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FEE-EXEMPT – Gov. Code, § 6103

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

SEP 26 2011

ALAN CARLSON, Clerk of the Court

BY: F. IBARRA, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

CENTRAL JUSTICE CENTER – UNLIMITED CIVIL

30-2011

00510773

INSURANCE COMMISSIONER OF THE  
STATE OF CALIFORNIA,

Case No.

Applicant,

**VERIFIED EX PARTE APPLICATION  
FOR ORDER APPOINTING  
CONSERVATOR;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF;  
DECLARATION RE EX PARTE NOTICE;  
EXHIBIT**

[Ins. Code, § 1011; Cal. Rules Ct., Rules  
3.1200 et seq.]

v.

AMERICAN STERLING INSURANCE  
COMPANY, A CALIFORNIA CORPORATION,

Respondent.

**Ex Parte Hearing**

Date: Monday, September 26, 2011

Time: 1:30 P.M.

Dept: TBD

Judge: TBD

Trial Date: N/A

Case Filed: Monday, September 26, 2011

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1                   **THE INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA**

2       (hereinafter “**APPLICANT**” or “**COMMISSIONER**”) respectfully alleges the following facts and  
3       matters of law.

4  
5                   **I. PARTIES**

6           1.       Applicant is the duly elected Insurance Commissioner of the State of California.

7           2.       **AMERICAN STERLING INSURANCE COMPANY** (hereinafter  
8       “**RESPONDENT**” or “**AMERICAN STERLING**”) currently is, and at all times mentioned herein has  
9       been, a corporation duly organized and existing under and by virtue of the laws of the State of  
10      California. Respondent’s principal office is in Laguna Niguel, California.

11          3.       Respondent is a wholly owned subsidiary of American Sterling Corporation  
12      (“**ASC**”).

13          4.       Respondent has five subsidiaries (i.e. entities which it owns in whole or in part):  
14      (i) American Sterling Productions, Ltd.; (ii) Gold Fish LLC; (iii) American Sterling  
15      Communications, LLC; (iv) American Sterling Capital Corporation; and (v) American Sterling  
16      Productions One, LLC.

17  
18                   **II. REGULATORY REQUIREMENTS**

19          5.       In order to transact insurance business in the State of California, an entity must  
20      have a Certificate of Authority issued by the Commissioner. (Ins. Code, § 700.) Holders of  
21      Certificates of Authority are sometimes referenced herein as “**licensees**.”

22          6.       California Insurance Code sections 700.01, 700.02, and 700.025 require licensees  
23      to meet certain financial requirements at all points in time that they hold a Certificate of  
24      Authority. Specifically, licensees must have a combined “paid-in capital” and a “surplus” (i.e.,  
25      regulatory accounting equity) of not less than \$5,400,000.

1           7.       The provisions of Article 4, Chapter 1, Part 2, Division 1, of the Insurance Code  
2 (sections 730-738) authorize the Commissioner to conduct financial examinations of all holders  
3 of Certificates of Authority. Holders of Certificates of Authority are "persons" subject to Article  
4 14, Chapter 1, Part 2, Division 1, of the Insurance Code (sections 1010-1062).

5  
6       **III. RESPONDENT SUBJECT TO JURISDICTION OF INSURANCE COMMISSIONER**

7           9.       At all times relevant hereto, Respondent has been authorized to transact the  
8 business of property and casualty insurance in California pursuant to a Certificate of Authority  
9 issued by the Commissioner.

10          10.       Respondent's statutory office is located at 28202 Cabot Road, Suite 640, Laguna  
11 Niguel, California 92677. (Ins. Code, § 923.)

12          11.       As the holder of a Certificate of Authority (or "licensee"), Respondent is subject to  
13 examination by the Commissioner under the provisions of Article 4, Chapter 1, Part 2, Division 1,  
14 of the Insurance Code (sections 730-738), and for these reasons is a "person" subject to Article  
15 14, Chapter 1, Part 2, Division 1, of the Insurance Code (sections 1010-1062).

16  
17       **IV. RESPONDENT'S FINANCIAL IMPAIRMENT**

18          12.       Pursuant to his authority in Insurance Code section 730, the Commissioner  
19 conducted a limited scope financial examination of Respondent, in accordance with the National  
20 Association of Insurance Commissioners' Financial Condition Examiner's Handbook. Said  
21 examination covered **the period ending June 30, 2011.**

22          13.       On completing this examination, the Commissioner determined Respondent failed  
23 to meet multiple statutory financial requirements. Specifically, the Commissioner found that:

24               13-a.   Respondent's surplus as regards policyholders was adjusted to \$2,911,894,  
25 which is below the minimum capital and surplus requirement of \$5.4 million, set forth in  
26 Insurance Code sections 700.01, 700.02, and 700.025;

