1 2 3 4 5 6 7 8 9	XAVIER BECERRA Attorney General of California LUCY F. WANG (State Bar No. 199772) Acting Supervising Deputy Attorney General 455 Golden Gate, Suite 11000 San Francisco, California 94102-7004 Telephone: (415) 510-4400 Facsimile: (415) 703-5480 Email: Lucy.Wang@doj.ca.gov  CYNTHIA J. LARSEN (State Bar No. 123994) ORRICK, HERRINGTON & SUTCLIFFE LLP 400 Capitol Mall, Suite 3000 Sacramento, California 95814-4497 Telephone: (916) 447-9200 Facsimile: (916) 329-4900 Email: clarsen@orrick.com	ELECTRONICALLY  D Superio Cour o California, Count o Sa Francisco  06/17/2020 Cler o th Court BY ERNALY BURA Deput Clerk	
10 11 12	Attorneys for Applicant Ricardo Lara, Insurance Commissioner of the State of Californin his Capacity as Liquidator of CastlePoint National Insurance Company	nia  EXEMPT from filing fees per Govt.  Code § 6103	
13	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
14	CITY AND COUNTY OF SAN FRANCISCO		
15			
16	INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA,	Case No. CPF-16-515183	
17	Applicant,	Reservation No. [N/A]	
18		INSURANCE COMMISSIONER'S AMENDED NOTICE OF	
19	v.  CASTLEPOINT NATIONAL INSURANCE	APPLICATION AND APPLICATION FOR ORDER APPROVING	
20	COMPANY, and DOES 1-50, inclusive,	FINANCIAL REPORT AND	
21	Respondents.	EXPENSES OF ADMINISTRATION; FINANCIAL REPORT ON STATUS	
22		OF CASTLEPOINT NATIONAL INSURANCE COMPANY IN	
23		LIQUIDATION; MEMORANDUM OF POINTS AND AUTHORITIES	
24		Date: August 13, 2020	
25		Time: 9:30 a.m. Dept: 302 Judge: Hon. Ethan P. Schulman	
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# AMENDED NOTICE OF APPLICATION FOR ORDER APPROVING FINANCIAL REPORT AND EXPENSES OF ADMINISTRATION

PLEASE TAKE NOTICE that on August 13, 2020, at 9:30 a.m., or as soon thereafter as may be heard before the Honorable Ethan P. Schulman in Department 302 of the above-entitled Court located at 400 McAllister Street, San Francisco, California 94103, Ricardo Lara, Insurance Commissioner ("Commissioner") of the State of California, as the statutory liquidator of the estate of CastlePoint National Insurance Company ("CastlePoint"), will and hereby does apply to the Court for an Order granting the Commissioner's Application for Order Approving Financial Report and Expenses of Administration ("Application") on the grounds that the 2019 Financial Report (as defined in the Application), and the expenses of administration paid in the conduct of the CastlePoint estate during 2019 are reasonable, appropriate and necessary, and are within the discretion of the Commissioner.

The Application is made pursuant to California Insurance Code sections 1010 et seq., and upon the Commissioner's broad authority to manage the insolvent estate of CastlePoint, and is based upon the 2019 Financial Report and the status of CastlePoint submitted herewith to the Court for approval and ratification, the Declaration of Joseph Holloway In Support of Application

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1	("Holloway Decl.") and exhibits, any statements or arguments that may be made in support of the		
2	Application at the hearing on this matter, and the pleadings, records and files in this proceeding.		
3	Dated: June 17, 2020	XAVIER BECERRA ATTORNEY GENERAL OF CALIFORNIA LUCY F. WANG	
5		DEPUTY ATTORNEY GENERAL	
6		CYNTHIA J. LARSEN ORRICK, HERRINGTON & SUTCLIFFE LLP	
7			
8		By: /s/Cynthia J. Larsen CYNTHIA J. LARSEN	
10			
11		Attorneys for Applicant Ricardo Lara, Insurance Commissioner of the State of California in his capacity as Liquidator of	
12		CastlePoint National Insurance Company	
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AMENDED NOTICE OF APPLICATION AND APPLICATION FOR ORDER APPROVING FINANCIAL REPORT AND EXPENSES OF ADMINISTRATION;

