

1 KAMALA D. HARRIS
Attorney General of California
2 FELIX E. LEATHERWOOD
3 W. DEAN FREEMAN
Supervising Deputy Attorneys General
4 LISA W. CHAO, State Bar No. 198536
Deputy Attorney General
5 300 South Spring Street, Room 1702
6 Los Angeles, California 90013
Telephone: (213) 897-2481
7 Facsimile: (213) 897-5775
8 E-mail: Lisa.Chao@doj.ca.gov

9 MICHAEL R. WEISS, State Bar No. 180946
EPSTEIN TURNER WEISS
10 A Professional Corporation
633 W. Fifth Street, Suite 3330
11 Los Angeles, California 90071
12 Telephone: (213) 861-7487
Facsimile: (213) 861-7488
13 Email: mrw@epsteinturnerweiss.com

14 Attorneys for Applicant
15 Insurance Commissioner of the State of California

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF LOS ANGELES**
18

19 INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,

20 Applicant,

21 v.

22 GOLDEN STATE MUTUAL LIFE
23 INSURANCE COMPANY, a California
corporation,

24 Respondent.
25

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

**MEMORANDUM IN SUPPORT OF
APPLICATION TO APPROVE
SETTLEMENT AGREEMENT
REGARDING MURAL OWNERSHIP
LAWSUIT; DECLARATIONS OF SCOTT
PEARCE AND MICHAEL R. WEISS**

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

I.

INTRODUCTION.

By this Application, the Insurance Commissioner of the State of California in his official statutory capacity as Liquidator for Golden State Mutual Life Insurance Company ("Commissioner") seeks Court approval of a General Release And Settlement Agreement between the Commissioner and Community Impact Development II, LLC ("CID") resolving the action entitled *Community Impact Development II, LLC v. Insurance Commissioner of the State of California as Liquidator for Golden State Mutual Life Insurance Company*, Los Angeles Superior Court Case No. BC462745.

On June 2, 2011, pursuant to this Court's authorization, CID sued the Commissioner for quiet title and declaratory relief, contending that CID owns two murals attached to the lobby walls of real property owned by CID and known as the Golden State Mutual Life Insurance Company Building located at 1999 West Adams Boulevard in Los Angeles, California ("Building"). The two murals are identified as (1) "*The Negro in California History: Exploration and Colonization*" by Charles Alston and (2) "*The Negro in California History: Settlement & Development*" by Hale Woodruff (collectively, "Murals"). The Murals are painted on canvas and depict the contributions of African Americans to California's history. The first mural depicts the years 1527 to 1850, and the second depicts the years 1850 to 1949. Thereafter, on December 21, 2011, the Commissioner filed a cross-complaint against CID seeking damages for breach of lease, breach of covenant of good faith and fair dealing and declaratory relief. Both parties claimed attorney's fees and expenses. CID's Complaint and the Commissioner's First Amended Cross-Complaint are referenced herein as the "Lawsuit."

In the Lawsuit, CID contended that it purchased the Murals with the Building at the time it purchased the Building in 2009. The Commissioner, on behalf of Golden State, disputed CID's contention and contended that the Murals are Golden State's personal property and that CID breached the Lease Agreement between CID and Golden State by not permitting the Commissioner to remove and sell the Murals. After over two years of litigation, during which the case was reassigned and rescheduled for trial multiple times, one and a half days of mediation and an all-day

1 Mandatory Settlement Conference before the Lawsuit's assigned trial judge, the Hon. William F.
2 Fahey, the Commissioner and CID reached a full settlement of the Lawsuit and thereafter entered
3 into the General Release And Settlement Agreement ("Settlement Agreement") attached hereto as
4 Exhibit 1.

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

6 1. CID agreed to pay to Golden State the total sum of Five Hundred Fifty Thousand
7 Dollars (\$550,000) in settlement of the Lawsuit, hereinafter referred to as the "Settlement Sum."

8 2. The Commissioner and Golden State agreed to release any and all right, title and
9 interest in and to the Murals to CID.

10 3. Within thirty (30) days of October 3, 2013, the Settlement Sum is to be deposited
11 into an interest bearing blocked escrow account at First American Title Insurance Company, which
12 shall serve as the escrow agent, and proof of said deposit shall be provided to counsel for the
13 Commissioner. The terms of the escrow account are to provide that within five (5) days of CID
14 receiving notice of entry of a Court Order or Orders approving the Settlement Agreement, the
15 escrow agent shall pay the Settlement Sum to Golden State. The terms of the escrow account also
16 are to provide that the escrow is not revocable by CID unless this Court expressly declines to
17 approve the Settlement Agreement.

18 4. CID shall not sell or otherwise transfer ownership of the Murals separately from the
19 Building for a period of five years and six months. Said period expires on March 31, 2019.

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

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

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

26 First, the Settlement Agreement and the payment to Golden State of \$550,000 represents a
27 reasonable settlement of the Commissioner's and CID's claims in the Lawsuit and eliminates the
28 uncertainty of a potential judgment awarding the Murals to CID and against the Commissioner.

CID's complaint sought a declaration that the Murals are owned by CID and an award of attorney's fees and expenses. If Judge Fahey determined that the Murals are owned by CID, then Golden State would receive no money from CID and potentially would have to pay an award of attorney's fees and expenses to CID previously estimated by CID to exceed \$400,000. If on the other hand Judge Fahey determined that the Murals are owned by Golden State, then the Commissioner would need to incur the cost of removing, storing and insuring the Murals at an estimated cost of at least \$35,000 and then selling the Murals at an estimated administrative cost (including a commission or sales fee) of at least \$25,000, for a combined cost of at least \$60,000. The Murals' combined estimated liquidation value in accordance with the estate's most recent appraisal is \$700,000 (\$350,000 per Mural).

Second, the majority of the issues in the Lawsuit were framed for trial by Judge Gregory Alarcon, the Lawsuit's former trial judge before re-assignment, in his Orders denying the Parties' cross-motions for summary judgment. True and correct copies of the two Orders are attached hereto as Exhibits 4 and 5. Based on Judge Alarcon's determinations in the Orders, the Commissioner believes that resolutions at trial of the facts, issues, claims and defenses in the Lawsuit would inevitably lead to an appeal, with the attendant costs and delay of an appeal. The settlement avoids an appeal and its costs and delay.

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

Fourth, the Settlement Agreement stops the further expenditure of Golden State's limited assets on attorney's fees and expenses associated with the Lawsuit, the anticipated trial scheduled to commence on October 21, 2013 prior to settlement, and anticipated appeal by the losing party. Trial was anticipated to take two to three weeks. The anticipated fees and expenses associated with trial and an appeal exceed \$150,000. Accordingly, absent settlement, the anticipated cost of removing, securing and selling the Murals and the attorney's fees and expenses for trial and appeal, assuming the Commissioner were in fact to prevail, exceeds \$210,000, resulting in a potential net recovery of \$490,000 or less (\$700,000 liquidation value minus at least \$210,000 in expenses)

1 which is approximately \$60,000 less than the \$550,000 Settlement Sum to be paid by CID pursuant
2 to the Settlement Agreement.

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

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

14 Accordingly, by this Application, the Commissioner requests that the Court issue the
15 following Orders:

- 16 1. An Order approving the Settlement Agreement and authorizing the Commissioner to
17 enter into the Settlement Agreement with CID; and
- 18 2. An Order authorizing the Commissioner to take any and all actions necessary to
19 accomplish the purposes of the Order requested herein.

20 II.

21 FACTUAL BACKGROUND

22 A. Orders Appointing Conservator and Liquidator of Golden State.

23 On September 30, 2009, this Court ordered and appointed the Commissioner to serve as
24 Conservator of Golden State ("Conservator"). (Order Appointing Conservator, Exhibit 2.)
25 Thereafter, on January 28, 2011, this Court terminated the Commissioner's status as Conservator
26 and ordered and appointed the Commissioner to serve as Golden State's Liquidator. (Order
27 Appointing Liquidator, Exhibit 3.) The Commissioner was appointed Liquidator because Golden
28 State was and remains insolvent in that, as of September 30, 2010, Golden State's estimated

1 liabilities of \$9,291,895 exceed its estimated remaining assets of \$5,721,154 by over \$3 million
 2 (\$5,721,154 in assets - \$9,291,895 in liabilities = \$-3,570,741). (Declaration of Scott Pearce
 3 ("Pearce Dec."), ¶¶ 6-9.)

4 The Order Appointing Liquidator, in pertinent part, directs the Commissioner (1) to
 5 liquidate and wind up the business of Golden State, (2) to "compromise or in any other manner
 6 negotiate settlements of claims against Golden State upon such terms and conditions as the
 7 Liquidator shall deem to be most advantageous to the estate of Golden State," and (3) to "sell,
 8 transfer, abandon, or otherwise dispose of or deal with, any real or personal property of Golden
 9 State at its reasonable market value, or, in cases other than acquisition, sale, or transfer on the basis
 10 of reasonable market value, upon such terms and conditions as the Liquidator may deem proper,
 11 provided the market value of the property involved does not exceed the sum of twenty thousand
 12 dollars (\$20,000)." Court approval of the Settlement Agreement is necessary because pursuant to
 13 the Order Appointing Liquidator, the Commissioner's ability to compromise, make settlements of
 14 claims against Golden State and sell or transfer Golden State's property is limited to \$20,000
 15 without Court approval. (Order Appointing Liquidator, ¶¶ 2, 7 and 8, Exhibit 3; see also Insurance
 16 Code § 1037(d).)

17 **B. The Murals.**

18 The Murals were commissioned in 1947, painted on canvas in New York and placed in
 19 Golden State's headquarters in Los Angeles in 1949. The Murals depict the contributions of
 20 African Americans to California's history. The first mural depicts the years 1527 to 1850, and the
 21 second depicts the years 1850 to 1949. The Murals are currently located in Golden State's former
 22 headquarters in Los Angeles, pursuant to a stipulation with CID pending the outcome of the
 23 Lawsuit. (Pearce Dec., ¶ 10.)

24 **C. Ownership of Golden State Building.**

25 From 1949 to May 18, 2005, Golden State owned the Building. On May 18, 2005, to raise
 26 capital, Golden State sold the Building to EN Golden State, LLC and entered into a Lease
 27 Agreement in which Golden State leased the Building for 15 years from EN Golden State, LLC. On
 28 August 31, 2006, EN Golden State, LLC sold the Building to West Adams Investment Trust.

1 Thereafter, on May 15, 2009, West Adams Investment Trust sold the Building to CID. (Pearce
2 Dec., ¶ 11.)

3
4 **D. City of Los Angeles Designates the Building as a Cultural-Historic Monument and**
5 **Includes the Murals in said Designation.**

6 On June 1, 2011, the City of Los Angeles designated the Building as a Cultural-Historic
7 Monument in the City's list of Cultural-Historic Monuments and included the Murals in the
8 designation. According to the City, the Murals are an integral part of the Building and removal of
9 the Murals from the Building would require the City's approval and compliance with the City's
10 Administrative Code. The Commissioner filed a mandate proceeding to challenge the designation,
11 which is Los Angeles Superior Court, Case No BS133562. This proceeding was stayed pending the
12 outcome of the trial over the ownership of the Murals. With approval of this settlement, the
13 Commissioner intends to dismiss the mandate proceeding. (Pearce Dec., ¶ 12.)

14 **E. 2011 Agreement to Sell the Murals to the Smithsonian Institution.**

15 On January 20, 2011, the Commissioner entered into a Sale Agreement with the
16 Smithsonian Institution to sell the Murals to the Smithsonian Institution for a total of \$750,000.
17 The Smithsonian Institution withdrew from the agreement prior to Court approval due to public
18 pressure against the removal of the Murals from the Building and CID's ownership claim. (Pearce
19 Dec., ¶ 13.)

20 **F. The Lawsuit.**

21 On June 2, 2011, pursuant to this Court's authorization, CID sued the Commissioner for
22 quiet title and declaratory relief, contending that CID owns the Murals. Thereafter, on December
23 21, 2011, the Commissioner filed a cross-complaint against CID contending that the Murals are
24 Golden State's personal property and seeking damages for breach of lease, breach of covenant of
25 good faith and fair dealing and declaratory relief. Both parties claimed attorney's fees and
26 expenses. (Pearce Dec., ¶ 14.)

27 In the Lawsuit, CID contended that the Murals are fixtures to the Building and, as such, CID
28 purchased the Murals at the time it purchased the Building in 2009. The Commissioner, on behalf

1 of Golden State, disputed CID's contention and contended that the Murals are Golden State's
2 removable personal property, are not fixtures to the Building and that CID breached the Lease
3 Agreement between CID and Golden State by not permitting the Commissioner to remove and sell
4 the Murals. CID and the Commissioner litigated the issues in the Lawsuit, took numerous
5 depositions, filed cross-motions for summary judgment which were denied (see Orders attached as
6 Exhibits 4 and 5), and prepared the Lawsuit for trial. At the time of settlement, the Commissioner
7 and CID were prepared for trial. (Pearce Dec., ¶¶ 15-17.)

8 **G. The Settlement Agreement.**

9 After over two years of litigation, the assigned trial judge, Judge William F. Fahey, ordered
10 the Commissioner and CID to participate in mediation. The parties participated in a full day and a
11 second half day of mediation before mediator Floyd J. Siegal on August 12 and September 16,
12 2013. The mediation did not result in settlement. Thereafter, on October 2, 2013, the parties
13 participated in an all day Mandatory Settlement Conference with Judge Fahey. As a result of Judge
14 Fahey's efforts, the parties reached a settlement of the Lawsuit. The Settlement Agreement is
15 attached hereto as Exhibit 1. (Pearce Dec., ¶ 18; Settlement Agreement, Exhibit 1.)

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

17 1. CID agreed to pay to Golden State the total sum of Five Hundred Fifty Thousand
18 Dollars (\$550,000) in settlement of the Lawsuit, hereinafter referred to as the "Settlement Sum."

19 2. The Commissioner and Golden State agreed to release any and all right, title and
20 interest in and to the Murals to CID.

21 3. Within thirty (30) days of October 3, 2013, the Settlement Sum is to be deposited
22 into an interest bearing blocked escrow account at First American Title Insurance Company, which
23 shall serve as the escrow agent, and proof of said deposit shall be provided to counsel for the
24 Commissioner. The terms of the escrow account are to provide that within five (5) days of CID
25 receiving notice of entry of a Court Order or Orders approving the Settlement Agreement, the
26 escrow agent shall pay the Settlement Sum to Golden State. The terms of the escrow account also
27 are to provide that the escrow is not revocable by CID unless the Court expressly declines to
28 approve the Settlement Agreement.

4. CID shall not sell or otherwise transfer ownership of the Murals separately from the Building for a period of five years and six months. Said period expires on March 31, 2019.

5. The Settlement Agreement is subject to and requires the approval of this Court, as the Court overseeing Golden State's liquidation in this matter.

6. The Parties are to bear their own costs and attorneys' fees.
(Settlement Agreement, Exhibit 1.)

III.

ARGUMENT

There is good cause for the Court to approve and authorize the Commissioner to enter into the Settlement Agreement.

A. Entry Into The Settlement Agreement Is Consistent With The Commissioner's Authority Set Forth In The Order Appointing Liquidator.

