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8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 STATE OF CALIFORNIA, *ex rel.* RoNo,
11 LLC,

12 Plaintiff,

13 v.

14 ALTUS FINANCE S.A.; CDR
ENTERPRISES; CONSORTIUM DE
REALISATION S.A.; MAAF
15 ASSURANCES; MAAF VIE S.A.; OMNIUM
GENEVE S.A.; CREDIT LYONNAIS S.A.;
16 AURORA NATIONAL LIFE ASSURANCE
COMPANY; NEW CALIFORNIA LIFE
17 HOLDINGS, INC.; ARTEMIS S.A.;
ARTEMIS FINANCE S.N.C.; AURORA
18 S.A.; ARTEMIS AMERICA PARTNERSHIP;
FRANCOIS PINAULT; and DOES 1 to 100,

19 Defendants.
20

Case No. 301344

COMPLAINT OF ATTORNEY
GENERAL ON ELECTION TO
INTERVENE UNDER GOV. CODE §
12652 FOR VIOLATION OF THE
FALSE CLAIMS ACT (Gov. Code §
12650 et seq.), UNFAIR COMPETITION
(Bus. & Prof. Code § 17200 et seq.),
CIVIL RICO (18 U.S.C. § 1961 et seq),
AND ACCOUNTING

21 Plaintiff State of California (“State”), alleges:

22 INTRODUCTION

23 1. This action arises under the California False Claims Act, Government Code section
24 12650 et seq. It was originally commenced on February 18, 1999, by plaintiff RoNo, LLC, as a *qui*
25 *tam* plaintiff pursuant to Government Code section 12652, subdivision (c)(1). This complaint by the
26 Attorney General is filed pursuant to a notice of election to intervene and proceed with the action
27 under Government Code section 12652, subdivision (c)(6)(A), filed contemporaneously with this
28

1 5. Defendant CDR Enterprises is a corporation organized under French law, is a successor
2 in interest of Altus, and is wholly owned by defendant Consortium de Realisation S.A.

3 6. Defendant Consortium de Realisation S.A. is a corporation organized under French law
4 and is a successor in interest to defendant Altus. Defendants CDR Enterprises and Consortium De
5 Realisation S.A. (collectively, “CDR”) are responsible as successors in interest for all debts and
6 liabilities of Altus and Credit Lyonnais arising from the acts stated in this complaint.

7 7. Defendant Credit Lyonnais S.A. (“Credit Lyonnais”) is a corporation organized under
8 French law. At all relevant times, Credit Lyonnais was doing business in California and the majority
9 owner of Credit Lyonnais was the government of France.

10 8. Defendant MAAF Assurances (“MAAF”) is a mutual insurance company organized
11 under French law, sometimes known as La Société Mutuelle Assurance Artisanale De France.

12 9. Defendant MAAF Vie S.A. (“MAAF Vie”) is a stock life insurance company organized
13 under French law, sometimes known as La Société Mutuelle Assurance Artisanale De France Vie S.A.
14 MAAF Vie is wholly owned by defendant MAAF.

15 10. Defendant Omnium Geneve S.A. (“Omnium Geneve”) is a holding company organized
16 under Swiss law.

17 11. Jean-Claude Seys (“Seys”) is, and at all relevant times was, an officer of MAAF and
18 MAAF Vie responsible for their general management.

19 12. Jean-Francois Henin (“Henin”) was at all relevant times the chief executive officer of
20 Altus.

21 13. Jean Irigoien (“Irigoien”) was at all relevant times an officer and/or director of MAAF and
22 MAAF Vie.

23 14. Defendant Artemis S.A. (“Artemis”) is a corporation organized under French law
24 conducting commercial activities in the United States and California. At all relevant times, Artemis
25 was owned, in part, by defendant Altus.

26 15. Defendant Artemis Finance S.N.C. (“Artemis Finance”) is an entity organized and doing
27 business under French law. At all relevant times, Artemis was the majority owner of defendant
28 Artemis Finance. On information and belief, Artemis Finance is conducting commercial activities in

1 the United States and California.

2 16. Defendant Aurora S.A. is a corporation organized under French law. On information and
3 belief, Aurora S.A. is owned by defendants Artemis and Artemis Finance.

4 17. Defendant Artemis America Partnership (“Artemis America”) is a partnership organized
5 under the laws of Delaware and is the continuation of Artemis America LLC, a limited liability
6 company. The partners of Artemis America are Artemis and Artemis Finance.

7 18. Defendant Francois Pinault (“Pinault”) was, at all relevant times, an officer, director, and
8 substantial owner of Artemis, Artemis Finance, and Artemis America. On information and belief,
9 Pinault routinely travels to the United States to conduct business. (Artemis, Artemis Finance, Aurora
10 S.A., Artemis America, and Pinault are hereafter referred to collectively as the “Artemis parties.”)

11 19. Defendant Aurora National Life Assurance Company (“Aurora”) is a stock life insurance
12 company organized under the laws of California. Aurora does business in California and has a
13 principal place of business in the County and City of Los Angeles. Aurora is wholly owned by
14 defendant New California Life Holdings, Inc. (“NCLH”).

15 20. Defendant NCLH is a corporation organized under the laws of Delaware and is doing
16 business in California. The majority owner of NCLH is defendant Aurora S.A..

17 21. At all relevant times, the outstanding common stock of NCLH was nominally owned,
18 in part, by defendants MAAF Vie, Omnium Geneve, and Artemis. Through these shareholders,
19 NCLH is imputed to have knowledge of the acts and omissions of MAAF Vie, Omnium Geneve, and
20 Artemis referred to herein. Through NCLH and Seys, an officer of MAAF and MAAF Vie and a
21 director of Aurora, Aurora is imputed to have knowledge of the acts and omissions of NCLH, MAAF
22 Vie, Omnium Geneve, and Artemis referred to herein.

23 22. Jean Yves Haberer (“Haberer”) was the president of defendant Credit Lyonnais during
24 the period from 1988 through 1993. On information and belief, Haberer was also the president of
25 defendant Altus during the period 1990 through 1993. Through Haberer and others, as well as through
26 its ownership of Altus, Credit Lyonnais is imputed to have knowledge of the acts and omissions of
27 Altus in connection with the actions and transactions referred to herein. Altus is also, therefore,
28 imputed to have knowledge of the acts and omissions of Credit Lyonnais in connection with the

1 actions and transactions referred to herein.

2 23. At all relevant times, the law firm of Morgan, Lewis & Bockius (“MLB”) and others
3 represented and acted as agents for the following defendants in connection with the acquisition of
4 ELIC through the state’s conservatorship and rehabilitation process, and later in connection with the
5 formation of Aurora and NCLH and transfer of the common stock of NCLH: Credit Lyonnais, Altus,
6 MAAF, MAAF Vie, Omnium Geneve, Artemis, Aurora, and NCLH.

7 24. Credit Lyonnais, at all relevant times, held a controlling majority of the shares of stock
8 of defendant Altus. By January 1993, Credit Lyonnais held at least 99.9% of the total shares issued
9 by Altus. At all relevant times, there existed a unity of interest between Credit Lyonnais and Altus
10 such that any individuality and separateness between these defendants ceased and Altus was the alter
11 ego of Credit Lyonnais. On information and belief, Credit Lyonnais placed its employees on Altus’
12 board of directors and controlled and dictated the operations of Altus. Henin, as chief executive
13 officer of Altus, reported directly to Haberer in his capacity as president of Credit Lyonnais.

14 25. Adherence to the fiction of the separate existence of Altus as an entity distinct from
15 Credit Lyonnais would permit an abuse of the corporate privilege and would sanction the deceit of
16 Credit Lyonnais and Altus, as described in more detail herein, and promote injustice in that Credit
17 Lyonnais used Altus to victimize plaintiff.

18 26. On information and belief, defendants entered into a joint venture to deceitfully and
19 wrongfully acquire ELIC’s junk bond portfolio and insurance business from plaintiff, as described
20 below, such that they had a community of interest in this undertaking and agreed to share the profits
21 derived from such scheme. Therefore, each defendant is responsible for the acts and omissions of
22 each other defendant.

23 27. On information and belief, all the acts and omissions described in this complaint by any
24 defendant was duly performed by, and attributable to, all defendants, each acting as agent, as
25 employee, alter ego and/or under the direction and control of the others, and such acts and omissions
26 were within the scope of such agency, employment, alter ego, direction, and/or control. Any reference
27 in this complaint to any acts of defendants shall be deemed to be the acts of each defendant acting
28 individually, jointly, or severally.