# APPLICATION FOR ORDER APPROVING FINANCIAL REPORT AND EXPENSES OF ADMINISTRATION AND STATUS OF CASTLEPOINT NATIONAL INSURANCE **COMPANY IN LIQUIDATION**

## I. INTRODUCTION & BACKGROUND

The purpose of this Application and the submission of the accompanying documents, including the report containing CastlePoint's statements of assets and liabilities, changes in net assets, and cash flows ("2019 Financial Report"), is to provide a status report to the Court on 2019 liquidation activities, submit the 2019 Financial Report to the Court, and update the Court on the expenses of administration paid by the Commissioner in 2019. (Holloway Decl., ¶ 8, Ex. A, ¶ 9, Ex. B.) The Commissioner notes that the 2019 Financial Report at Exhibit A and expense documentation at Exhibit B submitted this year are different than past years because the Commissioner transitioned the accounting functions for the estate from legacy CastlePoint employees in New Jersey to the CLO office in San Francisco. (Holloway Decl., ¶ 10.) In particular, in connection with the transfer, the prior financial report format is no longer being generated at year end in order to streamline and preserve the efficiency of the estate administration. (*Id.*)

By way of background for the current Application, CastlePoint was placed into conservation on July 28, 2016 (the "Conservation Date"). From the Conservation Date through March 31, 2017 (the "Conservation Period"), the Commissioner oversaw the administration and payment of claims while simultaneously working with state insurance guaranty associations ("IGAs") to prepare for the transition of claims administration responsibilities to the IGAs upon

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<sup>&</sup>lt;sup>1</sup> On September 13, 2016, the Court approved the Commissioner's Plan of Conservation & Liquidation for CastlePoint National Insurance Company (the "Plan"), and the Commissioner undertook to implement the provisions of the Plan. Under the Plan, CastlePoint entered into a number of Conservation Transaction Agreements, which, among other things, brought \$200 million (net of certain advances) of additional liquidity into the estate and provided for runoff administration services through AmTrust North America, Inc. (collectively with AmTrust Financial Services, Inc., "AmTrust") and National General Management Corp. ("National General"). The Plan also ordered and preserved the statutory claim priorities contained in Insurance Code section 1033(a) under which expenses of administration have the highest (Class 1) priority, followed by claims for policy benefits, which are entitled to the second-highest (Class 2) priority. (Plan at pp. 10-11; Ins. Code § 1033(a)(1)-(2).) The Plan transactions also established continuous claims administration services for CastlePoint from AmTrust and National General.

liquidation.<sup>2</sup> The Court entered its Liquidation Order for CastlePoint on March 30, 2017, and the Liquidation Order became effective on April 1, 2017 ("Liquidation Date").

Shortly thereafter, the Commissioner filed an *Application for Order Approving Financial Report and Expenses of Administration* that set forth a financial report and a report on the expenses incurred by the Commissioner during the Conservation Period, which the Court granted on July 18, 2017. The Commissioner subsequently sought and received approval by Order dated June 7, 2018 for the financial report and expenses of administration for the 2017 Liquidation Period (which covered the Liquidation Date through the end of 2017).

In June 2019, the Commissioner filed an *Application for Order Approving Financial Report, Expenses of Administration, and Estate Administration Matters* ("2018 Application"), which sought approval for the financial report and expenses incurred by the Commissioner in 2018, along with the request for approval of certain routine estate administration matters for the efficient and orderly handling of the estate. The 2018 Application was granted by Order of this Court on August 13, 2019.

The Commissioner now seeks an order approving his current Application concerning 2019 matters for the reasons set forth in detail below.

