

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Mike Kreidler, Insurance Commissioner  
for the State of Washington and as  
Receiver for Cascade National Insurance  
Company, in Liquidation

(b) County of Residence of First Listed Plaintiff King  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
Weintraub Genshlea Chediak Tobin & Tobin  
400 Capitol Mall, 11th Floor  
Sacramento, CA 95814  
916.558.6000

**DEFENDANTS**

Mainstay Business Solutions, a federally-  
authorized division of Blue Lake  
Rancheria Economic Development  
Corporation

County of Residence of First Listed Defendant Placer  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motion to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(a)

Brief description of cause:

Breach of Contract and related common counts to recover money owed

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 4,683,529

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ YES ☐ NO

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

April 30, 2012

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

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Attorneys for Plaintiff Mike Kreidler, Insurance Commissioner  
for the State of Washington and as Receiver for Cascade  
National Insurance Company, in Liquidation

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MIKE KREIDLER, Insurance Commissioner for  
the State of Washington and as Receiver for  
Cascade National Insurance Company, in  
Liquidation,

Plaintiff,

v.

MAINSTAY BUSINESS SOLUTIONS, a  
federally-authorized division of Blue Lake  
Rancheria Economic Development  
Corporation,

Defendant.

Case No. \_\_\_\_\_

COMPLAINT FOR BREACH OF CONTRACT,  
BREACH OF COVENANT OF GOOD FAITH  
AND FAIR DEALING, AND CONVERSION

DEMAND FOR JURY TRIAL

Plaintiff Mike Kreidler, as and for his claims against the defendant Mainstay Business  
Solutions in the above-captioned matter, alleges as follows:

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PARTIES

1. Plaintiff Mike Kreidler (hereinafter, "Receiver") is the Insurance Commissioner of the State of Washington and the Statutory Receiver of Cascade National Insurance Company ("Cascade National") pursuant to Washington State law. Authorized and acting on Receiver's behalf are James T. Odiorne, Deputy Insurance Commissioner of the State of Washington and Court-appointed Receiver, and Marshall McGinnis, Court-appointed Deputy Receiver of Cascade National. At relevant times while Cascade National was in operations, its principal place of business was located in Bellevue, Washington. By Order of Liquidation entered November 4, 2005, by the Thurston County Superior Court under Cause No. 04-2-02427-4, Cascade National was placed into state court receivership for purposes of liquidation pursuant to the state insurance code, Chapters 48.31 and 48.99 RCW. By operation of law confirmed by court order, Receiver became the owner and holder of all property, rights, interests, and causes of action of Cascade National. Receiver brings this action in his official capacity as Receiver of Cascade National under the authority conferred by the Insurance Code of the State of Washington and the Order of Liquidation. Receiver brings this action for the benefit of the general public, creditors, claimants, and those with an interest in the receivership estate of Cascade National.

2. Defendant Mainstay Business Solutions ("Mainstay") at all relevant times was and is a tribal business established on May 13, 2003, by the Blue Lake Rancheria Tribe, a federally-recognized Indian tribe. Mainstay was converted to a division of the Blue Lake Rancheria Economic Development Corporation ("BLREDCO") in December 2006. BLREDCO is a business corporation whose federal charter was approved by the federal government in December 2004, as authorized by section 17 (25 U.S.C. § 477) of the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461 *et seq.*, as amended. At relevant times, Mainstay represented that its principal place of business was located at 3010 Lava Ridge Court, Suite 110, Roseville, California 95661, and/or at 1180 Iron Point Road, Suite 210, Folsom, California 95630, and/or at 605 Coolidge Drive, Suite 210, Folsom, California 95630, the location of BLREDCO.

JURISDICTION AND VENUE

3. Pursuant to written agreement between Cascade National and Mainstay entered into on July 1, 2004, by which Cascade National provided workers' compensation and employer's liability insurance coverage to Mainstay, Mainstay expressly waived sovereign immunity and consented to suit in the Federal District Court for the Eastern District of California.

4. The matter in controversy here exceeds \$75,000. Mainstay is a citizen of the state of California and Receiver is a citizen of the State of Washington. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a).

5. Mainstay also maintains its principal place of business in the City of Folsom, Sacramento County, California.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a), (c).

STATEMENT OF FACTS

7. Cascade National at all relevant times was a domestic stock insurance company holding a Certificate of Authority to operate in the State of Washington as a property and casualty insurer pursuant to Chapter 48.05 RCW. Cascade National also held a license issued by the State of California Department of Insurance to write workers' compensation insurance policies for coverage in California, subject to the insurance laws and regulations of California.

