

1 KAREN HO (State Bar No. 274027)
2 ERVIN COHEN & JESSUP LLP
3 9401 Wilshire Boulevard, Ninth Floor
4 Beverly Hills, California 90212-2974
Telephone: (310) 273-6333
Facsimile: (310) 859-2325
Email: kho@ecjlaw.com

5 CYNTHIA J. LARSEN (State Bar No. 123994)
6 ORRICK, HERRINGTON & SUTCLIFFE LLP
7 400 Capitol Mall, Suite 3000
8 Sacramento, California 95814
Telephone: (916) 447-9200
Facsimile: (916) 329-4900
Email: clarsen@orrick.com

**EXEMPT from filing fees per Govt.
Code § 6103**

9 Attorneys for Ricardo Lara, Insurance Commissioner
10 of the State of California in his Capacity as
11 Rehabilitator/Liquidator of Executive Life Insurance
Company

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

14 INSURANCE COMMISSIONER OF THE
15 STATE OF CALIFORNIA,

16 Applicant,

17 v.

18 EXECUTIVE LIFE INSURANCE
19 COMPANY, a California corporation, and
20 DOES 1 through 1000, inclusive,

21 Respondents.
22
23
24
25
26
27
28

Case No. BS 006912

**INSURANCE COMMISSIONER'S
NOTICE OF APPLICATION AND
APPLICATION FOR ORDER:
(1) APPROVING FINAL ACCOUNTING;
(2) APPROVING CLOSING BUDGET;
(3) APPROVING DOCUMENT
DESTRUCTION PLAN; (4) APPROVING
FINAL DISTRIBUTION PLAN;
(5) DISSOLVING EXECUTIVE LIFE
INSURANCE COMPANY AND
DISCHARGING THE COMMISSIONER
AFTER FILING OF A DECLARATION
OF COMPLIANCE; AND
(6) ESTABLISHING PROCEDURES FOR
DISMISSING AND TERMINATING
PROCEEDINGS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

**Date: November 21, 2019
Time: 9:00 a.m.
Dept: 72
Judge: Hon. Ruth A. Kwan
RES ID: 752831062496**

TABLE OF CONTENTS

	Page
I. NOTICE OF APPLICATION.....	1
II. APPLICATION	4
A. INTRODUCTION	4
B. BACKGROUND	5
1. THE EXECUTIVE LIFE REHABILITATION PLAN	6
2. ADDITIONAL RECOVERIES BY THE COMMISSIONER FOR THE BENEFIT OF THE EXECUTIVE LIFE ESTATE.....	8
3. DISTRIBUTIONS OF EXECUTIVE LIFE'S ASSETS TO CONTRACT HOLDERS.....	9
A. DISTRIBUTIONS OF NON-LITIGATION RECOVERIES.....	9
B. DISTRIBUTIONS OF LITIGATION RECOVERIES.....	9
(1) FEC LITIGATION TRUST DISTRIBUTIONS.....	9
(2) ALTUS LITIGATION PROCEEDS DISTRIBUTIONS	10
4. THE REMAINING ESTATE ASSETS WILL NOT FULLY SATISFY ALLOWED CONTRACT HOLDER CLAIMS.....	11
5. COMMISSIONER'S COMPLETION OF ALL TASKS REQUIRED TO LIQUIDATE AND REQUEST FOR ENTRY OF FINAL ORDER APPROVING CLOSING OF ESTATE	11
C. REQUEST FOR APPROVAL OF THE COMMISSIONER'S FINAL ACCOUNTING	12
D. REQUEST FOR APPROVAL OF CLOSING BUDGET FOR EXECUTIVE LIFE ESTATE.....	13
E. REQUEST FOR APPROVAL OF DOCUMENT DESTRUCTION PLAN.....	15
F. REQUEST FOR APPROVAL OF FINAL DISTRIBUTION PLAN	15
G. REQUEST FOR APPROVAL OF PROCEDURES FOR DISSOLUTION OF EXECUTIVE LIFE AND DISMISSAL OF THIS PROCEEDING.....	17
1. PROCEDURES FOR DISSOLUTION	17
2. PROCEDURES FOR INTERIM REPORT, FINAL DECLARATION OF COMPLIANCE AND DISCHARGE OF COMMISSIONER	17
3. PROCEDURES BEFORE ESTATE CAN BE REOPENED	18
III. CONCLUSION.....	19
IV. MEMORANDUM OF POINTS AND AUTHORITIES	20

I.

NOTICE OF APPLICATION

TO EACH PERSON OR ENTITY WHO HAS REQUESTED OFFICIAL NOTICE IN
THIS PROCEEDING:

PLEASE TAKE NOTICE THAT on November 21, 2019, at 9:00 a.m., or as soon
thereafter as the matter may be heard, in Department 72 of the Superior Court for the County of
Los Angeles, located at 111 North Hill Street, Los Angeles, California (the "Hearing"), California
Insurance Commissioner Ricardo Lara (the "Commissioner"), in his capacity as the Conservator,
Rehabilitator and Liquidator of Executive Life Insurance Company, a California corporation,
("Executive Life," "Executive Life Estate" or "Estate"), will and hereby does move the Court for
the entry of an Order: (1) approving the Commissioner's final accounting; (2) approving the
closing budget; (3) approving the document destruction plan; (4) approving the final distribution
plan; (5) dissolving Executive Life Insurance Company and discharging the Commissioner as
Conservator, Rehabilitator and Liquidator upon his filing of a Declaration of Compliance; and (6)
establishing procedures for dismissing and terminating these proceedings ("Application").