## II. SUMMARY OF COMMISSIONER'S APPLICATION

## Commissioner's Request for an Order Approving Financial Report and Expenses of Administration

# A. 2019 Status Report

## 1. Overview & Financial Report

At the beginning of 2019, a portion of the liquidation activities continued to be conducted at the home office of CastlePoint in New Jersey, with oversight by the Commissioner as

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<sup>&</sup>lt;sup>2</sup> On January 12, 2017, the Commissioner filed with the Court a *Conservator's Report to the Court Concerning the Conservation of CastlePoint* ("Conservator's Report"), along with accompanying exhibits on January 18, 2017, to advise the Court and interested parties of material activities undertaken by the Conservator during the Conservation Period and to lay out, at a high level, the Conservator's expectations for the orderly liquidation of CastlePoint.

1	Liquidator, to preserve the institutional knowledge held by the legacy employees of CastlePoint		
2	located in New Jersey and New York. (Holloway Decl., ¶ 5.) However, by early 2019, the		
3	remaining liquidation activities were transferred to and assigned to the staff of the		
4	Commissioner's Conservation and Liquidation Office in San Francisco ("CLO") and, as of March		
5	31, 2019, all remaining activities were transferred to San Francisco and the CastlePoint home		
6	office was closed. ( <i>Id.</i> ) With all activities transferred to the CLO, as noted above, the 2019		
7	Financial Report submitted with this Application is different than past years. (Holloway Decl.,		
8	¶ 10.)		
9	The CLO and/or the CastlePoint home office accomplished the following tasks in 2019,		
10	among others:		
11	_		
12	1.	Continued to open and/or re-open claim files for the Guaranty Associations, now totaling over 2,821 claim files since the Liquidation Date through December 31, 2019;	
13 14	2.	Billed \$14,000,000 of reinsurance recoverables;	
15	3.	Collected reinsurance balances of approximately \$17,000,000;	
16	4.	Collected miscellaneous recoveries of approximately \$5,000,000;	
17	5.	Filed the tax return for the 2018 tax year and finalized the 2018 audit;	
18	6.	Completed a statutory deposit release to CIGA of \$19,044,989 in December 2019;	
19 20	7.	Secured the extensions of selected provisions of addenda to the administrative services agreements with AmTrust and National General; and	
21 22 23 24 25	8.	On behalf of CastlePoint, completed the novation of certain insurance policies and a reinsurance agreement, effective as of October 1, 2019, with Lion Insurance Company ("Lion"), State National Insurance Company, Inc. ("State National"), and Southeast Personnel Leasing, Inc., which in part novated all obligations and liabilities of CastlePoint under certain agreements to a new insurer, State National, and in connection therewith, the Commissioner received a one-time novation fee of \$25,000 and assisted with the release of assets held by Wells Fargo in a Trust Account to State National. <sup>3</sup>	
26 27	<sup>3</sup> Lion and O N.A. ("Well	CastlePoint were parties to a Trust Agreement, dated June 15, 2011, by and among Wells Fargo Bank, s Fargo") as Trustee, Lion as Grantor, and CastlePoint as the Beneficiary. (Holloway Decl., ¶ 7.)	

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(Holloway Decl., ¶ 6.)

A copy of the 2019 Financial Report is attached as Exhibit A to the Declaration of Joseph Holloway for the approval of the Court. (Holloway Decl., ¶ 8, Ex. A.)

#### 2. Issues Pertaining to the Claims of Eita Pruss Involving the Commissioner and AmTrust

As part of the Commissioner's claims handling functions on behalf of CastlePoint, the CLO also continued to handle, and direct its attorneys at Orrick on, substantial litigation in 2019 surrounding the proof of claim filed by Claimant Eita Pruss ("Pruss POC") for \$5 million in 2017 and continuing claims by Ms. Pruss involving the Commissioner and AmTrust. (Holloway Decl., ¶ 11.)<sup>4</sup> Starting in late 2016, and continuing to present, the claims of Ms. Pruss have required a considerable amount of the time of the CLO and its attorneys. (*Id.*)

