuation process in Golden  
17 State's liquidation. [Pearce Dec., ¶ 27.]

18 3. Based on this deficiency and pursuant to Insurance Code § 1021(c)(2), Golden  
19 State's liquidation should be discontinued and the Liquidator herein applies for a Court Order  
20 approving the termination and closure of Golden State's liquidation and the discharge of the  
21 Liquidator. [Pearce Dec., ¶ 28.]

22 The known claimants in Priority Classes 2 through 9 who will not receive any money from  
23 Golden State's estate include:

24 (1) Insurance guaranty associations including The National Organization of Life and  
25 Health Insurance Guaranty Associations having Priority Class 2 liabilities of at  
26 least \$1,664,205 for their assumption of non-transferred policy obligations;

27 (2) The Pension Benefit Guaranty Corporation having a Priority Class 7 liability of  
28 \$5,127,622 for its acceptance of Golden State's Pension Plan;

- 1 (3) Pitney Bowes, Inc. having a Priority Class 7 liability of unknown amount; and  
2 (4) Certificate of Contribution holders having Priority Class 8 liabilities including  
3 accrued interest of \$2,444,234. [Pearce Dec., ¶ 29.]

4 As part of the Order Appointing Liquidator, the Order established December 31, 2011 as  
5 the first Claims Bar Date. The Claims Bar Date is the date that claims against the assets of  
6 Golden State must be filed with the Liquidator. [Insurance Code §§ 1021-1024.] Thereafter, on  
7 September 28, 2011, July 20, 2012 and December 6, 2013, the Court granted the Liquidator's  
8 three applications to continue the Claims Bar Date to December 31, 2012, December 31, 2013  
9 and December 31, 2014, respectively. The Claims Bar Date was continued three times because  
10 Golden State's estimated net asset deficiency increased to at least \$9,000,000 such that it was  
11 unlikely Golden State would possess sufficient assets for distribution and, therefore, it was  
12 premature for the Liquidator to commence a claims handling process. The Liquidator's fourth  
13 application concerning the Claims Bar Date and requesting approval to not undertake a claims  
14 handling process, heard by the Court on March 25, 2015, was denied because the Liquidator had  
15 not completed Insurance Code §§ 1021's and 1022's "publication of notice" requirements, with  
16 the Court stating "Upon a showing of compliance with the notice requirements of Insurance  
17 Code §§ 1021 and 1022, Liquidator may choose to not handle certain claims or abandon the  
18 insolvency proceeding completely." [Court Order (Ex. 8).] As established in Exhibit 9, the  
19 Liquidator has now undertaken the publication requirement by publishing notice of this  
20 application, the Liquidator's determinations and the requested Orders in the Los Angeles Times  
21 on Sunday and Monday, October 11 and 12, 2015. [Court Orders (Exs. 5-8); Notice of  
22 Publication, Ex. 9.]

23 It is not economically feasible or proper to conduct a proof of claims process because the  
24 Liquidator estimates that the administrative costs of handling a claims process would be at least  
25 \$45,000. This amount includes preparing and mailing proofs of claim packages to over 2,200  
26 potential claimants, publishing notice in newspapers, and handling the returned proofs of claim  
27 packages from claimants. Conducting a proof of claim process would only serve to increase  
28 Golden State's administrative expenses, and thereby only increase Golden State's current

1 deficiency to the Insurance Fund. The proofs of claims would go unpaid, and thus no reason  
2 exists to incur further expenses to adjust them. [Pearce Dec., ¶ 30; Weiss Dec., ¶¶ 8-9.]

3 **F. Expenses for the Period January 1, 2015 through Closing of the Liquidation.**

4 The expenses incurred by the Liquidator to the below described consultants and vendors  
5 for the period January 1, 2015 through August 31, 2015, and an estimate of the Liquidator's final  
6 expenses for the period September 1, 2015 through termination of the Liquidation, necessary for  
7 Golden State's liquidation for which approval is requested in this Application, are the following.

8 Included in the chart are the hourly rates and scope of work for the consultants and vendors.

<u>Consultant</u>	<u>Hourly Rate</u>	<u>1/1/2015 to 8/31/2015</u>	<u>Estimate 9/1/2015-End</u>	<u>Scope of Work</u>
1. Dept. of Finance:	\$50-100	\$ 7,205.00	\$ 0.00	Audit services
2. ART Movers:	Fee based	\$ 3,176.72	\$ 1,500.00	Art storage services
3. Todd Donovan:	\$90	\$ 2,722.50	\$ 2,500.00	Management services
4. JLK Rosenberger:	Fee based	\$ 9,000.00	\$ 7,500.00	Financial, tax returns
5. Kane Corporation:	\$149-250	\$ 23,498.50	\$ 0.00	Real estate services
6. Wisener Nunnally Roth:	\$250	\$ 53.00	\$ 0.00	Legal services
7. Epstein Turner/LBBS:	\$200-295	\$ 30,781.48	\$ 30,000.00	Legal services
8. Ins. Commissioner's CLO:	\$200-251	\$134,195.59	\$ 60,000.00	Liquidator's staff
Totals		\$210,632.79	\$101,500.00	

19 [Pearce Dec., ¶ 31.]