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

The Order Appointing Liquidator directs the Commissioner as Liquidator to compromise or in any other manner negotiate settlements of claims against Golden State upon such terms and conditions as the Commissioner shall deem to be in the best interest of the estate of Golden State. The Court's approval of the Settlement Agreement is necessary because pursuant to the Order Appointing Liquidator, the Commissioner's ability to compromise and pay settlements of claims against Golden State is limited to \$20,000 without Court approval. (Order Appointing Liquidator, ¶¶ 2, 7 and 8, Exhibit 3.)

1 Here, the Settlement Agreement and its terms are rational, geared toward maximizing
2 Golden State's liquidation estate value and in the best interests of Golden State's creditors because:

3 1. The Settlement Agreement and the payment to Golden State of \$550,000 represents a
4 reasonable settlement of Commissioner's and CID's claims in the Lawsuit and eliminates the
5 uncertainty of a potential judgment awarding the Murals to CID and against the Commissioner.
6 CID's complaint sought a declaration that the Murals are owned by CID and an award of attorney's
7 fees and expenses. If Judge Fahey determined that the Murals are owned by CID, then Golden State
8 would receive no money from CID and potentially would have to pay an award of attorney's fees
9 and expenses to CID previously estimated by CID to exceed \$400,000. If on the other hand Judge
10 Fahey determined that the Murals are owned by Golden State, then the Commissioner would need
11 to incur the cost of removing, storing and insuring the Murals at an estimated cost of at least
12 \$35,000 and then selling the Murals at an estimated administrative cost (including a commission or
13 sales fee) of at least \$25,000, for a combined cost of at least \$60,000. The Murals' combined
14 estimated liquidation value in accordance with the estate's most recent appraisal is \$700,000
15 (\$350,000 per Mural). (Pearce Dec., ¶¶ 19-20.)

16 2. The majority of the issues in the Lawsuit were framed for trial by Judge Gregory
17 Alarcon, the Lawsuit's former trial judge before re-assignment, in his Orders denying the Parties'
18 cross-motions for summary judgment. (Exhibits 4 and 5.) Based on Judge Alarcon's
19 determinations in the Orders, the Commissioner believes that resolutions at trial of the facts, issues,
20 claims and defenses in the Lawsuit would inevitably lead to an appeal, with the attendant costs and
21 delay of an appeal. The settlement avoids an appeal and its costs and delay. (Pearce Dec., ¶¶ 19,
22 21.)

23 3. Due to the passage of time, the recollection and availability of witnesses, there are
24 evidentiary issues regarding proof of certain facts and issues. Neither side is assured of victory at
25 trial.

26 4. The Settlement Agreement stops the further expenditure of Golden State's limited
27 assets on attorney's fees and expenses associated with the Lawsuit, the anticipated trial scheduled to
28 commence on October 21, 2013 prior to settlement, and anticipated appeal by the losing party.

1 Trial was anticipated to take two to three weeks. The anticipated fees and expenses associated with
 2 trial and an appeal exceed \$150,000. Accordingly, absent settlement, the anticipated cost of
 3 removing, securing and selling the Murals and the attorney's fees and expenses for trial and appeal,
 4 assuming the Commissioner were in fact to prevail, exceeds \$210,000, resulting in a potential net
 5 recovery of \$490,000 or less (\$700,000 liquidation value minus at least \$210,000 in expenses)
 6 which is approximately \$60,000 less than the \$550,000 Settlement Sum to be paid by CID pursuant
 7 to the Settlement Agreement. (Pearce Dec., ¶¶ 19, 22.)

8 5. The Settlement Agreement is consistent with the Commissioner's authority under the
 9 Insurance Code and California case law, which grants the Commissioner broad powers to settle
 10 claims against Golden State. Insurance Code § 1037 and the Court's Order Appointing Liquidator
 11 provide that the Commissioner as Golden State's liquidator shall have the authority to "compromise
 12 or in any other manner negotiate settlements of claims against" Golden State "upon such terms and
 13 conditions as the commissioner shall deem to be most advantageous to the estate of the person
 14 being administered or liquidated." (Pearce Dec., ¶¶ 19, 23.)

15 In sum, the Commissioner's settlement of the Lawsuit for \$550,000 and an agreement that
 16 the Murals will not be removed from the Building for at least 5½ years is reasonable, rational,
 17 geared toward maximizing Golden State's liquidation estate value, and are in the best interests of
 18 Golden State's creditors. (Pearce Dec., ¶¶ 19-24.)

19 **B. The Settlement Agreement Is Consistent With The Commissioner's Authority Under**
 20 **The Insurance Code, Which Grants Broad Powers To The Commissioner As**
 21 **Liquidator Of Insolvent Insurance Companies.**

22 Insurance Code § 1037, entitled "Powers of commissioner as conservator or liquidator,"
 23 provides broad powers to the Insurance Commissioner as conservator and liquidator of insurance
 24 companies and authorizes the Liquidator to sell and dispose of Golden State's property. Section
 25 1037 states in pertinent part:

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

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

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

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

C. Similarly, Case Law Supports The Broad Powers Granted To The Liquidator.

California case law supports the broad grant of powers accorded the Commissioner when he is conserving, rehabilitating, and/or liquidating insurance companies. For instance, in *In Re Executive Life Insurance Company* (1995) 32 Cal.App.4th 344, the court considered the standards to be applied to a proposed settlement of a dispute by the Commissioner as Liquidator. the Court of Appeal noted that:

The Commissioner is an officer of the state (*Caminetti v. Pac. Mutual L. Ins. Co.* (1943) 22 Cal.2d 344, 354 [139 P.2d 908]) who, when he or she is a conservator, exercises the state's police power to carry forward 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].)

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

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

discriminatory. (*Carpenter v. Pacific Mut. Life Ins. Co.*, *supra*, 10 Cal.2d at p. 329.)
 The Commissioner as conservator of the insolvent insurer is also a trustee for the
 benefit of all creditors and other persons interested in the insolvency estate.
 ([Insurance Code] § 1057.)

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

The Court concluded that:

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

(*In Re Executive Life*, *supra*, at p. 358.). The Court of Appeal in *Executive Life* held that California
 Insurance Code Section 1037(c) provides the Insurance Commissioner as Liquidator with the
 authority to settle claims, subject to court review only on an abuse of discretion standard. As set
 forth above, this abuse of discretion standard requires the Commissioner to observe any statutory
 limitations and is subject to requirement that the decision to settle be neither arbitrary nor
 discriminatory.

In this case, the Commissioner contended that the Murals are the property of Golden State.
 The Lawsuit, however, will require a trial on the merits and a possible appeal. The offered
 settlement provides for a substantial payment to Golden State. The issues framed by the summary
 judgment Orders indicate that the trial court in the Lawsuit saw the dispute as a palpable dispute
 requiring trial. Under these circumstances, a settlement is not an abuse of discretion, but is a wise
 selection among difficult alternative choices. The proposed settlement should be approved.

The Court's review of the actions of the Commissioner as Liquidator is limited to a review
 to determine if the proposed action is "arbitrary, i.e., unsupported by a rational basis, contrary to
 specific statute, or discriminatory." (*Low v. Golden Eagle Ins. Co.* (.2003) 110 Cal.App.4th 1532,
 1544.) The proposed settlement in this matter is in accordance with the Commissioner's statutory
 authority, is not arbitrary and is non-discriminatory. The Commissioner thus respectfully requests
 approval of the Application.

IV.

NOTICE OF THIS APPLICATION

The Liquidator has provided written notice of this application to all persons and entities known to him that may have a substantial, unsatisfied claim that may be affected by this application and any Court Orders pertaining thereto, regardless of whether the persons or entities are a party to this action or have appeared in it, in compliance with California Rules of Court Rule 3.1184(c). Said persons and entities include the Pension Benefit Guaranty Corporation, National Organization of Life and Health Insurance Guaranty Associations, Certificate of Contribution holders, and additional persons and entities listed on the Service List attached at the end of the Notice for this Application. (Weiss Dec., ¶ 3; and Proof of Service at end of the Notice to this Application.)

V.

CONCLUSION

For the foregoing reasons, there is good cause for the Court to grant this Application and authorize the Commissioner to enter into the Settlement Agreement with CID. Accordingly, the Commissioner requests that the Court grant this Application and issue the following orders:

1. An Order approving the Settlement Agreement and authorizing the Commissioner to enter into the Settlement Agreement with CID pursuant to the terms of the Settlement Agreement by and between the Commissioner and CID; and
2. An Order authorizing the Commissioner to take any and all actions necessary to accomplish the purposes of the Order requested herein.

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1 DATE: October 28, 2013

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

6 EPSTEIN TURNER WEISS
A Professional Corporation

8 By: 
9 MICHAEL R. WEISS
Attorneys for Applicant
10 INSURANCE COMMISSIONER OF THE
11 STATE OF CALIFORNIA

DECLARATION OF SCOTT PEARCE

DECLARATION OF SCOTT PEARCE

IN SUPPORT OF COMMISSIONER'S APPLICATION TO APPROVE SETTLEMENT

AGREEMENT REGARDING MURAL OWNERSHIP LAWSUIT

I, Scott Pearce, declare as follows:

1. I have personal knowledge of the facts and circumstances set forth in this declaration, and if called upon to do so, I could and would competently testify thereto, except for those facts and circumstances set forth on information and belief.

2. I am the Senior Estate Trust Officer for the Insurance Commissioner's Conservation & Liquidation Office. Starting on September 30, 2009, and continuing to the present, I have been and currently am the Estate Trust Officer on behalf of the Insurance Commissioner in his Statutory Capacity as Conservator ("Conservator") and then as Liquidator ("Liquidator") of Golden State Mutual Life Insurance Company ("Golden State").

3. As the Senior Estate Trust Officer on behalf of the Conservator and now Liquidator of Golden State, I am responsible for the supervision and management of matters pertaining to the conservation and liquidation of Golden State including the matter entitled *Community Impact Development II, LLC v. Insurance Commissioner of the State of California as Liquidator for Golden State Mutual Life Insurance Company*, Los Angeles Superior Court Case No. BC462745 (the "Lawsuit"). I have closely supervised and managed the Lawsuit from its commencement through the present.

4. I have read and reviewed this Application and the memorandum and exhibits attached hereto.

5. Based on my supervision and management of the Lawsuit, all matters pertaining to Golden State, my experience, review and understanding of the events related to the conservation and now liquidation of Golden State, my and my staff's review of the files and records routinely maintained in the regular and ordinary course of business and believed to be entered contemporaneously by persons having knowledge of the events recorded and whose job duties include recording them, and my review of this Application and its supporting papers and documents, I state the following:

Orders Appointing Conservator and Liquidator of Golden State.

6. Attached hereto and incorporated herein as Exhibit "1" is a true and correct copy of the Settlement Agreement, executed by David E. Wilson on behalf of the Insurance Commissioner of the State of California in his official statutory capacity as Liquidator for Golden State Mutual Life Insurance Company ("Commissioner") and Community Impact Development II, LLC ("CID").

7. Attached hereto and incorporated herein as Exhibit "2" is a true and correct copy of the Order Appointing Conservator and Restraining Order dated September 30, 2009 ("Order Appointing Conservator").

8. Attached hereto and incorporated herein as Exhibit "3" is a true and correct copy of the Order of Liquidation and Orders and Injunctions in Aid of Liquidation For Golden State Mutual Life Insurance Company dated January 28, 2011 ("Order Appointing Liquidator").

9. The Commissioner was appointed Golden State's Liquidator because Golden State was and remains insolvent in that, as of September 30, 2010, Golden State's estimated liabilities of \$9,291,895 exceed its estimated remaining assets of \$5,721,154 by over \$3 million (\$5,721,154 in assets - \$9,291,895 in liabilities = -\$3,570,741).

The Murals.

10. On information and belief, the Murals were commissioned in 1947, painted on canvas in New York and placed in Golden State's headquarters in Los Angeles in 1949. The Murals depict the contributions of African Americans to California's history. The first mural depicts the years 1527 to 1850, and the second depicts the years 1850 to 1949. The Murals are currently located in Golden State's former headquarters in Los Angeles, pursuant to a stipulation with CID pending the outcome of the Lawsuit.

Ownership of Golden State Building.

11. On information and belief, from 1949 to May 18, 2005, Golden State owned the Building in which the Murals are located. On May 18, 2005, to raise capital, Golden State sold the Building to EN Golden State, LLC and entered into a Lease Agreement in which Golden State leased the Building for 15 years from EN Golden State, LLC. On August 31, 2006, EN Golden

1 State, LLC sold the Building to West Adams Investment Trust. Thereafter, on May 15, 2009, West
2 Adams Investment Trust sold the Building to CID.

3 **City of Los Angeles Designates the Building as a Cultural-Historic Monument and**
4 **Includes the Murals in said Designation.**

5 12. On June 1, 2011, the City of Los Angeles designated the Building as a Cultural-
6 Historic Monument in the City's list of Cultural-Historic Monuments and included the Murals in the
7 designation. According to the City, the Murals are an integral part of the Building and removal of
8 the Murals from the Building would require the City's approval and compliance with the City's
9 Administrative Code. The Commissioner filed a mandate proceeding to challenge the designation,
10 which is Los Angeles Superior Court, Case No BS133562. This proceeding was stayed pending the
11 outcome of the trial over the ownership of the Murals.

12 **2011 Agreement to Sell the Murals to the Smithsonian Institution.**

13 13. On January 20, 2011, the Commissioner entered into a Sale Agreement with the
14 Smithsonian Institution to sell the Murals to the Smithsonian Institution for a total of \$750,000.
15 The Smithsonian Institution withdrew from the agreement prior to Court approval due to public
16 pressure against the removal of the Murals from the Building and CID's ownership claim.

17 **The Lawsuit.**

18 14. On June 2, 2011, pursuant to Court authorization, CID sued the Commissioner for
19 quiet title and declaratory relief, contending that CID owns the Murals. Thereafter, on December
20 21, 2011, the Commissioner filed a cross-complaint against CID contending that the Murals are
21 Golden State's personal property and seeking damages for breach of lease, breach of covenant of
22 good faith and fair dealing and declaratory relief. Both parties claimed attorney's fees and
23 expenses.

24 15. In the Lawsuit, CID contended that the Murals are fixtures to the Building and, as
25 such, CID purchased the Murals at the time it purchased the Building in 2009. The Commissioner,
26 on behalf of Golden State, disputed CID's contention and contended that the Murals are Golden
27 State's removable personal property, are not fixtures to the Building and that CID breached the
28 Lease Agreement between CID and Golden State by not permitting the Commissioner to remove

1 and sell the Murals. CID and the Commissioner litigated the issues in the Lawsuit, took numerous
2 depositions, filed cross-motions for summary judgment which were denied, and prepared the
3 Lawsuit for trial. At the time of settlement, the Commissioner and CID were prepared for trial.

4 16. Attached hereto and incorporated herein as Exhibit "4" is a true and correct copy of
5 the Order Denying Plaintiff's Motion For Summary Judgment dated October 9, 2012, concerning
6 the summary judgment motion filed by CID in this matter.

7 17. Attached hereto and incorporated herein as Exhibit "5" is a true and correct copy of
8 the Order Denying Motion For Summary Judgment dated November 7, 2012, concerning the
9 summary judgment motion filed by the Commissioner in this matter.