On June 27, 2018, the Commissioner, acting through the CLO, issued his determination formally allowing the Pruss POC as a Class 2 (policyholder priority) claim under California Insurance Code Section 1033(a) for \$4 million, representing the full \$5 million policy limits of the CastlePoint policy less credit for \$1 million that was paid to Ms. Pruss by the New York Liquidation Bureau ("Commissioner's Determination"). The Commissioner rejected the claims of Ms. Pruss that she was entitled to have the \$4 million paid in cash on a priority or preferential basis because of alleged misrepresentations made regarding the availability of the \$5 million in cash at the time of the underlying settlement by counsel for CastlePoint and CastlePoint's insureds. Since the Commissioner rejected Ms. Pruss' request for a preferential or priority payment in his Determination, the Commissioner provided notice to Ms. Pruss of her rights to apply to the San Francisco Superior Court (Liquidation Court) for an order to show cause ///

Section 1(a) of the Trust Agreement directed Wells Fargo to administer a trust account (the "Trust Account") for the Beneficiary. Beneficiary as defined in the Trust Agreement also included Tower Insurance Company of New York ("TICNY") and Tower National Insurance Company ("TNIC"), for which CastlePoint is the successor by merger. (*Id*.)

<sup>&</sup>lt;sup>4</sup> The \$5 million was claimed by Ms. Pruss from CastlePoint pursuant to a settlement in her underlying personal injury action against certain CastlePoint insureds. (Id.)

pursuant to Insurance Code section 1032 as her exclusive judicial remedy to challenge the Commissioner's Determination.

On July 26, 2018, counsel for Ms. Pruss submitted for filing an application for an OSC ("OSC Application") and accompanying declaration to challenge the Commissioner's rejection of the payment of the Pruss POC on a priority or preferential basis as sought. The parties engaged in related discovery and briefing stemming from a January 16, 2019 Order of the San Francisco Superior Court, as modified by a March 26, 2019 Order, and the matter was heard before Judge Kahn on June 4, 2019. In the meantime, Ms. Pruss had filed two lawsuits in New York against AmTrust and others seeking to recover amounts in connection with the unpaid settlement. The first of which (referred to as "Pruss II") was stayed by the presiding Judge in New York, thereby prompting Ms. Pruss to also file with the San Francisco Superior Court an *Application for Leave to Pursue Action in New York* ("Application for Leave") to authorize her to continue to pursue the lawsuits pending in New York. The second was a plenary action for breach of the settlement agreement (from the Pruss I litigation) against AmTrust and others in New York (referred to as "Pruss III"), which was stayed pursuant to the January 2019 Order of this Court referenced above.

Following the June 4, 2019 hearing, Judge Kahn issued Orders dated July 1, 2019 denying the OSC Application of Ms. Pruss and granting in part and deferring in part her Application for Leave. Pursuant to the Order on the Application for Leave, the Court would address at a later hearing whether the claims of Ms. Pruss against AmTrust in Pruss II and III, and against counsel named in Pruss II, would be permitted to proceed in New York, or whether they would be required to proceed before the Liquidation Court in California.

AmTrust and the Commissioner both appealed the July 1, 2019 Order on the Application for Leave. Their appeals are pending, and briefing has not yet commenced. Judge Kahn subsequently requested briefing regarding whether the pending appeals by the Commissioner and AmTrust effect a stay of proceedings in the Liquidation Court regarding Ms. Pruss' request to pursue claims asserted in Pruss II and Pruss III, and if so, the scope of the stay. A hearing was

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held on February 6, 2020 before Judge Kahn on this issue. In an Order dated March 5, 2020, the Court denied an automatic stay of proceedings pending appeal but indicated that he will consider whether to grant a discretionary stay of proceedings pending appeal after he issues a ruling on the proper venue for Ms. Pruss' claims against AmTrust and the procedures applicable to the proceedings on those claims in light of the CastlePoint conservation and liquidation proceedings. Judge Kahn held a hearing on April 1, 2020, in which he set a schedule for briefing on the foregoing issues and related matters, under which briefing will be completed in May 2020, with a

Additionally, on June 11, 2019, Judge Kahn issued an Order requiring the participation of Ms. Pruss, AmTrust, and the Commissioner in a mandatory settlement conference with Judge Ross. Judge Ross has engaged the foregoing parties in settlement discussions over the last several months, but a settlement has not yet been reached. The Commissioner has engaged in good faith with this process and remains open to further efforts.