1 ELIC CONSERVANCY

2 31. In the late 1970s, ELIC began to amass, primarily through Michael Milken at Drexel
3 Burnham Lambert, one of the largest portfolios in the world of high yield corporate bonds (commonly
4 called “junk bonds”), with a face value exceeding \$6 billion. These bonds made up a majority of the
5 assets that supported ELIC’s policies and required statutory reserves.

6 32. However, in 1990 a series of events caused the junk bond market to collapse: Milken,
7 who largely made and controlled the junk bond market, pled guilty to securities fraud. Drexel filed
8 for bankruptcy. A federal law was enacted requiring savings and loans to sell their junk bond portfolio
9 within five years. ELIC policyholders got jittery and began cashing out their policies in 1989 and
10 1990. The Commissioner became concerned about ELIC’s financial viability. And, Credit Lyonnais
11 and Altus initiated plans to profit from the artificial depression of the junk bond market, eventually
12 turning to acquire ELIC’s junk bond portfolio at a bargain price. They did so initially by direct
13 negotiation with ELIC and later through private negotiation with the Commissioner.

14 33. Neither negotiation accomplished the goal of Altus and Credit Lyonnais, except for their
15 acquisition of certain highly desirable junk bonds which they “cherry-picked” directly from ELIC,
16 adding to its distressed financial position. Aware that a seizure of ELIC by the Commissioner was
17 imminent, Altus and Credit Lyonnais formed a joint venture, plan, and conspiracy to obtain control
18 of ELIC’s junk bond portfolio and insurance business through the conservatorship process.

19 34. On April 11, 1991, the Commissioner petitioned the Los Angeles County Superior Court
20 (“Rehabilitation Court”) to initiate a conservatorship for ELIC’s rehabilitation or liquidation. That
21 same day, the Rehabilitation Court issued an order pursuant to Insurance Code sections 1011 and 1059
22 appointing the Commissioner conservator of the estate of ELIC and vesting title to all of ELIC’s
23 assets, including its junk bond portfolio and insurance business, in the Commissioner in his official
24 capacity as an officer of the State of California.

25 35. Almost immediately after the Commissioner’s appointment as conservator for ELIC,
26 Altus and Credit Lyonnais began negotiating with him regarding the details of the purchase of ELIC.

27 36. In May 1991, the Commissioner announced that ELIC’s rehabilitation would be based
28 upon a so-called “definitive agreement” to be negotiated with Altus for the sale of ELIC’s junk bonds

1 and insurance business, which would be subject to certain qualifying conditions and an over-bid
2 process among other qualified buyers. Among the criteria required of all potential buyers was that the
3 bidder have experience operating a life insurance company, that all bids provide for the purchase and
4 operation of ELIC's insurance business as well as its junk bond portfolio, and that provision be made
5 for policyholders to participate in the profits of the restructured insurance company to the extent the
6 junk bond portfolio proved to be more valuable than anticipated.

7 37. Altus and Credit Lyonnais knew they could not meet the bidding requirements without
8 an independent purchaser of the insurance company because neither had experience operating an
9 insurance company. More importantly, Credit Lyonnais and Altus knew that both federal and state
10 law prohibited them from directly or indirectly owning or controlling ELIC's insurance business.
11 California law prohibited entities owned or controlled by a foreign government, such as Credit
12 Lyonnais and Altus, from directly or indirectly owning or controlling a California insurer. (Ins. Code
13 § 699.5.) Federal law prohibited a bank such as Credit Lyonnais and its subsidiary, Altus, from
14 directly or indirectly owning or operating an American life insurance company, except under limited
15 circumstances that did not apply. (12 U.S.C. § 1841 et seq.; 12 C.F.R. § 225.126.) On information
16 and belief, defendants were aware of these restrictions and understood Credit Lyonnais and Altus
17 would violate those restrictions if any insurance company bidding with them for ELIC's assets was
18 not independent of them and/or was simply acting as a front for them.

19 38. On information and belief, commencing in May 1991, Altus and Credit Lyonnais sought
20 the participation of various insurance companies in their plan to acquire control of ELIC's junk bond
21 portfolio and insurance operations, but were unsuccessful. In July 1991, as the bidding deadline drew
22 near, Altus and Credit Lyonnais identified MAAF, a small and financially troubled French automobile
23 insurer, as a partner in their bidding syndicate.

24 39. On or about August 7, 1991, the Commissioner signed the "definitive agreement" for
25 ELIC's sale and rehabilitation with Altus and what he understood to be "a French investment group
26 led by Paris-based MAAF, one of the largest mutual insurance companies in France," based on
27 statements from defendants. Under that agreement, Altus would purchase most of ELIC's junk bond
28 portfolio and the MAAF investment group would purchase, rehabilitate, and operate ELIC's insurance

1 business by and through the formation of a new insurance company, Aurora, which would be owned
2 and controlled by NCLH, a newly formed holding company.

3 40. On information and belief, Credit Lyonnais, Altus, and Does 1 to 100 identified and
4 made arrangements for the following entities to participate as part of the MAAF syndicate: SDI
5 Vendome, S.A., Financiere du Pacifique, S.A., and Omnium Geneve. In or about 1993, Chauray
6 Valeurs, S.A., a wholly-owned subsidiary of MAAF, joined the bidding syndicate. (MAAF, MAAF
7 Vie, Chauray Valeurs S.A., SDI Vendome S.A., Financiere du Pacifique S.A., and Omnium Geneve
8 are hereafter referred to as the “MAAF syndicate.”)

9 DEFENDANTS’ SECRET “PORTAGE” FRONTING AGREEMENTS

10 41. Unknown to the Commissioner, defendants, including Altus, Credit Lyonnais, MAAF,
11 MAAF Vie, and Omnium Geneve, and their partners, subsidiaries, and affiliates, entered into a secret
12 conspiracy to acquire ELIC from the Commissioner and the State through deceit. In furtherance of
13 that conspiracy, MAAF, for itself and MAAF Vie, entered into certain secret agreements with Altus
14 which provided that MAAF would be a front for Altus in acquiring ELIC’s insurance business. Under
15 an agreement referred to as a “Forward Sales Contract,” MAAF agreed to sell its NCLH shares to
16 Altus or Altus’ designee at a future date and a predetermined price. The parties were expressly
17 prohibited from disclosing the existence of the agreement to any third party. This secret agreement
18 was signed on August 6, 1991, one day before the “definitive agreement” was signed with the
19 Commissioner.

20 42. The same day, Altus and MAAF, for itself and MAAF Vie, entered into a “Management
21 Agreement” providing that while MAAF or MAAF Vie held shares in NCLH, the shareholder rights
22 in those shares would be exercised by MAAF only at Altus’ direction. Accordingly, the agreement
23 referred to MAAF and MAAF Vie as “temporary managers” of NCLH, recognized Altus as NCLH’s
24 true controlling entity, and relieved MAAF and MAAF Vie of all responsibility or liability for
25 management or loss in connection with NCLH and Aurora. Like the Forward Sales Agreement, the
26 Management Agreement was expressly made secret from all third parties.

27 43. The Forward Sales Agreement, the Management Agreement, other versions of such
28 agreements, and various amendments to such agreements were referred to by the parties, and are

1 hereafter collectively referred to as, “*contrats de portage*,” a French term for contracts used to
2 establish such secret fronting relationships. On information and belief, Altus also entered into similar
3 *contrats de portage* with Omnium Geneve and all members of the MAAF syndicate at or about the
4 time the Altus/MAAF bid proposal was submitted to the Commissioner.

5 44. Defendants’ *contrats de portage* were intended to and did make it appear that MAAF and
6 the other “fronts” were legitimate, independent investors and participants in the bidding process, while
7 giving Altus and Credit Lyonnais full ownership and control over the assets of ELIC thereby obtained.
8 In reality, the participation of MAAF and the other “fronts” was a sham designed to deceive the State,
9 the Commissioner, the Rehabilitation Court, and the other bidders.

10 45. In addition, on information and belief, Credit Lyonnais and Altus entered into a series
11 of complex financial arrangements with the members of the MAAF syndicate, whereby they
12 functionally provided all or virtually all of the financing by which the MAAF syndicate, acquired
13 ELIC’s insurance business and/or capitalized Aurora and NCLH. On information and belief, Credit
14 Lyonnais and Altus also entered into a series of complex financial arrangements with the Artemis
15 parties to acquire interests in ELIC’s bonds and insurance business.

16 46. On information and belief, Does 1 through 50 were aware of the secret agreements and
17 were aware that Altus and Credit Lyonnais intended to, and did, misrepresent the ownership interests,
18 financial relationships, affiliations, and roles of the MAAF syndicate to the Commissioner and the
19 Rehabilitation Court in violation of California law. On information and belief, Does 51 through 100
20 were under an obligation to know whether the MAAF syndicate was in fact independent of Credit
21 Lyonnais and Altus, but acted in deliberate ignorance or with reckless disregard of the secret
22 agreements and of the acts by Altus and Credit Lyonnais to misrepresent the ownership interests and
23 roles of the MAAF syndicate to the Commissioner and the Rehabilitation Court in violation of
24 California law.