8. Mainstay was at all relevant times engaged in business as a professional employer organization ("PEO") in the State of California. A PEO, also referred to as a labor contractor, provides human resources/personnel services to its clients who are typically small to medium-sized businesses. The PEO technically "employs" its clients' workforces who continue to work at the clients' businesses. The PEO provides various human resources and personnel services on behalf of its clients, including payroll and benefits administration, health and workers' compensation insurance programs, and other similar services. Providing workers' compensation insurance coverage for the clients' workforce is a major component and marketing factor for a PEO to obtain clients because the PEO can often obtain more favorable

1 rates because it is able to pool many clients' workforces into a substantially larger pool of  
2 employees.

3 9. On July 1, 2004, Cascade National and Mainstay entered into a written letter  
4 agreement (the "Agreement") by which Cascade National would provide statutory workers'  
5 compensation insurance coverage to Mainstay in the State of California for the clients and  
6 workplace employees of Mainstay's PEO operations.

7 10. The workers' compensation insurance provided to Mainstay by Cascade  
8 National is a high-deductible policy. The deductible was \$1 million per claim. Under the  
9 Agreement, Cascade National is required to initially pay all claims to injured workers from the  
10 first date of injury and the first dollar of coverage, and Mainstay is required to repay or  
11 reimburse Cascade National for all those claims payments within the deductible amount. To  
12 secure performance by Mainstay, a \$500,000 deposit and a Letter of Credit in the amount of  
13 \$1,500,000 were provided by Mainstay, among other requirements.

14 11. The Agreement also requires Mainstay to remit to Cascade National on a weekly  
15 basis various sums for the "deductible premium," taxes and assessments, and for incurred  
16 claims, including paid loss and loss adjustment expenses and estimated ultimate unpaid loss  
17 and loss adjustment expenses.

18 12. The Agreement further provides that Cascade National, in its sole and complete  
19 discretion, is to determine the amount of the reserves to be paid over to Cascade National by  
20 Mainstay for losses and loss adjustment expenses. The required reserves are expressly defined  
21 in the Agreement as the greater of the estimated ultimate unpaid loss and loss adjustment  
22 expenses as calculated by Cascade National's appointed actuary, and any applicable loss and  
23 loss adjustment expense reserves required by a regulator. Under the Agreement, Mainstay is  
24 required to pay to Cascade the full amount of these calculated, required reserves.

25 13. The workers' compensation insurance policy coverage provided by Cascade  
26 National became effective on July 1, 2004. On March 28, 2005, Mainstay gave a "notice of  
27 cancellation" of the policy retroactively effective on March 1, 2005. The policy covers all  
28 workers' compensation injuries which occurred during that policy period, including all on-



1 going expenses, claims and costs arising from those covered injuries which are incurred after  
2 March 1, 2005 and for as long as the claim remains open. Cascade National is continually  
3 obligated to pay all ongoing expenses and losses for every worker injury which occurred during  
4 the policy period; and Mainstay is continually obligated to pay and reimburse Cascade  
5 National for all such claims. The obligation of Mainstay to pay Cascade National under the  
6 Agreement continues as long as Cascade National is required to pay out on workers'  
7 compensation claims for injuries which occurred during the policy period.

8 14. Cascade National has provided all the insurance coverage as agreed and  
9 required under the Agreement. Cascade National has paid, and during receivership has  
10 continued to pay and be obligated to the California Insurance Guaranty Association for all  
11 claims payments for the Mainstay coverage. Over the course of the coverage, the amount  
12 charged and payable by Mainstay to Cascade National totals \$18,887,657, including the  
13 calculated premium plus paid losses (i.e. paid losses and loss adjustment expense), and  
14 reserves (i.e. unpaid losses and loss adjustment expense) as of the last actuarial analysis as of  
15 December 31, 2011. Mainstay has paid or been credited with \$14,204,128, leaving a  
16 balance due from Mainstay to Cascade National of \$4,683,529 as of the last actuarial  
17 analysis as of December 31, 2011.

18 15. Receiver has made numerous written demands to Mainstay for payment pursuant  
19 to the Agreement and has provided detailed itemized support and actuarial analysis supporting  
20 the amounts due and owing beginning in mid-2009 through 2011. The amount due as of the  
21 actuarial study as of December 31, 2011, is now \$4,683,529, which amount consists of  
22 (a) \$155,981 in Stipulated Deductible Premium; (b) \$6,333,131 in Paid Losses and Allocated  
23 Loss Adjustment Expense ("ALAE"); (c) \$703,613 in Case Reserves Losses and ALAE;  
24 (d) \$720,264 in Unallocated Loss Adjustment Expense ("ULAE") Reserves; and (e) a credit or  
25 surplus of \$3,229,460 for Incurred But Not Reported ("IBNR") Losses and ALAE.

26 16. Demand has been made to Mainstay and it has failed to pay over to Cascade  
27 National the on-going and continuing amounts due as required under the Agreement.

28 ///

FIRST CAUSE OF ACTION

(Breach of Contract)

17. Receiver hereby realleges and incorporates paragraphs 1 through 16 as if fully set forth below.

18. The conduct, acts, and omissions of Mainstay in failing and refusing to pay sums due Cascade National constitute breach of contract under the Agreement.