#### 3. **TruPS Claim**

The CLO on behalf of the Commissioner also continued to oversee and direct its attorneys in connection with a motion brought by interested third-party Movants<sup>5</sup> on November 20, 2018. (Holloway Decl., ¶ 12.) By the motion, Movants requested clarification from this Court that the standing injunctions entered in connection with the CastlePoint insolvency do not prohibit or stay the continued prosecution of a civil action they filed in the Supreme Court of the State of New York, Index No. 655881/2017 against certain named defendants, including AmTrust. The motion brought by Movants was filed following the agreement of the Movants, Commissioner, and defendants to a stipulation and proposed order setting the briefing schedule and hearing for this matter. This matter has also required a considerable amount of the time of the CLO and its attorneys. (*Id.*)

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<sup>26</sup> <sup>5</sup> "Movants" comprise non-parties Alesco Preferred Funding VIII, Ltd., Alesco Preferred Funding XI, Ltd., Alesco Preferred Funding XII, Ltd., Alesco Preferred Funding XIV, Ltd., Hildene Opportunities Master Fund II, Ltd., NFC Partners, LLC, Wolf River Opportunity Fund LLC, Wolf River Partner Fund, and WT Holdings, Inc.

The Movants are holders of subordinated debt instruments referred to as "TruPS" (short for "Trust Preferred Securities"). The TruPS were issued by one or more companies that were previously up-stream, non-insurance company affiliates of CastlePoint that were members of a group of companies referred to as the "Tower Group." CastlePoint is neither an issuer nor obligor under the TruPS. CastlePoint is no longer an affiliate of the Tower Group, having formally "deconsolidated" from the Tower Group pursuant to the Plan approved by the Court on September 13, 2016.

In the New York action, Movants have been seeking payment on the TruPS. However, because the specific Tower Group companies that issued the TruPS are likely insolvent and unable to pay any of the sizable amounts due on the TruPS, the Movants named a broad array of defendants (Officers, Directors, affiliates, and third parties) and asserted a number of alternative claims and liability theories. While CastlePoint is not a defendant in the New York action, the asserted claims and liability theories encroach on claims that are (or were) owned by CastlePoint and have already been released in exchange for the significant value received by the CastlePoint estate under the Plan.

Following briefing by the Movants and the New York defendants, as well as the Commissioner's statement of position that was filed on January 15, 2019, a hearing was held before Judge Schulman on March 11, 2019. At oral argument at the hearing, the Court instructed counsel for the Movants and New York defendants to file supplemental briefing setting forth concisely why each party contends that the prosecution of Movants' claims either would or would not violate the injunction or, conversely, that those claims have been or have not been released. The Court also permitted supplemental briefing on new authority offered by the New York defendants. The Court invited the Commissioner to submit further analysis as well, which the Commissioner provided in a supplemental statement of position on April 2, 2019.

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<sup>6</sup> The Commissioner discussed the Release Agreement in his *Statement of Position in Response to Motion for Order Clarifying the CastlePoint Stay Does Not Apply to New York Action* at pp. 6-7, 9. *See also* Release Agreement, March 30, 2017 Liquidation Order, and September 13, 2016 Plan Order.

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Ultimately, the Commissioner concluded that the Movants' tort claims appear either to

have been released by the Commissioner, <sup>6</sup> or to be unreleased claims that still belong to the

direct breach of contract claims against Issuers, appear to be "merely incidental" to claims

belonging to the Commissioner for loss of assets belonging to the estate. (Avikian v. WTC

the ten causes of action brought by Movants in New York "are barred by the outstanding

injunctions issued by this Court and releases approved by this Court in the underlying CastlePoint

liquidation proceedings." (May 16, 2019 Order at p. 2.) On May 31, 2019, the Movants filed a

Motion for Reconsideration of this Court's May 16, 2019 Order. A hearing was held on August

13, 2019, following which the Court issued an Order denying the Motion for Reconsideration.