1 13-b. Respondent's liquid assets consist of \$175,630 in cash and \$165,247 in  
2 short-term investments, whereas Respondent's average monthly expenses (for operational needs  
3 and payment of claims) are \$212,000; **as of September 12, 2011, Respondent had only \$15,000**  
4 **in its operating account, rendering Respondent essentially illiquid and without adequate**  
5 **cash or equivalents to pay ongoing expenses of operation;**

6 13-c. ASC (Respondent's parent corporation) has a large past-due loan  
7 obligation to Respondent, involving \$7.5 million in loan principal, and more than \$1.2 million in  
8 outstanding accrued interest; because this obligation is substantially overdue, the Commissioner  
9 must consider this "account receivable" as a non-admitted asset, pursuant to the Statement of  
10 Statutory Accounting Principles ("SSAP") No. 5, paragraphs 6 and 7;

11 13-d. Respondent has failed to file with the California Department of Insurance  
12 its 2010 annual audited financial statements, which were due on June 1, 2011 (Ins. Code, §  
13 900.2); and

14 13-e. Respondent has no verifiable evidence that it has sufficient liquid assets to  
15 continue to pay claims and expenses.

## 16 V. GROUNDS FOR CONSERVATION

17 14. Based upon the foregoing financial examination results, and the examination  
18 adjustments made to Respondent's financial statements, **American Sterling is undercapitalized**  
19 **and has almost no liquid assets.** Accordingly, the Commissioner finds that:

20 14-a. American Sterling's continued transaction of business – outside of  
21 conservation – will be, and is, hazardous to its policyholders, its creditors, and the public. Such a  
22 condition is grounds for conservation under Insurance Code section 1011, subdivision (d).

23 14-b. Because of its financial impairment, American Sterling does not meet the  
24 requirements for issuance of a Certificate of Authority. Such a condition constitutes grounds for  
25 conservation under Insurance Code section 1011, subdivision (h).

26 15. Accordingly, American Sterling is subject to conservation under Insurance Code  
27 section 1011.  
28

16. Therefore, pursuant to Insurance Code section 1011, the Commissioner files this ex parte application for an order appointing him as conservator of American Sterling. Given American Sterling's financial condition, and the existence of legal grounds for conservation, a formal conservation is necessary and appropriate.

17. The California Insurance Commissioner is prepared to commence conservation of American Sterling Insurance Company, with (i) David E. Wilson serving as the Special Deputy Insurance Commissioner and Chief Executive Officer of the Conservation and Liquidation Office (“CLO”) of the California Department of Insurance, and specifically as the Conservator of American Sterling Insurance Company, and (ii) Scott Pearce of the CLO, serving as the Conservation Manager for American Sterling Insurance Company.

## VI. EX PARTE RELIEF

18. The Commissioner has satisfied all requirements for ex parte relief, as set forth in the California Rules of Court. [See Declaration of Elisa B. Wolfe-Donato, appended hereto.]

**WHEREFORE**, the Commissioner prays that this Court issue an order with the following provisions:

1. Appointing the Commissioner as Conservator (hereinafter “**CONSERVATOR**”) of American Sterling, and directing him to conduct the business of American Sterling, or so much thereof as he may deem appropriate; and authorizing the Conservator, in his discretion, to pay or defer payment of some or all proper claims, expenses, liabilities, and obligations of American Sterling, in whole or in part, which debts accrued prior to, or will accrue subsequent to, his appointment as Conservator;

2. Authorizing the Conservator to assume, reject, or modify any executory contract, including, without limitation, any lease, rental or utilization contract or agreement (including any schedule to any such contract or agreement), and any license or other arrangement for the use of computer software or business information systems, to which American Sterling is a party or as to which American Sterling agrees to accept an assignment of such contract; directing the

1 Conservator to effect any such assumption, rejection, or modification of any executory contract  
2 not later than 120 days from the date of the Order Appointing Conservator, unless such date is  
3 extended by application to and further order of this Court; ordering that all executory contracts  
4 not expressly assumed by the Conservator shall be deemed rejected;

5 3. Authorizing the Conservator to take possession of all the assets of American  
6 Sterling, including but not limited to books, records, property (both real and personal), accounts,  
7 safe deposit boxes, rights of action, subsidiaries, and all such assets as may be in the name of  
8 American Sterling, wheresoever situated;

9 4. Vesting title to all property and assets of American Sterling, including its five  
10 subsidiaries (American Sterling Productions, Ltd.; Gold Fish LLC; American Sterling  
11 Communications, LLC; American Sterling Capital Corp.; American Sterling Productions One,  
12 LLC), deposits, securities, contracts, rights of actions, books, records, and other assets of every  
13 type and nature, including both those presently in American Sterling's possession and those  
14 which may be discovered hereafter, wheresoever situated, in the Conservator or his successor in  
15 office, in his official capacity as Conservator; authorizing the Conservator to deal with the same  
16 in his own name as Conservator or in the name of American Sterling; and enjoining all persons  
17 from interfering with Conservator's possession and title thereto;