**ALL PERSONS AND ENTITIES INTERESTED IN THE CONSERVATION,
REHABILITATION AND LIQUIDATION OF EXECUTIVE LIFE, INCLUDING
WITHOUT LIMITATION ALL CREDITORS REQUESTING NOTICE, SHOULD TAKE
PARTICULAR NOTICE THAT THE COMMISSIONER'S APPLICATION, IF
GRANTED, WILL RESULT IN, AMONG OTHER THINGS, THE FINAL
DISTRIBUTION OF ALL OF EXECUTIVE LIFE'S REMAINING ASSETS, THE
DISSOLUTION OF EXECUTIVE LIFE, THE TERMINATION AND DISMISSAL OF
THESE PROCEEDINGS, AND THE DISCHARGE OF THE COMMISSIONER AS
STATUTORY CONSERVATOR, REHABILITATOR AND LIQUIDATOR, AND ANY
AND ALL CLAIMS, DEMANDS, COMPLAINTS AND OBJECTIONS, HOWEVER AND
WHENEVER ARISING, CONCERNING THE ADMINISTRATION OF THE ESTATE,
THE PAYMENT OF COSTS OF ADMINISTRATION, THE RESOLUTION OF CLAIMS
AND DEMANDS, AND ALL LITIGATIONS AND CLAIMS, KNOWN OR UNKNOWN,**

1 THAT HAVE OR COULD BE BROUGHT AGAINST THE ESTATE, THE
2 COMMISSIONER, HIS CONSERVATION AND LIQUIDATION OFFICE, AND THEIR
3 AGENTS AND ATTORNEYS ARE, AND WILL BE, FULLY AND FINALLY
4 RESOLVED AND/OR RELEASED BY THE COMMISSIONER'S APPLICATION, IF
5 GRANTED, EXCEPT AS SET FORTH AND PROVIDED FOR IN THE COURT'S
6 ORDER ON THE APPLICATION.¹ NO FURTHER NOTICES SHALL BE GIVEN AND
7 THE HEARING ON THIS APPLICATION SHALL CONSTITUTE THE FINAL
8 OPPORTUNITY OF ANY INTERESTED PARTY WITH STANDING TO RAISE ANY
9 OBJECTION, OF ANY TYPE OR NATURE, WITH RESPECT TO THE APPLICATION
10 THESE PROCEEDINGS, THE CONSERVATION, REHABILITATION AND
11 LIQUIDATION OF EXECUTIVE LIFE, OR THE ADMINISTRATION OF THE
12 EXECUTIVE LIFE ESTATE. IN ORDER TO BE HEARD AT THE HEARING, ANY
13 SUCH INTERESTED PARTY MUST RAISE A TIMELY OBJECTION TO THE
14 COMMISSIONER'S APPLICATION BY FILING WITH THE COURT A WRITTEN
15 MEMORANDUM IN OPPOSITION THERETO, SETTING FORTH SUCH OBJECTION,
16 AND THE GROUNDS AND EVIDENCE IN SUPPORT THEREOF, NO LATER THAN
17 NOVEMBER 7, 2019, WHICH IS AT LEAST NINE (9) COURT DAYS BEFORE THE
18 NOVEMBER 21, 2019 HEARING. FAILURE TO OBJECT AS DESCRIBED WILL
19 CONSTITUTE A WAIVER OF ANY OBJECTION. EACH MEMORANDUM IN
20 OPPOSITION SHALL BE SERVED ON COUNSEL FOR THE COMMISSIONER AND
21 PERSONS IDENTIFIED IN THE PROOF OF SERVICE FILED HEREWITH BY
22 MEANS CONSISTENT WITH CCP CODE SECTIONS 1011, 1012, AND 1013 AND IN A
23 MANNER REASONABLY CALCULATED TO ENSURE DELIVERY TO THE OTHER
24 PARTIES NOT LATER THAN THE CLOSE OF THE NEXT BUSINESS DAY AFTER
25 THE MEMORANDUM IN OPPOSITION AND ANY SUPPORTING DOCUMENTS ARE

26 ///

27 _____
28 ¹ The Application and Order sought by the Commissioner would provide for distributions of the remaining Estate assets, including with respect to claims asserted in a pending Order to Show Cause proceeding identified in footnote 10 of the Application, if allowed.

1 **FILED. SEE CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1005(13)(b) and**
2 **(c).**

3 This Application is made pursuant to the authority granted to the Commissioner in and
4 under the California Insurance Code including, but not limited to, sections 1016, 1017, 1020,
5 1033, and 1037, and is based upon the Commissioner's determination that this Application, and
6 the relief sought herein, are necessary, appropriate and in the best interests of the Executive Life
7 Estate and its contract holders and beneficiaries. This Application is further made pursuant to the
8 Court's Order Appointing Conservator, Establishment of Procedures, Issuance of Injunctions and
9 Related Orders (the "Conservation Order"); the Court's Order Approving and Adopting Final
10 Plan of Rehabilitation and Order of Rehabilitation (the "Rehabilitation Order"); the Court's Order
11 of Liquidation; the Court's Orders authorizing distributions of Executive Life assets (the
12 "Distribution Orders")² and all other Orders entered herein which pertain to this Application; and
13 the pleadings, records, and files in this action.

14 **WHEREFORE**, based on this Notice, the Application set forth below, the Memorandum
15 of Points and Authorities and Declarations of David Wilson and Raymond Minehan with exhibits,
16 and the proposed Order submitted herewith, and all other pleadings and documents filed in
17 support of the Application and previously filed by the Commissioner in these proceedings, the
18 Commissioner respectfully requests that the Court enter the Order applied for herein.

19 Dated: October 18, 2019

CYNTHIA J. LARSEN
ORRICK, HERRINGTON & SUTCLIFFE LLP

KAREN HO
ERVIN COHEN & JESSUP LLP

23 BY: 
CYNTHIA J. LARSEN

24 Attorneys for Ricardo Lara, Insurance
25 Commissioner of the State of California in his
26 Capacity as Rehabilitator/Liquidator of
27 Executive Life Insurance Company

28 ² For the Court's convenience, the Commissioner will provide courtesy copies of these prior Orders to the Court prior to the hearing on this Application.

1 II.

2 APPLICATION

3 A. INTRODUCTION

4 This Application is the final stage of a statutory conservation, rehabilitation and
5 liquidation proceeding that began on April 11, 1991, when the Court granted the Commissioner's
6 application to place Executive Life into conservation because it was operating in a hazardous
7 financial condition. The Application requests Court approval for the Commissioner to distribute
8 the Executive Life Estate's remaining assets and close the Estate because he has marshalled the
9 assets of Executive Life, paid or otherwise made provision for its liabilities, and otherwise
10 completed all tasks required to liquidate the Executive Life Estate. The Application further
11 requests that the Court order that all claims concerning the administration of the Estate and
12 payment of the costs thereof, and concerning the resolution of claims and litigations that were or
13 could have been brought against the Estate, known or unknown, are finally resolved and/or
14 released.