On August 27, 2019, the Movants filed a notice of appeal of the May 16, 2019 and August 13,

2019 Orders. The appeals remain pending and briefing has only recently commenced. Parallel to

the briefing, on March 24, 2020, the New York defendants filed a motion to strike the filing of the

notice of appeal as well as an application for order to show cause regarding contempt against the

Movants. In the motion to strike, the New York defendants allege that the orders that Movants

seek to appeal are not in fact appealable on the grounds that a motion for clarification regarding

an injunction, and a motion for reconsideration of that, are not appealable under California law.

In the application regarding contempt, the New York defendants claim that Movants should be

this Court by asserting claims against the New York defendants that had been barred by this

Court. A hearing has been scheduled for July 20, 2020 to address these two filings.

held in contempt for an amended complaint they filed in December 2019 that defies the orders of

Financial Corp. (2002) 98 Cal. App. 4th 1108, 1116.)

Commissioner, as Conservator and then Liquidator of the CastlePoint estate, and are enjoined by

the Court's prior orders. Any loss in investment value thereafter suffered by Movants, apart from

The Court issued an order on May 16, 2019 finding that all but one (breach of contract) of

## 4. Update on Estate Administration Matter

In the 2018 Application, the Commissioner requested the approval of certain routine estate administration matters for the efficient and orderly handling of the estate. (Holloway Decl., ¶ 13.) One such matter was the Commissioner's request for approval of a records retention and destruction plan. (*Id.*) With the insolvency of CastlePoint, the Commissioner inherited over 10,000 boxes of CastlePoint files.<sup>7</sup> (Holloway Decl., ¶ 14.) The cost to store these boxes, some of which dated as far back as 1997, was substantial and reducing the remaining value of the estate each month. (*Id.*) Accordingly, the Commissioner sought approval of the Court to implement a records retention and destruction plan pursuant to which all boxes over seven years old, and that have not been accessed from storage in the past seven years, may be destroyed, and box destruction may continue on an ongoing basis consistent with this plan. (*Id.*) Following the Court's August 13, 2019 Order approving the 2018 Application, the CLO oversaw the destruction of all designated boxes held in storage by GRM Information Management Services, Inc. ("GRM") in New Jersey, which took several months to complete as explained in the 2018 Application. (Holloway Decl., ¶ 15.) The CLO continues to direct the destruction of boxes on an ongoing basis consistent with the approved plan. (*Id.*)

## **B.** Expenses of Administration

In 2019, the CastlePoint estate paid expenses totaling \$6,093,970.8 (Holloway Decl., ¶ 9, Ex. B, ¶ 16.) Of that total, \$470,015 was paid in payroll and benefits to CastlePoint employees through the end of March 2019, at which time all work was transferred to the CLO, and \$873,019 was paid for various office expenses, which included costs for storage (\$324,363) and record retrieval (\$494,144).9 (*Id.*) Also of that expenses total, \$4,750,935 was paid for professional fees. (Holloway Decl., ¶ 17.) Within the total for professional fees, \$823,333 was paid for legal expenses (including \$797,426 for fees paid to Orrick for legal services in connection with the

<sup>&</sup>lt;sup>7</sup> A limited number of boxes have been added to storage following the Conservation Date. (Holloway Decl., ¶ 14.)

<sup>&</sup>lt;sup>8</sup> In 2018, the CastlePoint estate paid expenses totaling \$5,677,105. (Holloway Decl., ¶ 18.)

<sup>&</sup>lt;sup>9</sup> As of the Conservation Date, July 28, 2016, CastlePoint had 26 employees and an annual payroll of \$3.93 million. Since then, the Liquidator has steadily reduced the number of employees and payroll costs, releasing the last of the CastlePoint employees by the end of March 2019. (Holloway Decl., ¶ 16.)

liquidation during 2019), \$697,074 was paid for necessary consultants and contractors, and \$3,230,528 was paid to the CLO for professional fees, which included in part amounts allocated to the CLO Claims Department (\$448,135), the CLO IT Department (\$1,083,793), the CLO Reinsurance Department (\$992,969), and the CLO Estate Trust Department (\$432,121). (*Id.*) A full breakdown of all expenses paid during 2019 related to the liquidation can be found at Exhibit B to the Declaration of Joseph Holloway, which provides additional detail on the information found on page 2 of Exhibit A. (Holloway Decl., ¶ 9, Ex. B.)