18 5. Granting the Conservator all the powers of the directors, officers, and managers of  
19 American Sterling, whose authorities are suspended except as such powers may be redelegated by  
20 the Conservator;

21 6. Authorizing the Conservator to terminate compensation and benefits arrangements  
22 with employees, and to enter into new compensation arrangements with employees, including  
23 arrangements containing retention incentives; and authorizing the Conservator to hire employees  
24 on such terms and conditions as he deems reasonable;

25 7. Except upon the express authorization of the Conservator, enjoining American  
26 Sterling, its officers, directors, agents, and employees from transacting any of the business of  
27 American Sterling or of its five Subsidiaries, whether in the State of California or elsewhere, or  
28 from disposing of, using, transferring, selling, assigning, canceling, alienating, hypothecating, or

1 concealing in any manner or any way, or assisting any person in any of the foregoing, the  
2 property or assets of American Sterling or property or assets in the possession of American  
3 Sterling, of any nature or kind, including claims or causes of action, until further order of this  
4 Court; and further, enjoining such persons from obstructing or interfering with the Conservator's  
5 conduct of his duties as Conservator;

6 8. Enjoining all persons (i) from instituting, prosecuting, or maintaining any action at  
7 law or suit in equity (including but not limited to actions or proceedings to compel discovery or  
8 production of documents or testimony, and matters in arbitration), and (ii) from attaching,  
9 executing upon, redeeming of, or taking any other legal proceedings, against any of the property  
10 of American Sterling, and (iii) from doing any act interfering with the conduct of said business by  
11 the Conservator, except after an order from this Court obtained after reasonable notice to the  
12 Conservator;

13 9. Directing American Sterling, and all officers, directors, agents, and employees of  
14 American Sterling, to deliver to, and immediately make available to, the Conservator all assets,  
15 books, records, accounts, records, information, computers, tapes, discs, writings, other recordings  
16 of information, equipment, and other property of American Sterling, wheresoever situated, in said  
17 persons' custody or control; and further, directing the aforesaid to disclose verbally, or in writing  
18 if requested by the Conservator, the exact whereabouts of the foregoing items if such items are  
19 not in the possession custody or control of said persons;

20 10. Directing that all officers, directors, trustees, employees or agents, of American  
21 Sterling, or any other person, firm, association, partnership, corporate parent, holding company,  
22 affiliate, or other entity in charge of any aspect of American Sterling's affairs, either in whole or  
23 in part, and including but not limited to banks, savings and loan associations, financial or lending  
24 institutions, brokers, stock or mutual associations, or any parent, holding company, subsidiary, or  
25 affiliated corporation, or any other representative acting in concert with American Sterling, shall  
26 cooperate with the Conservator in the performance of his or her duties;



1           11.     Authorizing the Conservator to pay all reasonable costs of taking possession of  
2 and conserving American Sterling (including but not limited to Commissioner's pre-conservation  
3 costs in examining American Sterling's financial condition, and preparing to take possession of  
4 and conserve American Sterling) out of the funds and assets of American Sterling;

5           12.     Authorizing the Conservator to pay all reasonable costs of operating American  
6 Sterling as Conservator (including direct and allocated direct costs, direct and allocated general  
7 and administrative costs and overhead, and all other allocated costs) out of any and all funds and  
8 assets of American Sterling; and if there are insufficient funds, to pay for the costs out of the  
9 Insurance Fund pursuant to Insurance Code section 1035;

10          13.     Directing that all funds and assets, including certificates of deposit, bank accounts,  
11 and mutual fund shares of American Sterling and its five Subsidiaries, in various financial  
12 depository institutions, including banks, savings and loan associations, industrial loan companies,  
13 mutual funds, or stock brokerages, wheresoever situated, be vested in the Conservator and subject  
14 to withdrawal only upon his order;

15          14.     Ordering all persons who maintain records for American Sterling and its  
16 Subsidiaries, pursuant to written contract or any other agreement, to maintain such records and to  
17 deliver to the Conservator such records upon his request;

18          15.     Directing all agents of American Sterling, and all brokers who have done business  
19 with American Sterling, to make all remittances of all funds collected by them or in their hands  
20 directly to the Conservator;

21          16.     Ordering that all persons having possession of any lists of policyholders or escrow  
22 holders of American Sterling shall deliver such lists to the Conservator; and that all persons are  
23 enjoined from using any such lists or any information contained therein without the consent of the  
24 Conservator;

25          17.     Authorizing the Conservator to initiate such equitable or legal actions or  
26 proceedings in this or other States as may appear to him necessary to carry out his functions as  
27 Conservator;

1           18.     Authorizing the Conservator to appoint and employ special deputies, estate  
2 officers and managers, other professionals, clerks and assistants and to give each of them such  
3 power and authority as may be deemed necessary by him and authorizing the Conservator to  
4 compensate these persons from the assets of American Sterling as he shall deem appropriate;