20  
21 The above consultants submitted to the Liquidator invoices and documentation detailing  
22 the services and work performed for Golden State and the Liquidator. Upon receipt of the  
23 invoices and documentation, Senior Estate Trust Officer Scott Pearce from the Insurance  
24 Commissioner's Conservation & Liquidation Office ("CLO") and his staff carefully reviewed the  
25 documentation and where appropriate discussed the documentation with the consultants, requested  
26 additional information and documentation, compared the services and tasks performed by the  
27 consultants with his own understanding and first-hand knowledge of the work performed by the  
28 consultants, reviewed the timekeeping and invoices for accuracy, and sought clarification and/or

1 correction where deemed appropriate. [Pearce Dec., ¶ 32.]

2 Mr. Pearce and his staff worked directly with each of the consultants, who had work plans,  
3 deadlines and deliverables. Mr. Pearce and his staff reviewed the services and deliverables  
4 provided by these consultants, and ensured that the essential services, reports and studies were  
5 satisfactorily performed and delivered on time. As such, Mr. Pearce is readily familiar with and  
6 authorized the work performed by these consultants. Based on his review of the work performed  
7 and work product delivered to Golden State and his personal knowledge of the essential services  
8 and tasks performed by the consultants, Mr. Pearce confirms in his declaration submitted with this  
9 Application that the proposed payments sought for approval by this Application were reasonable  
10 and necessary for Golden State's conservation and liquidation, and were rendered in the best  
11 interests of Golden State's estate. [Pearce Dec., ¶¶ 33-34.]

12 The services performed by each of the consultants and vendors are described below:

13 1. Conservation & Liquidation Office ("CLO"): The CLO is an administrative  
14 service entity created by the Insurance Commissioner to administer the estates of insurers  
15 undergoing conservation or liquidation in California. Upon obtaining a conservation or  
16 liquidation order, the Commissioner generally delegates his statutory administrative duties over  
17 the insurer to the CLO and/or to special deputy insurance commissioners, pursuant to Insurance  
18 Code § 1035. The CLO's administrative expenses are allocated to each conservation or liquidation  
19 estate it manages on a pro rata basis ("Allocated Expenses"). Allocated Expenses are non-estate  
20 specific expenses and include office supplies, rent, utilities and other occupancy expenses as well  
21 as salaries and benefits for CLO employees. The portion of Allocated Expenses charged to each  
22 estate is determined by the amount of time CLO employees worked on estate matters. For  
23 example, if total estate hours for a particular month are 4,000 hours, and 200 of those hours are  
24 attributed to Golden State, the CLO would charge Golden State's estate 5% (or 200/4,000) of the  
25 Allocated Expenses for that month. Allocated Expenses also include the Consumer Affairs  
26 Bureau's ("CAB") administrative expenses, which are based on hours billed by the CAB's legal  
27 staff and the pass-through billings associated with work performed by the Attorney General's  
28 Office. [Pearce Dec., ¶ 35.]

1 The CLO continues the daily management and administration of Golden State's liquidation  
2 including the management and administration of Golden State's assets and liabilities, the  
3 California Department of Finance audit of Golden State, sales and management of assets under  
4 sale, court applications, preparation and finalization of audits, tax returns and financial reporting  
5 documents, and numerous additional management and administration matters and actions on  
6 behalf of Golden State. [Pearce Dec., ¶ 36.]

7 2. Todd Donovan: Todd Donovan was the full-time operations assistant to the  
8 Liquidator. Mr. Donovan provided full-time and then part-time services to the Liquidator for the  
9 day-to-day management of Golden State's operations and liquidation, prepared and distributed  
10 complex information packages to the Liquidator and his staff, developed and maintained reporting  
11 metrics for management, managed policy system/data clean-up efforts, assisted with liquidating  
12 and selling remaining assets, assisted with preparation of information and documents for court  
13 applications, reviewed and confirmed artwork inventory, and handled numerous additional  
14 assignments. Invoices prepared by Mr. Donovan attached as Exhibit "10" hereto further detail the  
15 services and tasks performed by Mr. Donovan for the period January 1, 2015 through August 31,  
16 2015. It is anticipated that Mr. Donovan's services will be required through termination of the  
17 liquidation. [Pearce Dec., ¶ 39; and Invoices (Ex. 10).]

18 3. Kane Corporation: Kane Corporation provided commercial real estate consulting  
19 services to the Liquidator regarding Golden State's commercial office buildings, marketed and  
20 solicited for sale Golden States commercial office buildings in an effort to maximize properties'  
21 values, assisted with the sales of properties, inspected each building, evaluated and interviewed  
22 local real estate brokers to develop an asset disposition plan and marketing plan for the properties,  
23 and assisted in the disposition of estate assets. [Pearce Dec., ¶ 40; Invoices (Ex. 11); and  
24 Declaration of Peter Kane, ¶¶ 4-5.]