The Court's Liquidation Order authorizes the Commissioner, acting as Liquidator, to fix and pay the administrative expenses of the liquidation from the assets of CastlePoint, subject to the Court's oversight and approval as specified. (*See* Liquidation Order, ¶¶ 3, 15-18.) These provisions were entered pursuant to California Insurance Code sections 1035 and 1036, which grant the Commissioner the power to fix all administrative costs (§ 1035) and the compensation of outside attorneys (§ 1036), with the approval of the Court, and to have those expenses paid by the liquidation estate. The Commissioner believes that the expenses incurred, which are administrative costs and legal fees, were necessary to the efficient and orderly administration of CastlePoint during 2019 for the continuing liquidation of CastlePoint.

## III. MEMORANDUM OF POINTS AND AUTHORITIES

# A. The Commissioner Has Broad Authority to Manage the CastlePoint Estate

The Commissioner is vested with broad discretion to conduct the liquidation of an insolvent insurer subject to certain statutory limitations and the limitation "that the exercise of discretion be neither arbitrary nor improperly discriminatory." (*In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 356 (citing *Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal.2d 307, 329).) His decisions as to matters concerning an insolvent insurer are reviewed by the Court on an abuse of discretion standard. (*In re Executive Life, supra*, 32 Cal.App.4th at 358.)

# B. The Expenses of Administration for Which Approval is Sought Are Within the Commissioner's Authority

California Insurance Code Sections 1035 and 1036 require the Commissioner to seek approval of the Court for the payment of administrative costs (§ 1035) and legal fees (§ 1036) from the assets of CastlePoint. Specifically, section 1035(a) provides that "all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of [CastlePoint]...shall be fixed by the commissioner, subject to the approval of the court, and shall be paid out of the assets of [CastlePoint] to the department." (Ins. Code § 1035(a).) Similarly, section 1036 states that "compensation of any counsel outside of California state service who is employed...to represent the commissioner as receiver shall be fixed by the commissioner, subject to the approval of the court. Compensation of counsel representing the commissioner as receiver shall be paid from the assets of [CastlePoint]." (Ins. Code § 1036.)

The expenses and professional fees incurred by the Commissioner during 2019 were typical for a receivership of this size and complexity, and were necessary, reasonable, and an appropriate exercise of the Commissioner's discretion to secure and manage the CastlePoint estate and to protect its creditors to the fullest extent possible. (Holloway Decl., ¶ 19.)

## IV. CONCLUSION

Based on the foregoing, including the within Memorandum of Points and Authorities, the Commissioner respectfully requests that the Court approve and ratify the 2019 Financial Report and the expenses of administration paid by the Commissioner during 2019 as set forth above and in the Holloway Declaration and its accompanying exhibits. At the hearing on this Application,

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1	the Commissioner through counsel will be prepared to ensure any questions that the Court may		
	the Commissioner, through counsel, will be prepared to answer any questions that the Court may		
2	have regarding the status of the liquidation a	and the expenses of administration incurred in 2019.	
3			
4	Dated: May 6, 2020	XAVIER BECERRA ATTORNEY GENERAL OF CALIFORNIA	
5		LUCY F. WANG DEPUTY ATTORNEY GENERAL	
6		CYNTHIA J. LARSEN	
7		ORRICK, HERRINGTON & SUTCLIFFE LLP	
8			
9		By: /s/ Cynthia J. Larsen	
10		CYNTHIA J. LARSEN	
11		Attorneys for Applicant Ricardo Lara, Insurance Commissioner of the State of	
12		California in his capacity as Liquidator of CastlePoint National Insurance Company	
13		Casheronic National Insurance Company	
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