5           19.     Authorizing the Conservator to divert, take possession of, and secure all mail of  
6 American Sterling and its five Subsidiaries, in order to screen such mail, and to effect a change in  
7 the rights to use any and all post office boxes and other mail collection facilities used by  
8 American Sterling or any of its five Subsidiaries;

9           20.     Directing that American Sterling and its officers, directors, agents, servants,  
10 employees, successors, assigns, affiliates, and other persons or entities under their control, and all  
11 persons or entities in concert or participation with American Sterling, and each of them, shall turn  
12 over to Conservator all records, documentation, charts, and/or descriptive materials of all funds,  
13 assets, property (owned beneficially or otherwise), and all other assets of American Sterling and  
14 its five Subsidiaries, wherever situated, and all books and records of accounts, title documents  
15 and other documents in their possession or under their control, which relate, directly or indirectly  
16 to assets or property owned or held by American Sterling or to the business or operations of  
17 American Sterling or its Subsidiaries;

18           21.     Except with leave of court issued after a hearing in which the Conservator has  
19 received reasonable notice, enjoining all persons from obtaining preferences, judgments,  
20 attachments, or other liens, or making any levy against American Sterling or its assets or  
21 property, and from executing or issuing or causing the execution or issuance of any court  
22 attachment, subpoena, replevin, execution, or other process for the purpose of impounding or  
23 taking possession of or interfering with or creating or enforcing a lien upon any property or assets  
24 owned or in the possession of American Sterling or the Conservator, wheresoever situated, and  
25 from doing any act interfering with the conduct of said business by the Conservator;

26           22.     Except with leave of court issued after a hearing in which the Conservator has  
27 received reasonable notice, enjoining all persons from accelerating the due date of any obligation  
28 or claimed obligation; exercising any right of set-off; taking, retaining, retaking, or attempting to

1 retake possession of any real or personal property; withholding or diverting any rent or other  
2 obligation; doing any act or other thing whatsoever to interfere with the possession of or  
3 management by the Conservator of the property and assets owned or controlled by American  
4 Sterling or in the possession of American Sterling; or in any way interfering with the Conservator  
5 or interfering in any manner during the pendency of this proceeding with the exclusive  
6 jurisdiction of this Court over American Sterling;

7         23.     Ordering that any and all provisions of any agreement entered into by and between  
8 any third party and American Sterling [including by way of illustration, but not limited to, the  
9 following types of agreements (as well as any amendments, assignments, or modifications  
10 thereto)-- financial guarantee bonds, promissory notes, loan agreements, security agreements,  
11 deeds of trust, mortgages, indemnification agreements, subrogation agreements, subordination  
12 agreements, pledge agreements, assignments of rents or other collateral, financial statements,  
13 letters of credit, leases, insurance policies, guaranties, escrow agreements, management  
14 agreements, real estate brokerage and rental agreements, servicing agreements, attorney  
15 agreements, consulting agreements, easement agreements, license agreements, franchise  
16 agreements, or employment contracts] providing in any manner that the selection, appointment, or  
17 retention of a conservator, receiver, or trustee by any court, or entry of any order such as hereby  
18 made, shall be deemed to be, or otherwise operate as, a breach, violation, event of default,  
19 termination, event of dissolution, event of acceleration, insolvency, bankruptcy, or liquidation,  
20 shall be stayed, and the assertion of any and all rights and remedies relating thereto shall also be  
21 stayed and barred, except as otherwise ordered by this Court, and this Court shall retain  
22 jurisdiction over any cause of action that has arisen or may otherwise arise under any such  
23 provision;

24         24.     Authorizing the Conservator to invest American Sterling's assets and funds not  
25 immediately distributable to American Sterling's creditors, in such a manner as to him may seem  
26 suitable for the best interest of American Sterling's creditors; however, no investment or  
27 reinvestment shall be made exceeding the sum of \$100,000 without first obtaining permission of  
28 this Court, except the Conservator may make investments or reinvestments in excess of \$100,000,

1 but not exceeding \$5,000,000 per investment or reinvestment, without prior approval if such  
2 investments or reinvestments are made pursuant to the investment guidelines of the Conservator's  
3 Conservation & Liquidation Office, a true and correct copy of which is attached hereto as Exhibit  
4 A and incorporated herein by this reference; providing the Conservator shall file quarterly reports  
5 of such investments or reinvestments in excess of \$100,000 with the Court, within 60 days of the  
6 end of each quarter, with notice to all persons on the service list;

7 25. Authorizing the Conservator to pay for his costs and fees in bringing and  
8 maintaining this action, and such other actions as are necessary to carry out his functions as  
9 Conservator, out of the funds and assets of American Sterling;

10 26. Authorizing the Conservator to conduct an analysis of the business and financial  
11 condition of American Sterling to determine, in the best judgment of the Conservator, whether it  
12 will be possible to correct the problem that led to the order of conservation, and restore the  
13 insurer to private management and normal operations, or whether American Sterling should be  
14 placed into rehabilitation or liquidation;

15 27. Enjoining all persons from the waste of the assets of American Sterling; and

16 28. For such other and further relief as may be proper or necessary.