10 **The Settlement Agreement.**

11 18. After over two years of litigation, the assigned trial judge, the Hon. William F.
12 Fahey, ordered the Commissioner and CID to participate in mediation. The parties participated in a
13 full day and a second half day of mediation before mediator Floyd J. Siegal on August 12 and
14 September 16, 2013. The mediation did not result in settlement. Thereafter, on October 2, 2013,
15 the parties participated in an all day Mandatory Settlement Conference with Judge Fahey. As a
16 result of Judge Fahey's efforts, the parties reached a settlement of the Lawsuit. The Settlement
17 Agreement is attached hereto as Exhibit 1.

18 19. The Settlement Agreement and its terms are rational, geared toward maximizing
19 Golden State's liquidation estate value and in the best interests of Golden State's creditors for the
20 following reasons.

21 20. The Settlement Agreement and the payment to Golden State of \$550,000 represents a
22 reasonable settlement of the Commissioner's and CID's claims in the Lawsuit and eliminates the
23 uncertainty of a potential judgment awarding the Murals to CID and against the Commissioner.
24 CID's complaint sought a declaration that the Murals are owned by CID and an award of attorney's
25 fees and expenses. If Judge Fahey determined that the Murals are owned by CID, then Golden State
26 would receive no money from CID and potentially would have to pay an award of attorney's fees
27 and expenses to CID previously estimated by CID to exceed \$400,000. If on the other hand Judge
28 Fahey determined that the Murals are owned by Golden State, then the Commissioner would need

1 to incur the cost of removing, storing and insuring the Murals at an estimated cost of at least
2 \$35,000 and then selling the Murals at an estimated administrative cost (including a commission or
3 sales fee) of at least \$25,000, for a combined cost of at least \$60,000. The Murals' combined
4 estimated liquidation value in accordance with the estate's most recent appraisal is \$700,000
5 (\$350,000 per Mural).

6 21. The majority of the issues in the Lawsuit were framed for trial by Judge Gregory
7 Alarcon, the Lawsuit's former trial judge before re-assignment, in his Orders denying the Parties'
8 cross-motions for summary judgment. True and correct copies of the two Orders are attached
9 hereto as Exhibits 4 and 5. Based on Judge Alarcon's determinations in the Orders, the
10 Commissioner believes that resolutions at trial of the facts, issues, claims and defenses in the
11 Lawsuit would inevitably lead to an appeal, with the attendant costs and delay of an appeal. The
12 settlement avoids an appeal and its costs and delay.

13 22. The Settlement Agreement stops the further expenditure of Golden State's limited
14 assets on attorney's fees and expenses associated with the Lawsuit, the anticipated trial scheduled to
15 commence on October 21, 2013 prior to settlement, and anticipated appeal by the losing party.
16 Trial was anticipated to take two to three weeks. The anticipated fees and expenses associated with
17 trial and an appeal exceed \$150,000. In addition, the mandate proceeding will be dismissed.
18 Accordingly, absent settlement, the anticipated cost of removing, securing and selling the Murals
19 and the attorney's fees and expenses for trial and appeal, assuming the Commissioner were in fact
20 to prevail, exceeds \$210,000, resulting in a potential net recovery of \$490,000 or less (\$700,000
21 liquidation value minus at least \$210,000 in expenses) which is approximately \$60,000 less than the
22 \$550,000 Settlement Sum to be paid by CID pursuant to the Settlement Agreement.

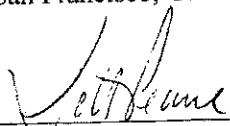
23 23. The Settlement Agreement is consistent with the Commissioner's authority under the
24 Insurance Code and California case law, which grants the Commissioner broad powers to settle
25 claims against Golden State. Insurance Code § 1037 and the Court's Order Appointing Liquidator
26 provide that the Commissioner as Golden State's liquidator shall have the authority to "compromise
27 or in any other manner negotiate settlements of claims against" Golden State "upon such terms and
28

1 conditions as the commissioner shall deem to be most advantageous to the estate of the person
2 being administered or liquidated.”

3 24. In sum, the Commissioner’s settlement of the Lawsuit for \$550,000 and an
4 agreement that the Murals will not be removed from the Building for at least 5½ years is reasonable,
5 rational, geared toward maximizing Golden State’s liquidation estate value, and are in the best
6 interests of Golden State’s creditors.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing
8 is true and correct.

9 Executed on this 20 day of October, 2013, at San Francisco, California.

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12 SCOTT PEARCE
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DECLARATION OF MICHAEL WEISS

DECLARATION OF MICHAEL R. WEISS
IN SUPPORT OF COMMISSIONER'S APPLICATION TO APPROVE SETTLEMENT
AGREEMENT REGARDING MURAL OWNERSHIP LAWSUIT

I, Michael R. Weiss, declare as follows:

1. I am over 18 years of age and have personal knowledge of the facts and circumstances set forth in this declaration, and if called upon to do so, I could and would competently testify thereto.

2. I am an attorney licensed to practice law in the State of California, and am a partner with the law firm Epstein Turner Weiss, A Professional Corporation. I and Epstein, Turner Weiss have been retained by the Insurance Commissioner of the State of California in his capacity as Conservator and then as Liquidator of Golden State Mutual Life Insurance Company ("Golden State") to provide legal services concerning Golden State. I make this declaration in support of the Commissioner's Application To Approve Settlement Agreement Regarding Mural Ownership Lawsuit ("Application").

3. I and my staff provided written notice of this Application and the hearing date on the Application, by mailing a copy of the Application and supporting documents, to all persons and entities known to me, the Commissioner and the Commissioner's staff that may have a substantial, unsatisfied claim that may be affected by the Application and any Court Orders pertaining to the Application, regardless of whether the persons or entities are a party to this action or have appeared in it, in compliance with California Rules of Court Rule 3.1184(c). Said persons and entities include the Pension Benefit Guaranty Corporation, National Organization of Life and Health Insurance Guaranty Associations, Certificate of Contribution holders, and additional persons and entities listed on the Service List attached at the end of the Notice for this Application.

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct.

3 Executed on this 28th day of October, 2013, at Los Angeles, California.

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6 MICHAEL R. WEISS
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EXHIBIT 1

**GENERAL RELEASE
AND SETTLEMENT AGREEMENT**

1. PARTIES

The parties to this General Release and Settlement Agreement ("Agreement") are Plaintiff and Cross-Defendant Community Impact Development II, LLC ("CID"), represented by Jesse S. Hernandez of the law offices of ANDERSON, McPHARLIN & CONNERS LLP, on the one hand, and Defendant and Cross-Complainant Insurance Commissioner of the State of California in his official statutory capacity as Liquidator for Golden State Mutual Life Insurance Company ("Commissioner"), represented by Lisa W. Chao, Deputy Attorney General and Michael R. Weiss of Epstein Turner Weiss, A Professional Corporation, on the other hand.

2. RECITALS

2.1 The two murals which are the subject of this Agreement are identified as (1) "*The Negro in California History: Exploration and Colonization*" by Charles Alston and (2) "*The Negro in California History: Settlement & Development*" by Hale Woodruff (collectively, "Murals").

2.2 The real property which is the subject of this Agreement is the Golden State Mutual Life Insurance Company Building located at 1999 West Adams Boulevard in Los Angeles, California ("Property").

2.3 On May 15, 2009, CID purchased the Property.

2.4 At that time CID purchased the Property, Golden State Mutual Life Insurance Company ("Golden State") was a tenant at the Property pursuant to a Lease Agreement.

2.5 On September 30, 2009, the Los Angeles Superior Court ordered and appointed the Commissioner to serve as Conservator for Golden State in the action entitled *Insurance Commissioner of the State of California v. Golden State Mutual Life Insurance Company* (LASC Case No. BS123005).

2.6 On January 28, 2011, the Los Angeles Superior Court terminated the Commissioner's status as Conservator and ordered and appointed the Commissioner to serve as Golden State's Liquidator.

2.7 On June 2, 2011, CID filed a Complaint in the Los Angeles Superior Court, Case No. BC462745, for (1) Quiet Title and (2) Declaratory Relief seeking a judgment affirming ownership of the Murals to CID.

2.8 On December 21, 2011, the Commissioner filed a First Amended Cross-Complaint against CID for (1) Breach of Lease, (2) Breach of Covenant of Good Faith and Fair Dealing, and (3) Declaratory Relief.

2.9 The Complaint and First Amended Cross-Complaint are referenced herein as the "Lawsuit."

General Release and Settlement Agreement

RE COMMUNITY IMPACT DEVELOPMENT II, LLC V. INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA, AS LIQUIDATOR FOR GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY

2.10 In the Lawsuit, CID contends that it purchased the Murals with the Property at the time it purchased the Property. The Commissioner, on behalf of Golden State, disputes CID's contention and contends that CID breached the Lease Agreement between CID and Golden State.

NOW, THEREFORE, in consideration of the foregoing and the promises and covenants recited herein, and to settle this Lawsuit and resolve all disputes between the Parties, the Parties hereto and each of them agree as follows:

3. AGREEMENT BETWEEN THE PARTIES

3.1 CID shall pay to Golden State the total sum of Five Hundred Fifty Thousand Dollars (\$550,000), hereinafter referred to as the "Settlement Sum."

3.2 Within thirty (30) days from October 3, 2013, the Settlement Sum shall be deposited into an interest bearing blocked escrow account at First American Title Insurance Company, which shall serve as the escrow agent, and proof of said deposit shall be provided to counsel for the Commissioner.

3.3 The terms of the escrow account shall provide that within five (5) days of CID receiving notice of entry of a Court Order or Orders approving this Agreement as described in Sections 3.6 and 3.7 below, the escrow agent shall pay the Settlement Sum to Golden State. The terms of the escrow account shall further provide that it is not revocable by CID unless the Liquidation Court shall issue an order which declines to approve this Agreement (see Section 3.6).

3.4 CID shall not sell or otherwise transfer ownership of the Murals separately from the Property for a period of five years and six months. Said period expires on March 31, 2019.

3.5 Notwithstanding Section 3.4 above, the Parties agree that the Murals may be removed from the Property during CID's anticipated renovation of the Golden State Mutual Life Insurance Company Building and that CID may publicly display and/or exhibit the Murals in a location such as a museum, university and/or exhibition facility prior to reinstalling the Murals in said building.

3.6 Liquidation Court Approval. This Agreement and all related agreements concerning the transactions contemplated by this Agreement are subject to and require the approval of the Los Angeles Superior Court handling the action entitled *Insurance Commissioner of the State of California v. Golden State Mutual Life Insurance Company* (LASC Case No. BS123005) ("Liquidation Court") and an Order or Orders approving the Agreement shall be entered with the Liquidation Court and be final. The Order or Orders shall contain language satisfactory to the Commissioner that (1) the transactions are authorized; (2) the transactions, when contemplated, shall be enforceable; (3) the transactions are fair to the policyholders and creditors of Golden State; and (4) the form of this Agreement and all related agreements concerning the transactions contemplated by the Agreement are approved. This Agreement and any related agreements shall be null and void without said Order or Orders entered by the Liquidation Court approving said agreements. In the event the Agreement is null and void, the

General Release and Settlement Agreement

RE COMMUNITY IMPACT DEVELOPMENT II, LLC V. INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA, AS LIQUIDATOR FOR GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY

Parties shall promptly apply to the Los Angeles Superior Court handling the Lawsuit to request the scheduling of a prompt trial date for the Lawsuit.

3.7 The Commissioner's counsel shall promptly file and serve an application with the Liquidation Court seeking approval of the Agreement ("Application"). If objections to the Application are filed, then notwithstanding Section 3.3 above, the payment of the Settlement Sum shall be paid to Golden State within five (5) days after the Order or Orders approving this Agreement become final, which is either on the 61st day after entry of the Order or Orders approving the Agreement if no appeal is filed or upon entry of a Remittitur if an appeal is filed.

3.8 For and in consideration of the timely and full performance and satisfaction of the conditions set forth in Section 3, including the receipt by Golden State of the Settlement Sum and approval of this Agreement by the Los Angeles Superior Court, the Commissioner and Golden State, by and through the Commissioner as Liquidator of Golden State, shall and hereby do release any and all right, title and interest to CID in and to the Murals.

3.9 The Parties shall bear their own costs and attorneys' fees.

4. DISMISSAL AND RELEASE BETWEEN THE PARTIES

4.1 For and in consideration of the timely and full performance and satisfaction of the conditions set forth in Section 3, including the receipt by Golden State of the Settlement Sum and approval of this Agreement by the Los Angeles Superior Court, the Parties shall dismiss with prejudice the Lawsuit and the Complaint and Cross-Complaint filed therein.

4.2 For and in consideration of the timely and full performance and satisfaction of the conditions set forth in Section 3, including the receipt by Golden State of the Settlement Sum and approval of this Agreement by the Los Angeles Superior Court, the Parties shall and hereby do release and forever discharge each other, and each of their associates, owners, stock-holders, predecessors, successors, heirs, spouses, executors, conservators, liquidators, administrators, deputies, consultants, assigns, agents, insurers, directors, officers, partners, joint venturers, attorneys, and all persons acting by, through, under, or in concert with them, or any of them, from any and all claims, demands, actions, causes of action, obligations, liabilities, indebtedness, breaches of contract, breaches of duty, suits, liens, lawsuits, costs, or expenses of any nature whatsoever, known or unknown, fixed or contingent (except any agreements or claims arising directly from this Agreement), arising out of, based upon, or relating to the Lawsuit and/or the matters relating thereto or referenced in the Recitals herein.

4.3 Each Party does hereby covenant and agree that it will pursue no claim or cause of action against the other Party hereto, its successors, assigns, agents, insurers, employees, attorneys, or any of them, collectively or individually, for any type of relief that in any fashion involves or arises from the Lawsuit and/or the matters relating thereto or referenced in the Recitals herein, including prosecution thereof.

4.4 Except as set forth in Section 3, each of the Parties hereto represents and warrants to the other that each has full power, capacity, and authority to enter into this Agreement, and that none of them has sold, assigned, or in any manner transferred any claims which any of them

General Release and Settlement Agreement

RE COMMUNITY IMPACT DEVELOPMENT II, LLC V. INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA, AS LIQUIDATOR FOR GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY

ever had against the other to any third party, and that no other releases or settlements are necessary from any other person or entity to release and discharge completely the other Parties from the claims specified above.

4.5 Except as set forth in Section 3, it is the intention of the Parties in executing this Agreement that it shall be effective as a bar to each and every claim, demand, and cause of action above specified, and in furtherance of this intention, the Parties expressly waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the Civil Code or by any similar provision of any other state, federal, or local statute, code, ordinance, or law. The Parties hereto expressly consent that the releases contained in this Agreement shall be given full force and effect according to the provisions of this Agreement, including those releases and provisions relating to unknown and unsuspected claims, demands, and causes of action of the Parties to this Agreement. Section 1542 of the Civil Code, which is hereby waived, reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, must have materially affected his or her settlement with the debtor.

4.6 As further consideration for the entry into this Agreement, the Parties, and each of them, warrant and represent that neither they, nor any corporation or entity in which they are an owner, which is controlled by them, or in which they have an interest, intends to assert any claim or file any lawsuit against any other Party to this Agreement.

4.7 Each Party acknowledges that it is aware of Section 664.6 of the Code of Civil Procedure of the State of California which provides:

If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

Each Party agrees that Section 664.6 of the Code of Civil Procedure of the State of California shall apply to this Agreement, and the Court handling the Lawsuit shall retain jurisdiction.