15 The closing of the Executive Life Estate is a highly complex endeavor in light of the
16 nearly thirty years the Estate has been open, the size of the Estate, and the over 300,000 eligible
17 contract holders who may be entitled to receive a share of the remaining assets of the Executive
18 Life Estate. In effecting a final distribution to the contract holders of Executive Life, the
19 Commissioner is constrained by the six-month timing requirements of contractual notification for
20 the final distribution and by the need for timely compliance with certain IRS requirements. To
21 fulfill the required timeline for final distribution, the Commissioner and his staff have been
22 engaged for months in completing the required financial review and other activities in order to
23 have this Application heard by the Court on November 21, 2019. Assuming the Commissioner's
24 Application is granted, the Commissioner thereafter will be intensively engaged in completing
25 multifaceted preparations for a July 1, 2020 final distribution. Granting the Application will
26 enable the final distribution process to occur in an orderly and timely fashion.

27 After the final distribution, the Commissioner and his staff will devote their efforts to the
28 resolution of multiple Estate matters, such as the distribution clean up, the escheatment process,

1 audit and tax matters and records destruction. The Commissioner will file with the Court an
2 interim report of his progress one year after the entry of the Order sought in this Application.
3 Thereafter he will file with the Court a Declaration of Compliance when compliance with the
4 Order is completed. The Commissioner will then be discharged as statutory Conservator,
5 Rehabilitator and Liquidator, and these proceedings will be dismissed.

6 The Application seeks an Order that is consistent with applicable law and the prior Orders
7 of the Court, and within the Commissioner's lawful discretion. *See In re Executive Life Ins. Co.*,
8 32 Cal. App. 4th 344, 358-59 (1995); *see also Carpenter v. Pacific Mutual Life Ins. Co.*, 10 Cal.
9 2d 307 (1938). The Order sought contains provisions which are similar to those contained in
10 closing orders in other life insurer insolvencies and which are customary for the Commissioner
11 when closing an insolvent life insurer estate. *See* Declaration of David Wilson filed herewith
12 ("Wilson Decl."), ¶¶ 5-6. For the reasons set forth in detail below, the Commissioner respectfully
13 requests that his Application be granted so that the Executive Life contract holders can at long
14 last receive their proper share of the Estate's assets and these proceedings can be brought to a
15 close.

16 **B. BACKGROUND**

17 In the years leading up to the 1991 conservation, Executive Life typically invested 55 to
18 60 percent of its billions of dollars of invested assets into high yield "junk" bonds. In late 1989,
19 the junk bond market largely collapsed and, by early 1991, the Commissioner determined that
20 Executive Life's financial statements, which had valued the bonds at approximately \$6 billion,
21 were grossly overstated. Wilson Decl., ¶ 8. According to the Commissioner's analysis, the bond
22 portfolio's market value was between \$3.5 billion and \$4 billion. With this lower valuation,
23 Executive Life's obligations far exceeded its assets and a liquidation order was entered pursuant
24 to Insurance Code section 1016 on December 6, 1991. *Id.*

25 After conserving Executive Life, the Commissioner focused first on stabilizing its
26 business and investment portfolio, and then turned his attention to rehabilitating Executive Life's
27 core insurance business. The Commissioner obtained Court approval to conduct a bidding
28 process to sell virtually all of Executive Life's junk bond portfolio and through that process

1 identified Altus Finance ("Altus")/MAAF³ as the winning bidder. Its bid was approved by the
2 Conservation Court on December 26, 1991, and thereafter Executive Life's junk bond portfolio
3 was sold. *Id.*, ¶ 9. The Commissioner proceeded to develop a Plan of Rehabilitation and
4 Liquidation for Executive Life ("Rehabilitation Plan") under which an investment group bought
5 the insurance company operations of Executive Life and named the new insurer Aurora National
6 Life Assurance Company ("Aurora"). After significant disputes and discussions with stakeholder
7 representatives and certain modifications, the Rehabilitation Plan was approved by the Court and
8 took effect on September 3, 1993. *Id.*

9 **1. The Executive Life Rehabilitation Plan**

10 The primary contractual agreements embodying the Rehabilitation Plan are: (1) the
11 Amended and Restated Agreement of Purchase and Sale in connection with the Rehabilitation of
12 Executive Life Insurance Company dated August 7, 1991, as amended ("Rehabilitation
13 Agreement"); and (2) the Amended and Restated Reinsurance and Assumption Agreement (3) the
14 Amended and Restated Enhancement Agreement between the Commissioner, Aurora, the
15 National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA") and the
16 participating Guaranty Associations dated as of December 5, 1991, as amended ("Enhancement
17 Agreement"). Wilson Decl., ¶ 10.

18 The Rehabilitation Plan provided for the restructuring of Executive Life's contracts to
19 eliminate the differential between the value of Executive Life's assets at the time of their sale and
20 the amount of its liabilities under its insurance contracts. *Id.*, ¶ 11. The Rehabilitation Plan
21 provided for the Participating Guaranty Associations to fulfill their statutory coverage obligations
22 by providing benefits under the Enhancement Agreement. The Enhancement Agreement
23 provided that NOLHGA's Participating Guaranty Associations would provide additional funding
24 to increase the recovery of certain classes of contract holders. NOLHGA's Participating
25 Guaranty Associations have paid over \$2.5 billion net of subrogation recoveries for the benefit of
26 these contract holders under the terms of The Enhancement Agreement. *Id.* Virtually all of

27 ///

28 _____
³ MAAF is an acronym for Marthelli Assurance Artisan a le de France.

1 Executive Life's restructured contracts were to be assumed by Aurora.⁴ *Id.*, ¶ 12. Each contract
2 holder with an in-force Executive Life contract at the time of the sale to Aurora had the option to
3 either opt in or opt out of the Rehabilitation Plan. By opting in a contract holder remained
4 eligible to recover some or all of any reduction in the restructured contract's value through
5 payments from the Participating Guaranty Associations, and could proportionally share in the
6 liquidation of Executive Life's remaining assets. *Id.* Contract holders who opted out terminated
7 their policies in exchange for a cash payment and proportionally share in the liquidation of
8 Executive Life's remaining assets. Under the Rehabilitation Plan, based on each contract's
9 Conservation Date Statutory Reserve ("CDSR"),⁵ approximately 33.9 percent of the distributable
10 assets of Executive Life were to be paid to the Opt-Out Trust for the benefit of the approximately
11 27,000 Opt-Out contract holders. The remaining approximately 66.1 percent of the distributable
12 assets of Executive Life were to be transferred to Aurora under the Rehabilitation Plan for the
13 benefit of the over 280,000 eligible Opt-In contract holders.⁶ *Id.*