25 4. Epstein Turner Weiss / Lewis Brisbois: Epstein Turner Weiss and then Lewis  
26 Brisbois Bisgaard & Smith are law firms that provided legal services to the Liquidator and his  
27 staff including providing advice concerning insurance conservation and liquidation, asset  
28 liquidation, real estate, the sales of Golden State's assets including real estate and artworks, claim

1 handling and procedures, court applications and procedures, and other issues and matters  
2 pertaining to Golden State and its liquidation. [Pearce Dec., ¶ 41; and Invoices (Ex. 12); and  
3 Weiss Dec., ¶¶ 5-6.]

4 5. Wisener Nunnally Roth: Wisener Nunnally Roth is a law firm that provided legal  
5 services including assisting with negotiating the sale of the Golden State's insurance policies and  
6 annuity contracts and drafting the agreements for said sale, transfer of historical materials to  
7 UCLA Library, and additional related matters. [Pearce Dec., ¶ 42; Invoices (Ex. 13).]

8 6. JLK Rosenberger: JLK Rosenberger is a Certified Public Accounting firm that  
9 provided financial audits, tax liability consulting and tax return preparation to Golden State for a  
10 number of years prior to the conservation and was retained by the Liquidator under essentially the  
11 same terms to continue providing professional accounting and tax services to the Golden State  
12 estate. JLK Rosenberger prepared Golden State's 2014 tax returns. The services were provided  
13 on a fee basis, and not an hourly basis. An invoice for the services performed by JLK  
14 Rosenberger which specify the services to be performed and the compensation for performance is  
15 attached as Exhibit 14 hereto. [Pearce Dec., ¶ 43; and Invoices (Ex. 14).]

16 7. California Department of Finance: The California Department of Finance,  
17 Business Services, provided state auditing services regarding Golden State. Invoices for the  
18 services performed by the Department of Finance which specify the services performed and the  
19 compensation for performance are attached as Exhibit 15 hereto. [Pearce Dec., ¶ 44; and Invoices  
20 (Ex. 15).]

21 8. ART Movers: ART Movers provided fine art storage for Golden State's fine art  
22 collection and records. [Pearce Dec., ¶ 45; and Invoices (Ex. 16).]

23 **G. Estimated Expenses for the Period September 1, 2015 through Closing of the**  
24 **Liquidation.**

25 The Liquidator's estimates of his final expenses for the period September 1, 2015 through  
26 termination of the Liquidation include the Liquidator's CLO services to close the estate, to prepare  
27 final accounting and financial information, prepare any final tax returns, for continuing storage  
28 and destruction of Golden State's records at an off-site records storage facility, any final auditing

1 services, legal services for preparing this Application, legal services for closing the sale of the Art  
2 Collection to the County and additional services, storage costs for the Art Collection until closing  
3 of the sale of the collection to the County, and additional estate closing services. [Pearce Dec., ¶  
4 37.]

5 As part of these expenses, the Liquidator intends to commence destruction of Golden  
6 State's records and files located at the off-site records storage facility, after providing notice to IA  
7 American and the insurance guaranty association of said destruction and providing them an  
8 opportunity to remove any records and files they may want to maintain at their own expense. The  
9 majority of Golden State's insurance and annuity contract records and files were previously  
10 transferred to IA American and are maintained in electronic format. For the past several years  
11 there has been no dependence or retrieval of the records and files maintained at the storage  
12 facility. [Pearce Dec., ¶ 38.]

13 **H. Written and Newspaper Publication of Notice of this Application.**

14 Notice of this application, the Liquidator's determinations and the requested Orders in  
15 compliance with Insurance Code §§ 1021(c)(1)&(2) and 1022, were provided as follows:

16 1. By publication in the Los Angeles Times on Sunday and Monday, October 11 and  
17 12, 2015 (see Exhibit 9). Sunday was selected as that is the day of the week with the largest  
18 circulation, and Monday was selected as a business day. The published notice stated:

19 LEGAL NOTICE - GOLDEN STATE MUTUAL LIFE INSURANCE  
20 COMPANY IN LIQUIDATION, Los Angeles Superior Court Case # BS123005:  
21 To all policyholders, creditors, certificate of contribution holders and interested  
22 persons, take notice: (1) On January 28, 2011, the Insurance Commissioner of the  
23 State of California was appointed by the Los Angeles Superior Court to serve as  
24 Liquidator ("Liquidator") of Golden State Mutual Life Insurance Company  
25 ("GSM"). (2) Pursuant to Insurance Code § 1021(c)(1) the Liquidator has  
26 determined that GSM possesses insufficient assets to permit distribution to  
27 creditors in Classes 2 through 9 of Insurance Code § 1033 and that the Liquidator  
28 will not handle claims against GSM in those classes. (3) Pursuant to Insurance  
Code § 1021(c)(2), the Liquidator also has determined that GSM possesses  
insufficient assets to fully pay its expenses of administration in Class 1 of Insurance  
Code § 1033 and that it is necessary to terminate GSM's liquidation and discharge  
the Liquidator. (4) A hearing requesting approval of these determinations, approval  
of the Liquidator's expenses for the period January 1, 2015 through termination of  
the liquidation, and approval of the Liquidator's Statement of Assets and Liabilities

1 dated as of August 31, 2015, is scheduled for November 20, 2015, at 9:30 a.m. in  
2 Dept. 86 of the Los Angeles Superior Court, 111 N. Hill St., Los Angeles,  
3 California 90012. Information for creditors and interested persons is provided at  
4 the website [www.caclo.org/GoldenStateMutual](http://www.caclo.org/GoldenStateMutual). [Exhibit 9.]