5. CID'S OWNERSHIP OF THE MURALS

5.1 CID's ownership of the Murals is and shall be on an As Is, Where Is, basis. The Commissioner and Golden State expressly disclaim any and all express and implied warranties concerning the Murals, including but not limited to the implied warranty of merchantability, the implied warranty of fitness for purpose, any warranties as to the authenticity of the Murals or any other implied or express warranties of any kind or nature.

General Release and Settlement Agreement

RE COMMUNITY IMPACT DEVELOPMENT II, LLC V. INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA, AS LIQUIDATOR FOR GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY

5.2 No promises have been made by the Commissioner or by Golden State about the Murals, other than the promises set forth in this Agreement. CID assumes the duty to investigate the Murals to determine their characteristics, value, and authenticity, as the Commissioner makes no representations about the Murals of any kind or nature. CID waives any right to make any claim against the Commissioner based upon the Murals, including but not limited to their condition, characteristics, defects or authenticity.

5.3 This Agreement is the entire agreement of the Parties, which is intended by the Parties to be an integrated and final expression of their intention. In the event of any unintended ambiguity in the Agreement, this Agreement shall be read to require court approval of an AS IS transaction of the Commissioner's and Golden State's interest in the Murals, and to impose no duties upon the Commissioner or Golden State other than those set forth expressly in this Agreement.

6. EXECUTION NOT AN ADMISSION

By entering into this Agreement, no Party hereto admits that the claims of the other were or are valid or meritorious. Each Party hereto has in the past denied and continues to deny the claims, assertions, allegations, and contentions of the others, and this Agreement and the underlying Settlement are strictly for the purpose of compromising disputes.

7. ADVICE OF COUNSEL

Each Party represents and warrants that, in agreeing to the terms of this Agreement, it has read the document, has had the document explained by counsel of its choice, is aware of the content and legal effect of the document, and is acting on the advice of counsel of its choice and not in reliance on any representation of the other Parties to the Agreement, except as expressly set forth herein.

8. ADDITIONAL PROVISIONS

8.1 This Agreement shall be governed by California law. The Parties hereby consent to the exclusive summary jurisdiction of the Liquidation Court to resolve any and all disputes as among the Parties which arise out of, or relate directly or indirectly, to the Agreement or the transactions contemplated hereby. In the event the Liquidation Court is not available, the Parties hereby consent to the exclusive jurisdiction of the Los Angeles Superior Court to resolve any and all disputes as among them which arise out of, or relate directly or indirectly, to the Agreement or the transactions contemplated hereby. The Parties agree that service of process shall be effective if sent by certified or registered mail, return receipt requested, with signature required. The Parties intend to grant the broadest possible exclusive jurisdiction to the Liquidation Court. Notwithstanding the foregoing, any judgment may be enforced using the assistance of such courts as may be available to aid in the enforcement of judgments.

8.2 The Parties agree that they will, from time to time, upon the request of any other Party and without further consideration, execute, acknowledge and deliver in proper form any further instruments and take such other action as another Party may reasonably require in order to carry out effectively the purposes of this Agreement. Each of the Parties hereto agrees to

General Release and Settlement Agreement

RE COMMUNITY IMPACT DEVELOPMENT II, LLC V. INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA, AS LIQUIDATOR FOR GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY

execute and deliver to each of the other Parties hereto all additional documents, instruments, and agreements, and to take such additional action as is reasonably required to implement the terms and conditions of this Agreement.

8.3 The Parties agree that the rights and obligations arising out of the Agreement, and each of its terms, shall be assignable and delegable, respectively, and shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Parties, and each of them.

8.4 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which counterparts when taken together shall constitute but one and the same instrument.

8.5 Nothing in this Agreement is intended or shall be construed to give any person, other than the Parties, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

8.6 This Agreement and all other agreements contemplated hereby and thereby collectively constitute the entire agreement among the Parties with respect to the transactions contemplated hereby and supersede any prior agreements, term sheets, understandings, negotiations and discussions, whether oral or written, of the Parties.

8.7 The recitals to this Agreement are hereby incorporated by reference into this Agreement as if they were set forth at length in the text of this Agreement.

8.8 Except as expressly stated herein, nothing stated in this Agreement shall be deemed to limit, expand, enlarge, or otherwise modify the Commissioner's statutory obligations, or to expand or enlarge any person's interest in or to the assets of Golden State, or to waive any defenses which any Party may now have or in the future have.

8.9 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be declared invalid or unenforceable by the Liquidation Court or other court of competent jurisdiction, the remainder of this Agreement or the application of such terms or provisions to persons or circumstances other than those as to which it has held invalid or unenforceable, shall remain in full force and effect.

8.10 This Agreement shall be construed in accordance with its express terms and not its implied terms. Captions, paragraph and section headings appearing in this Agreement shall be used only for convenience in identifying the material terms and provisions of the Agreement and shall not be construed to express any other intent. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender as the context require.

8.11 This Agreement has been structured, approved and jointly drafted by all the Parties hereto and, for purposes of interpreting its terms, shall not be construed against any Party as the principal draftsman hereof.

General Release and Settlement Agreement

RE COMMUNITY IMPACT DEVELOPMENT II, LLC V. INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA, AS LIQUIDATOR FOR GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY

8.12 This Agreement may be amended, superseded, canceled, renewed or extended, and the terms hereof may be waived, only by a written instrument signed by each of the Parties or, in the case of a waiver, by the Party waiving compliance. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof. Nor shall any waiver on the part of any Party of any right, power, remedy or privilege, nor any single or partial exercise of any such right, power, remedy or privilege, preclude any further exercise thereof or the exercise of any other such right, remedy, power or privilege. The rights and remedies herein provided are cumulative. Such rights and remedies are not exclusive of any rights or remedies that any Party may otherwise have at law or in equity, unless, and then only to the extent that, any such rights or remedies have been expressly limited under the Agreement.

8.13 The Commissioner is a Party to this Agreement only in his representative capacity as Liquidator of Golden State, and not individually, and the Parties hereto agree and acknowledge that the Commissioner and any Special Deputy Insurance Commissioner executing this Agreement shall not have any personal liability for any matters or obligations hereunder.

DATED: _____

COMMUNITY IMPACT DEVELOPMENT II, LLC
BY FRIENDS OF SCLARC, MANAGING MEMBER OF
COMMUNITY IMPACT DEVELOPMENT II, LLC

By: _____

Its: _____

DATED: _____

DEFENDANT AND CROSS-COMPLAINANT
INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA IN HIS OFFICIAL
STATUTORY CAPACITY AS LIQUIDATOR
FOR GOLDEN STATE MUTUAL LIFE
INSURANCE COMPANY

By: _____

Its: _____

General Release and Settlement Agreement

RE COMMUNITY IMPACT DEVELOPMENT II, LLC V. INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA, AS LIQUIDATOR FOR GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY

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8.13 The Commissioner is a Party to this Agreement only in his representative capacity as Liquidator of Golden State, and not individually, and the Parties hereto agree and acknowledge that the Commissioner and any Special Deputy Insurance Commissioner executing this Agreement shall not have any personal liability for any matters or obligations hereunder.

DATED: _____

10/24/13

COMMUNITY IMPACT DEVELOPMENT II, LLC
BY FRIENDS OF SCLARC, MANAGING MEMBER OF
COMMUNITY IMPACT DEVELOPMENT II, LLC

By: _____

Its: _____

Malcolm Bennett
President

DATED: _____

DEFENDANT AND CROSS-COMPLAINANT
INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA IN HIS OFFICIAL
STATUTORY CAPACITY AS LIQUIDATOR
FOR GOLDEN STATE MUTUAL LIFE
INSURANCE COMPANY

By: _____

Its: _____

General Release and Settlement Agreement
RE COMMUNITY IMPACT DEVELOPMENT II, LLC V. INSURANCE COMMISSIONER OF THE STATE OF
CALIFORNIA, AS LIQUIDATOR FOR GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY

8.12 This Agreement may be amended, superseded, canceled, renewed or extended, and the terms hereof may be waived, only by a written instrument signed by each of the Parties or, in the case of a waiver, by the Party waiving compliance. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof. Nor shall any waiver on the part of any Party of any right, power, remedy or privilege, nor any single or partial exercise of any such right, power, remedy or privilege, preclude any further exercise thereof or the exercise of any other such right, remedy, power or privilege. The rights and remedies herein provided are cumulative. Such rights and remedies are not exclusive of any rights or remedies that any Party may otherwise have at law or in equity, unless, and then only to the extent that, any such rights or remedies have been expressly limited under the Agreement.

8.13 The Commissioner is a Party to this Agreement only in his representative capacity as Liquidator of Golden State, and not individually, and the Parties hereto agree and acknowledge that the Commissioner and any Special Deputy Insurance Commissioner executing this Agreement shall not have any personal liability for any matters or obligations hereunder.

DATED: _____

COMMUNITY IMPACT DEVELOPMENT II, LLC
BY FRIENDS OF SCLARC, MANAGING MEMBER OF
COMMUNITY IMPACT DEVELOPMENT II, LLC

By: _____

Its: _____

DATED: 10/28/2013

DEFENDANT AND CROSS-COMPLAINANT
INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA IN HIS OFFICIAL
STATUTORY CAPACITY AS LIQUIDATOR
FOR GOLDEN STATE MUTUAL LIFE
INSURANCE COMPANY

David E. Wilson

By: David E. Wilson

Its: CEO-Special Deputy Insurance Commissioner

General Release and Settlement Agreement

RE COMMUNITY IMPACT DEVELOPMENT II, LLC V. INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA, AS LIQUIDATOR FOR GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY

Approved as to Form:

DATED: 10/31/13 ANDERSON, McPHARLIN & CONNERS LLP

By: J. Hernandez
JESSE S. HERNANDEZ
ELMIRA R. HOWARD
Attorneys for COMMUNITY IMPACT
DEVELOPMENT II, LLC

KAMALA D. HARRIS
Attorney General of the State of California
W. DEAN FREEMAN
Supervising Deputy Attorney General
LISA W. CHAO
Deputy Attorney General

DATED: _____ EPSTEIN TURNER WEISS
A Professional Corporation

By: _____
MICHAEL R. WEISS
Attorneys for Defendant and Cross-Complainant
Insurance Commissioner of the State of
California in his official statutory capacity as
Liquidator for Golden State Mutual Life
Insurance Company

General Release and Settlement Agreement
RE COMMUNITY IMPACT DEVELOPMENT II, LLC V. INSURANCE COMMISSIONER OF THE STATE OF
CALIFORNIA, AS LIQUIDATOR FOR GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY

Approved as to Form:

DATED: _____ ANDERSON, McPHARLIN & CONNERS LLP

By: _____
JESSE S. HERNANDEZ
ELMIRA R. HOWARD
Attorneys for COMMUNITY IMPACT
DEVELOPMENT II, LLC

KAMALA D. HARRIS
Attorney General of the State of California
W. DEAN FREEMAN
Supervising Deputy Attorney General
LISA W. CHAO
Deputy Attorney General

DATED: Oct. 29, 2013

EPSTEIN TURNER WEISS
A Professional Corporation


By:  _____
MICHAEL R. WEISS
Attorneys for Defendant and Cross-Complainant
Insurance Commissioner of the State of
California in his official statutory capacity as
Liquidator for Golden State Mutual Life
Insurance Company

EXHIBIT 2

ORIGINAL

EDMUND G. BROWN JR.
Attorney General of the State of California
W. DEAN FREEMAN
Supervising Deputy Attorney General
FELIX LEATHERWOOD
Supervising Deputy Attorney General
MARTA L. SMITH, State Bar No. 101955
Deputy Attorney General
300 South Spring Street, Room 1702
Los Angeles, California 90013
Telephone: (213) 897-2480
Fax: (213) 897-5775

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 30 2009

John A. Clarke, Executive Officer/Clerk
By *[Signature]* Deputy
CONNIE L. HUDSON

Attorneys for Applicant Insurance Commissioner
of the State of California

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,

Applicant,

v.

GOLDEN STATE MUTUAL LIFE
INSURANCE, a California corporation,

Respondent.

CASE NO. **BS 123005**

cl
~~PROPOSED~~ ORDER APPOINTING
CONSERVATOR AND RESTRAINING
ORDER

Assigned For All Purposes To the Honorable

1 The verified Application of the Insurance Commissioner of the State of California ("the
2 Commissioner") having been filed herein and it appearing to this Court from said Application that
3 the Commissioner has (1) found Golden State Mutual Life Insurance Company ("Golden State")
4 to be in such condition that its further transaction of business will be hazardous to its
5 policyholders, creditors, and the public; and (2) found that said insurer does not comply with the
6 requirements for the issuance to it of a certificate of authority,

7 **IT IS HEREBY ORDERED** that:

8 1. The Commissioner is appointed as Conservator (hereinafter "Conservator") of
9 Golden State and directed him to conduct the business of Golden State or so much thereof as he
10 may deem appropriate (Insurance Code §§ 1011 and 1037(a));

11 2. Title to all of the assets of Golden State, wheresoever situated, is vested in the
12 Conservator or his or her successor in office, in his official capacity as such, including without
13 limitation deposits, certificates of deposit, bank accounts, mutual funds, securities, contracts,
14 rights of actions, books, records and other assets of any and every type and nature, wheresoever
15 situated, presently in Golden State's possession or control those which may be discovered
16 hereafter (Insurance Code § 1011);

17 3. All funds and assets, including without limitation deposits, certificates of deposit,
18 bank accounts, securities, and mutual fund shares of Golden State, in various financial depository
19 institutions, including without limitation banks, savings and loan associations, industrial loan
20 companies, mutual funds and/or stock brokerages, wheresoever situated, are subject to
21 withdrawal only upon direction or order by the Conservator (Insurance Code §§ 1011 and 1037
22 General Powers);

23 4. The Conservator is authorized forthwith to take possession of all of Golden State's
24 books, records, property, real and personal, and assets including without limitation accounts, safe
25 deposit boxes, rights of actions and all assets as may be in the name of Golden State, wheresoever
26 situated (Insurance Code § 1011);

27 5. The Conservator is authorized to collect all moneys due to Golden State, and to do
28 such other acts as are necessary or expedient to collect, conserve, or protect Golden State's assets,

1 property, and business (Insurance Code § 1037(a));

2 6. The Conservator is authorized to collect all debts due and claims belonging to
3 Golden State and to have the authority to sell, compound, compromise, or assign, for the purpose
4 of collection upon such terms and conditions as the Conservator deems best, any bad or doubtful
5 debts (Insurance Code § 1037(b));

6 7. The Conservator is authorized to compound, compromise or in any other manner
7 negotiate settlements of claims against Golden State upon such terms and conditions as the
8 Conservator shall deem to be in the best interest of the estate of Golden State (Insurance Code §
9 1037(c));

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

16 9. The Conservator, for the purpose of executing and performing any of the powers
17 and authority conferred upon the Conservator under Insurance Code § 1010 *et seq.*, in the name of
18 Golden State or in the Conservator's own name, is authorized to initiate, prosecute, and/or defend
19 any and all suits and other legal proceedings, legal or equitable, and to execute, acknowledge and
20 deliver any and all deeds, assignments, releases and other instruments necessary and proper to
21 effectuate any sale of any real and personal property or other transaction in connection with the
22 administration, liquidation or other disposition of the assets of golden State, in this or other states
23 as may appear to him necessary to carry out his functions as Conservator (Insurance Code §
24 1037(f) and 1037 General Powers);