25 DEFENDANTS’ DECEITFUL CONDUCT

26 47. On various occasions commencing in or about August 1991, and continuing for at least
27 four years thereafter, MAAF Vie, MAAF, Omnium Geneve, NCLH, Aurora, and their agents made
28 statements of fact to the Commissioner and his agents in California in communications over the

1 telephone, by fax wire transmission and by U.S. mail or other private or commercial carrier in which
2 the defendants stated that MAAF Vie was to be the true owner of shares in NCLH, which, in turn,
3 would be the sole shareholder of Aurora. The defendants also misrepresented and failed to disclose
4 that Altus and Credit Lyonnais, and their partners, subsidiaries, affiliates, and agents would control
5 all aspects of the ownership and management of NCLH and Aurora pursuant to the secret *contrats de*
6 *portage*. On information and belief, defendants also misrepresented the source of the funds by which
7 the “fronts” would acquire their interests in NCLH and failed to disclose that Altus and Credit
8 Lyonnais, and their partners, subsidiaries, and affiliates, would be effectively providing all or virtually
9 all of the financing for those acquisitions.

10 48. During the same time period, Altus and Credit Lyonnais and their agents made statements
11 of fact in communications to the Commissioner and his agents in California over the telephone and
12 by U.S. mail or other private or commercial carrier in which they falsely stated that Aurora would not
13 be owned or controlled, directly or indirectly, by Altus, Credit Lyonnais, or any foreign government
14 and that the members of the MAAF syndicate were not subject to such control. Examples of the
15 specific false statements made by defendants are set forth in detail below.

16 49. Based in material part on such false statements, misrepresentations, and omissions, the
17 Commissioner accepted and sought approval of the Altus/MAAF bid for the purchase and sale of
18 ELIC’s bonds and insurance business and, on December 26, 1991, the Rehabilitation Court approved
19 that bid. Had the secret *contrats de portage* and the true facts concerning Altus’ and Credit Lyonnais’
20 control over the MAAF syndicate been disclosed, the Commissioner could not and would not have
21 approved the Altus/MAAF bid and Altus and the MAAF syndicate would have been disqualified from
22 bidding because the bid was in violation of state and federal law.

23 50. Pursuant to an order of the Rehabilitation Court, on or about March 3, 1992, the
24 Commissioner, acting in his official capacity on behalf of the State, transferred ownership of the
25 majority of ELIC’s junk bond portfolio to Altus. But for the deceit by Credit Lyonnais, Altus, MAAF
26 Vie, MAAF, Omnium Geneve, Aurora, NCLH, and their agents, and the other acts and omissions
27 discussed herein, neither the Commissioner nor the Rehabilitation Court could have or would have
28 allowed the portfolio to be sold or transferred to Altus. Instead, the Commissioner would have

1 managed the portfolio, would have transferred it to other bidders, or would have otherwise disposed
2 of it in a manner that would have resulted in substantially greater recovery to the State as owner of the
3 ELIC estate.

4 51. Based in material part on the false statements, misrepresentations, and omissions
5 discussed herein, the Commissioner also sought approval from the Rehabilitation Court of the
6 proposed rehabilitation plan and transfer of ELIC's insurance business to NCLH, Aurora, and the
7 MAAF syndicate. On or about July 31, 1992, the Rehabilitation Court approved the rehabilitation
8 plan and the transfer of ELIC's insurance business to the MAAF syndicate through NCLH and Aurora.
9 Had the secret *contrats de portage* and the true facts concerning Altus' and Credit Lyonnais' control
10 over the MAAF syndicate been disclosed, the State could not and would not have approved the
11 transfer of ELIC's insurance business to the MAAF syndicate.

12 52. From November 1991 through December 1992, defendants filed applications for an
13 Organizational Permit and Certificate of Contribution and amendments thereto in order to form and
14 to issue stock for its new insurance company, Aurora, and its parent holding company, NCLH, to take
15 over ELIC's insurance business; the applications contained defendants' misrepresentations as to the
16 true identities of the investors and failed to disclose the portage agreements. In December 1992, in
17 reliance on the false application, approval was given by the Department of Insurance for the
18 Organizational Permit and Certificate of Contribution. On or about December 16, 1992, in reliance
19 on the false applications that the defendants filed with the Department of Insurance, and the deceitful
20 statements made to the Commissioner, the Department of Insurance issued a Certificate of Authority
21 to Aurora to operate an insurance company in California. But for the false applications and statements
22 discussed herein, the applications for Organizational Permit and Contribution Certificate and the
23 Certificate of Authority could not and would not have been approved and issued.

24 53. On information and belief, in or about November and/or December 1992, the Artemis
25 parties entered into a joint venture, plan, or scheme with Credit Lyonnais and Altus to acquire a
26 portion of the ELIC junk bond portfolio and Altus' controlling interest in ELIC's insurance business
27 by and through NCLH. In or about December 1992 and May 1993, Artemis and/or Artemis Finance
28 entered into agreements with Altus to purchase a portion of the ELIC bond portfolio and the interest

1 Altus controlled in ELIC's insurance business by and through NCLH. On information and belief,
2 Artemis and/or Artemis Finance thereafter transferred a portion of the junk bonds so acquired to
3 Artemis America. On information and belief, when these agreements were made, the Artemis parties
4 knew of the *contrats de portage* and of the misrepresentations that had been made to plaintiff. In early
5 1993, the Artemis parties initially applied to the Commissioner to acquire ELIC's insurance business
6 directly and later applied to become a permitted transferee.

7 54. On or about March 23, 1993, the Rehabilitation Court's order approving the
8 rehabilitation plan was vacated by the California Court of Appeal, and the case was remanded to the
9 Rehabilitation Court for further proceedings.

10 55. In May 1993, again acting in reliance upon the misrepresentations and omissions
11 described herein, the Commissioner sought judicial approval for a revised plan of rehabilitation that
12 would again transfer ownership of ELIC's insurance business to NCLH and the MAAF syndicate.

13 56. In reliance upon these and other false statements, pleadings, documents, and applications
14 made, submitted, or filed by Credit Lyonnais, Altus, MAAF Vie, MAAF, Omnium Geneve, Aurora,
15 NCLH, and their agents, on or about August 13, 1993, the Rehabilitation Court approved the modified
16 rehabilitation plan. That order and the sale of ELIC's insurance assets to the MAAF syndicate and
17 NCLH were affirmed by the California Court of Appeal in or about February 1995.

18 57. But for the deceit and false statements made by Credit Lyonnais, Altus, MAAF Vie,
19 MAAF, Omnium Geneve, Aurora, NCLH, and their agents and the other acts and omissions described
20 herein, neither the Commissioner nor the Rehabilitation Court could have or would have allowed
21 ELIC's insurance business to be sold or transferred to the MAAF syndicate or NCLH. On information
22 and belief, had the insurance business not been sold and transferred to the MAAF syndicate, the
23 Commissioner would have managed ELIC's insurance business, would have transferred the business
24 to other bidders, or would have otherwise disposed of it in a manner that would have resulted in
25 substantially greater recovery to the State as owner of the ELIC estate.

26 58. As a result of the deceit perpetrated by defendants, the State lost an opportunity to sell
27 ELIC's bonds and insurance business to other investors under a court approved rehabilitation plan that
28 would have finally resolved many of the claims and disputes concerning the rights of policyholders

1 and creditors against the ELIC estate. Additionally, the value of the transaction to the State has been
2 substantially reduced by the risks associated with litigation commenced by parties other than the
3 Commissioner based on defendants' wrongful conduct and the lack of finality associated with such
4 litigation.

5 59. In or about March 1994, Artemis, acting for itself and as agent for Credit Lyonnais,
6 Altus, MAAF, MAAF Vie, Omnium Geneve, Aurora, and NCLH, began the process of seeking
7 approval from the Commissioner for the transfer of stock in NCLH held by defendant Omnium
8 Geneve and a portion of the stock held by defendant MAAF Vie to Artemis. On or about July 6, 1994,
9 the formal application for approval of such transfer was filed with the Commissioner by the Artemis
10 and Pinault, acting as agents for those defendants. In these submissions to the Commissioner and the
11 discussions held between the representatives of the Artemis and the Commissioner, Artemis and
12 Pinault failed to disclose that Omnium Geneve and MAAF Vie were selling their interests in NCLH
13 pursuant to the direction of defendants Altus and Credit Lyonnais and in accordance with the *contrats*
14 *de portage*, of which Artemis and Pinault had full knowledge.