14 In exchange for Aurora's contractual commitments under the Rehabilitation Plan,
15 including Aurora's agreement to assume the restructured Executive Life policies, the
16 Commissioner transferred to Aurora in September 1993 substantially all of Executive Life's
17 investment grade securities and operating assets, valued at over \$6 billion, to support the
18 liabilities assumed by Aurora under the Rehabilitation Plan and the initial cash payment to Opt-
19 Out contract holders. *Id.*, ¶ 13. Certain assigned assets remained in the Executive Life Estate
20 after the assumption by Aurora, pursuant to the Rehabilitation Plan. To maximize asset values,
21 these assets were placed in three trusts, the Executive Life Insurance Company Trust ("ELIC
22 Trust"), the Executive Life Insurance Company Real Estate Trust, and the Base Assets Trust for

23 ⁴ Aurora was initially owned by a consortium of French companies. In 2001 Swiss Re Life Health America, Inc.
24 ("Swiss Re") took control of Aurora. The outstanding stock of Aurora was thereafter sold to RGA Reinsurance
25 Company ("RGA Re") in 2015. RGA Re replaced Swiss Re with respect to certain obligations under the
26 Rehabilitation Plan. Wilson Decl., ¶ 12, note 2.

27 ⁵ The provisions of the Rehabilitation Plan providing for the use of "CDSR" in fixing allowed policyholder claim
28 amounts were approved on appeal in *In re Executive Life Ins. Co.* ("Quackenbush v. Aurora", 32 Cal. App. 4th 344,
382-87 (1995)).

⁶ Certain contractual undertakings with respect to Aurora's obligations under the Plan are contained in the
Administrative Services Agreement between the Commissioner and Aurora dated June 29, 1995, as amended, and the
subsequent 2012 Administrative Services Agreement, the AVI Distribution Cost and ERAV Return Agreement and
Agreement Regarding Review of AVI Distributions, between the Commissioner, Aurora and Swiss Re. Wilson
Decl., ¶ 12.

1 the benefit of Opt-Out and Opt-In contract holders (collectively, the “Enhancement Trusts”). The
2 Enhancement Trusts had completed their missions by 1999 after distribution of nearly \$1.1 billion
3 to the Executive Life Estate. The trusts were then terminated, and their remaining assets
4 transferred to the Estate. *Id.*

5 Initially, the Estate was managed by special deputy commissioners and the trustees of the
6 three liquidating trusts described above, under the oversight of the Commissioner. In mid-1997,
7 the Commissioner’s Conservation and Liquidation Office (“CLO”) assumed the administration of
8 the Estate and the CLO continues to administer the Estate today. *Id.*, ¶ 14.

9 **2. Additional Recoveries by the Commissioner for the Benefit of the Executive**
10 **Life Estate**

11 The Estate received significant recoveries shared by both Opt-In and Opt-Out contract
12 holders following multiple successful litigations. The Commissioner’s lawsuit against officers
13 and directors of Executive Life’s parent, First Executive Corporation (“FEC”), Michael Milken,
14 Drexel and others resulted in a receipt of litigation proceeds deposited into the FEC Litigation
15 Trust between 1992 and 2006 in excess of \$346.7 million and \$45.3 million in interest thereon.
16 Wilson Decl., ¶ 15.

17 In addition, the Commissioner brought a separate lawsuit against the consortium of French
18 companies (including Altus) that bought Executive Life’s junk bond portfolio and formed Aurora
19 to assume Executive Life’s insurance business (a transaction that violated federal and state
20 banking and insurance laws). *Id.* A 2003 settlement of criminal litigation brought by the United
21 States Attorney General’s Office against Artemis, S.A. (“Artemis”), an entity owned by Altus,
22 and a variety of its affiliates, resulted in the receipt of \$110 million by the Commissioner in 2004
23 as a victim compensation payment for the benefit of the Executive Life Estate. The
24 Commissioner’s suit against the French companies, various individuals, and other companies,
25 including Artemis, Mallart, Aurora, CDR, MAAF, Henin and Altus, produced a recovery of \$931
26 million including the \$110 million from the U.S. Government Victims Compensation Fund for
27 the Executive Life Estate (collectively “Altus Litigation Proceeds”). *Id.*

28 ///

1 **3. Distributions of Executive Life's Assets to Contract Holders**

2 The CLO is responsible for distributions to Opt-Out contract holders through the Opt-Out
3 Trust,⁷ and Aurora is responsible for distributions to Opt-In contract holders. Wilson Decl., ¶ 16.
4 When distributions have occurred, the relative percentage of funds is 66.1 percent for the Opt-In
5 contract holders and their subrogees and 33.9 percent for the Opt-Out contract holders and their
6 subrogees, as previously approved by the Court. From inception of the Estate until the filing of
7 this Application, the Commissioner made interim distributions from the Executive Life Estate
8 totaling approximately \$1.92 billion for the benefit of Executive Life contract holders. *Id.* These
9 interim distributions are described below.

10 **a. Distributions of Non-Litigation Recoveries**

11 Distributions of Executive Life's non-litigation recovery assets were made to its contract
12 holders by way of the three Enhancement Trusts.⁸ Any of Executive Life's assets transferred
13 from one of the three trusts for distribution were distributed in the 66.1 percent / 33.9 percent
14 proportion for the benefit of Opt-In and Opt-Out contract holders respectively. Wilson Decl.,
15 ¶ 17. Distributions from the Enhancement Trusts for the benefit of Opt-Out contract holders were
16 made directly to the Opt-Out Trust, for subsequent distributions to contract holders. Distributions
17 for the benefit of Opt-In contract holders were provided to Aurora to be distributed. These
18 distributions resulted in payments to individual Opt-Out contract holders and their subrogees of
19 \$381.9 million and the payment of \$682 million to Aurora for Opt-In contract holders and their
20 subrogees. *Id.* The termination of the three Enhancement Trusts was approved by the Court in
21 1999. *Id.*, ¶ 17.

22 **b. Distributions of Litigation Recoveries**

23 **(1) FEC Litigation Trust Distributions**

24 Between September 1992 and March 2006, the Commissioner received approximately
25 \$346.7 million in FEC litigation proceeds and earned \$45.3 million in interest thereon. The sum

26 _____
27 ⁷ The Opt-Out Trust is a Grantor Trust of the Executive Life Estate to receive and distribute funds (net of investment
income and distribution expenses) from the Executive Life Estate to the Opt-Out contract holders. Wilson Decl.,
28 ¶ 16.

⁸ Of the three trusts, the ELIC Trust was the main vehicle for liquidating miscellaneous assets. Wilson Decl., ¶ 17,
note 4.