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1 Dated: September 26, 2011

Respectfully submitted,

2 KAMALA D. HARRIS  
3 Attorney General of the State of California  
4 FELIX E. LEATHERWOOD  
5 W. DEAN FREEMAN  
6 Supervising Deputy Attorneys General

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10 Deputy Attorney General

11 *Attorneys for Applicant*  
12 *Insurance Commissioner of the State of California*  
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Executed on this 26th day of September, 2011, at San Francisco, California.

David E Wilson

DAVID E. WILSON  
Special Deputy Insurance Commissioner  
CEO, Conservation & Liquidation Office  
California Department of Insurance

1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**  
2                                    **IN SUPPORT OF**  
3                                    **VERIFIED EX PARTE APPLICATION FOR ORDER APPOINTING CONSERVATOR**

4            The INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA  
5            (“**APPLICANT**” or “**COMMISSIONER**”) hereby applies to this Honorable Court for (i) an order  
6            appointing him as Conservator of AMERICAN STERLING INSURANCE COMPANY  
7            (“**RESPONDENT**”), and (ii) restraining orders ancillary to a conservatorship.

8  
9                                    **SUMMARY OF FACTS AND LAW**

10           Respondent is authorized to transact the business of property and casualty insurance in  
11           California under the authority of a Certificate of Authority issued by the Commissioner.  
12           (Application, ¶ 9.) By law, Respondent must maintain a total paid-in capital and surplus sum of  
13           at least \$5,400,000. (Ins. Code, §§ 700.01, 700.02, 700.025.)

14           Following a recent limited scope financial exam of Respondent, the Commissioner  
15           determined, *inter alia*, that:

16                    ●●● Respondent has a combined paid-in capital plus surplus sum of \$2,911,894,  
17                    which is substantially below the minimum paid-in capital plus surplus requirement of \$5.4  
18                    million. (Ins. Code, §§ 700.01, 700.02, 700.025.)

19                    ●●● **As of September 12, 2011, Respondent had only \$15,000 in its operating**  
20                    **account**, whereas Respondent’s average monthly expenses (for operational needs and payment of  
21                    claims) are \$212,000. Respondent has no verifiable evidence it has sufficient liquid assets to  
22                    continue to pay claims and expenses.

23                    ●●● **American Sterling is undercapitalized and has almost no liquid assets.**

24            Consequently, the Commissioner has concluded that:

25                    ► American Sterling’s continued transaction of business – outside of  
26                    conservation – will be, and is, hazardous to its policyholders, its creditors, and the public. Such a  
27                    financial impairment constitutes grounds for conservatorship under Insurance Code section 1011,  
28                    subdivision (d).

► Because of its financial impairment, American Sterling does not meet the requirements for issuance of a Certificate of Authority. Such a condition constitutes grounds for conservation under Insurance Code section 1011, subdivision (h).

For these reasons, American Sterling is subject to conservation under Insurance Code section 1011. Accordingly, the Commissioner makes the instant application and seeks to be appointed as the conservator of Respondent.

## ARGUMENT

# I

THE SUPERIOR COURT MUST ISSUE A CONSERVATION ORDER  
UPON VERIFIED APPLICATION OF THE INSURANCE COMMISSIONER

Any person subject to examination by the Insurance Commissioner, or for whom a Certificate of Authority is required for the transaction of business in the State of California, is subject to an order of conservation issued by the superior court of the county in which the principal office of such person is located. (Ins. Code, §§ 1010, 1011.) Addressing the key elements of these code sections:

♦ As a property and casualty insurer, Respondent is a “person” subject to both a licensure requirement and financial examination by the Insurance Commissioner. (Ins. Code, §§ 700, 730, 1010.)

♦ Respondent's principal office is located in Orange County, and specifically, in Laguna Niguel, California. (Application, ¶ 9.)

Insurance Code section 1011 states in relevant portion that:



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

12 ...

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

16 ...

17 (h) That a domestic insurer does not comply with the requirements for the issuance to  
18 it of a certificate of authority, or that its certificate of authority has been revoked ...  
19 [Emphasis added.]

20 On its face, the language of section 1011 is mandatory and automatic: the Court **shall**  
21 issue a conservation order, upon the Insurance Commissioner's filing of a verified application  
22 showing the existence of one or more grounds for conservation. (*Financial Indemnity Co. v.*  
23 *Superior Court* (1955) 45 Cal.2d 395, 402; *Garamendi v. Golden Eagle Ins. Co.* (2005) 128 Cal.  
24 App. 4th 452, 463-464.)

25 The Commissioner may obtain a conservation order on an *ex parte* basis. (*Rhode Island*  
26 *Ins. Co. v. Downey* (1949) 95 Cal.App.2d 220, 229-234.) If the seized company objects to the  
27 conservation, then it may apply for and have a full hearing after the *ex parte* issuance of a  
28 conservation order. (Ins. Code, § 1012; *Rhode Island Ins. Co. v. Downey, supra*, 95 Cal.App.2d  
at pp. 235-36.)