15 60. In reliance on those false submissions, representations, and omissions by the Artemis
16 parties, on or about August 25, 1994, the Commissioner approved the transfer of stock in NCLH from
17 Omnium Geneve and MAAF Vie to Artemis. But for the false submissions, representations, and
18 omissions that approval could not and would not have been given.

19 61. On or after April 5, 1995, defendant Consortium de Realization joined the conspiracy
20 with defendants Credit Lyonnais, Altus, MAAF, MAAF Vie, Omnium Geneve, Artemis, Artemis
21 Finance, Aurora, NCLH, and Pinault, and their partners, subsidiaries, and affiliates, and ratified the
22 acts of the co-conspirators by failing to disclose the co-conspirators' deceit, despite knowledge of it,
23 and by enjoying the benefits of defendants' misconduct.

24 62. On information and belief, in 1995, the Artemis parties entered into an agreement with
25 MAAF Vie assigning MAAF Vie's right to dividends on its shares in NCLH to the Artemis parties
26 in exchange for a fixed fee. In or about July 1995, Artemis, acting for itself and as agent for Credit
27 Lyonnais, Altus, MAAF, MAAF Vie, Omnium Geneve, Aurora, and NCLH, sought the approval of
28 the Commissioner for the transfer of stock held by defendant MAAF Vie to Artemis. In the

1 submissions to the Commissioner and the discussions held between the representatives of Artemis and
2 the Commissioner, Artemis failed to disclose that MAAF Vie was selling its interests in NCLH
3 pursuant to the direction of defendants Altus and Credit Lyonnais and in accordance with the *contrats*
4 *de portage*, of which Artemis had full knowledge.

5 63. In reliance on those false submissions, representations, and omissions by Artemis and
6 Pinault, on or about August 15, 1995, the Commissioner approved the transfer of stock in NCLH from
7 MAAF Vie to Artemis. But for the false submissions and representations, that approval could not and
8 would not have been given.

9 64. Aurora and NCLH have continued to make periodic annual filings with the
10 Commissioner purporting to disclose the ownership of NCLH. At no time did Aurora or NCLH
11 disclose that Altus and its partners, subsidiaries, and affiliates were the true owners of NCLH's
12 common stock nominally held by MAAF Vie and the other members of the MAAF syndicate. On
13 information and belief, Aurora and NCLH made such annual filings with the knowledge of the falsity
14 of its statements and with the intent to deceive the Commissioner using the U.S. mails. Such
15 information was material to the Commissioner and had he known the identity of the true owners of
16 NCLH, he could not and would not have approved Aurora's declaration of dividends to NCLH or
17 allowed it to continue to be operated in violation of law.

18 65. On information and belief, beginning in 1993 and continuing to the present, Aurora has
19 declared dividends to NCLH derived from profits generated by ELIC's insurance business and paid
20 principal and interest on certificates of contribution to NCLH. NCLH has, in turn, declared dividends
21 in favor of its shareholders, including but not limited to defendant MAAF Vie and others, and such
22 dividends benefitted or were ultimately transferred to the Artemis parties, Altus, Credit Lyonnais,
23 CDR, and Consortium de Realisation, and their partners, subsidiaries and affiliates. NCLH has also
24 made payments of principal and interest to Altus on account of loans made by Altus to NCLH in
25 connection with the ELIC Rehabilitation. On information and belief, such dividends and repayments
26 of principal and interest have been in excess of \$450 million.

27 66. Defendants were aware of the falsity of the statements, applications, and filings described
28 herein, or acted in deliberate ignorance or with reckless disregard of their truth. Defendants made

1 these statements, applications, and filings with the intent to deceive the State, the Commissioner, the
2 Rehabilitation Court, and the parties to the Rehabilitation proceedings, to induce them to act in
3 reliance on the statements, applications, and filings in the manner described above, and with the
4 expectation that they would so act.

5 DEFENDANTS' SPECIFIC MISREPRESENTATIONS

6 67. Defendants repeatedly misrepresented to the State, the Commissioner, staff of the
7 Department of Insurance, the Rehabilitation Court, federal banking regulators, and others that no
8 agreement such as the *contrats de portage* existed and that the Altus/MAAF bid for ELIC's junk bond
9 portfolio and insurance business was in compliance with the bidding requirements established by the
10 Commissioner and applicable law. The false statements described below are examples only and do
11 not recount all such misrepresentations and falsehoods. Many of these misrepresentations were made
12 by defendants using the U.S. mails, the telephone, or interstate wire transmission of documents
13 containing the misrepresentations in the form of faxes in furtherance of the false claims and deceptive
14 scheme.

15 68. On or about June 7, 1991, Henin, on behalf of Altus, submitted a letter to the
16 Commissioner with a proposed plan for ELIC's rehabilitation falsely stating: "The Investor Group
17 being formed . . . to fund Newco [i.e., Aurora] will not be controlled by any foreign government and
18 will comply with all requirements of the California Insurance Code." On information and belief, Altus
19 knew that statement was false when it was made.

20 69. On or about September 17, 1991, David Harbaugh of MLB, as agent for Credit Lyonnais,
21 Altus, MAAF, MAAF Vie, Omnium Geneve, Aurora, and NCLH, submitted to the Commissioner via
22 U.S. mail or private or commercial carrier documentation indicating that MAAF Vie would own the
23 largest interest in Aurora and purporting to identify all entities that would have a 10% or greater
24 interest in Aurora. That documentation failed to disclose the interests of Altus and Credit Lyonnais
25 in Aurora and NCLH.

26 70. On or about October 11, 1991, Altus and NCLH delivered to the Commissioner and his
27 agents bid documents falsely claiming that the Altus/MAAF bid was in full compliance with the
28 bidding requirements when they knew it was not.

1 71. On or about October 18, 1991, Altus and NCLH submitted to the Commissioner and his
2 agents a second set of bid documents falsely claiming that the Altus/MAAF bid was in full compliance
3 with the bidding requirements when they knew it was not.

4 72. On or about November 2, 1991, Aurora (on its own behalf and on behalf of the other
5 defendants), filed an Application for Organizational Permit for the issuance of stock and approval of
6 a Contribution Certificate with the Commissioner signed and sworn to by Irigoien under penalty of
7 perjury. The application purported to disclose all investors in Aurora, but failed to reveal the interests
8 of Altus and Credit Lyonnais or the existence of the secret *contrats de portage*.

9 73. On or about November 11, 1991, Altus and NCLH delivered to the Commissioner and
10 his agents a third set of bid documents falsely claiming that the Altus/MAAF bid was in full
11 compliance with the bidding requirements when they knew it was not.

12 74. On information and belief, on or about November 12, 1991, in response to a concern
13 raised by a competing bidder that Altus and Credit Lyonnais might control the French bidders for
14 ELIC's insurance business, Credit Lyonnais, Altus, MAAF, MAAF Vie, Omnium Geneve, Artemis,
15 Aurora, and NCLH, through counsel, sent a written response by facsimile over the telephone wires
16 denying any such control. Defendants knew the denial was false.

17 75. On or about November 18, 1991, hearings to approve the Altus/MAAF bid began in the
18 Rehabilitation Court. As a result of defendants' misrepresentations and omissions, the Commissioner
19 supported the Altus/MAAF bid. During the hearings, defendants and their agents falsely represented
20 to the Commissioner, the parties, and the court that MAAF, MAAF Vie, Omnium Geneve, and the
21 other members of the "MAAF-led investor group" were independent investors whose interests in
22 Aurora and NCLH were not owned or controlled in any way by Altus or Credit Lyonnais. These false
23 statements were part of a deliberate and premeditated plan by Altus and Credit Lyonnais to obtain
24 control of ELIC's junk bond portfolio and insurance business in violation of Insurance Code sections
25 699.5 and 1215.2 and other provisions of California and federal law.

26 76. On or about December 11, 1991, Credit Lyonnais, Altus, MAAF, MAAF Vie, Omnium
27 Geneve, Aurora, and NCLH, through their agents, submitted via U.S. mail or private or commercial
28 carrier an Amended Application for Organizational Permit to the Commissioner and the California

1 Department of Insurance purporting to describe the ownership of Aurora and NCLH. The application
2 admitted that Altus was controlled by Credit Lyonnais and CL Thomson, both of which are owned and
3 controlled by the French government, but falsely stated with respect to Altus, Credit Lyonnais, and
4 CL Thomson that “none of these entities will own any interest in Aurora or its parent, New California
5 Life Holdings, Inc.”