1 of \$319.7 million was distributed by the FEC Litigation Trust prior to the transfer to the CLO.
2 The remaining \$72.3 million FEC Litigation Trust was transferred to the CLO and subsequently
3 distributed to the Opt-In and Opt-Out contract holders. Wilson Decl., ¶ 18.

4 (2) **Altus Litigation Proceeds Distributions**

5 Distribution of the Altus Litigation Proceeds took place in stages. After obtaining Court
6 approval, in February 2006, the CLO distributed just over \$211 million to the Opt-Out contract
7 holders and designated \$418 million for distribution to the Opt-In contract holders and their
8 subrogees. Wilson Decl., ¶ 19. The foregoing amounts were inclusive of the distributable
9 portion of the \$110 million victim compensation payment under the United States Attorney's
10 settlement of criminal litigation described above. *Id.* Thereafter, in 2006, \$94 million was
11 distributed and subsequently in 2007, \$308.7 million was distributed from this settlement to
12 Opt-In contract holders. *Id.*

13 In 2016, the Commissioner sought and obtained Court approval for a distribution to
14 contract holders of \$110.8 million, primarily consisting of proceeds from a settlement between
15 the Commissioner and Artemis. *Id.*, ¶ 20. The gross amount of the settlement was \$200 million,
16 however, \$25 million of the settlement was immediately payable to Sierra National Insurance
17 Holdings, Inc. ("Sierra") under a separate court approved agreement. *Id.* In determining the total
18 distribution, the Commissioner added the remaining \$175 million to other liquid assets in the
19 estate, and then deducted a reserve to cover other remaining potential priority liabilities of the
20 Estate, including a tax reserve of \$61 million. *Id.* The Commissioner also reserved \$14 million
21 against a claim filed by the bankruptcy trustee for Thelen LLC (the Commissioner's prior
22 contingency fee counsel in the Altus litigation, which resulted in the Artemis settlement) which
23 was subsequently settled for \$1.95 million. *Id.* With this reserve, and a prudent reserve against
24 future expenses, the Commissioner determined in 2016 that there was then \$110.8 million
25 available for contract holder distribution. Of that total, \$37.55 million was distributed to the
26 Opt-Out Trust. After a reserve of \$2.55 million, \$35 million was distributed to its approximately
27 27,000 Opt-Out former contract holders and their subrogees and approximately \$73.2 million was
28 distributed to Aurora for the benefit of over 280,000 eligible Opt-In contract holders and their

1 subrogees. *Id.* Subsequent to the 2016 distribution, there have been no further distributions up
2 until the date of this Application. *Id.*

3 4. **The Remaining Estate Assets Will Not Fully Satisfy Allowed Contract Holder**
4 **Claims**

5 As of July 31, 2019, the Estate holds total assets of \$79,248,129 after marshalling the
6 assets of the Executive Life Estate. Wilson Decl., ¶ 21. *See also* section F, below. The
7 Commissioner has determined that this remaining amount is insufficient to pay 100% of the
8 remaining \$7.5 billion in allowed contract holder liabilities. *Id.*; Declaration of Raymond
9 Minehan filed herewith (“Minehan Decl.”), ¶¶ 12, 14, Ex. A. Given that the Estate lacks
10 adequate funds to satisfy completely all allowed contract holder liabilities, no payment will be
11 made with respect to lower priority claims, including general creditor claims because Insurance
12 Code section 1033 prohibits payment to lower priority claimants until senior allowed claims are
13 paid in full. Wilson Decl., ¶ 21; Minehan Decl. ¶ 14.

14 5. **Commissioner’s Completion of All Tasks Required to Liquidate and Request**
15 **for Entry of Final Order Approving Closing of Estate**

16 The Commissioner has now completed all tasks required to liquidate Executive Life other
17 than those pertaining to the actions for which approval is sought in this Application. Wilson
18 Decl., ¶ 21. Thus the Commissioner requests that the Court enter an Order: (1) approving as
19 proper his final accounting for the period January 1, 1997 through July 31, 2019; (2) approving
20 the Commissioner’s Closing Budget for estimated expenses from August 1, 2019 through July 31,
21 2021; (3) approving the Commissioner’s document retention plan; (4) approving the
22 Commissioner’s final distribution plan; (5) dissolving Executive Life and discharging the
23 Commissioner upon his filing of a declaration of compliance; and (6) establishing procedures for
24 dismissing and terminating these proceedings. The Commissioner anticipates making a final
25 distribution of Executive Life assets on or about July 1, 2020. Wilson Decl., ¶ 22; Minehan
26 Decl., ¶ 14. As noted above, the disposition cannot reasonably be accomplished at an earlier date
27 due, among other things, to the complexities associated with properly and timely administering a
28 final distribution payment to over 300,000 eligible contract holders. Wilson Decl., ¶ 22.

1 **C. REQUEST FOR APPROVAL OF THE COMMISSIONER'S FINAL**
2 **ACCOUNTING**

3 The CLO assumed responsibility, on behalf of the Commissioner, for the administration
4 of the Estate in 1997 from a special deputy commissioner who had served by appointment of the
5 Commissioner. Wilson Decl., ¶ 14. This transition was Court-approved and was based on the
6 financial status of the Estate on January 1, 1997. Thus, the Commissioner's Final Accounting
7 addresses the period January 1, 1997 through July 31, 2019.⁹ *Id.*

8 The Commissioner's Final Accounting, a true and correct copy of which is attached to the
9 Minehan Decl. as Exhibit A, consists of a set of Closing Liquidation-Basis Financial Statements
10 which include a Statement of Sources and Application of Funds for the period January 1, 1997 to
11 July 31, 2019; a Statement of Net Assets as of July 31, 2019; a Statement of Changes in Net
12 Assets; and a Statement of Cash Flows, the latter two documents for the period January 1, 1997 to
13 July 31, 2019. *See* Minehan Decl., Ex. A, pp. 1 through 4. An additional part of the
14 Commissioner's Final Accounting is a "closing budget" ("Closing Budget"), for the period
15 August 1, 2019 through July 31, 2021, a true and correct copy of which is attached to the
16 Minehan Declaration as Exhibit B. The Commissioner believes that this format and content of a
17 Final Accounting is the most efficient way to conduct an accurate final accounting for the
18 Executive Life Estate, and thus within his lawful discretion. Minehan Decl., ¶¶ 5-8; Wilson
19 Decl., ¶¶ 7, 23.