Insurance Code section 1020 provides that the Court shall issue orders as may be  
necessary to, among other things, prevent waste of assets, obtaining of preferences, and  
interference with the Commissioner's efforts to conserve the seized company.

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II.

THE COMMISSIONER'S APPLICATION SHOWS MULTIPLE GROUNDS  
FOR THE ISSUANCE OF AN ORDER OF CONSERVATION

After adjusting American Sterling's surplus pursuant to applicable standards in the Statement of Statutory Accounting Principles ("SSAP"), American Sterling's surplus as regards policyholders totaled \$2,911,894, which is substantially below the minimum combined paid-in capital and surplus requirement of \$5.4 million. (Ins. Code, §§ 700.01, 700.02, 700.025.) In light of American Sterling's lack of operating cash or cash equivalents, the company is illiquid. An ongoing negative cash flow from continued operations could worsen American Sterling's already-unacceptable financial condition. Accordingly, the Commissioner has found that, given American Sterling tenuous financial condition, its further transaction of business will be hazardous to its policyholders, its creditors, and the public; this constitutes grounds for conservation under Insurance Code section 1011, subdivision (d).

Moreover, because of its financial impairment, American Sterling does not meet the requirements for issuance of a Certificate of Authority. Such a condition constitutes further grounds for conservation under Insurance Code section 1011, subdivision (h).

For these reasons, American Sterling is subject to conservation under Insurance Code section 1011. Accordingly, the Commissioner makes the instant application and seeks to be appointed as the conservator of Respondent.

The Commissioner's findings are presumed to be correct. (*Caminetti v. Guarantee Union Life Ins. Co.* (1942) 52 Cal. App. 2d 330, 337.)

Under the circumstances pertaining to American Sterling, the issuance of a conservation order is plainly required in order to protect the company's policyholders and creditors, and the public.

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CONCLUSION

For each and all of the foregoing reasons, the Insurance Commissioner of the State of California respectfully urges this Court to issue the requested conservation order.

Dated: September\_26, 2011

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
FELIX E. LEATHERWOOD  
W. DEAN FREEMAN  
Supervising Deputy Attorneys General

  
ELISA B. WOLFE-DONATO  
Deputy Attorney General  
*Attorneys for Applicant*  
*California Insurance Commissioner*

1                                   **DECLARATION OF ELISA B. WOLFE-DONATO**  
2                                   **RE: NOTICE OF EX PARTE APPLICATION FOR**  
3                                   **ORDER APPOINTING CONSERVATOR**

4           I, ELISA B. WOLFE-DONATO, hereby declare:

5           1.       I have personal knowledge of the facts set forth below. If called as a witness, I  
6 could and would testify competently, under oath, to the ensuing facts.

7           2.       I am a Deputy Attorney General ("**DAG**") and am employed by the California  
8 Department of Justice, Office of the Attorney General. I have been so employed since November  
9 1, 1988. Since March 16, 2000, I have been assigned to the Business and Tax Section within the  
10 Civil Division of the Office of the Attorney General, in Los Angeles. I am an active member of  
11 the State Bar of California.

12          3.       I represent Applicant INSURANCE COMMISSIONER OF THE STATE OF  
13 CALIFORNIA in the instant case. I was assigned to help handle this matter on or about  
14 September 20, 2011.

15          4.       Prior to giving ex parte notice of the instant application, I asked California  
16 Department of Insurance ("**CDI**") personnel to provide me with the name(s) of (a) the principal(s)  
17 for American Sterling Insurance Company, and (b) any attorney(s) representing American  
18 Sterling Insurance Company. CDI representatives informed me that (i) American Sterling's  
19 principal is LAWRENCE K. DODGE, and (ii) American Sterling's attorney is KENNETH B.  
20 SCHNOLL, of SNR Denton's San Francisco office.

21          5.       I checked American Sterling's website (www.americansterling.com) to find a  
22 facsimile number and an e-mail address for Mr. Dodge. I could not find an e-mail address for Mr.  
23 Dodge or for the company, but I did see a facsimile number posted for American Sterling  
24 Insurance Company: (949) 545-6411. Subsequently, a CDI representative provided me with Mr.  
25 Dodge's e-mail address: LDodge@AmericanSterling.com.

26          6.       I checked SNR Denton's website (www.SNRDenton.com), where I found an e-  
27 mail address for Mr. Schnoll (Kenneth.Schnoll@SNRDenton.com) and a fax number for the law  
28 firm's San Francisco office ((415) 882- 0300).