6 77. On or about December 13, 1991, MLB, as agent for Credit Lyonnais, Altus, MAAF,
7 MAAF Vie, Omnium Geneve, Aurora, and NCLH, submitted to the State’s agents via U.S. mail or
8 private or commercial carrier declarations by Seys and Irigoien on behalf of MAAF and MAAF Vie,
9 respectively, stating that no government entity directed or had the power to direct the management or
10 policies of MAAF, MAAF Vie, or any persons owning directly or indirectly any share or other interest
11 in MAAF and MAAF Vie by means of any contract. These documents failed to disclose the secret
12 *contrats de portage* or the true relationship among Credit Lyonnais, Altus, and the members of the
13 MAAF syndicate.

14 78. On or about December 24, 1991, MLB, as agent for Credit Lyonnais, Altus, MAAF,
15 MAAF Vie, Omnium Geneve, Aurora, and NCLH, submitted to the Commissioner via U.S. mail or
16 private or commercial carrier a declaration by Irigoien on behalf of MAAF Vie stating again that no
17 government entity directed or had the power to direct the management or policies of MAAF, MAAF
18 Vie, or any persons owning directly or indirectly any share or other interest in MAAF and MAAF Vie
19 by means of any contract. Again, Irigoien, on behalf of MAAF Vie, failed to disclose the secret
20 *contrats de portage* or the true relationship among the members of the MAAF syndicate.

21 79. In February and March of 1992, Credit Lyonnais, Altus, MAAF, MAAF Vie, Omnium
22 Geneve, Aurora, and NCLH made additional misrepresentations to the Commissioner. For example,
23 on or about February 12, 1992, they caused additional documents to be transmitted to the
24 Commissioner via U.S. mail or private or commercial carrier by MLB as their agent purporting to
25 disclose all Altus’ and Credit Lyonnais’ interests in MAAF, Omnium Geneve, and their affiliates.
26 Those documents again failed to disclose the existence of the secret agreements involving Altus,
27 MAAF, MAAF Vie, and Omnium Geneve which gave Altus and Credit Lyonnais effective ownership
28 and control of Aurora and NCLH.

1 80. On or about March 11, 1992, MLB, as agent for Credit Lyonnais, Altus, MAAF, MAAF
2 Vie, Omnium Geneve, Aurora, and NCLH, submitted to the Commissioner’s agents via U.S. mail or
3 private or commercial carrier a document purporting to disclose all business dealings and
4 arrangements between Altus or Credit Lyonnais and MAAF or MAAF Vie. The document failed to
5 disclose the existence of the secret agreements involving Altus, MAAF, and MAAF Vie which gave
6 Altus and Credit Lyonnais effective ownership and control of Aurora and NCLH, falsely stating:
7 “There are no contracts or similar arrangements presently in effect pursuant to which Altus/Credit
8 Lyonnais (or affiliates) exert or can exert, directly or indirectly, control over the management or
9 policies of MAAF, MAAF Vie or their affiliates.” This statement directly contradicted the *contrats*
10 *de portage*, and defendants knew it was false when they made it.

11 81. On or about March 24, 1992, Jacques Thunnissen, a representative of defendant Omnium
12 Geneve, executed a document under penalty of perjury purporting to disclose all business dealings and
13 arrangements between Altus or Credit Lyonnais and Omnium Geneve. This document failed to
14 disclose the secret agreements involving Altus and Omnium Geneve which gave Altus and Credit
15 Lyonnais effective ownership and control of Aurora and NCLH.

16 82. On or about March 26, 1992, MLB, as agent for Credit Lyonnais, Altus, MAAF, MAAF
17 Vie, Omnium Geneve, Aurora, and NCLH, sent statements to the Commissioner’s agents via U.S.
18 mail or private or commercial carrier executed under penalty of perjury stating that “[t]here are no
19 contracts or similar arrangements presently in effect pursuant to which Altus/Credit Lyonnais (or
20 affiliates) exert or can exert directly or indirectly, control over the management or policies of MAAF,
21 MAAF Vie or their affiliates.” These statements were false and failed to disclose the secret
22 agreements involving Altus, MAAF, and MAAF Vie which gave Altus and Credit Lyonnais effective
23 ownership and control of Aurora and NCLH.

24 83. On or about April 7, 1992, MLB, as agent for Credit Lyonnais, Altus, MAAF, MAAF
25 Vie, Omnium Geneve, Aurora, and NCLH, again wrote to the Commissioner via U.S. mail or private
26 or commercial carrier stating: “There is no ‘side agreement’ or understanding that Aurora will be
27 purchasing assets from, or selling assets to, Altus/Credit Lyonnais in the future We would also
28 note that Altus/Credit Lyonnais will not be ‘affiliated’ with Aurora, Holdco [NCLH] or any of the

1 Investor Group’s members.” That statement was false, and was known to be so by defendants when
2 it was made.

3 84. On or about August 21, 1992, and on several occasions thereafter, including but not
4 limited to August 28, 1992, and October 6, 1992, MLB, as agent for Credit Lyonnais, Altus, MAAF,
5 MAAF Vie, Omnium Geneve, Aurora, and NCLH, submitted via U.S. mail or private or commercial
6 carrier an Application to Amend Organizational Permit purporting to disclose all parties that would
7 own and/or control NCLH, and made other false representations regarding the application. Those
8 transmissions failed to disclose the secret agreements involving Altus and the MAAF syndicate which
9 gave Altus and Credit Lyonnais effective ownership and control of Aurora and NCLH.

10 85. On or about October 9, 1992, Aurora (acting for itself and the other defendants) filed an
11 “Application to Amend Organizational Permit” with the Commissioner. This document purported
12 to disclose all investors in Aurora, but failed to reveal the interests of Altus and Credit Lyonnais.

13 86. On or about December 3, 1992, Aurora (for itself and the other defendants) filed by first
14 class mail an “Application for Amend Organizational Permit” with the Commissioner which purported
15 to disclose all investors in Aurora, but failed to reveal the interests of Altus and Credit Lyonnais.

16 87. On or about May 7, 1993, Aurora (acting for itself and the other defendants) filed in the
17 Rehabilitation Court and served by first class mail and by facsimile over the telephone wires an
18 “Opposition of Aurora and Joinder in Commissioner’s Opposition to Motion for Order Directing
19 Compliance or Proof of Compliance by Commissioner with Federal Bank Holding Act and California
20 Insurance Code.” The opposition falsely stated that “Altus has no ownership interest in New
21 California, no interest in the profits of New California, and no right to control the operation or
22 management of Aurora.” Defendants knew these statements to be false when they were made.

23 88. On information and belief, on or about May 7, 1993, a third party named ANVEL asked
24 defendants for information regarding the “current and prospective owners who ultimately own/will
25 own Aurora.” Aurora and the other defendants, through counsel, responded by a letter sent by first
26 class mail dated May 13, 1993, which referred ANVEL’s counsel to the false statements made in the
27 Opposition defendants filed on May 13, 1993.

28 89. On or about May 20, 1993, Aurora (acting for itself and the other defendants) filed jointly

1 with the Commissioner and served by Federal Express and facsimile over the telephone wires a
2 response in the Rehabilitation Court to a request from ANVEL for information regarding Aurora's
3 direct and indirect ownership stating, in relevant part: "Last week, Aurora filed its response to Texas
4 Commerce Bank's motion relating to alleged foreign ownership issues. The equity owners of New
5 California Life Holdings, the parent of Aurora[,] were disclosed. Those investors have also been
6 disclosed to ANVEL at meetings and in written materials." Defendants knew that the statements and
7 "disclosures" they referenced had been false, and that they had lied to and misled the Commissioner
8 during his investigation.

9 90. On or about October 13, 1993, MLB, as agent for Credit Lyonnais, Altus, MAAF, MAAF
10 Vie, Omnium Geneve, Aurora, and NCLH, submitted an application by U.S. mail or private or
11 commercial carrier to the Department of Insurance requesting approval to transfer the stock of S.A.
12 Chauray Valeurs in NCLH to MAAF Vie. That application stated that the transfer should be of no
13 consequence because both S.A. Chauray Valeurs and MAAF Vie were owned by MAAF, but failed
14 to disclose the secret agreements involving Altus and the MAAF syndicate which gave Altus and
15 Credit Lyonnais effective ownership and control of Aurora and NCLH.

16 91. Credit Lyonnais, Altus, MAAF, MAAF Vie, and Omnium Geneve, as direct and indirect
17 parties to the various agreements giving control of the NCLH shares to Altus and Credit Lyonnais,
18 were aware of the falsity of the statements, applications, and pleadings described above. Defendants
19 made these statements and filed these applications and pleadings with the intent to deceive the State,
20 the Commissioner, and the Rehabilitation Court, to induce them to act in reliance on those deceptive
21 documents in the manner described above, and with the expectation that they would so act.