20 During the long course of this complex proceeding, the Commissioner has filed numerous
21 motions and applications to obtain periodic Court approvals of all transactions, including real
22 estate and investment related transactions, and all expenditures for which Court approval was or
23

24 ⁹ The Executive Life Estate has been open and active for nearly three decades, and had been under the administrative
25 control of a number of Commissioners, Deputy Commissioners, Deputy Trustees, and Special Deputy
26 Commissioners before its administration was migrated into the CLO. Wilson Decl., ¶ 14. Throughout that time, the
27 Estate has consistently made regular interim accountings to the Court and interested parties, and has obtained
28 requisite approvals of administrative expenses and other transactions that required Court approval under the
Insurance Code and Court pre-approved/mandated expense limits. Minehan Decl., ¶ 10; Wilson Decl., ¶ 23. The
CLO has relied on the books and records it received from those charged with administering the Estate prior to CLO's
assumption of those duties. Minehan Decl., ¶ 5, note 1. All of CLO's reporting and interim accounts have been
based on the "opening financials" that the CLO created based on the financial records it received from the prior
administrators. *Id.* Accordingly, the Commissioner, in his discretion, has concluded that the period from 1997 to
2019 is the appropriate period for submission of financial statements. Wilson Decl., ¶¶ 7, 23; Minehan Decl., ¶ 5.

1 is required. During the course of these proceedings all expenses of administration and third-party
2 administrative expenses along with attorneys' fees and expenses have been paid from the assets
3 of Executive Life in accordance with Insurance Code sections 1035 and 1036, all of which have
4 been accounted for in the Commissioner's Final Accounting described above. Reference is made
5 to all prior applications for instructions and other related motions filed herein, including without
6 limitation the Conservation Order, the Rehabilitation Order, the Claims Procedures Order, the
7 Distribution Orders and all Applications for Instructions, and incorporates by reference into this
8 final accounting all such prior motions and applications and the orders entered thereon. The
9 Commissioner believes that this complex Estate has been efficiently and effectively administered,
10 within the lawful discretion of the Commissioner, throughout the duration of the proceeding, and
11 respectfully requests that the Commissioner's Final Accounting and all amounts set forth therein
12 be deemed settled and approved. Wilson Decl., ¶ 22; Minehan Decl., ¶ 11.

13 **D. REQUEST FOR APPROVAL OF CLOSING BUDGET FOR EXECUTIVE LIFE**
14 **ESTATE**

15 The Commissioner seeks approval in the Application for a Closing Budget in the amount
16 that the Commissioner estimates will be required to close the Executive Life Estate and terminate
17 these proceedings. Minehan Decl., Ex. B. This Closing Budget consists of the additional
18 administrative costs, including attorneys' fees, that have been incurred since the July 31, 2019
19 closing date of the Final Accounting and certain administrative costs, including cost in planning
20 for and preparation of the final distribution, which will continue to be incurred in connection with
21 the activities for which the Commissioner seeks approval in his Application. Accordingly, the
22 two primary components of the administrative expenses which must be included in the
23 Commissioner's Closing Budget are (1) incurred and estimated future closing expenses of the
24 Commissioner's CLO, including for the use of consultants and third-parties; and (2) incurred
25 attorneys' fees and expenses and estimated future attorneys' fees and expenses (collectively
26 "Closing Expenses"). *Id.*, ¶ 6, Ex. B.

27 These Closing Expenses include, among other things, legal, consulting and internal CLO
28 expenses in connection with: bringing this Application; preparing for and processing the final

1 distributions to Aurora (including the required audit of Aurora's final distribution and
2 escheatment), including the use of consultants and third-parties to assist in the distribution and
3 audit; the pending Order to Show Cause ("OSC") proceeding; final audits for 2019, 2020 and
4 2021 mandated by Insurance Code Section 1061 and any final tax obligations; processing the
5 formal dissolution of Executive Life, including with the Secretary of State's Office and the
6 preparation and filing of the Declaration of Compliance; and providing for the storage and
7 ultimate disposal in two or three years (as described below) of the voluminous business records of
8 Executive Life and the Estate. Minehan Decl., ¶ 6.

9 The Commissioner, through the CLO, has engaged in a diligent process to estimate the
10 CLO Closing Expenses for the Executive Life Insurance Estate and has determined that a
11 reasonable calculation of such expenses is \$2,115,660 for the two-year period from August 1,
12 2019 through July 31, 2021. The Commissioner believes this estimate to be accurate and
13 reasonable under the circumstances, and within his lawful discretion, and requests that the Court
14 authorize the Commissioner to (1) provide to the CLO the sum of \$2,115,660 for the Executive
15 Life Insurance Closing Expenses prior to making a final distribution; and (2) utilize such sum for
16 Closing Expenses and pay any excess Closing Expenses that exceed such amount out of the funds
17 appropriated for the maintenance of the Department of Insurance as authorized by Insurance Code
18 section 1035; and (3) deposit any funds remaining in the Closing Budget not utilized for the
19 Closing Expenses to the Department of Insurance expense fund. The deposit of all such unused
20 funds is appropriate given that the Department of Insurance allocates significant funds each year
21 from the CDI expense fund to cover any shortfalls experienced by the CLO in funding its work to
22 conserve or liquidate insolvent insurers. *Id.*, ¶ 7.

23 The Commissioner may find it appropriate to make minor adjustments to the estimated
24 interest projection (either up or down) and/or significant true-ups of other estimates up to the time

25 ///

26 ///

27 ///

28 ///

1 that the final distributable amount is fixed.¹⁰ The Commissioner requests that the Order entered
2 on this Application recognize and permit such modifications.

3 **E. REQUEST FOR APPROVAL OF DOCUMENT DESTRUCTION PLAN**

4 It has been the practice of the Commissioner to obtain Court approval for destruction of
5 the records of an insolvent estate after the elapse of a reasonable period of time after an order
6 authorizing closure of the estate. Here, given the nearly thirty years that the Executive Life Estate
7 has been open and the significant storage expenses involved, the Commissioner seeks
8 authorization from the Court in the Order sought in this Application to destroy all records of
9 Executive Life and the Executive Life Estate after two years from the entry of the Order sought in
10 the Application, except that financial records necessary for tax or audit purposes, including an
11 audit conducted under Insurance Code section 1061, will be retained for three years after the date
12 of the Order sought in this Application and destroyed thereafter. Minehan Decl., ¶ 6.