1           7.     **E-MAIL:** at about 9:24 a.m. on Friday, September 23, 2011, I sent e-mail to  
2 Messrs. Dodge (LDodge@AmericanSterling.com) and Schnoll  
3 (Kenneth.Schnoll@SNRDenton.com), from my DOJ account. My message read as follows ---  
4 **Subject: American Sterling Insurance Co. - Notice of Ex Parte Application for Conservation**  
5 **Text: TO AMERICAN STERLING INSURANCE COMPANY, ITS PRINCIPAL LARRY K.**  
6 **DODGE, AND ITS LEGAL COUNSEL:**

7 PLEASE TAKE NOTICE THAT ON MONDAY, SEPTEMBER 26, 2011, AT 1:30  
8 P.M. OR AS SOON THEREAFTER AS THE MATTER MAY BE HEARD, AT  
9 THE ORANGE COUNTY SUPERIOR COURT, CENTRAL JUSTICE CENTER,  
10 LOCATED AT 700 CIVIC CENTER DRIVE WEST, SANTA ANA, CALIFORNIA,  
11 THE CALIFORNIA INSURANCE COMMISSIONER WILL APPLY EX PARTE  
12 FOR AN ORDER CONSERVING AMERICAN STERLING INSURANCE  
COMPANY, AND NAMING THE INSURANCE COMMISSIONER AS  
CONSERVATOR. THE PRIMARY BASIS FOR THIS APPLICATION IS THE  
COMPANY'S ONGOING, IMPAIRED, UNDERCAPITALIZED FINANCIAL  
CONDITION, WHICH VIOLATES MULTIPLE PROVISIONS OF THE  
CALIFORNIA INSURANCE CODE AND WHICH PRESENTS A HAZARD TO  
POLICYHOLDERS, CREDITORS, AND THE PUBLIC.

13 THE COMMISSIONER DOES NOT CURRENTLY KNOW THE DEPARTMENT  
14 TO WHICH THIS APPLICATION WILL BE ASSIGNED. HOWEVER, THE  
15 ORANGE COUNTY SUPERIOR COURT WEBSITE INSTRUCTS THE MOVING  
16 PARTY TO GIVE THE OPPOSING PARTY NOTICE "to appear in the Unlimited  
Civil Clerk's Office, Room D-110, Central Justice Center, 700 Civic Center Drive  
West, Santa Ana at 1:30 p.m. and to check the 'Ex Parte Board' for the assigned  
courtroom."

17 IF YOU INTEND TO OPPOSE THIS APPLICATION, PLEASE CONTACT  
18 DEPUTY ATTORNEY GENERAL ELISA WOLFE DONATO IMMEDIATELY.  
MS. WOLFE-DONATO'S CONTACT INFORMATION IS AS FOLLOWS:

19 ELISA B. WOLFE-DONATO, DEPUTY ATTORNEY GENERAL  
20 CALIFORNIA DEPARTMENT OF JUSTICE, OFFICE OF THE ATTORNEY GENERAL  
300 SOUTH SPRING STREET, SUITE 1700  
21 LOS ANGELES, CA 90013-1256  
OFFICE PHONE: (213) 897-0633  
22 CELLULAR PHONE: (310) 753-5268  
E-MAIL ADDRESS: ELISA.WOLFE@DOJ.CA.GOV.  
23 FAXSIMILE: (213) 897-5775

24 FEEL FREE TO CONTACT ME WITH ANY QUESTIONS OR CONCERNS YOU  
MAY HAVE, IN CONNECTION WITH THIS MATTER.

25 SINCERELY,  
26 Elisa B. Wolfe-Donato, Deputy Attorney General IV  
Business and Tax Section, Civil Division  
27 Office of the Attorney General, California Department of Justice  
300 S. Spring Street, Suite 1702  
28 Los Angeles, CA 90013  
(213) 897-0633 Direct Dial; (213) 897-5775 Facsimile

1           8.       Following the transmission of this message, I received no notices of undeliverable  
2 e-mail, or other indicia of non-receipt.

3           9.       **FAX:** I asked fellow Deputy Attorney General Ronald Ito to fax a printout of this  
4 same message to Messrs. Dodge ((949) 545-6411) and Schnoll ((415) 882- 0300). I am informed  
5 and believe that at approximately 9:45 a.m., DAG Ito sent the foregoing message to Messrs.  
6 Dodge and Schnoll via facsimile transmission from the Department of Justice fax machine on my  
7 floor ((213) 897-5775). However, due to apparent malfunctions with this fax machine, DAG Ito  
8 reportedly did not receive a statement indicating whether the fax was transmitted successfully.

9           10.      Neither Mr. Dodge nor Mr. Schnoll contacted me in an immediate response to the  
10 e-mail or fax transmissions. However, CDI personnel reported that, in an immediate response to  
11 the e-mail and/or fax messages, they received phone calls from both Mr. Dodge and Mr. Schnoll  
12 shortly prior to 10:00 a.m. on Friday, September 23<sup>rd</sup>. I am informed and believe that during  
13 these telephone calls, Messrs. Dodge and/or Schnoll urged CDI personnel to reconsider the  
14 decision to initiate conservation proceedings. Later that day, Mr. Schnoll reportedly told CDI  
15 personnel he believed American Sterling would **not** appear at or oppose today's ex parte hearing.