5 2. In writing by U.S. Mail to all persons who have routinely been provided notice of  
6 the Liquidator's Court applications and to all persons and entities known to him that may have a  
7 substantial, unsatisfied claim that may be affected by the this application and any Court Orders  
8 pertaining thereto, regardless of whether the persons or entities are a party to this action or have  
9 appeared in it, in compliance with California Rules of Court Rule 3.1184(c). Such persons include  
10 Golden State's Certificate of Contribution holders and, due to prior requests to receive copies of  
11 court filings in this matter, The National Organization of Life and Health Insurance Guaranty  
12 Associations ("NOLHGA") and its attorneys, Pension Benefit Guaranty Corporation, and Pitney  
13 Bowes, Inc. The above described persons and entities are listed on the Proof of Service filed  
14 concurrently herewith. [Weiss Dec., ¶ 7; Proof of Service.]

### 14 **III. STATUTORY AUTHORITY FOR REQUESTED ORDERS.**

15 Impaired and insolvent insurance companies are precluded from seeking relief in  
16 bankruptcy. [11 U.S.C. § 109(b)(2) ("A person may be a debtor under chapter 7 of this title only  
17 if such person is not . . . a domestic insurance company").] Instead, California, like most states,  
18 has statutory proceedings subjecting impaired and insolvent insurers to orderly conservation,  
19 rehabilitation and/or liquidation. California's statutory proceedings are codified in Insurance Code  
20 § 1010 *et seq.* [*Garamendi v. Golden Eagle Insurance Company* (2005) 128 Cal.App.4<sup>th</sup> 452  
21 (Insurance conservation proceedings are special proceedings subject to the provisions of the  
22 California Insurance Code).]

#### 23 **A. Orders and Powers of Commissioner as Liquidator.**

24 Insurance Code §§ 1016, 1035(a), 1036 and 1037 and the Order Appointing Liquidator  
25 directs the Commissioner as Liquidator to liquidate and wind up the business of Golden State and  
26 to act in all ways and exercise all powers necessary for the purpose of carrying out the liquidation,  
27 authorizes the Liquidator is "to do such other acts as are necessary or expedient to collect,  
28 conserve, protect and/or liquidate Golden State's assets, property and business," and authorizes the

1 Liquidator to employ special deputy commissioners, assistants, clerks and legal counsel, and to  
2 give to each of them those powers that the Liquidator deemed necessary. [Insurance Code §§  
3 1016, 1035(a), 1036 and 1037, and Order Appointing Liquidator, ¶¶ 1, 2, 5, 14, 15 (Ex. 3).]

4 Additionally, Insurance Code § 1037, entitled "Powers of commissioner as conservator or  
5 liquidator," provides broad powers to the Commissioner as conservator and liquidator of insurance  
6 companies and authorizes him to collect, conserve and protect the insurer's assets, sell and dispose  
7 of an insurer's assets and property, resolve lawsuits, and undertake acts which the Commissioner  
8 deems necessary or expedient for the accomplishment or in aid of the insurer's conservation or  
9 liquidation. Insurance Code § 1037 states in pertinent part:

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

12 (a) [Conservation of assets; conduct of business.] Shall have authority to collect  
13 all moneys due that person, and to do such other acts as are necessary or expedient  
14 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  
15 may seem appropriate.

16 (d) [Acquisition and disposition of property.] Shall have authority without notice,  
17 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  
18 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  
19 commissioner may deem proper. However, no transaction involving real or  
personal property shall be made where the market value of the property involved  
20 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  
21 prescribe.

22 (f) [Lawsuits, execution of instruments.] May, for the purpose of executing and  
23 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  
24 commissioner's own name, . . . execute, acknowledge and deliver any and all deeds,  
assignments, releases and other instruments necessary and proper to effectuate any  
25 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  
26 by that proceeding; . . .

27 . . .

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

8 **B. Liquidator Can Decline to Handle Claims against the Insolvent Insurer.**

9 After issuance of an order to liquidate an insurer, the Liquidator establishes a claims bar  
10 date ("Claims Bar Date") by which claimants to the insolvent insurer's assets are required to file  
11 their claims against the insurer. [Insurance Code § 1021(a).] Notwithstanding the establishment  
12 of a Claims Bar Date, if the Liquidator determines that an insolvent insurer is not likely to possess  
13 sufficient assets to permit significant distribution to certain priority classes of claimants set forth  
14 in Insurance Code § 1033, then pursuant to Insurance Code § 1021(c)(1) the Liquidator may  
15 decline to handle certain claims from classes of claimants after complying with the "publication of  
16 notice" requirement in Insurance Code § 1022. The "publication of notice" requirement in  
17 Insurance Code § 1022 requires notice of the Liquidator's claim handling determinations to be  
18 "published in newspapers of general circulation in geographic areas pertinent to the liquidation"  
19 and "shall reference a source, either the liquidated company's or the liquidator's Internet Web site,  
20 where ongoing information for creditors shall be provided."