13 **F. REQUEST FOR APPROVAL OF FINAL DISTRIBUTION PLAN**

14 After the entry of an Order granting the relief sought in this Application, the
15 Commissioner will retain at the CLO the Closing Budget amount of \$2,115,660, and thereafter
16 will make distributions to the Opt-Out Trust for the benefit of the Opt-Out contract holders and
17 their subrogees and to Aurora for the benefit of the Opt-In contract holders and their subrogees.
18 Pursuant to the terms of the Rehabilitation and Enhancement Agreements Opt-In contract holder
19 percentage will be 66.1 percent of the net assets available for distribution, and the Opt-Out Trust
20 percentage will be 33.9 percent of the net assets available for distribution, just as in prior
21 distributions. Minehan Decl., ¶ 12.

22 The following calculation demonstrates the net assets available for distribution from the
23 Executive Life Estate and the distribution amounts yielded by application of the foregoing
24 percentages:

25
26 ¹⁰ The Closing Budget does not include any amounts sought in the pending OSC proceeding by National Structured
27 Settlements Trade Association, *et al.*, for the attorneys' fees and costs of their private counsel, set for hearing on
28 December 5, 2019. The Commissioner does not believe an award by the Court of any amounts in respect of the OSC
would be appropriate, however, the distribution amount will be amended accordingly should any payment by the
Estate be required. Minehan Decl., ¶ 8. Because the hearing on the claims asserted in the OSC Application was
continued by the Court until December 5, 2019, those claims would not be determined or released by an Order
entered on this Application prior thereto, and the Commissioner's proposed Order would so provide.

Executive Life Estate Assets as of July 31, 2019	\$79,248,129
Estimated additional interest income and recoveries:	
Interest income net of tax	1,286,461
Other recoveries	<u>1,848,000</u>
Total estimated available assets	82,382,590
Less Executive Life Estate closing budget	(2,115,660)
Net estimated assets available for distribution	<u>\$80,266,930</u>
Distribution to RGA/Aurora for Opt-In contract holders 66.1%	\$53,056,441
Distribution to Opt-Out Trust 33.9%	\$27,210,489

Id., ¶ 12.

Consistent with the terms of the Rehabilitation and Enhancement Agreements, the Commissioner requests Court approval for issuing distributions for the Opt-In and Opt-Out contract holders (and their subrogees) consistent with the foregoing amounts, with such modifications thereto as may be required by reason of accounting adjustments or true-ups, or the resolution of the pending OSC. Minehan Decl., ¶¶ 8, 12.

The administrative costs of effecting the distribution by Aurora to Opt-In contract holders will be borne by Aurora. The Commissioner, through the CLO, is responsible for the ultimate distribution to Opt-Out contract holders of funds distributed by the Executive Life Estate to the Opt-Out Trust. *Id.*, ¶ 13. See Rehabilitation Agreement, §§ 7.7, 9.6; Enhancement Agreement, Articles 4, 10, 12, 17; ELIC Trust Agreement §§ 3.5, 4.1, 5.3.2, 5.3.4. Approximately \$1,322,818 of the closing distribution will be held in the Opt-Out Trust (the \$2,316,209 Opt-Out closing budget less \$769,734 in Opt-Out Trust funds available as of July 31, 2019 and estimated interest income of \$223,657) as a reserve for expenses, including the cost of distribution to Opt-Out contract holders and future related administrative expenses. Minehan Decl., ¶ 13.

The Commissioner requests that the Order entered on the Application approve that balances under \$2.00 will be held by the CLO as part of the closing funds to perform and

1 complete the closing process of the Estate, in light of the costs of processing such de minimis
2 amounts.¹¹ *Id.*, ¶ 16. The Commissioner will escheat unclaimed property and funds as permitted
3 by applicable law and the Commissioner requests that the Order entered on the Application so
4 reflect.

5 **G. REQUEST FOR APPROVAL OF PROCEDURES FOR DISSOLUTION OF**
6 **EXECUTIVE LIFE AND DISMISSAL OF THIS PROCEEDING**

7 **1. Procedures for Dissolution**

8 The Commissioner seeks approval to formally dissolve the corporate existence of
9 Executive Life pursuant to Insurance Code section 1017(a) after the final distribution of
10 Executive Life assets has occurred, and to take all other steps reasonable and necessary to
11 terminate and dismiss with prejudice this statutory proceeding. Wilson Decl., ¶ 1. To accomplish
12 this, the Commissioner requests that the Order provide that Executive Life is dissolved; that the
13 California Secretary of State's Office shall accept for filing a copy of the Order on this
14 Application at such time as it is presented to that office by the Commissioner for filing; and that
15 the Secretary of State's office shall take any necessary steps required to record the dissolution of
16 Executive Life without further forms, charges, or clearances being requested or required.

17 **2. Procedures for Interim Report, Final Declaration of Compliance and**
18 **Discharge of Commissioner**

19 In order to effect the termination and dismissal of this proceeding, the Commissioner
20 requests that the Order entered on the Application provide for the filing of a "Declaration of
21 Compliance" by the Commissioner, confirming that he has complied with the provisions of the
22 Order by making the payments and final distributions described hereinabove, and for the filing of
23 a Request for Dismissal of this action, with prejudice. In order to apprise the Court of his interim
24 progress toward dismissal and termination of this proceeding, the Commissioner will update the
25 Court on the first anniversary date of entry of the Closing Order concerning the status of
26

27 ¹¹ There are significant costs associated with cash distributions effected by checks. Based on an analysis of costs
28 incurred in making various prior distributions, these costs are estimated to be approximately \$2.00 per check issued.
Because such amount, estimated by the CLO at less than \$7,000 is de minimis, the Commissioner seeks Court
approval for the Commissioner to apply such funds to defray the costs of closing the Estate. Minehan Decl. ¶ 16.

1 completion of closing tasks. Provisions for the filing of a Declaration of Compliance and for the
2 interim update should be part of the Order entered on the Application. Finally, the Commissioner
3 requests that the Order provide that he shall be discharged from his statutory duties herein upon
4 the filing of the Declaration of Compliance. Wilson Decl., ¶ 1.