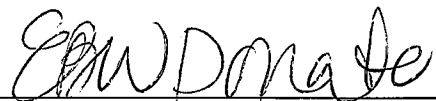
16           11.      This morning, at approximately 7:45 a.m., I received a telephone call from Mr.  
17 Dodge. He indicated that he or his attorney may be appearing at today's hearing, and that he may  
18 be infusing capital into American Sterling.

19           12.      I intend to e-mail these moving papers to Messrs. Dodge and Schnoll as soon as  
20 they are finished.

21           13.      I make this declaration in my official capacity.

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed on this 26<sup>th</sup> day of September, 2011, at Los Angeles, California.

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25  
26 ELISA B. WOLFE-DONATO  
27 Deputy Attorney General  
28 Declarant

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## EXHIBIT "A"

### The Investment Guidelines of the Conservation & Liquidation Office of the California Department of Insurance

**INSURANCE COMMISSIONER of the**  
**STATE of CALIFORNIA**  
**CONSERVATION & LIQUIDATION OFFICE**  
**INVESTMENT GUIDELINES**

**Objectives**

To maintain safety of principal and to maximize available yield while assuming a minimum of risk through a balance of quality and diversification within the investment portfolio.

**A. Safety**

***Quality***

None of the Portfolio will be invested in fixed income securities rated below investment grade quality by Standard & Poor's, Moody's or by another nationally recognized statistical rating organization. Unrated securities may not be held. The minimum average market value weighted credit quality of securities in the Portfolio will be AA- by Standard & Poor's and Aa3 by Moody's or their equivalent.

Commercial Paper will be rated no less than A1 by Standard & Poor's or P1 by Moody's.

***Sectors***

Permitted investments for the Portfolio shall include:

1. Fixed income securities and other fixed income obligations of any type which may be issued or guaranteed by (i) the U.S. and the agencies, instrumentalities, and political sub-divisions of the U.S., and (ii) U.S. corporations, trusts and special purpose entities. Such securities must be traded on exchanges or in over the counter markets in the U.S. No emerging markets' securities are allowed.
2. Repurchase agreements.



### *Restrictions on permitted investments*

None of the Portfolio may be invested in foreign securities and in securities not denominated in U.S. dollars. Manager may not elect to hedge currency and/or interest rate exposure. No speculative currency positions are permitted.

All repurchase agreements will be transacted with counterparties approved by the Manager in accordance with its policies and procedures and terms and conditions set forth in the applicable Investment Management Agreement and any applicable Master Repurchase Agreement(s).

No investment in interest only ("IO"), principal only ("PO"), or inverse floater CMOs are permitted. The manager should only accept reasonable prepayment risk, consistent with the stated objectives of their respective funds.

Derivatives, or financial investments containing derivatives, are not permitted, defined as options, forwards, futures and swaps.

Investment transactions (i) which result in leverage or short sales and/or (ii) with affiliates of the Manager, are not permitted.

### *Diversification*

No more than 5 % of the Portfolio will be invested in the securities of any one issuer, other than those securities issued or guaranteed by the U.S. government, its agencies, and instrumentalities and refunded municipal issues (all of which may be held without limit). For the purposes of this guideline, asset backed and mortgage-related securities (not issued by the U.S. Government, its agencies or instrumentalities), issued by trusts and other special purpose entities, will be limited to no more than 5 percent per issue, in addition to a common originator limit of no more than 20 percent.

## **B. Maturity**

Portfolio duration will be maintained within a range of (+/-) twelve months of Barclays Capital US Government/Credit 1-3 Yr ex Baa (the Index) under normal market conditions. There will be no restriction on the duration of any single security. Duration will be calculated adjusting for any optionality in

securities as well as adjusting for the expected prepayment level of mortgage-backed security pools.

#### **C. Calculation of Returns**

Returns will be calculated in compliance with the Association for Investment Management and Research standards.

#### **D. General**

All percentage restrictions on Portfolio holdings will initially be evaluated at the time of purchase. At any time thereafter, concentrations in eligible portfolio investments will not exceed the prescribed limit by more than one percent.

Notwithstanding any provision to the contrary, Manager will not be required to sell any particular holding because a rating of a security is downgraded subsequent to purchase. However, Manager is required to notify the client in the event of a downgrade below investment grade. In the event a security is split rated, the lower rating will apply with respect to all portfolio percentage and quality restrictions.

Investment personnel who will have input into or control over any investment decision on behalf of the Commissioner are required, if they have a beneficial interest in that security, to disclose in writing their beneficial interest and receive written authority from the Commissioner before an investment decision is made.

#### **E. Benchmark**

The benchmark for the Portfolio will be the Barclays Capital US Government/Credit 1-3 Yr ex Baa or better, (the "Index"). The objective of the Portfolio will be to maintain safety of principal and maximize available yield while assuming a minimum of risk through a balance of quality and diversification within the portfolio.