21 Insurance Code § 1021(c)(1) states:

22 Notwithstanding the provisions of subdivision (a), ... (1) If the commissioner  
23 determines that the business subject to liquidation order possesses, or is likely to  
24 possess, insufficient assets to permit significant distribution to a person interested  
25 in those assets, the commissioner may decline to handle a claim submitted pursuant  
26 to subdivision (a), as long as the notice requirements of subdivision (a) and Section  
27 1022 are observed.

28 Insurance Code § 1022, entitled "Publication of notice," states in pertinent part:

The notice shall be published in newspapers of general circulation in geographic  
areas pertinent to the liquidation. The notice shall reference a source, either the  
liquidated company's or the liquidator's Internet Web site, where ongoing  
information for creditors shall be provided. A copy of the notice, accompanied by  
an affidavit of due publication, including a statement of the date of publication,  
shall be filed with the clerk of the court.

Insurance Code § 1033(a) provides the distribution priorities for insolvent insurers, which states in pertinent part that funds available are distributed in the following order:

(a) Claims allowed in a proceeding under this article shall be given preference in the following order:

(1) Expense of administration.

(2) All claims of the California Insurance Guarantee Association or the California Life and Health Insurance Guarantee Association, and associations or entities performing a similar function in other states, together with claims for refund of unearned premiums and all claims under insurance and annuity policies or contracts, including funding agreements, of an insolvent insurer that are not covered claims.

....

(3) Claims having preference by the laws of the United States.

(4) Unpaid charges due under the provisions of Section 736.

(5) Taxes due to the State of California.

(6) Claims having preference by the laws of this state.

(7) Claims of creditors not included in paragraphs (1) to (6), inclusive.

(8) Certificates of contribution, surplus notes, or similar obligations, and premium refunds on assessable policies.

(9) The interests of shareholders or other owners in any residual value in the estate.

**C. Liquidator Can Decline to Continue and Can Terminate the Liquidation.**

Also, notwithstanding the establishment of a Claims Bar Date, if the Liquidator determines that the insolvent insurer is not likely to possess sufficient assets to pay the administrative expenses to liquidate the insurer, then pursuant to Insurance Code § 1021(c)(2) the Liquidator may decline to continue, and may abandon, the liquidation, also after complying with the “publication of notice” requirement in Insurance Code § 1022. Insurance Code § 1021(c)(2) states:

Notwithstanding the provisions of subdivision (a), ... (2) If the commissioner reasonably determines that the business subject to liquidation order possesses, or is likely to possess, insufficient assets to permit significant distribution of funds to pay the expenses of administration under this article, as provided in paragraph (1) of subdivision (a) of Section 1033, the commissioner may decline to continue, and may abandon, the insolvency proceeding upon providing notice pursuant to subdivision (a) and Section 1022.

Additionally, pursuant to Insurance Code § 1017(a), the Liquidator at any time during the liquidation may apply for an order dissolving the insolvent insurer. Insurance Code § 1017, entitled “Order dissolving corporation,” states in Subsection (a):

///

4845-5394-2825.1

1 In the commissioner's application for an order for the liquidation of a domestic  
2 corporation, or at any time thereafter, the commissioner may apply for, and the  
3 court shall make, an order dissolving the corporation.

4 **IV. STANDARD OF REVIEW FOR TRIAL COURT'S APPROVAL OF**  
5 **LIQUIDATOR'S DETERMINATIONS, ACTIONS AND EXPENSES.**

6 The Insurance Commissioner exercises the state's police power with respect to the  
7 administration of insolvent insurance companies and enterprises. "In exercising this power, the  
8 Commissioner is vested with broad discretion (*Commercial Nat. Bank v. Superior Court*, [(1993)],  
9 14 Cal.App.4<sup>th</sup> [393] at p. 402.) This discretion is subject to statutory limitations [citation] and the  
10 requirement that the exercise of discretion be neither arbitrary nor improperly discriminatory.  
11 [Citation.]" [*In re Executive Life Insurance Company* (1995) 32 Cal.App.4th 344, 358.]

12 The trial court's review of the Commissioner's discretion is "not de novo." [*Id.*, at 358.]  
13 "The trial court reviews the Commissioner's actions under the abuse of discretion standard: was  
14 the action arbitrary, i.e., unsupported by a rational basis, or is it contrary to specific statute, a  
15 breach of the fiduciary duty of the conservator as trustee, or improperly discriminatory?" [*Id.*, at  
16 358; see also *Low v. Golden Eagle Ins. Co.* (2003) 110 Cal.App.4th 1532, 1544 (The Court's  
17 review of the actions of the Commissioner as Liquidator is limited to a review to determine if the  
18 proposed action is "arbitrary, i.e., unsupported by a rational basis, contrary to specific statute, or  
19 discriminatory.".)]