25 10. The Conservator is authorized to divert, take possession of and secure all mail of
26 Golden State and to effect a change in the rights to use any and all post office boxes and other
27 mail collection facilities used by Golden State (Insurance Code §§ 1011 and 1037 General
28 Powers);

1 11. The Conservator is authorized to invest and reinvest, in such manner as the
2 Conservator may deem suitable for the best interests of the policyholders and creditors of Golden
3 State, such portions of the funds and assets of Golden State in his possession as do not exceed the
4 amount of the reserves required by law to be maintained by Golden State as reserves for life
5 insurance policies, annuity contracts, supplementary agreements incidental to life business, and
6 reserves for noncancellable disability policies, provided the investment or reinvestment to be
7 made does not exceed the sum of one hundred thousand dollars (\$100,000), except that the
8 Conservator may make investments or reinvestments in excess of \$100,000, but not exceeding
9 \$5,000,000 per investment or reinvestment, if such investments or reinvestments are in
10 compliance with Golden State's existing investment guidelines (Attached as Exhibit 2 to the
11 Application and incorporated by reference herein) or are made pursuant to the investment
12 guidelines of the Commissioner's Conservation & Liquidation Office (Attached as Exhibit 3 to
13 the Application and incorporated by reference herein) including investments and reinvestments
14 through an investment pool consisting exclusively of assets from conserved and/or liquidating
15 estates (Insurance Code § 1037(g) and General Powers);

16 12. The Conservator is authorized, in his discretion, to pay or defer payment of some
17 or all claims, expenses, liabilities and/or obligations of Golden State, in whole or in part, accruing
18 prior and/or subsequent to his appointments as Conservator; to establish a 90-day moratorium on
19 surrenders of and withdrawals from life insurance policies and annuities; to develop and
20 implement a procedure for surrenders of and withdrawals from life insurance policies and
21 annuities due to hardship (Insurance Code §§ 1011 and 1037 General Powers);

22 13. The Conservator is authorized to appoint and employ under his hand and official
23 seal, special deputy commissioners and/or legal counsel, as his agents, and to employ clerks
24 and/or assistants, and to give to each of them those powers that the Conservator deems necessary
25 (Insurance Code §§ 1035(a) and 1036);

26 14. The Conservator is authorized to fix the costs of employing special deputy
27 commissioners, legal counsel, clerks, and/or assistants, and all expenses of taking possession of,
28 conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and

1 property of Golden State, subject to the approval of the court, and to pay such costs out of the
2 assets of Golden State to the Conservator and others including without limitation expenses,
3 expense allocations, administrative costs, administrative overhead, and costs incurred and/or
4 allocated by the Conservation & Liquidation Office, and if there are insufficient funds to pay such
5 costs, then to pay such costs out of the Insurance Fund pursuant to Insurance Code § 1035
6 (Insurance Code §§ 1035(a), 1036 and 1037 General Powers);

7 15. The Conservator is authorized to assume or reject, or to modify, any executory
8 contract, including without limitation, any lease, rental or utilization contract or agreement
9 (including any schedule to any such contract or agreement), and any license or other arrangement
10 for the use of computer software or business information systems, to which Golden State is a
11 party or as to which Golden State agrees to accept an assignment of such contract, not later than
12 120 days of the date of the Order Appointing Conservator, unless such date is extended by
13 application to and further order of this Court, and if not expressly assumed by the Conservator
14 within that time then such executory contract is deemed rejected (Insurance Code § 1037 General
15 Powers);

16 16. The Conservator is authorized to terminate compensation arrangements with
17 employees, to enter into new compensation arrangements with employees including arrangements
18 containing retention incentives, and to hire employees on such terms and conditions as he deems
19 reasonable (Insurance Code § 1037 General Powers);

20 17. The Conservator is granted all the powers of the directors, officers and managers
21 of Golden State, whose authorities are suspended except as such powers may be redelegated in
22 writing by the Conservator (Insurance Code § 1037 General Powers);

23 18. Except upon the express authorization of the Conservator, Golden State and its
24 officers, directors, agents, servants, and employees are enjoined from the transaction of Golden
25 State's business or disposition of its property including without limitation from disposing of,
26 using, transferring, selling, assigning, canceling, alienating, hypothecating or concealing in any
27 manner or any way, or assisting any person in any of the foregoing, of the property or assets of
28 Golden State or property or assets in the possession of Golden State, of any nature or kind,

1 including without limitation claims or causes of action, until further order of this Court and
2 further, such persons are enjoined from obstructing or interfering with the Conservator's conduct.
3 of his or her duties as Conservator (Insurance Code §§ 1011, 1020 and 1037);

4 19. All persons are enjoined from instituting or prosecuting or maintaining any action
5 at law or suit in equity including without limitation actions or proceedings to compel discovery or
6 production of documents or testimony, and matters in arbitration, and from obtaining or
7 attempting to attain preferences, judgments, foreclosures, attachments or other liens of any kind
8 or nature, against Golden State, its assets, or the Conservator, and from attaching, executing upon,
9 foreclosing upon, redeeming of, making levy upon, or taking any other legal proceedings against
10 any of the property and/or assets of Golden State, and from doing any act interfering with the
11 conduct of said business by the Conservator, except after an order from this Court obtained after
12 reasonable notice to the Conservator (Insurance Code §§ 1011, 1020 and 1037 General Powers);

13 20. Enjoining the sale or deed for nonpayment of taxes or assessments levied by any
14 taxing agency of property and/or assets of Golden State (Insurance Code § 1020(f));

15 21. Except with leave of court issued after a hearing in which the Conservator has
16 received reasonable notice, all persons are enjoined from accelerating the due date of any
17 obligation or claimed obligation, exercising any right of set-off, taking, retaining, retaking or
18 attempting to retake possession of any real or personal property, withholding or diverting any rent
19 or other obligation, and doing any act or other thing whatsoever to interfere with the possession of
20 or management by the Conservator of the property and assets, owned or controlled, by Golden
21 State or in the possession of Golden State or in any way interfering with the Conservator or
22 interfering in any manner during the pendency of this proceeding with the exclusive jurisdiction
23 of this Court over Golden State (Insurance Code §§ 1020 and 1037 General Powers);

24 22. All persons are enjoined from the waste of the assets of Golden State (Insurance
25 Code § 1020);

26 23. Golden State and all officers, directors, agents and employees of Golden State are
27 ordered to deliver to, and immediately make available to, the Conservator all assets, books,
28 records, accounts, information, computers, tapes, discs, writings, other recordings of information,

1 equipment and other property of Golden State, wheresoever situated, in said persons custody or
2 control and further, directing the aforesaid to disclose verbally, or in writing if requested by the
3 Conservator, the exact whereabouts of the foregoing items if such items are not in the possession
4 custody or control of said persons (Insurance Code §§ 1011, 1020 and 1037 General Powers);

5 24. All officers, directors, trustees, employees or agents of Golden State, or any other
6 person, firm, association, partnership, corporate parent, holding company, affiliate or other entity
7 in charge of any aspect of Golden State's affairs, either in whole or in part, and including but not
8 limited to banks, savings and loan associations, financial or lending institutions, brokers, stock or
9 mutual associations, or any parent, holding company, subsidiary or affiliated corporation or any
10 other representative acting in concert with Golden State, are ordered to cooperate with the
11 Conservator in the performance of his or her duties (Insurance Code § 1037 General Powers);

12 25. All persons who maintain records for Golden State, pursuant to written contract or
13 any other agreement, are ordered to maintain such records and to deliver to the Conservator such
14 records upon his request (Insurance Code §§ 1020 and 1037 General Powers);

15 26. All agents of Golden State, and all brokers who have done business with Golden
16 State, are ordered to make all remittances of all funds collected by them or in their hands directly
17 to the Conservator (Insurance Code §§ 1020 and 1037 General Powers);

18 27. All persons having possession of any lists of policyholders, escrow holders,
19 mortgages or mortgagees of Golden State are ordered to deliver such lists to the Conservator and
20 all persons are enjoined from using any such lists or any information contained therein without
21 the consent of the Conservator (Insurance Code §§ 1020 and 1037 General Powers);

22 28. Golden State and its officers, directors, agents, servants, employees, successors,
23 assigns, affiliates, and other persons or entities under their control and all persons or entities in
24 concert or participation with Golden State, and each of them, are ordered to turn over to the
25 Conservator all records, documentation, charts and/or descriptive materials of all funds, assets,
26 property (owned beneficially or otherwise), and all other assets of Golden State wherever
27 situated, and all books and records of accounts, title documents and other documents in their
28 possession or under their control, which relate, directly or indirectly to assets or property owned



1 or held by Golden State or to the business or operations of Golden State (Insurance Code §§ 1020
2 and 1037 General Powers);

3 29. Any and all provisions of any agreement entered into by and between any third
4 party and Golden State, including by way of illustration, but not limited to, the following types of
5 agreements (as well as any amendments, assignments, or modifications thereto), shall be stayed,
6 and the assertion of any and all rights and remedies relating thereto shall also be stayed and
7 barred, except as otherwise ordered by this Court, and this Court shall retain jurisdiction over any
8 cause of action that has arisen or may otherwise arise under any such provision: financial
9 guarantee bonds, promissory notes, loan agreements, security agreements, deeds of trust,
10 mortgages, indemnification agreements, subrogation agreements, subordination agreements,
11 pledge agreements, assignments of rents or other collateral, financial statements, letters of credit,
12 leases, insurance policies, guaranties, escrow agreements, management agreements, real estate
13 brokerage and rental agreements, servicing agreements, attorney agreements, consulting
14 agreements, easement agreements, license agreements, franchise agreements, or employment
15 contracts that provide in any manner that selection, appointment or retention of a conservator,
16 receiver or trustee by any court, or entry of any order such as hereby made, shall be deemed to be,
17 or otherwise operate as, a breach, violation, event of default, termination, event of dissolution,
18 event of acceleration, insolvency, bankruptcy, or liquidation (Insurance Code §§ 1020 and 1037
19 General Powers).

20
21 Dated: **SEP 30 2009**


22 Judge of the Superior Court

DECLARATION OF SERVICE BY E-MAIL AND OVERNIGHT COURIER

Case Name: **Insurance Commissioner v. Golden State Mutual Life Insurance Co.**

No.:

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with the **FEDERAL EXPRESS** overnight mail service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.

On September 28, 2009, I served the attached [**PROPOSED**] **ORDER APPOINTING CONSERVATOR AND RESTRAINING ORDER** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

Michael L. Rosenfield, Esq.
Barger & Wolen LLP
633 W. 5th Street
Forty-Seventh Floor
Los Angeles, California 90071-2045
Phone: (213) 614-7321
Fax: (213) 614-7399
E-mail Address: mrosenfield@bargerwolen.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **September 28, 2009**, at Los Angeles, California.

Veronica James
Declarant


Signature



Order of the Court
SEP 30 2000
Date

Jessica Le
Jessica Le

EXHIBIT 3

ORIGINAL FILED

JAN 28 2011

RECEIVED

DEC 21 2010

LOS ANGELES
SUPERIOR COURT

DEPT 86

EDMUND G. BROWN JR.
Attorney General of California
FELIX LEATHERWOOD
W. DEAN FREEMAN
Supervising Deputy Attorneys General
MARTA L. SMITH, State Bar No. 101955
Deputy Attorney General
300 South Spring Street, Room 1702
Los Angeles, California 90013
Telephone: (213) 897-2483
Facsimile: (213) 897-5775
E-mail: Marta.Smith@doj.ca.gov

MICHAEL R. WEISS, State Bar No. 180946
EPSTEIN TURNER WEISS
A Professional Corporation
633 W. Fifth Street, Suite 3330
Los Angeles, California 90071
Telephone: (213) 861-7487
Facsimile: (213) 861-7488
Email: mrw@epsteinturnerweiss.com

Attorneys for Applicant
Insurance Commissioner of the State of California

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

INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,

Applicant,

v.

GOLDEN STATE MUTUAL LIFE
INSURANCE COMPANY, a California
corporation,

Respondent.

Case No. BS123005
Assigned to Hon. Ann I. Jones, Dept. 86

~~PROPOSED~~ ORDER OF LIQUIDATION
AND ORDERS AND INJUNCTIONS IN
AID OF LIQUIDATION FOR GOLDEN
STATE MUTUAL LIFE INSURANCE
COMPANY

Date: January 28, 2011
Time: 9:30 a.m.
Dept: 86

1 On January 28, 2011, in Department 86 of the above-entitled Court, the Honorable Ann I.
2 Jones, Judge Presiding (the "Court"), the Court held the hearing on the Court's Order to Show
3 Cause and the Motion For Order Of Liquidation And Orders And Injunctions In Aid Of
4 Liquidation For Golden State Mutual Life Insurance Company, filed by Applicant Steve Poizner,
5 Insurance Commissioner of the State of California, in his capacity as Conservator ("Conservator")
6 of Golden State Mutual Life Insurance Company in Conservation ("Golden State"). Deputy
7 Attorney General Marta L. Smith and attorney Michael R. Weiss appeared on behalf of the
8 Conservator. Other appearances, if any, are noted in the record.

9 The Court, having read and considered the Conservator's Notice of Order to Show Cause
10 and Motion, Memorandum of Points and Authorities in support of the Motion, the Declarations of
11 David E. Wilson and Michael R. Weiss, and all documents and evidence submitted, and having
12 heard and considered the arguments presented to the Court, and upon good cause shown,

13 IT IS HEREBY ORDERED that the Conservator's Motion is granted and that:

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

15 1. As of September 30, 2010, Golden State is insolvent and remains insolvent today,
16 and it would be futile for the Commissioner to proceed as Conservator; and therefore, sufficient
17 grounds exist in accordance with Insurance Code § 1016 for entry of an order of liquidation of
18 Golden State. (Insurance Code § 1016.)

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

23 3. Title to all of the assets of Golden State, wheresoever situated, shall remain vested
24 in the Commissioner, now as Liquidator, or his successor in office, in his official capacity as
25 such, including without limitation real and personal property, deposits, certificates of deposit,
26 bank accounts, mutual funds, securities, contracts, rights of actions, books, records and other
27 assets of any and every type and nature, wheresoever situated, presently in Golden State's
28

1 possession and/or those which may be discovered hereafter. (Insurance Code §§ 1011, 1016 and
2 1037 General Powers.)

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

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

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

16 7. The Liquidator is authorized to compound, compromise or in any other manner
17 negotiate settlements of claims against Golden State upon such terms and conditions as the
18 Liquidator shall deem to be most advantageous to the estate of Golden State. (Insurance Code §
19 1037(c).)

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

27 9. The Liquidator is authorized to transfer to a trustee or trustees, under a voting trust
28 agreement, the stock of Golden State heretofore or hereafter issued to the Liquidator in

1 connection with a rehabilitation or reinsurance agreement, or any other proceeding under
2 Insurance Code § 1010 *et seq.* (Insurance Code § 1037(e).)