22 92. On information and belief, Credit Lyonnais had knowledge of the acts and omissions by
23 the other defendants and of the falsity of the statements, applications, and pleadings described above,
24 and participated in the making of those misrepresentations.

25 93. On information and belief, at the time of Artemis' purchase of NCLH common stock,
26 the Artemis parties were aware of the *contrats de portage*, but failed to disclose their existence and
27 misrepresented the true owners of NCLH in their submissions to the Commissioner. The Artemis
28 parties failed to disclose this information and made these misrepresentations with the intent to deceive

1 the Commissioner, to induce him to act in reliance upon those omissions and statements in the manner
2 described above, and with the expectation that he would so act.

3 94. On information and belief, Aurora and NCLH were aware of the falsity of the statements,
4 applications, and pleadings described above. Defendants made these statements and filed these
5 applications and pleadings with the intent to deceive the State, the Commissioner, and the
6 Rehabilitation Court, to induce them to act in reliance on those statements, applications, and pleadings
7 in the manner described above, and with the expectation that they would so act.

8 95. On information and belief, on numerous other occasions before and after the sale of
9 ELIC's junk bond portfolio to Altus and before the transfer of ELIC's insurance business to Aurora,
10 and in furtherance of their scheme, defendants made misrepresentations by telephone, in person, and
11 in writing sent by U.S. mail to the Board of Governors of the Federal Reserve System regarding the
12 participation of Altus and Credit Lyonnais in the purchase, ownership, and control of ELIC, Aurora
13 and NCLH.

14 96. In a letter dated August 19, 1991, for example, the law firm of Sullivan & Cromwell, as
15 agent for Credit Lyonnais and Altus, misrepresented to the General Counsel to the Board of Governors
16 of the Federal Reserve System that, subsequent to the transfer of ELIC's insurance business to Aurora,
17 Altus would have "no continuing role with [MAAF, MAAF Vie , and Omnium Geneve]." That letter
18 further falsely stated: "The Credit Lyonnais involvement in the Proposed Transaction consists of the
19 Altus loan, the commitment letters, and Altus' purchase of the high-yield bonds. In particular, Credit
20 Lyonnais, its affiliates and employees (the 'Credit Lyonnais Group') will own no common stock or
21 other equity securities of either Newco [Aurora] or Holdco [NCLH]. . . . The Credit Lyonnais Group
22 will not control any aspect of the business of either Newco [Aurora] or Holdco [NCLH]."

23 97. Those statements were made with the intent to deceive the Federal Reserve Board into
24 withholding objection to the sale of ELIC's insurance business to defendants under United States
25 banking laws which strictly limit a bank's ownership of an insurance company and were made in
26 furtherance of defendants' illegal scheme to secretly gain control of ELIC's bond portfolio and
27 insurance operations.

28 98. None of the communications described above revealed that Credit Lyonnais or Altus had

1 secretly arranged to provide all or substantially all of the financing to the “fronts” for the purchase of
2 the insurance company in violation of various state and federal laws.

3 CONCEALMENT AND DISCOVERY OF DECEPTION

4 99. At the time of the acts and omissions described herein, plaintiff was ignorant of the
5 deception and falsity of defendants’ statements, applications, and filings, and believed them to be true.

6 100. Defendants’ deceit and knowledge of the true relationship between Altus and MAAF and
7 the extent to which Altus and Credit Lyonnais controlled MAAF and the members of the Altus/MAAF
8 bidding syndicate first became known to the Attorney General of California no sooner than February
9 1999 by way of the *qui tam*’s false claims complaint.

10 101. Plaintiff could not, with reasonable diligence, have discovered the deceit and
11 concealment of defendants until on or about these dates because defendants actively concealed their
12 misconduct from plaintiff and swore one another to secrecy concerning the *contrats de portage* and
13 other deceptive agreements that had been executed by and among themselves.

14 102. As a result of the affirmative efforts of the defendants to conceal the existence of the
15 secret agreements between them discussed above from plaintiff and as a result of the various false
16 statements to plaintiff by defendants and their agents that there were no contracts or agreements of any
17 kind that gave Altus or Credit Lyonnais control over the MAAF syndicate, New California, or Aurora,
18 plaintiff was reasonably led to believe until the discoveries of the deception described above that no
19 falsehoods or violation of law had occurred. During that period of time, plaintiff had neither actual
20 nor constructive notice of the acts described herein and any period of limitations that might otherwise
21 have run is extended by the doctrine of equitable tolling.

22 CIVIL CONSPIRACY

23 103. Defendants formed and operated an unlawful conspiracy. Specifically, defendants agreed
24 that they would unlawfully obtain ownership and control of ELIC’s junk bond portfolio and insurance
25 business and illegally own and operate ELIC’s insurance business through the formation of a new
26 California insurance company, Aurora, and its holding company, NCLH. Defendants then carried out
27 this agreement through a series of joint ventures, deceitful plans, or schemes involving different
28 defendants at different times as alleged above.

1 would have been.

2 108. But for the acts and omissions complained of herein, the State would have retained
3 ownership of the ELIC junk bond portfolio and insurance business transferred to Altus and the MAAF
4 syndicate, would have transferred ownership to another bidder, or would have disposed of the assets
5 in another manner that would have resulted in a greater recovery to the State's ELIC estate and,
6 ultimately, to ELIC's policyholders. Additionally, the value of the transaction to the State has been
7 substantially reduced by the risks associated with litigation commenced by parties other than the
8 Commissioner based on defendants' wrongful conduct and the lack of finality associated with such
9 litigation.

10 109. Defendants' wrongful acts and omissions described above have not only resulted in
11 monetary loss and liability exposure to the State's ELIC estate, but have reduced the amount of
12 monetary benefits to ELIC's policyholders. In addition, citizens of California and many other states
13 have been required to pay tax assessments or assessments in the nature of taxes.

14 FIRST COUNT
15 False Claims Act - Gov. Code § 12650, *et seq*
(Against All Defendants)

16 110. Plaintiff incorporates here by reference the allegations in paragraphs 1 through 109 of
17 this complaint.

18 111. This is a claim for treble damages and penalties under the California False Claims Act,
19 Government Code section 12650 *et seq*.

20 112. The Altus/MAAF bids, including without limitation the definitive agreement, and the
21 various representations, applications, and submissions described above made in connection with the
22 ELIC conservatorship and the acquisition, formation, operation, and management of ELIC's junk bond
23 portfolio and insurance business, constituted one or more claims within the meaning of Government
24 Code section 12650 *et seq*.

25 113. By the conduct and acts described above in connection with the ELIC conservatorship
26 and the acquisition, formation, operation, and management of ELIC's junk bond portfolio and
27 insurance business, defendants Credit Lyonnais, Altus, MAAF, MAAF Vie, Omnium Geneve, the
28 Artemis parties, Aurora, NCLH, and Does 1 through 100 committed various violations of the

1 California False Claims Act within the meaning of Government Code section 12651, including
2 without limitation:

3 a. Defendants knowingly presented or caused to be presented to an officer and to
4 employees of the State false claims for approval, in violation of Government Code section 12651,
5 subdivision (a)(1), by submitting the various Altus/MAAF bids and related bid documents to the
6 Commissioner acting as an officer of the State and to employees of the California Department of
7 Insurance with knowledge that they were false and that defendants could not meet the bidding
8 requirements and that federal and state law prohibited defendants from directly or indirectly owning
9 or controlling ELIC's insurance business.

10 b. Defendants knowingly made, used, and caused to be made or used false records and
11 statements to get a false claim approved by the State, in violation of Government Code section 12651,
12 subdivision (a)(2), by making and using and causing to be made and used the numerous statements
13 and records described above which falsely misrepresented the relationships and affiliations between
14 the defendants and concealed the secret *contrats de portage* to get the Altus/MAAF bids approved by
15 the State.

16 c. Defendants conspired to defraud the State by getting a false claim allowed by the
17 State, in violation of Government Code section 12651, subdivision (a)(3), by entering into the
18 agreements described above to unlawfully obtain ownership and control of ELIC's bond portfolio and
19 insurance business and to illegally own and operate ELIC's insurance business by submitting the
20 various false bids, records, and statements to the State.

21 d. Defendants knowingly made, used, and caused to be made and used a false record
22 or statement to conceal, avoid, or decrease an obligation to pay or transmit money to the State, in
23 violation of Government Code section 12651, subdivision (a)(7), by making and using and causing
24 to be made and used the numerous statements and records described above which falsely
25 misrepresented the affiliations between the defendants and concealed the secret *contrats de portage*
26 to avoid or decrease the amount of their obligation to pay or transmit money to the State.