20 In addition to the Liquidator's determinations and actions, the abuse of discretion standard  
21 of review also applies to the Court's approval of fees and expenses incurred and approved by the  
22 Commissioner and his staff in conserving and liquidating insurance companies. In *Executive Life*,  
23 *supra*, the trial court approved more than \$60 million in fees to attorneys and other professionals  
24 for services performed at the direction of the Commissioner as liquidator of Executive Life  
25 Insurance Company. [*Id.*, at p. 399-403.] The Court of Appeal affirmed the trial court's approval  
26 of the fees and expenses, holding that the Commissioner had supplied the trial court with  
27 "adequate information" for the trial court to evaluate and confirm that the Commissioner had  
28 performed his duty to determine that the fees and expenses were proper and rendered to protect the

1 insurer's estate, policyholders and creditors. [*Id.*] The information provided to the trial court in  
2 *Executive Life* was the following:

3 1. Declarations reciting that detailed timekeeping and invoices seeking payment were  
4 received and carefully reviewed by the liquidator's staff and the proposed payments were  
5 reasonable and necessary for the rehabilitation of Executive Life and in its best interests,

6 2. Brief descriptions of the services performed by each of the professionals seeking  
7 payment,

8 3. A sample of original invoices permitting the court to test the accuracy of the  
9 declarations, and

10 4. A description of the tasks performed, time spent and amount billed for each person  
11 for each day. [*Id.*]

12 Specifically, the Court of Appeal stated:

13 The power of the Commissioner to employ professionals and to pay them  
14 for their services is found in section 1064.2, subdivision (c). A related power,  
15 exercised through the Attorney General, is to be found in section 1036. Both  
16 sections require "approval" by the trial court of fees which the Commissioner  
17 proposes to pay.

18 "Approval," as opposed to the "award" language more common in fee-  
19 shifting statutes, connotes an initial discretion in the Commissioner to determine  
20 whether fees billed are proper. The Commissioner is the public officer designated  
21 as the steward for the funds of the insolvent insurer whose estate he or she  
22 administers. The Commissioner's initial determination necessarily requires  
23 adequately detailed information describing the work performed, by whom it was  
24 performed, the time spent and when it was spent, and the rate and amount billed,  
25 unless an approved contract of employment specifies a different basis of  
26 compensation. [Citation.] The Commissioner should possess sufficient  
27 information to be able to determine from the billings any excessive or duplicative  
28 charges, and seek clarification and correction where appropriate. Where  
compensation is on other than an hourly basis, the Commissioner must possess  
adequate information to determine that the terms of the engagement were satisfied.

To obtain court approval for payment of the fees deemed appropriate, the  
Commissioner must supply the court with adequate information to permit  
intelligent evaluation of the basis for the Commissioner's determination. The court  
must be satisfied that the Commissioner has performed his duty to protect the  
interests of the estate. It is not required by statute, nor is it practical, for the court  
to undertake a detailed review of the invoices before approving payment. The  
Commissioner must, however, be ready to provide whatever documentation the

1 court may find necessary in determining the propriety of the Commissioner's  
2 request that payment be approved.

3 These standards were met in this case. The Commissioner's motions for  
4 approval of fees were accompanied by declarations from employees of [Executive  
5 Life] or from the Commissioner's special counsel. These declarations recite that  
6 "extremely detailed" invoices seeking payment for legal or other professional  
7 services were received and carefully reviewed in their detail by the Commissioner's  
8 staff. They recite that the proposed payments to the professional firms "are  
reasonable and necessary for the rehabilitation" and are in the best interests of  
[Executive Life]. Also attached to the motions were brief descriptions of the  
services performed by each of the professionals seeking payment. [*Id.*, at p. 399-  
403.]

9 **V. ARGUMENT.**

10 **A. Court Approval of the Liquidator's Determinations to Not Handle Claims**  
11 **From Claimants in Distribution Priority Classes 2 through 9, to Not**  
12 **Undertake a Proof of Claims Process, to Terminate Golden State's**  
13 **Liquidation and to Discharge the Liquidator, is Appropriate.**

14 Pursuant to Insurance Code § 1021(c)(1), when the Liquidator determines that an insolvent  
15 insurer is not likely to possess sufficient assets to permit significant distribution to certain priority  
16 classes of claimants set forth in Insurance Code § 1033, then the Liquidator may decline to handle  
17 certain claims from classes of claimants after complying with the "publication of notice"  
18 requirement in Insurance Code § 1022. Further, pursuant to Insurance Code § 1021(c)(2), when  
19 the Liquidator determines that an insolvent insurer is not likely to possess sufficient assets to pay  
20 the administrative expenses to liquidate the insurer, then the Liquidator may decline to continue,  
21 and may abandon the liquidation, after complying with the "publication of notice" requirement in  
22 Insurance Code § 1022.