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

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

16 12. The Liquidator is authorized, without permission of the court and without notice,
17 to invest and reinvest, in such manner as the Liquidator may deem suitable for the best interests of
18 the policyholders and/or creditors of Golden State, such portions of the funds and assets of
19 Golden State in his possession as do not exceed the amount of the reserves required by law to be
20 maintained by Golden State as reserves for life insurance policies, annuity contracts,
21 supplementary agreements incidental to life business, and reserves for non-cancelable disability
22 policies, and which funds and assets are not immediately distributable to creditors, provided the
23 investment or reinvestment to be made does not exceed the sum of one hundred thousand dollars
24 (\$100,000), except that the Liquidator, without permission of the court and without notice, may
25 make investments or reinvestments in excess of \$100,000, but not exceeding \$5,000,000 per
26 investment or reinvestment, if such investments or reinvestments are part of Golden State's
27 existing investments or are made pursuant to the investment guidelines of the Commissioner's
28 Conservation & Liquidation Office including investments and reinvestments through an

1 investment pool consisting exclusively of assets from conserved and/or liquidating estates.
2 (Insurance Code § 1037(g) and General Powers.)

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

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

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

20 16. The Liquidator is authorized to assume or reject, or to modify, any executory
21 contract, including without limitation, any lease, rental or utilization contract or agreement
22 (including any schedule to any such contract or agreement), and any license or other arrangement
23 for the use of computer software of business information systems, to which Golden State is a
24 party or as to which Golden State agrees to accept an assignment of such contract, not later than
25 120 days of the date of the Order Appointing Conservator, unless such date is extended by
26 application to and further order of this Court, and if not expressly assumed by the Conservator
27 within that time then such executory contract is deemed rejected. (Insurance Code § 1037
28 General Powers.)

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

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

B. Injunctions and Other Orders

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

20. All persons are enjoined from instituting or prosecuting or maintaining any action at law or suit in equity including without limitation actions or proceedings to compel discovery or production of documents or testimony, and matters in arbitration, and from obtaining or attempting to attain preferences, judgments, foreclosures, attachments or other liens of any kind or nature, against Golden State, its assets, or the Liquidator, and from attaching, executing upon, foreclosing upon, redeeming of, making levy upon, or taking any other legal proceedings against any of the property and/or assets of Golden State, and from doing any act interfering with the conduct of said business by the Liquidator, except after an order from this Court obtained after reasonable notice to the Liquidator. (Insurance Code §§ 1011, 1020 and 1037 General Powers.)

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

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

13 23. All persons are enjoined from the waste of the assets of Golden State. (Insurance
14 Code § 1020.)

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

23 25. Golden State and all officers, directors, trustees, employees or agents of Golden
24 State, or any other person, firm, association, partnership, corporate parent, holding company,
25 affiliate or other entity in charge of any aspect of Golden State's affairs, either in whole or in part,
26 and including but not limited to banks, savings and loan associations, financial or lending
27 institutions, brokers, stock or mutual associations, or any parent, holding company, subsidiary or
28 affiliated corporation or any other representative acting in concert with Golden State, are ordered

1 to cooperate with the Liquidator in the performance of his or her duties. (Insurance Code § 1037
2 General Powers.)

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

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

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

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

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

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

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

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

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

26 //

27 //

28 //

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

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

4 DATED: 1-28-11
5

ANN I. JONES

THE HONORABLE ANN I. JONES
Los Angeles Superior Court Judge

EXHIBIT 4

DATE RECEIVED

OCT 11 2012

EPSTEIN TURNER WEISS

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

OCT 09 2012

John A. Clarke, Executive Officer/Clerk

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

COMMUNITY IMPACT DEVELOPMENT
II, LLC a limited liability company,
Plaintiff,

v.

INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA, as liquidator for
GOLDEN STATE MUTUAL LIFE
INSURANCE COMPANY, a California
Corporation; All persons unknown, claiming
any legal or equitable right, title, estate, lien,
or interest in the property described in the
complaint adverse to plaintiff's title, or any
cloud upon plaintiff's title thereto; and DOES 1
through 25,
Defendants.

INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA, in his official
statutory capacity as liquidator for GOLDEN
STATE MUTUAL LIFE INSURANCE
COMPANY, A California Corporation,
Cross-Complainant,

v.

COMMUNITY IMPACT DEVELOPMENT
II, LLC, a Delaware limited liability company,
WEST ADAMS INVESTMENT TRUST, a
Delaware statutory trust, JOSEPH HAYDEL,
an individual, and Roes 1 through 50,
inclusive
Cross-Defendants.

Case No.: BC 462745

COMPLAINT FILED: June 2, 2011
MOTION FILED: July 18, 2012

**ORDER DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

DEPARTMENT 36

HEARING DATE: October 2, 2012
TRIAL DATE: December 11, 2012

MOVING PARTY: Plaintiff Community Impact
Development II, LLC
RESPONDING PARTY: Defendant Insurance
Commissioner of the State of California in his
official statutory capacity as Liquidator for
Golden State Mutual Life Insurance Company

1 Plaintiff Community Impact Development II, I.L.C.'s ("Plaintiff") Motion for Summary
2 Judgment is denied.
3

4
5 **I. INTRODUCTION¹**

6 This action seeks to resolve who owns two murals that were painted on canvas and are
7 currently hung/glued to the lobby walls of Golden State Mutual Life Insurance Company
8 Building: (1) Golden State Mutual life Insurance Company ("Golden State"), an insurance
9 company that commissioned and paid for the murals, or Plaintiff, who owns the building and
10 contends the murals are its property as fixtures to the building.²

11 In 1945, Golden State purchased vacant land on the Subject Premises for the purpose of
12 building its new home office building and a "pillar for the surrounding African American
13 community[.]" (Plaintiff's Separate Statement of Undisputed Fact ["PSUF"] # 2, 3.) To advance
14 such efforts, Golden State hired Paul R. Williams ("Williams"), a prominent American architect
15 of the 20th century to design the Building. (PSUF # 4.) In addition, Golden State authorized
16 Williams to commission Charles Henry Alston ("Alston") and Kale Woodruff ("Woodruff"),
17 artists from the Harlem Renaissance, to paint two Murals depicting the accomplishments of
18 African American settlers in California. (PSUF # 5.) Working closely with Williams, Alston and
19 Woodruff painted the two murals on canvas and had them affixed with adhesive glue and
20 marouflaged on the east wall of the entrance foyer of the Building. (PSUF # 16, 17.) Both Murals
21

22
23
24 ² As requested the court rules on the objections of both counsel. Defendant's objections: 1, 4, 6, 7, 9, 10, 32: sustained. 2, 3, 5,
25 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34 : overruled. Plaintiff's objections: 1, 5,
6, 7, 8, 9, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 36, 37, 38, 39, 40, 41, 42, 43,
44, 45, 46, 47, 48, 49, 50, 51, 52: overruled. 2, 3, 4, 10, 13, 14, 28: sustained.

1 are approximately 16'5" long and 9'3 1/4" tall and extend over and around door frames in the
2 lobby. (PSUF # 19, 20.)

3 Plaintiff estimates that the removal and reinstallation of the Murals will cost
4 approximately about \$ 15,000-18,750 for each Mural, will damage the main lobby walls, and
5 will take over 1 week to complete. (PSUF # 84-88.) In contrast, Defendant Insurance
6 Commissioner of the State of California's ("Defendant") estimates that complete removal of the
7 Murals from the building will cost approximately \$12,000 and take no longer than two days; "[a]
8 fresh peel test along the left side of the door reveals relatively easy detachment [of the Murals]
9 from the wall." (DASUF # 104, 124.) In addition, Defendant's evidence shows that any
10 remaining soluble paste glue on the walls can easily be removed by a handyman or painter at a
11 minimal cost. (DASUF # 105-106) and that no damage or destruction to the Murals or the
12 Building is expected from removal of the Murals. (DASUF # 102-103.) Defendant's expert
13 opined, "[l]ight percussion by running the hand along the wall indicates that there are many areas
14 that are detached[.]" (DASUF # 124.)

15
16 The Murals were unveiled in August of 1949 (PSUF # 22) and were temporarily removed
17 from the Property in the 1980s for cleaning (DASUF # 125.)

18 Golden State began facing financial difficulties under the stewardship of Larkin Teasley
19 (Golden State's President since 1981 and CEO and Chairman of the Board since 1991) and
20 began discussing the possibility of selling the Property to raise capital and improve liquidity.
21 (PSUF # 32, 34.) In October 25, 1993, Golden State's board carried a motion to approve that the
22 Murals not be sold with the Building, if the Building was sold to a third party. (PSUF # 35.)
23 Also, Larkin Teasley testified that Golden State never intended the Murals to be sold to EN at the
24 time of the 2005 sale. (See Defendant's Additional Separate Statement of Undisputed Facts
25

1 ["DASUF"] # 15-18.) Further, Golden State's corporate minutes state that the Murals are not
2 included in any sale of the Property and that the Murals are Golden State's personal property
3 separate from the Building (*See* DASUF # 23-29), and Golden State acknowledged the
4 importance of notifying potential purchasers that the Murals would not be part of any sale of the
5 Property and would be removed if the Building was sold. (PSUF # 36.)

6 On March 31, 2005, Golden State entered into a purchase and sale agreement ("2005
7 Purchase Agreement") with EN Realty Associates, LLC ("EN") that contemplated
8 the sale of the Property to EN for \$7,070,000. (PSUF # 42, 43.) Golden State did not formally
9 record any instrument memorializing the exclusion of the Murals from the Building's sale, but
10 its unrecorded 2005 Purchase Agreement provides that:

11 "The Property shall not include, and Seller shall retain title to and possession of,
12 all personal property owned by Seller, whether located on or about the Building
13 or the Land or otherwise, including furniture, office equipment, files and business
14 records, business licenses and franchises, artwork (including removable murals),
trademarks and service marks, tradenames owned or used by [Golden State]".
(*See* PSUF # 37, #44, a#46, and Golden State's Response to PSUF # 37 [emphasis added].)

15 The term "removable murals" is not defined in the 2005 Purchase Agreement. (PSUF # 45.)
16 However, Larkin Teasley testified that the words "artwork (including removable murals)" in the
17 2004 Purchase Agreement refer to the Murals. (*See* DASUF # 15-18.)

18 On May 18, 2005, the purchase of the Property by EN from Golden State closed.
19 (DASUF # 19.) As part of the sale, Golden State, as Tenant, and EN, as Landlord, entered into a
20 written lease agreement ("Lease"), in which Golden State leased the Building for 15 years from
21 EN. (DASUF # 20.) The Lease entitles Golden State to "remove" its personal property from the
22 Building at the termination of the Lease and "repair any damage caused by such removal."
23 (DASUF # 21, 22.)
24
25

1 On August 28, 2006, EN sold the Property to West Adams Investment Trust ("WAIT").
2 (PSUF # 53.) Additionally, on August 30, 2006, an Assignment of the Lease was executed and
3 recorded against the Property, identifying the lease between Golden State and EN and
4 specifying that Golden State retains only a leasehold interest in the Property. (PSUF # 56.)

5 On May 13, 2009, Plaintiff purchased the Property from WAIT, including all fixtures and
6 improvements. (PSUF # 63.) In preparing the appraisal report, Plaintiff's appraiser considered
7 the Murals as part of the Property because he was not informed that the Murals were valuable
8 artwork by a famous artist and because the Murals appeared to him as being painted on the wall.
9 (See PSUF # 66-70.)

10 On January 28, 2011, the court appointed the Insurance Commissioner to serve as
11 Liquidator of Golden State as a result of Golden State's insolvency. (PSUF # 91.) This order
12 also authorized the Liquidator to sell, transfer or otherwise dispose of Golden State's personal
13 property. (PSUF # 92.) The Liquidator listed the Murals as an asset of Golden State's estate
14 and seeks to sell the Murals, denying Plaintiff's ownership of the Murals. (PSUF # 93.)

15 In 2011, the City of Los Angeles designated the Property, including the Murals, as a
16 Historic Landmark/Monument. (PSUF # 29.) The City of Los Angeles Office of Historic
17 Resources and Cultural Heritage Commission stated the Murals "remain thematically
18 inextricable to a building that itself has been central to the African American experience in Los
19 Angeles." (PSUF # 30.) The City of Los Angeles found that the Property, including the Murals
20 reflected "broad cultural, economic or social history of the nation, State or community" for its
21 association with the history of African Americans in Los Angeles." (PSUF # 31.) Golden State
22 has challenged the inclusion of the Murals in this designation by filing a mandate action against
23 the City on the grounds that the City's inclusion of the Murals in the Property's designation
24
25

violates the City's Administrative Code, exceeds the City's jurisdiction, and is an abuse of the City's authority and duty to follow its Administrative Code. (DASUF # 140-142.)

On June 2, 2011, Plaintiff filed a Complaint against the Liquidator for (1) Quiet Title and (2) Declaratory Relief. Plaintiff seeks a judgment quieting title to the Property, including the Murals, in its name.

II. LEGAL STANDARD

CCP § 437c(c) provides that

[a] motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence.

In determining whether there is a triable issue of material fact, the court will view the papers submitted by the non-moving party in the most favorable light. There is a triable issue of material fact if...the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof."

(*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 825, 850, footnotes and citations omitted.)

If the court were to deny summary judgment, the court must specify one or more material facts constituting a triable controversy and must specifically refer to the evidence establishing the controversy. (CCP § 437c(g).) In making the above determination, the court does not determine the facts or the credibility of witnesses (*See Colarossi v. Coty US Inc.* (2002) 97 Cal.App.4th 1142) and "may not weigh the plaintiff's evidence or inferences against the defendant[s] as

1 though it were sitting as the trier of fact.” (*Hussey-Head v. World Savings & Loan Assn.* (2003)
2 111 Cal.App.4th 773, 780.)

3 Moreover, “the party moving for summary judgment bears an initial burden of production
4 to make a prima facie showing of the nonexistence of any triable issue of material fact; if he
5 carries his burden of production, he causes a shift, and the opposing party is then subjected to the
6 burden of production of his own to make a prima facie showing of the existence of a triable issue
7 of material fact...A burden of production entails only the presentation of ‘evidence.’...A prima
8 facie showing is one that is sufficient to support the position of the party in question...” (*Aguilar*,
9 *supra*, 25 Cal.4th at p. 850-851, citations omitted.)

10 Lastly, where the Plaintiff seeks summary judgment or summary adjudication, the
11 plaintiff’s burden is to produce admissible evidence on each element of a “cause of action”
12 entitling him or her to judgment. (See CCP § 437c(p)(1); see *Hunter v. Pacific Mechanical*
13 *Corp.* (1995) 37 Cal. App. 4th 1282, 1287 (disproved on other grounds in *Aguilar v. Atlantic*
14 *Richfield Co.* (2001) 25 Cal. App. 4th 826.) This means that plaintiff who bears the burden of
15 proof at trial by a preponderance of the evidence must produce evidence that would require a
16 reasonable trier of fact to find that any underlying material fact more likely than not will be
17 judged in his favor; otherwise, the plaintiff would not be entitled to judgment as a matter of law.
18 (*Aguilar*, *supra*, 25 Cal. App. 4th at 851; *LLP Mortg. v. Bizar* (2005) 126 Cal. App. 4th 773,
19 776). California “no longer requires a plaintiff moving for summary judgment to disprove any
20 defense asserted by the defendant as well as prove each element of his own cause of action.
21 [citation] It is sufficient for a plaintiff to prove each element of the cause of action.” (*Troyk v.*
22 *Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1321.)
23
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At that point, the burden shifts to defendant “to show that a triable issue of one or more material facts exists as to that cause of action.” (CCP § 437c(p)(1).) The defendant has no evidentiary burden until plaintiff produces admissible (and undisputed) evidence on each element of a cause of action. (Weil & Brown (Rutters 2010) California Practice Guide: Civil Procedure before Trial, § 10:238.) Until that time, plaintiff has not met its burden of producing evidence, and defendant therefore has no burden to oppose. (See CCP § 437c(p)(1).)