27 e. To the extent any defendant did not know about or knowingly participate in the
28 making of any of the false claims described above within the meaning of Government Code section

1 12650, subdivision (b)(2), such defendant is a beneficiary of an inadvertent submission of a false
2 claim to the State who subsequently discovered the falsity of the claims and failed to disclose them
3 to the State within a reasonable time after such discovery, in violation of Government Code section
4 12651, subdivision (a)(8), in that each defendant benefitted from the Commissioner's acceptance and
5 approval of the Altus/MAAF bid and the resulting ownership, formation, operation, and management
6 of ELIC's junk bond portfolio and insurance business operation and, on information and belief, each
7 discovered the falsity of the bids, records, statements, and claims by which those assets were acquired
8 but failed to disclose that falsity to the State within a reasonable time after they discovered it.

9 114. Had the Commissioner known the true facts, he could not and would not have approved
10 the bid or transferred either ELIC's junk bond portfolio or its insurance business to defendants.

11 115. As a result of the foregoing acts, defendants are liable to the State for three times the
12 amount of damages which the State sustained and civil penalties, as prayed for below.

13 SECOND COUNT
14 Unfair Competition - Bus. & Prof. Code § 17200
(Against All Defendants)

15 116. Plaintiff incorporates here by reference the allegations in paragraphs 1 through 109 of
16 this complaint.

17 117. Beginning at an exact date unknown to plaintiff and continuing to the present, all
18 defendants have engaged in, and are still engaging in, unfair competition as defined in Business and
19 Professions Code section 17200, in the City and County of San Francisco and elsewhere in California.

20 118. Such unfair competition includes, but is not limited to, the following acts or practices:

21 a. Defendants violated the California False Claims Act, Government Code section
22 12650 et seq., by the acts and practices set forth in paragraphs 111 through 115 of this complaint,
23 which are incorporated here by reference.

24 b. Defendants violated Insurance Code sections 699.5 and 1215 et seq. and California
25 Code of Regulations, title 10, section 2683 et seq. by the acts and practices described above, including
26 without limitation:

27 (1) Acquisition of ownership and control of ELIC's insurance business and junk
28 bond portfolio, Aurora, and NCLH by Altus and Credit Lyonnais as agencies of a foreign government

1 and in the absence of either the finding required under Insurance Code section 699.5, subdivision (b),
2 or facts sufficient to support such a finding.

3 (2) Entering into agreements to acquire control of ELIC's insurance business and
4 bonds, Aurora, and NCLH without disclosing or providing to the Commissioner the information
5 required under Insurance Code section 1215.2, subdivision (a).

6 (3) Failure to file with the Commissioner a statement containing the information
7 specified by Form A in connection with defendants' acquisition of ownership and control of ELIC's
8 insurance business and junk bond portfolio, Aurora, and NCLH, as required by Code of Regulations,
9 title 10, sections 2683.18 and 2683.23.

10 (4) Failure to furnish the Commissioner with such other or further information
11 and material necessary to make the information defendants actually provided in connection with their
12 acquisition of ownership and control of ELIC's insurance business and junk bond portfolio, Aurora,
13 and NCLH not misleading, as required under Code of Regulations, title 10, section 2683.21.

14 (5) Failure to file with the Commissioner an initial registration statement and
15 annual registration statements thereafter containing the information required under Insurance Code
16 section 1215.4, subdivision (b), and specified in Form B, Code of Regulations, title 10, sections
17 2683.8 and 2683.23, in connection with the ownership, control, and operation of Aurora and NCLH.

18 f. Defendants violated the Bank Holding Company Act, 12 U.S.C. § 1841 et seq., by
19 the acts and practices described above, including without limitation, the acquisition and retention by
20 Credit Lyonnais and Altus, in collaboration with the other defendants, of direct or indirect ownership
21 or control of more than five percent of the voting shares of NCLH and Aurora, in violation of 12
22 U.S.C. § 1843.

23 g. Defendants violated California Penal Code section 118 et. seq., in that they
24 committed perjury and aided or abetted perjury by the acts and practices described above, including
25 without limitation making false statements under oath in the applications and filings discussed above
26 pursuant to Insurance Code section 1215 et seq., California Code of Regulations, title 10, section 2683
27 et seq., and the Bank Holding Company Act, 12 U.S.C. § 1843 et seq., and in ELIC's conservation
28 proceedings.

1 h. Defendants violated 18 U.S.C. § 1341, which prohibits engaging in mail fraud, by
2 the acts and practices set forth in paragraphs 121 through 141 of this complaint, which are
3 incorporated here by reference.

4 i. Defendants violated 18 U.S.C. § 1343 by the acts and practices set forth in
5 paragraphs 121 through 141 of this complaint, which are incorporated here by reference.

6 j. Defendants violated 18 U.S.C. § 1961, et seq., in that they have used the U.S. mail
7 and telephones in furtherance of a conspiracy to defraud by the acts and practices set forth in
8 paragraphs 121 through 141 of this complaint, which are incorporated here by reference..

9 k. Defendants committed unfair and deceptive acts and practices in the conduct of
10 their business, including without limitation the following:

11 (1) Defendants repeatedly concealed and suppressed the existence of the secret
12 *contrats de portage* and the other facts discussed in detail above regarding the true nature of the
13 relationship between themselves and the identity of the parties which would and did actually own and
14 control ELIC's insurance business and bonds, Aurora, and NCLH.

15 (2) Defendants repeatedly and falsely misrepresented, as discussed in detail
16 above, the true nature of the relationships and affiliations between themselves and the parties which
17 would and did actually own and control ELIC's insurance business and junk bond portfolio, Aurora,
18 and NCLH.

19 (3) Defendants Altus and Credit Lyonnais unfairly and improperly manipulated
20 the bid process to their own advantage, and to the disadvantage of other actual and potential bidders,
21 by engaging in a series of activities, including but not limited to:

22 (a) Obtaining access to critical documentary and other information through
23 their contacts with ELIC prior to its conservation, which information was not made available to others;

24 (b) Having access to key electronic programs and information that was not
25 made available on the same terms and accessibility to other bidders;

26 (c) Use of key experts, including actuarial, accounting, and banking experts,
27 who had inside information about the operation of the company and its securities portfolios, but whose
28 information was not made available to other bidders or was made available on a much more restricted

1 and less useful basis;

2 (d) Establishment of undue influence with the bidding agency prior to the
3 conservatorship to establish a bidding process that was favorable to them, was disadvantageous to
4 other bidders, and was improper in an auction of publicly owned assets;

5 (e) Use of improper means to eliminate other bidders who threatened to
6 either win the bid from them, or to increase the price they would have to pay;

7 (f) Negotiation of essential details of the insurance company restructuring
8 prior to conservancy, giving them an advantage over other bidders; and,

9 (g) Access to extensive and unmonitored information directly from the
10 company and its experts months prior to conservation and for a period of time much longer than
11 information was available to other bidders.

12 119. To the extent said unfair competition may have occurred more than four years prior to
13 the commencement of this action, defendants concealed their conduct making plaintiff unable to
14 discover such conduct, as more fully alleged in paragraphs 99 through 102, such that the filing of this
15 claim is timely.

16 120. As a result of the foregoing acts, plaintiff is entitled to the disgorgement and injunctive
17 relief prayed for below.

18 THIRD COUNT
19 RICO (18 U.S.C. §1962(b)
(Against All Defendants)

20 121. Plaintiff incorporates here by reference the allegations in paragraphs 1 through 120 of this
21 complaint.

22 122. Aurora and NCLH constitute enterprises engaged in and whose activities affect interstate
23 and foreign commerce.

24 123. Defendants directly and indirectly acquired and maintained interests in and control of the
25 enterprises referenced in paragraph 122 above through a pattern of racketeering activity in violation
26 of 18 U.S.C. §1962(b).

27 124. Pursuant to and in furtherance of their unlawful schemes, defendants committed
28 numerous related acts of mail fraud (as defined in 18 U.S.C. § 1341) and wire fraud (as defined in 18

1 U.S.C. § 1343) as set forth above. Those acts constitute a pattern of racketeering activity pursuant
2 to 18 U.S.C. § 1961(5).