23 Here, the Liquidator has (1) determined that Golden State is not likely to possess sufficient  
24 assets to permit distribution to Priority Classes 2 through 9, (2) determined that Golden State is not  
25 likely to possess sufficient assets to pay the administrative expenses to liquidate itself, and (3)  
26 determined it is necessary to terminate Golden State's liquidation and discharge the Liquidator.  
27 These determinations are based on the facts that as of August 31, 2015, Golden State's estimated  
28 net asset deficiency is at least \$10,059,001, its unpaid Priority Class 1 administrative expense

1 funding owed to the California Department of Insurance's Insurance Fund to pay Golden State's  
2 liquidation administrative expenses is \$716,841, its remaining assets total only \$203,041, and  
3 therefore its current deficiency to the Insurance Fund is \$513,800 – which the Liquidator does not  
4 anticipate having sufficient assets to repay. [Pearce Dec., ¶¶ 17-28; Statement (Ex. 4).]

5 Further, notice of this application, the Liquidator's determinations and the Orders  
6 re2quested herein was provided (1) by publication in the Los Angeles Times on Sunday and  
7 Monday, October 11 and 12, 2015 (Exhibit "9" hereto) in compliance with "notice of publication"  
8 requirements in Insurance Code §§ 1021 and 1022, and (2) in writing by U.S. Mail to all persons  
9 who have routinely been provided notice of the Liquidator's Court applications and to all persons  
10 and entities known to him that may have a substantial, unsatisfied claim that may be affected by  
11 this application and any Court Orders pertaining thereto, regardless of whether the persons or  
12 entities are a party to this action or have appeared in it, in compliance with California Rules of  
13 Court Rule 3.1184(c). [Weiss Dec., ¶ 7; and Proof of Service.]

14 In sum, given the financial impairment of Golden State and facts discussed herein, there is  
15 good cause for the Court to approve the Liquidator's determinations. These determinations are  
16 within the Liquidator's statutory authority and broad discretion pursuant to the Order Appointing  
17 Liquidator, Insurance Code §§ 1021 and 1037 and case law including *In Re Executive Life*  
18 *Insurance Company* (1995) 32 Cal.App.4th 344.

19 **B. Court Approval of the Liquidator's Statement of Assets and Liabilities Dated**  
20 **as of August 31, 2015, is Appropriate.**

21 The Statement attached as Exhibit 4 reflects the current financial condition of Golden  
22 State. The Statement, and all prior monthly Statements, have been maintained and prepared  
23 monthly throughout the conservation and liquidation of Golden State from September 30, 2009  
24 through the present. The Statement, and all prior monthly Statements, have been maintained and  
25 prepared from information, records and documents known to the Liquidator or his staff, or on the  
26 basis of information reported by other persons who had a business duty to observe and report the  
27 facts recorded as part of their employment, and by persons authorized and tasked with maintaining  
28 and preparing the Statement, prior Statements, and the information, records and documents on

1 which the Statement and prior Statements are and were based. The Statement, and all prior  
2 Statements, are and were kept in the course of the Liquidator's regularly conducted business  
3 activities of conserving, rehabilitating and liquidating insurance companies, and it is the  
4 Liquidator's and his staff's routine and customary practice to make and prepare the Statement and  
5 all prior Statements as part of the Liquidator's regularly conducted business activities of  
6 conserving, rehabilitating and liquidating insurance companies. [Pearce Dec., ¶¶ 17-24.]

7 Based on information, records and documents known to the Liquidator and his staff, the  
8 Liquidator submits that the Statement of Assets and Liabilities dated as of August 31, 2015,  
9 accurately reflects Golden State's current assets and liabilities; and requests Court approval that  
10 the Statement of Assets and Liabilities dated as of August 31, 2015. With the Liquidator's  
11 Declaration of Compliance, the Liquidator intends to submit a further Statement of Assets and  
12 Liabilities dated as of the termination of Golden State's liquidation reflecting Golden State's  
13 final financial condition at termination of liquidation. [Pearce Dec., ¶¶ 17-24.]

14 C. **Court Approval of the Liquidator's Expenses for January 1, 2015 through**  
15 **August 31, 2015, and the Estimates of the Liquidator's Expenses for**  
16 **September 1, 2015 through Termination of Golden State's Liquidation, is**  
17 **Appropriate.**

18 In compliance with *Executive Life, supra*, 32 Cal.App.4<sup>th</sup> at pp. 399-403, the Liquidator  
19 has provided the Court with "adequate information to permit intelligent evaluation" and approval  
20 of the expenses requested to be approved. In addition, Court approval of the expenses is  
21 appropriate because the expenses were necessary for the liquidation of Golden State, are  
22 reasonable for the services performed, and are within the Liquidator's statutory authorities and  
23 broad discretion pursuant to the Court's Order Appointing Liquidator, the Insurance Code §§ 1021  
24 and 1037, and case law.

25 Specifically, as detailed in Section II(F) and (G) above and in the Declarations of the  
26 Insurance Commissioner's Senior Estate Trust Officer Scott Pearce and consultants Peter Kane  
27 and Michael R. Weiss, and attached Exhibits, the Liquidator has provided the following  
28 information in this application:

1           1.       Declaration from Mr. Pearce reciting that detailed timekeeping and invoices  
2 seeking payment were received and reviewed by the Liquidator's staff including Mr. Pearce, the  
3 invoices were confirmed to be accurate and consistent with the services and tasks to be performed,  
4 and the proposed payments were reasonable and necessary for Golden State's liquidation and in  
5 its best interests. [Pearce Dec., ¶¶ 31-45; Invoices (Exs. 10-16).]