19. As a result of such breach, Receiver has been harmed in an amount of all sums due under the Agreement of at least \$4,683,529, plus accrued interest, and/or in an amount to be proven at trial.

SECOND CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing)

20. Receiver hereby realleges and incorporates paragraphs 1 through 19 as if fully set forth below.

21. The Agreement includes an implied covenant of good faith and fair dealing by which Mainstay promised to deal with Cascade National in good faith. Specifically, the covenant of good faith and fair dealing required Mainstay to fairly, honestly, and reasonably perform the terms and conditions of the Agreement and to not act to deprive Cascade National of the benefits of the Agreement.

22. The conduct, acts and omissions of Mainstay in failing and refusing to pay sums due Cascade National constitute breach of the implied covenant of good faith and fair dealing under the Agreement.

23. As a result of such breach, Receiver has been harmed in an amount of all sums due under the Agreement of at least \$4,683,529, plus accrued interest, and/or in an amount to be proven at trial.

THIRD CAUSE OF ACTION

(Open Book Account)

24. Receiver hereby realleges and incorporates paragraphs 1 through 23 as if fully set forth below.

25. Since July 1, 2004, Mainstay became indebted to Cascade National on an open book account for money due in the amount of the last actuarial study as of December 31, 2011, of at least \$4,683,529. Cascade National has provided all the insurance coverage for all claims as agreed and required under the Agreement. Mainstay agreed to pay all amounts due, but has failed and continues to refuse to pay.

26. Receiver has demanded payment of the above amounts from Mainstay on numerous occasions, but Mainstay has failed to pay any part of the total amounts due. There is now due and owing from Mainstay to the Receiver the sum of at least \$4,683,529, plus accrued interest, and/or in an amount to be proven at trial.

#### FOURTH CAUSE OF ACTION

(Conversion of Constructive Trust Funds)

27. Receiver hereby realleges and incorporates paragraphs 1 through 26 as if fully set forth below.

28. Mainstay collected sums as and for insurance premiums from its clients and the workforce employees for workers' compensation insurance coverage. Those premiums were and are impressed with a constructive trust, and were and are to be held in trust or constructive trust on behalf of Cascade National, and are to be paid over to the insurer, Cascade National. The collection and retention of those funds by Mainstay constitutes conversion of sums due to and owned by Cascade National.

29. Receiver is entitled to recover all funds held in constructive trust, in an amount to be determined at trial. Receiver is entitled to a priority to such funds over other potential creditors or claimants. Receiver requests that the Court order Mainstay to hold all monies, profits, and other property acquired by the use of the funds misappropriated from Cascade National as a constructive trustee for Receiver's benefit.

WHEREFORE, Receiver prays for relief as follows:

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/ / /



PRAYER

AS TO THE FIRST, SECOND, AND THIRD CAUSES OF ACTION

(Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing,  
and Open Book Account)

a. for damages in an amount to be proven at trial, but not less than \$4,683,529,  
plus interest thereon at the legal rate until paid in full;

b. for costs of suit; and

c. for such other and further relief as the Court may deem just and proper;

AS TO THE FOURTH CAUSE OF ACTION

(Conversion of Constructive Trust Funds)

a. for an order declaring that Mainstay hold all monies, tangible and intangible  
assets constituting the proceeds and profits of its misappropriation of premiums due Cascade  
National in trust for Receiver;

b. for an order declaring Receiver the owner of the monies, assets, and property  
interest described above, and all property and proceeds thereof;

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1 c. for an order granting possession of the above-described monies, assets, and  
2 property interests, and all property and proceeds thereof, to Receiver; and

3 d. for an accounting of all monies due and owing from Mainstay to Receiver.  
4

5 Dated: April 30, 2012

Respectfully submitted,

6 weintraub genshlea chediak  
7 tobin & tobin  
8 Law Corporation

9 By: /s/ Dale C. Campbell  
10 Dale C. Campbell  
California State Bar No. 99173

11 Attorneys for Plaintiff Mike Kreidler,  
12 Insurance Commission for the State of  
Washington and as Receiver for  
13 Cascade National Insurance Company, in  
Liquidation  
14

15 DEMAND FOR JURY TRIAL

16 Receiver hereby requests a trial by jury provided by Rule 38 of the Federal Rules of Civil  
17 Procedure.  
18

19 Dated: April 30, 2012

Respectfully submitted,

20 weintraub genshlea chediak  
21 tobin & tobin  
22 Law Corporation

23 By: /s/ Dale C. Campbell  
24 Dale C. Campbell  
California State Bar No. 99173

25 Attorneys for Plaintiff Mike Kreidler,  
26 Insurance Commission for the State of  
Washington and as Receiver for  
27 Cascade National Insurance Company, in  
Liquidation  
28