3 125. As a direct and proximate result of defendants' racketeering activities and violations of
4 18 U.S.C. § 1962(b), the State has been injured in its business and property in that it was deprived of
5 ELIC's junk bond portfolio and insurance business, which together would have resulted in a
6 substantial recovery in the multi-billions to the State; also, the value of ELIC's estate has been
7 substantially reduced by the risks associated with litigation commenced by parties other than the
8 Commissioner based on defendants' wrongful conduct described herein and the lack of finality
9 associated with such litigation. Additionally, defendants' pattern of racketeering activity and
10 violations of 18 U.S.C. §1962(b) have subverted California's conservatorship process and violated
11 its insurance regulatory laws to the detriment and damage to the State, whose citizens have been
12 forced to pay tax assessments or assessments in the nature of taxes on many of their insurance policies
13 to make up in part for the losses suffered by ELIC's estate owned by the State, and/or who have had
14 their ELIC policy account values and policy benefits reduced as a result of defendants' illegal
15 acquisition of ELIC's junk bond portfolio and insurance business and the continued operation and
16 maintenance of Aurora and NCLH.

17 126. As a result of the foregoing, defendants are liable to the State for treble damages in an
18 amount to be proven at trial and for other relief prayed for below.

19 FOURTH COUNT
20 RICO (18 U.S.C. § 1962(c))
(Against All Defendants)

21 127. Plaintiff incorporates here by reference the allegations in paragraphs 1 through 120 of
22 this complaint.

23 128. The joint ventures, schemes, and the MAAF syndicate formed by defendants to acquire
24 ELIC's junk bond portfolio and its insurance business and to operate ELIC's insurance business
25 through the formation and maintenance of a new California insurer and holding company was and is
26 an enterprise or enterprises engaged in and whose activities affect interstate and foreign commerce.
27 Defendants are employed by or associated with the enterprise(s).

28 129. Aurora and NCLH also constitute enterprises engaged in and whose activities affect

1 interstate and foreign commerce. Defendants are employed by or associated with those enterprises.

2 130. Defendants agreed to and did conduct and participate in the conduct of the affairs of the
3 enterprises referenced in paragraphs 128 and 129 above through a pattern of racketeering activity and
4 for the purposes of unlawfully obtaining ownership and control of ELIC and its junk bond portfolio,
5 forming a new insurance company and its parent holding company, issuing and transferring stock of
6 NCLH, and operating ELIC's life insurance business through the new companies.

7 131. Pursuant to and in furtherance of their unlawful scheme, defendants committed numerous
8 related acts of mail fraud (as defined in 18 U.S.C. § 1341) and wire fraud (as defined in 18 U.S.C. §
9 1343) as set forth above. Those acts constitute a pattern of racketeering activity pursuant to 18 U.S.C.
10 § 1961(5).

11 132. Defendants have directly and indirectly conducted and participated in the conduct of the
12 affairs of the enterprises referenced in paragraphs 128 and 129 above through the pattern of
13 racketeering activity described above, in violation of 18 U.S.C. § 1962 (c).

14 133. As a direct and proximate result of defendants' racketeering activities and violations of
15 18 U.S.C. § 1962(c), the State has been injured in its business and property in that it was deprived of
16 ELIC's junk bond portfolio and insurance business, which together would have resulted in a
17 substantial recovery in the multi-billions to the State; also, the value of ELIC's estate has been
18 substantially reduced by the risks associated with litigation commenced by parties other than the
19 Commissioner based on defendants' wrongful conduct described herein and the lack of finality
20 associated with such litigation. Additionally, defendants' pattern of racketeering activity and
21 violations of 18 U.S.C. §1962(c) have subverted California's conservatorship process and violated
22 its insurance regulatory laws to the detriment and damage to the State, whose citizens have been
23 forced to pay tax assessments or assessments in the nature of taxes on many of their insurance policies
24 to make up in part for the losses suffered by ELIC's estate owned by the State, and/or who have had
25 their ELIC policy account values and policy benefits reduced as a result of defendants' illegal
26 acquisition of ELIC's junk bond portfolio and insurance business and the continued operation and
27 maintenance of Aurora and NCLH.

28 134. As a result of the foregoing, defendants are liable to the State for treble damages in an

1 amount to be proven at trial and for other relief prayed for below.

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FIFTH COUNT
RICO (18 U.S.C. § 1962(d))
(Against All Defendants)

135. Plaintiff incorporates here by reference the allegations in paragraphs 1 through 134 of this complaint.

136. The joint ventures, schemes, and MAAF syndicate formed by defendants to acquire ELIC's junk bond portfolio and its life insurance business and to operate its life insurance business through the formation and maintenance of a new California insurer and holding company was and is an enterprise or enterprises engaged in and whose activities affect interstate and foreign commerce.

137. Aurora and NCLH also constitute enterprises engaged in and whose activities affect interstate and foreign commerce.

138. As set forth above, defendants agreed and conspired to violate 18 U.S.C. §§ 1962 (b) and (c). Defendants intentionally conspired and agreed to acquire or maintain interests in the enterprises referenced in paragraphs 136 and 137 above through a pattern of racketeering activity and to conduct and participate in the conduct of the affairs of those enterprises through a pattern of racketeering activity.

139. Defendants knew that their actions were part of a pattern of racketeering activity and agreed to the commission of those acts to further the schemes described above. That conduct constitutes a conspiracy to violate 18 U.S.C. § 1962 (b) and (c) in violation of 18 U.S.C. § 1962 (d).

140. As a direct and proximate result of defendants' conspiracy, the overt acts taken in furtherance of that conspiracy, and violations of 18 U.S.C. § 1962 (d), the State has been injured in its business and property in that it was deprived of ELIC's junk bond portfolio and its insurance business, which together would have resulted in a substantial recovery in the multi-billions to the State; also, the value of ELIC's estate has been substantially reduced by the risks associated with litigation commenced by parties other than the Commissioner based on defendants' wrongful conduct described herein and the lack of finality associated with such litigation. Additionally, defendants' pattern of racketeering activity and violations of 18 U.S.C. § 1962(d) have subverted the State's conservatorship process and violated its insurance regulatory laws to the detriment and damage to the

1 State and its citizens, who have been forced to pay assessments in the nature of taxes on many of their
2 insurance policies to make up in part for the losses suffered by ELIC's estate owned by the State,
3 and/or who have had their ELIC policy account values and policy benefits reduced as a result of the
4 illegal acquisition of ELIC's junk bond portfolio and insurance business and the continued operation
5 and maintenance of Aurora and NCLH.

6 141. As a result of the foregoing, defendants are liable to the State for treble damages in an
7 amount to be proven at trial and for other relief prayed for below.

8 SIXTH COUNT
9 Accounting
(Against All Defendants)

10 142. Plaintiff incorporates here by reference the allegations in paragraphs 1 through 140 of
11 this complaint..

12 143. Based on the actions and deceit of defendants, plaintiff is entitled to recover, by virtue
13 of the claims for relief set forth above, the value of ELIC's junk bond portfolio and the proceeds
14 therefrom, as well as the proceeds and dividends derived from the insurance business. The current
15 value of ELIC's junk bond portfolio, the amount of the proceeds, to whom the proceeds were paid,
16 or where they were reinvested is so complicated that it can not be determined without an accounting.
17 The amounts of the proceeds and dividends from the insurance business and the distribution of said
18 proceeds and dividends are so complicated that they can not be determined without an accounting.
19 Moreover, this information concerning ELIC's junk bond portfolio and the insurance business is
20 uniquely within the knowledge of defendants. The amount due to plaintiff would be shown through
21 an accounting.

22
23 PRAYER FOR RELIEF

24 Wherefore, plaintiff prays for relief against all defendants as follows:

25 As to the First Count:

26 1. Three times the damages which the State sustained as a result of defendants' false claims
27 in an amount to be proven at trial; and,

28 2. Civil penalties in the amount of \$10,000 for each false claim.

1 As to the Second Count:

2 3. An order that defendants disgorge all monies acquired by means of any act or practice
3 found by this court to be an unlawful, unfair, or fraudulent business act or practice under California
4 Business and Professions Code section 17200 et seq. and take all other steps necessary to make
5 plaintiff whole from the acts and omissions of defendants set forth above; and,

6 4. Such appropriate injunctive relief as is required to prevent future or additional unlawful,
7 unfair, or fraudulent business acts or practices by defendants.

8 As to the Third Count, Fourth and Fifth Counts:

9 5. For treble damages in an amount to be proven at trial suffered by reason of injury to the
10 State’s business and property sustained as a result of defendants’ racketeering activities and violations
11 of 18 U.S.C. §1962(b), (c) and (d).

12 6. For reasonable attorneys fees as provided by 18 U.S.C. §1964(c).

13 As to the Sixth Count:

14 7. An order requiring that defendants account to plaintiff for all profits and proceeds earned
15 from or taken in exchange for the property described above.

16 As to all Counts:

17 8. Damages in an amount of not less than \$2,000,000,000;

18 9. Costs of suit; and,

19 10. Such further or additional relief as the court deems proper.

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5 Dated: June 19, 2001
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