6           2.       Descriptions of the services performed by each consultant and vendor. [Pearce  
7 Dec., ¶¶ 31-45; Kane Dec., ¶ 5; and Weiss Dec., ¶ 6; and Invoices (Exs. 10-16).]

8           3.       Invoices for the services performed by each consultant and vendor for the period  
9 January 1 through August 31, 2015. [Pearce Dec., ¶¶ 31-45; Kane Dec., ¶ 5; Weiss Dec., ¶ 6; and  
10 Invoices (Exs. 10-16).]

11          4.       Descriptions of tasks performed, amount billed and basis for amount billed for each  
12 consultant and vendor, as reflected in the Invoices and declarations. [*Id.*]

13           In addition, the Liquidator also has provided an estimate of the anticipated expenses to be  
14 incurred by the consultants and vendors through the termination of Golden State's liquidation and  
15 discharge of the Liquidator. [Pearce Dec., ¶¶ 37-38.]

16           Based on the provided information, the Liquidator submits that he has complied with the  
17 expense approval requirements set forth in *Executive Life*, the Order Appointing Liquidator and  
18 the Insurance Code, and thereby requests approval of the expenses incurred by the Liquidator to  
19 the above described consultants and vendors for the period January 1, 2015 through August 31,  
20 2015, and approval of estimates of the Liquidator's final expenses for the period September 1,  
21 2015 through termination of the Liquidation.

22           **D.       The Orders Requested Herein Are Consistent with the Liquidator's**  
23           **Authorities and Discretion under the Court's Order of Liquidation, the**  
24           **Insurance Code and Case Law.**

25           The requested Court Orders are authorized and consistent with the Liquidator's authorities  
26 and discretion under the Court's prior Order Appointing Liquidator (Ex. 3), the Insurance Code  
27 and California case law – all of which grants broad powers to the Commissioner as conservator  
28 and liquidator of insurance companies, as discussed below.

1 First, pursuant to the Order Appointing Liquidator, the Liquidator is "directed as  
2 Liquidator to liquidate and wind up the business of Golden State and to act in all ways and  
3 exercise all powers necessary for the purpose of carrying out [the liquidation]", is "authorized ...  
4 to do such other acts as are necessary or expedient to collect, conserve, protect and/or liquidate  
5 Golden State's assets, property and business," is "authorized to take any and all action necessary  
6 to accomplish the purposes of [the Order Appointing Liquidator], and is authorized to employ  
7 special deputy commissioners, assistants, clerks and legal counsel, and to give to each of them  
8 those powers that the Liquidator deemed necessary. [Order Appointing Liquidator, ¶¶ 1, 2, 5, 14,  
9 15, 34 (Ex. 3) as authorized in Insurance Code §§ 1011, 1016, 1035(a), 1036 and 1037.]

10 Second, Insurance Code § 1037, entitled "Powers of commissioner as conservator or  
11 liquidator," provides broad powers to the Insurance Commissioner as conservator and liquidator of  
12 insurance companies, and state in pertinent part:

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

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

19 . . . .  
[General powers.] The enumeration, in this article, of the duties, powers  
20 and authority of the commissioner in proceedings under this article shall not be  
21 construed as a limitation upon the commissioner, nor shall it exclude in any manner  
22 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  
23 necessary or expedient for the accomplishment or in aid of the purpose of such  
proceedings.

24 Further, Insurance Code § 1021(c)(1) states that "If the [Liquidator] determines that the  
25 business subject to liquidation order possesses, or is likely to possess, insufficient assets to permit  
26 significant distribution to a person interested in those assets, the [Liquidator] may decline to  
27 handle a claim submitted pursuant to [Section 1021(a)]."

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1 Third, California case law supports the broad grant of powers accorded the Insurance  
2 Commissioner to transfer assets when he is conserving, rehabilitating, and/or liquidating insurance  
3 companies. In *Executive Life, supra*, the Court of Appeal stated that:

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

8 In exercising this power, the Commissioner is vested with broad discretion.  
9 (*Commercial Nat. Bank v. Superior Court* [(1993)] 14 Cal.App.4th [393] at p. 402.)  
10 This discretion is subject to statutory limitations (see *id.* at p. 409) and the  
11 requirement that the exercise of discretion be neither arbitrary nor improperly  
12 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.)

13 ...

14 ... The trial court reviews the Commissioner's actions under the abuse of  
15 discretion standard. (*Commercial Nat. Bank v. Superior Court, supra*, 14  
16 Cal.App.4th 393, 398); was the action arbitrary, i.e. unsupported by a rational basis,  
17 or is it contrary to specific statute, a breach of the fiduciary duty of the conservator  
as trustee, or improperly discriminatory? (*In Re Executive Life, supra*, at pp. 356  
and 358.)

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1  
2 **VI. CONCLUSION**

3 There is good cause for the Court to grant this application. Accordingly, the Liquidator  
4 requests that the Court grant this application and issue the Orders requested herein.

5 Respectfully submitted,

6 DATE: October 16, 2015

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