III. DISCUSSION

Plaintiff’s Motion for Summary Judgment is denied because a triable issue exists as to whether the Murals are fixtures and thus, transferred along with the real property to Plaintiff.

The Parties do not dispute that Plaintiff is not entitled to summary judgment if the Murals are not fixtures. A fixture is an article of personal nature annexed to real property. (*People v. Church* (1943) 57 Cal.App.2d Supp. 1032.) The transfer of real property passes all of its fixtures unless expressly excluded or reserved from the grant. (Civil Code §§ 660, 658, 1084; *Trask v. Moore* (1944) 24 Cal.2d 365, 370-371.) In determining whether personal property attached to land becomes part of the realty, three factors are considered: (1) the manner of its annexation, (2) its adaptability to use and purpose for which the realty is used; and (3) the intention of the party in making the annexation. (*Banks v. Clintworth* (1962) 201 Cal.App.2d 789, 794.) In determining “whether an article placed on the premises constitutes a fixture or personal property, the aforelisted three elements do not play equal parts. In making the determination in a particular case the element of intent is regarded as crucial and overriding factor, with the other two criteria being considered only as subsidiary ingredients relevant to the determination of intent [citation

omitted].” (*Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881,887-888.)

A. A Triable Issue Exists as to Whether Golden State Intended the Murals to be Permanently Annexed to the Property as a Fixture

Plaintiff’s evidence shows that Golden State “indicated that [Architect Williams and the Artists’] points were well received” when Williams and the Artists discussed the importance of the Murals and the *mural painter’s intent* for his mural to be a permanent fixture “as an integral part of the architecture, both sculpturally and psychologically” (*See* PSUF # 11, 12).

Meanwhile, Defendant’s evidence, in the form of testimony from Golden State’s previous President, CEO, and Chairman of the Board, shows that Golden State never intended the Murals to be sold to EN at the time of the 2005 sale. (*See* Defendant’s Additional Separate Statement of Undisputed Facts [“DASUF”] # 15-18.) This argument is corroborated by Golden State’s corporate minutes stating that the Murals are Golden State’s personal property separate from the Property (*See* DASUF # 23-29) and acknowledging the importance of notifying potential purchasers that the Murals would be removed if the Building was sold (PSUF # 36). Moreover, Defendant proffers evidence that the term “removable murals” in the 2005 Purchase Agreement refer to the Murals and thus, separate the Murals from the purchase of the real property. (*See* DASUF # 15-18.)

Accordingly, a triable issue exists as to whether Golden State always intended the Murals to be its personal artwork to be removed from the Property upon sale. A reasonable trier-of-fact may find that Golden State’ fairly strong and consistent views in the 1990’s and 2000’s (that the Murals are not fixtures) suggests that Golden State also held similar views in the 1940’s when the Murals were created. Also, a triable issue exists as to whether Golden State’s rather passive

1 receipt of Architect Williams and the Artists' views of the Murals was more of a civil
2 acknowledgment of the Murals as a permanent fixture artistically and symbolically (c.g., the
3 eternal and sublime effect of art on an audience) as opposed to a permanent fixture from a legal
4 and business perspective. Moreover, just because "[t]he mural[s] [were] designed to occupy the
5 space allotted to it . . . [according to the] drawing prepared by the Architect" (PSUF # 8) and
6 extend over and around door frames in the lobby (PSUF # 19, 20) does not necessarily mean
7 that the Murals were *only* intended to occupy the space in the Property's lobby; Architect
8 Williams and the Artists could have been merely concerned about the aesthetic effect and artistic
9 harmony of the Murals and were not reflecting Golden State's intent to permanently annex the
10 Murals as a fixture. Lastly, Plaintiff does not address Defendant's argument that Golden State
11 would have directly painted the Murals on the walls if it had wanted them to be permanently
12 affixed.

13
14 Thus, viewing the Parties' evidence as a whole and in context, the Court finds that a
15 triable issue exists as to Golden State's intent in hanging the Murals in the Property.

16 **B. A Triable Issue Exists as to Whether the Manner of the Murals' Annexation**
17 **Shows that that the Murals are Fixtures**

18 The Parties' evidence differ as to whether the Murals are easily removable and whether
19 their removal would damage the Property. been categorized as a fixture. Plaintiff estimates that
20 the removal and reinstallation of the Murals will cost approximately about \$ 15,000-18,750 for
21 each Mural, will damage the main lobby walls, probably cause tears and damage to the Murals,
22 which will need to be mended and re-attached and will take over 1 week to complete. (PSUF #
23 84-88.) In contrast, Defendant estimates that complete removal of the Murals from the building
24 will cost approximately \$12,000 and take no longer than two days; "[a] fresh peel test along the
25

1 left side of the door reveals relatively easy detachment [of the Murals] from the wall.” (DASUF
2 # 104, 124.) In addition, Defendant’s evidence shows that any remaining soluble paste glue on
3 the walls can easily be removed by a handyman or painter at a minimal cost. (DASUF # 105-
4 106) and that no damage or destruction to the Murals or the Building is expected from removal
5 of the Murals. (DASUF # 102-103.)

6 Although the 16’5” x 9’3 ¼” size of the Murals and the “expense incident to removing
7 the [Murals suggest and] . . . signif[y] against removal [and are] . . . indicative of intended
8 permanency” (*Bank of America Nat. Trust & Sav. Ass’n v. Los Angeles County* (1964) 224
9 Cal.App.2d 108), a reasonable trier-of-fact may still find that the Murals are not permanently
10 affixed to the Property and can be removed with reasonable ease based on the evidence of
11 Defendant’s Art Conservationist. For one, the Parties do not cite any case law establishing that
12 all murals are *per se* fixtures because of their innate size and, consequently, the increased
13 expense of their removal. Second, Defendant’s expert testimony suggests that the removal of the
14 Murals will probably not damage the Murals or the Property’s walls and that the removal will be
15 relatively easy and straightforward. Also, there is currently no indication that the \$12,000 cost
16 for removal reflects the burden and inconvenience of removal as opposed to the concentrated
17 effort to preserve and protect a great work of art (i.e., there is no allocation of expenses). For
18 example, the Louvre would incur great expense in removing and transferring the Mona Lisa even
19 though it is not a fixture. Third, Plaintiff does not comment substantively or reconcile
20 Defendant’s evidence that the Murals were temporarily removed from the Property in the 1980s
21 for cleaning (DASUF # 125). Lastly, the Court cannot tell from the photographs the Parties
22 submitted as to whether the Murals appear to be “painted on” because the photographs were
23 taken from too great of distance and too low of a resolution for the Court to determine whether
24
25

1 there are any discernable edges. Moreover, Plaintiff does not substantively address or reconcile
2 Defendant's evidence that "[l]ight percussion by running the hand along the wall indicates that
3 there are many areas that are detached[.]" (DASUF # 124.) If there are discernable areas of
4 detachment, then the Murals would not appear to be "painted on."

5 Thus, the court finds that a triable issue exists as to whether the manner of the Murals'
6 annexation shows that the Murals are fixtures.

7 **C. A Triable Issue Exists as to Whether the Murals' Adaptability to the Use and the**
8 **Purpose for Which the Property Is Used Shows that the Murals Are Fixtures**

9 The evidence shows that Golden State purchased the Property for the purpose of using it
10 as an office building and for the purpose of creating a "pillar for the surrounding African
11 American community[.]" (PSUF # 2, 3.) There is no evidence showing the allocation of the
12 extent to which the Property serves as a mere private office building and the extent to which it
13 serves and was intended to serve as a public monument. Moreover, a triable issue exists as to
14 the validity of the City of Los Angeles's designation of the Property and the Murals as a Historic
15 Landmark/Monument (PSUF # 29-31) because Plaintiff's Separate Statement and briefs do not
16 show the criteria that the City used to make its findings and because Golden State is challenging
17 the City's designation. Further, it is undisputed that the Murals have no use that is *necessary* to
18 the operation of the Property as an office building, and Plaintiff does not show that the Murals'
19 artistic integrity would be significantly subverted if they were moved elsewhere (e.g., the art in
20 the Murals can still be appreciated if the Murals were relocated by a sale or donation to the
21 African American Art Museum).

22
23 As a result, the court finds that a triable issue exists as to whether the Murals'
24 adaptability to the use and purpose of the Property shows that the Murals are fixtures.
25

1 Consequently, in light of the foregoing reasons, the court denies Plaintiff's Motion for Summary
2 Judgment because a triable issue exists as to whether the Murals constitute fixtures or private
3 personal property.

4
5 **IV. CONCLUSION**

6 Plaintiff Community Impact Development II, LLC's Motion for Summary Judgment is
7 DENIED.

8
9 DATED: October 2, 2012

10
11 Gregory W. Alarcon
12 HON. GREGORY ALARCON
13 JUDGE OF THE SUPERIOR COURT
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Los Angeles Superior Court
111 N. Hill St.
Los Angeles, CA 90012
R. 36



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EPSTEIN TURNER WEISS

Epstein, Turner, Weiss
Michael R. Weiss
633 W. Eighth St
Suite 3330
Los Angeles, CA 90071

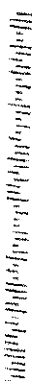


EXHIBIT 5

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Superior Court of California
County of Los Angeles

NOV 07 2012

John A. Clarke, Executive Officer/Clerk

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

COMMUNITY IMPACT DEVELOPMENT
II, LLC a limited liability company,
Plaintiff,

v.

INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA, as liquidator for
GOLDEN STATE MUTUAL LIFE
INSURANCE COMPANY, a California
Corporation; All persons unknown, claiming
any legal or equitable right, title, estate, lien,
or interest in the property described in the
complaint adverse to plaintiff's title, or any
cloud upon plaintiffs title thereto; and DOES 1
through 25,
Defendants.

INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA, in his official
statutory capacity as liquidator for GOLDEN
STATE MUTUAL LIFE INSURANCE
COMPANY, A California Corporation,
Cross-Complainant,

v.

COMMUNITY IMPACT DEVELOPMENT
II, LLC, a Delaware limited liability company,
WEST ADAMS INVESTMENT TRUST, a
Delaware statutory trust, JOSEPH HAYDEL,
an individual, and Roes 1 through 50,
inclusive
Cross-Defendants.

Case No.: BC 462745

COMPLAINT FILED: June 2, 2011
MOTION FILED: August 24, 2012

**ORDER DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

DEPARTMENT 36

HEARING DATE: November 7, 2012
TRIAL DATE: December 12, 2012

MOVING PARTY: Plaintiff Community Impact
Development II, LLC

RESPONDING PARTY: Defendant Insurance
Commissioner of the State of California in his
official statutory capacity as Liquidator for
Golden State Mutual Life Insurance Company

1 Defendant Insurance Commissioner of the State of California's ("Defendant's") Motion
2 for Summary Judgment is denied.
3

4 I. INTRODUCTION¹

5 This action seeks to resolve who owns two murals that were painted on canvas and are
6 currently hung/glued to the lobby walls of Golden State Mutual Life Insurance Company
7 Building: (1) Golden State Mutual life Insurance Company ("Golden State"), an insurance
8 company that commissioned and paid for the murals, or Plaintiff, who owns the building and
9 contends the murals are its property as fixtures to the building.
10

11 In 1945, Golden State purchased vacant land on the Subject Premises for the purpose of
12 building its new home office building and a "pillar for the surrounding African American
13 community[.]" (Plaintiff's Separate Statement of Undisputed Fact ["PSUF"] # 2, 3.) To advance
14 such efforts, Golden State hired Paul R. Williams ("Williams"), a prominent American architect
15 of the 20th century to design the Building. (PSUF # 4.) In addition, Golden State authorized
16 Williams to commission Charles Henry Alston ("Alston") and Kale Woodruff ("Woodruff"),
17

18
19 ¹ The Court only considers the facts stated in this section to be dispositive or relevant to its decision for the Motion. The Court
20 overrules all evidentiary objections corresponding to these facts and finds the other evidence and evidentiary objections to be
largely irrelevant and inapplicable. PLAINTIFF'S EVIDENTIARY OBJECTIONS re. Teasley (##19-20, 22): the court overrules them
because the foundation for Teasley's opinion is that he was in lengthy negotiations with EN Realty and should have a good idea as
to the identity of the person on the other side of the negotiating table as well as the subject matter of the negotiation.

21 Furthermore, re. #20, the statement from EN Realty is not hearsay since it's not being used for its truth but for its effect on the
person who heard it (Teasley).

22 Overrule the other Teasley objection, #21. Simply because other evidence contradicts it doesn't mean it is inadmissible.

23 DEFENDANT'S EVIDENTIARY OBJECTIONS: the grants Defendant's evidentiary objection to the 1948 conference with the mural artists (Ex.
24 12) for hearsay.

1 artists from the Harlem Renaissance, to paint two Murals depicting the accomplishments of
2 African American settlers in California. (PSUF # 5.) Working closely with Williams, Alson and
3 Woodruff painted the two murals on canvas and had them affixed with adhesive glue and
4 marouflaged on the east wall of the entrance foyer of the Building. (PSUF # 16, 17.) Both Murals
5 are approximately 16'5" long and 9'3 1/4" tall and extend over and around door frames in the
6 lobby. (PSUF # 19, 20.)

7 Plaintiff estimates that the removal and reinstallation of the Murals will cost
8 approximately about \$ 15,000-18,750 for each Mural, will damage the main lobby walls, and
9 will take over 1 week to complete. (PSUF # 84-88.) In contrast, Defendant Insurance
10 Commissioner of the State of California's ("Defendant") estimates that complete removal of the
11 Murals from the building will cost approximately \$12,000 and take no longer than two days; "[a]
12 fresh peel test along the left side of the door reveals relatively easy detachment [of the Murals]
13 from the wall." (DASUF # 104, 124.) In addition, Defendant's evidence shows that any
14 remaining soluble paste glue on the walls can easily be removed by a handyman or painter at a
15 minimal cost. (DASUF # 105-106) and that no damage or destruction to the Murals or the
16 Building is expected from removal of the Murals. (DASUF # 102-103.) Defendant's expert
17 opined, "[l]ight percussion by running the hand along the wall indicates that there are many areas
18 that are detached[.]" (DASUF # 124.)

20 The Murals were unveiled in August of 1949 (PSUF # 22) and were temporarily removed
21 from the Property in the 1980s for cleaning (DASUF # 125.)

22 Meanwhile, Golden State began facing financial difficulties under the stewardship of
23 Larkin Teasley (Golden State's President since 1981 and CEO and Chairman of the Board since
24 1991) and began discussing the possibility of selling the Property to raise capital and improve
25

1 liquidity. (PSUF # 32, 34.) In October 25, 1993, Golden State's board carried a motion to
2 approve that the Murals not be sold with the Building, if the Building was sold to a third party.
3 (PSUF # 35.) Also, Larkin Teasley testified that Golden State never intended the Murals to be
4 sold to EN at the time of the 2005 sale. (See Defendant's Additional Separate Statement of
5 Undisputed Facts ["DASUF"] # 15-18.) Further, Golden State's corporate minutes state that the
6 Murals are not included in any sale of the Property and that the Murals are Golden State's
7 personal property separate from the Building (See DASUF # 23-29), and Golden State
8 acknowledged the importance of notifying potential purchasers that the Murals would not be part
9 of any sale of the Property and would be removed if the Building was sold. (PSUF # 36.)

10 On March 31, 2005, Golden State entered into a purchase and sale agreement ("2005
11 Purchase Agreement") with EN Realty Associates, LLC ("EN") that contemplated
12 the sale of the Property to EN for \$7,070,000. (PSUF # 42, 43.) Golden State did not formally
13 record any instrument memorializing the exclusion of the Murals from the Building's sale, but
14 its unrecorded 2005 Purchase Agreement provides that:

15 "The Property shall not include, and Seller shall retain title to and possession of,
16 all personal property owned by Seller, whether located on or about the Building
17 or the Land or otherwise, including furniture, office equipment, files and business
18 records, business licenses and franchises, artwork (including removable murals),
19 trademarks and service marks, tradenames owned or used by [Golden State]".
(See PSUF # 37, #44, a#46, and Golden State's Response to PSUF # 37 [emphasis added].)

20 The term "removable murals" is not defined in the 2005 Purchase Agreement. (PSUF # 45.)
21 However, Larkin Teasley testified that the words "artwork (including removable murals)" in the
22 2004 Purchase Agreement refer to the Murals. (See DASUF # 15-18.)

23 On May 18, 2005, the purchase of the Property by EN from Golden State closed.
24 (DASUF # 19.) As part of the sale, Golden State, as Tenant, and EN, as Landlord, entered into a
25 written lease agreement ("Lease"), in which Golden State leased the Building for 15 years from

1 EN. (DASUF # 20.) The Lease entitles Golden State to “remove” its personal property from the
2 Building at the termination of the Lease and “repair any damage caused by such removal.”
3 (DASUF # 21, 22.)

4 On August 28, 2006, EN sold the Property to West Adams Investment Trust (“WAIT”).
5 (PSUF # 53.) Additionally, on August 30, 2006, an Assignment of the Lease was executed and
6 recorded against the Property, identifying the lease between Golden State and EN and
7 specifying that Golden State retains only a leasehold interest in the Property. (PSUF # 56.)

8 On May 13, 2009, Plaintiff purchased the Property from WAIT, including all fixtures and
9 improvements. (PSUF # 63.) In preparing the appraisal report, Plaintiff’s appraiser considered
10 the Murals as part of the Property because he was not informed that the Murals were valuable
11 artwork by a famous artist and because the Murals appeared to him as being painted on the wall.
12 (See PSUF # 66-70.)

13 On January 28, 2011, the Court appointed the Insurance Commissioner to serve as
14 Liquidator of Golden State as a result of Golden State’s insolvency. (PSUF # 91.) This order
15 also authorized the Liquidator to sell, transfer or otherwise dispose of Golden State’s personal
16 property. (PSUF # 92.) The Liquidator listed the Murals as an asset of Golden State’s estate
17 and seeks to sell the Murals, denying Plaintiff’s ownership of the Murals. (PSUF #. 93.)

18 In 2011, the City of Los Angeles designated the Property, including the Murals, as a
19 Historic Landmark/Monument. (PSUF # 29.) The City of Los Angeles Office of Historic
20 Resources and Cultural Heritage Commission stated the Murals “remain thematically
21 inextricable to a building that itself has been central to the African American experience in Los
22 Angeles.” (PSUF # 30.) The City of Los Angeles found that the Property, including the Murals
23 reflected “broad cultural, economic or social history of the nation, State or community” for its
24
25

1 association with the history of African Americans in Los Angeles.” (PSUF # 31.) Golden State
2 has challenged the inclusion of the Murals in this designation by filing a mandate action against
3 the City on the grounds that the City’s inclusion of the Murals in the Property’s designation
4 violates the City’s Administrative Code, exceeds the City’s jurisdiction, and is an abuse of the
5 City’s authority and duty to follow its Administrative Code. (DASUF # 140-142.)

6 On June 2, 2011, Plaintiff filed a Complaint against the Liquidator for (1) Quiet Title and
7 (2) Declaratory Relief. Plaintiff seeks a judgment quieting title to the Property, including the
8 Murals, in its name.

10 II. LEGAL STANDARD

11 CCP § 437c(c) provides that

12 [a] motion for summary judgment shall be granted if all the papers submitted
13 show that there is no triable issue as to any material fact and that the moving party
14 is entitled to judgment as a matter of law. In determining whether the papers
15 show that there is no triable issue as to any material fact the court shall consider
16 all of the evidence set forth in the papers, except that to which objections have
been made and sustained by the court, and all inferences reasonably deducible
from the evidence.

17 In determining whether there is a triable issue of material fact, the court will view the
18 papers submitted by the non-moving party in the most favorable light. There is a triable issue of
19 material fact if...the evidence would allow a reasonable trier of fact to find the underlying fact in
20 favor of the party opposing the motion in accordance with the applicable standard of proof.”

21 (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 825, 850, footnotes and citations omitted.)

22 If the court were to deny summary judgment, the court must specify one or more material facts
23 constituting a triable controversy and must specifically refer to the evidence establishing the
24 controversy. CCP § 437c(g). In making the above determination, the court does not determine
25

1 the facts or the credibility of witnesses (*See Colarossi v. Coty US Inc.* (2002) 97 Cal.App.4th
2 1142) and “may not weigh the plaintiff’s evidence or inferences against the defendant[‘s] as
3 though it were sitting as the trier of fact.” (*Hussey-Head v. World Savings & Loan Assn.* (2003)
4 111 Cal.App.4th 773, 780.)

5 Moreover, “the party moving for summary judgment bears an initial burden of production
6 to make a prima facie showing of the nonexistence of any triable issue of material fact; if he
7 carries his burden of production, he causes a shift, and the opposing party is then subjected to the
8 burden of production of his own to make a prima facie showing of the existence of a triable issue
9 of material fact...A burden of production entails only the presentation of ‘evidence.’...A prima
10 facie showing is one that is sufficient to support the position of the party in question...” (*Aguilar*,
11 *supra*, 25 Cal.4th at 850-851, citations omitted.)

12 Lastly, if a defendant moves for summary judgment, the defendant must present evidence
13 that would preclude a reasonable trier of fact from finding that it was more likely than not the
14 material fact was true, or the defendant must establish that an element of the claim cannot
15 established, by presenting evidence that the plaintiff does not possess and cannot reasonably
16 obtain needed evidence. (*Kahn v. East Side Union High School Dist.* (2003) 31 C4th 990, 1003.)
17 A moving defendant may show that the plaintiff’s cause of action has no merit by establishing
18 the absence of at least one essential element to that cause of action. (CCP § 437c(o)(1).) Also,
19 the moving defendant must present some evidence in support of its motion, unlike federal law
20 under which argument pointing to the absence of evidence may be sufficient to win a summary
21 judgment motion. (*Aguilar, supra*, 25 Cal.4th at 854-855; *Gaggero v. Yura* (2003) 108 Cal. App.
22 4th 884, 889-890.)
23
24
25

III. DISCUSSION

Defendant's Motion for Summary Judgment is denied because a triable issue exists as to whether the Murals are fixtures.

The Parties do not dispute that Plaintiff is not entitled to summary judgment if the Murals are not fixtures. A fixture is an article of personal nature annexed to real property. (*People v. Church* (1943) 57 Cal.App.2d Supp. 1032.) The transfer of real property passes all of its fixtures unless expressly excluded or reserved from the grant. (Civil Code §§ 660, 658, 1084; *Trask v. Moore* (1944) 24 Cal.2d 365, 370-371.) In determining whether personal property attached to land becomes part of the realty, three factors are considered: (1) the manner of its annexation, (2) its adaptability to use and purpose for which the realty is used; and (3) the intention of the party in making the annexation. (*Banks v. Clintworth* (1962) 201 Cal.App.2d 789, 794.) In determining "whether an article placed on the premises constitutes a fixture or personal property, the aforelisted three elements do not play equal parts. In making the determination in a particular case the element of intent is regarded as crucial and overriding factor, with the other two criteria being considered only as subsidiary ingredients relevant to the determination of intent [citation omitted]." (*Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 887-888.)

A. A Triable Issue Exists as to Whether Golden State Intended the Murals to be Permanently Annexed to the Property as a Fixture

Defendant has offered sufficient evidence to infer that Golden State might have intended the Murals to be permanently annexed to the Property as a fixture. Where the rights of a person unconnected with that transaction are concerned, and who is without actual or constructive notice concerning the intent of the parties responsible for annexing the personalty to the realty,

1 the question is not so much the intent of such parties as the apparent intent as it would
2 reasonably appear to such third person. *Kruse Metals Mfg. Co. v. Utility Trailer Mfg. Co.*, 206
3 Cal. App. 2d 176, 183 (Cal. App. 2d Dist. 1962). Here, none of the parties were the immediate
4 parties to the creation of the murals in 1948-1949. Therefore, circumstantial evidence is relevant
5 and necessary to prove Golden State's intent. Declarations by Plaintiff's expert witnesses,
6 Daniel Paul and Scott Haskins state that based on their review of the architectural plans and
7 documents related to the installation of the Murals, the Murals are site specific and were
8 intended to remain in the Building. (Paul Decl., ¶¶B & C, Haskins Decl., ¶C). Defendant's
9 objections to this opinion testimony (Evid Obj., ##18-34) are all overruled. Contrary to
10 Defendant's assertions, the experts are not making their opinion in a vacuum; their declarations
11 clearly state that they are basing their analysis off of their examination of the murals as well as
12 the original architectural plans as well as the documents related to the installation of the Murals.
13 Furthermore, their backgrounds as a conservator (Haskins) and as an architectural historian
14 (Paul) provide them with the background to opine on whether the aesthetic uniformity of the
15 Murals and the surrounding building implies a sense of permanence. They also can testify to the
16 difficulty in removing the Murals from the Building, for evidence of the manner of annexation
17 can be used to determine intent. Nevertheless, Defendant's evidentiary objections ##16 & 17 are
18 sustained as to improper opinion testimony by William Pajaud, a long time employee of Golden
19 State, regarding the permanence of the Murals. Similar objections (##9-10) as to the improper
20 opinion of another employee of Golden State, Ed Hines, are also sustained. However, the expert
21 opinions of Paul and Haskins are sufficient to create a triable issue of fact as to whether Golden
22 State intended the Murals to be fixtures.
23
24

25 B. Trade Fixtures

1 The Murals are not Golden State's trade fixtures under Cal Civ Code §1019. Cal Civ
2 Code §1019 allows a tenant to remove from the demised premises, any time during the
3 continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament,
4 or domestic use. However, Cal Civ Code §1019 applies only to "property affixed by a tenant"
5 for such purposes. *Bond Inv. Co. v. Blakeley*, 83 Cal. App. 696, 699-700 (Cal. App. 1927).
6 Golden State was the owner of the Property at the time it affixed the Murals, not a tenant. By the
7 time Golden State became a tenant of the Property, the Murals were arguably already part of the
8 leased premises and not subject to Golden State's statutory right to remove as a tenant.

9 **C. Applicability of 2005 Purchase Agreement**

10 There exists a triable issue of fact as to whether the 2005 Purchase Agreement affects the
11 rights of the parties to the Murals. Parties may agree that articles affixed to realty shall
12 nevertheless remain personal property, and such an agreement is binding between them, and
13 against third persons with notice thereof. 13 Witkin Sum. Cal. Law Pers Prop § 97. As to third
14 persons without notice, e.g., bona fide purchasers or encumbrancers of the land, the agreement is
15 ineffective, and a fixture will be regarded as real property. *Oakland Bank of Savings v.*
16 *California Pressed Brick Co.*, 183 Cal. 295, 302 (1920). The elements of bona fide purchase are
17 payment of value, in good faith, and without actual or constructive notice of another's rights.
18 "Even though the prior instrument is unrecorded, and there is therefore no constructive notice
19 from the [***15] record, a subsequent purchaser may nevertheless have actual knowledge or
20 constructive [**636] notice of it, and if so will not be a bona fide purchaser. *Id.*
21 *Gates Rubber Co. v. Ulman*, 214 Cal. App. 3d 356, 364 (Cal. App. 2d Dist. 1989).

22 While Defendant argues that Larkin Teasley, former President of Golden State contacted
23 Dexter Henderson, Plaintiff's contact person regarding Golden State's rights to the Murals prior
24
25

1 to the sale (Teasley Decl., ¶6) , Plaintiff vehemently disputes Henderson's receipt of Teasley's
2 letter. Therefore, a triable issue of fact exists as to whether Plaintiff had actual notice of the
3 unrecorded 2005 Purchase Agreement.

4 Defendant also argues that Plaintiff had constructive notice of the agreement because
5 Golden State's possession of the leased premises represents constructive notice to any intending
6 purchaser of the property all the rights of the person in possession which would be disclosed by
7 inquiry. *Asisten v. Underwood*, 183 Cal. App. 2d 304, 309 (Cal. App. 4th Dist. 1960). The more
8 recent case of *Gates Rubber Co. v. Ulman*, however, elaborates on a purchaser's duty to inquire,
9 holding that where a tenant's possession is consistent with the terms of a recorded lease which
10 does not refer to the tenant's additional rights, and there are no circumstances indicating the
11 tenant has additional rights, the purchaser does not have a duty to inquire of the tenant as to any
12 other rights the tenant may possess. Cal. App. 3d at 365 (Cal. App. 2d Dist. 1989). The
13 assignment of Golden State's lease was recorded giving Plaintiff constructive notice of Golden
14 State's interest in the Property as a tenant (RFJN, Ex. 57). Because Golden State's occupancy of
15 the Property was consistent with the terms of the lease and the lease did not contain any
16 reference to the 2005 Purchase Agreement, Plaintiff did not have a duty to inquire of Golden
17 State any additional rights in the Property it might have possessed. Therefore, Golden State's
18 mere possession of the Property did not automatically impose a duty of inquiry on Plaintiff.

19
20 Nevertheless, should it be found that Plaintiff was not a bona fide purchaser of the
21 Property, Paragraph 1 of the 2005 Purchase Agreement clearly provides that Golden State
22 retained title to all "artwork (including removable murals)", "whether located on or about the
23 Building or the Land or otherwise". This language is broad enough to include the Murals at
24 issue; the Murals themselves do not need to be specifically delineated. Moreover, the phrase
25

1 "including removable murals" does not expressly limit "artwork" to only "removable murals"
2 but stands as an example of "artwork" which may be included in property retained by Golden
3 State.

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7 **IV. CONCLUSION**

8 Defendant Insurance Commissioner of the State of California's Motion for Summary
9 Judgment is DENIED.

10
11 DATED: November 7, 2012

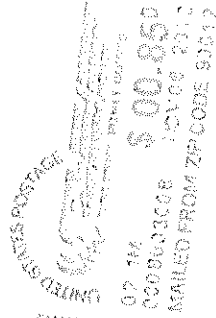
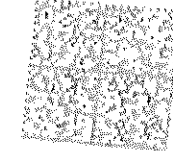
12 **Gregory W. Alarcon**

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HON. GREGORY ALARCON
15 JUDGE OF THE SUPERIOR COURT
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

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