5 **3. Procedures Before Estate Can Be Reopened**

6 The Commissioner has completed the marshalling of assets of Executive Life and does not
7 anticipate that there will be any future recoveries beyond those considered in connection with this
8 Application. Accordingly, the Commissioner requests that the Court enter an Order that the
9 Estate not be reopened, except upon the Commissioner's request after receiving additional funds
10 in amounts that, in his discretion and judgment, justify the reopening of the Estate. Wilson Decl.,
11 ¶ 22. The Commissioner further requests that the Court order that any funds received by the
12 Commissioner or the Estate which are insufficient, in the Commissioner's discretion and
13 judgment, to warrant reopening of the Estate are to be deposited by the Commissioner into the
14 Department of Insurance expense fund to defray the costs of activities of the Department of
15 Insurance.¹² *Id.*

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 _____
27 ¹² While the Commissioner does not anticipate any opposition to this Application, the Commissioner reserves the
28 right to amend this Application at any time up to and including the hearing date, in the event of circumstances that
demonstrate to the satisfaction of the Commissioner that the Closing Expenses reflected in the Closing Budget will
be insufficient to pay the actual expenses of the final administration of the Estate in accordance with Insurance Code
section 1033(a)(1).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

CONCLUSION

WHEREFORE, the Commissioner prays that the Court grant the Commissioner's Application in its entirety and enter an Order substantially as set forth in the proposed Order served and filed with this Application.

DATED: October 18, 2019.

Respectfully submitted,

CYNTHIA J. LARSEN
ORRICK, HERRINGTON & SUTCLIFFE LLP

KAREN HO
ERVIN COHEN & JESSUP LLP

By: 

CYNTHIA J. LARSEN

Attorneys for Ricardo Lara, Insurance
Commissioner of the State of California in his
Capacity as Rehabilitator/Liquidator of
Executive Life Insurance Company

1 IV.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 California Insurance Commissioner Ricardo Lara ("Commissioner"), in his capacity as
4 Statutory Liquidator ("Liquidator") of Executive Life Insurance Company ("Executive Life"),
5 hereby submits this Memorandum of Points and Authorities in support of Insurance
6 Commissioner's Notice of Application and Application for an Order: (1) approving final
7 accounting; (2) approving the closing budget; (3) approving the document destruction plan;
8 (4) approving a final distribution plan for the Executive Life Estate; (5) dissolving Executive Life
9 Insurance Company and discharging the Commissioner as Liquidator after filing of a declaration
10 of compliance; and (6) establishing procedures for dismissing and terminating proceedings
11 ("Application"). Such an Order will authorize the Commissioner to fully complete the closure of
12 the Executive Life Estate at long last.

13 The conservation and liquidation proceedings of Executive Life have been pending for
14 more than twenty-eight years. On April 11, 1991, the proceedings commenced with the seizure
15 of Executive Life's operations by the then Insurance Commissioner. Wilson Decl., ¶ 8.
16 Executive Life operated as a multi-billion dollar life insurance company. The primary basis for
17 the seizure was that Executive Life was being operated in a condition and manner that rendered
18 its continuing operation outside of conservation hazardous to contract holders and the public,
19 primarily due to the collapse of the market for high yield bonds, which comprised over half of
20 Executive Life's investment portfolio. With the devaluation of those bonds, Executive Life's
21 obligations far exceeded its assets and a liquidation Order was entered on December 6, 1991. *Id.*
22 The seizure and complicated transactions and agreements required to conserve and ultimately
23 liquidate Executive Life are detailed in prior documents and filings made with the Court and
24 Orders entered by the Court, which are incorporated herein by reference as if restated in full, with
25 certain documents, filings and Orders discussed below.

26 ///

27 ///

28 ///

1 For almost three decades, the Commissioner has administered the conservation and
2 liquidation of Executive Life and has supervised the activities under the Executive Life's Plan of
3 Rehabilitation and Liquidation ("Rehabilitation Plan") approved by the Court in 1993. *Id.*, ¶ 9.
4 The purposes of the Rehabilitation Plan for Executive Life have been accomplished. The
5 Commissioner has completed the marshalling of Executive Life's assets and has adjusted or
6 otherwise made provision for all claims and liabilities. *Id.*, ¶ 21. An estate in liquidation may be
7 closed and dissolved when there is no further need for administration of the affairs of the failed
8 insurer. *See generally* Insurance Code §§ 1016, 1017, 1033, 1035 and 1037 (collectively
9 providing for liquidation and dissolution of insolvent insurers).¹³

10 The Commissioner is authorized by Insurance Code section 1033 to make a distribution of
11 assets in a statutory insolvency proceeding in accordance with the priorities specified therein.
12 Cal. Ins. Code § 1033. Section 1033(a) provides in pertinent part regarding the priority of claims
13 that:¹⁴ "Claims allowed in a proceeding under this article shall be given preference in the
14 following order:"

15 (1) Expenses of administration;

16 (2) All claims of the California Insurance Guarantee Association or the California Life
17 and Health Insurance Guarantee Association, and associations or entities performing a
18 similar function in other states, together with claims for refund of unearned premiums and
19 *all claims under insurance and annuity policies or contracts*, including funding
20 agreements, of an insolvent insurer that are not covered claims . . . ;

21 (3) Claims having preference by the laws of the United States;

22 (4) Unpaid charges due under the provisions of Section 736;

23 ¹³ *See also* Insurance Code § 1060(c)(4) (requiring the Commissioner to report to the Governor and the Legislature a
24 list of insolvent estates not closed within 10 years of a Court-ordered liquidation and to provide an explanation of
why the estate remains open).

25 ¹⁴ In response to *United State Dept. of Treasury v. Fabe*, 508 U.S. 491 (1993), which was decided several years after
26 the approval of the Executive Life Rehabilitation Plan, the California Legislature amended Section 1033(a) to
subordinate federal tax claims to the interests of contract holders. As a result, the numbers of the claim priority
27 classes set forth in Section 1033(a) are now different than the numbers used in the Rehabilitation Order. Whereas
contract holder claims were identified as "class five" claims in the Rehabilitation Order, the code now lists them as
28 "class two" claims. Similarly, general creditor claims were changed from "class six" claims to "class seven" claims.
In order to mitigate any resulting confusion, the Commissioner has attempted to use the terms "contract holder
claims" and "general creditor" claims. The current version of Section 1033(a) is referenced throughout this
Application.

- 1 (5) Taxes due to the State of California;
- 2 (6) Claims having preference by the laws of this state;
- 3 (7) Claims of creditors not included in paragraphs (1) to (6), inclusive;
- 4 (8) Certificates of contribution, surplus notes, or similar obligations, and premium
- 5 refunds on assessable policies;
- 6 (9) The interests of shareholders or other owners in any residual value in the estate.
- 7 Cal. Ins. Code § 1033(a)(1)-(9) (emphasis added).

8 As detailed in the Application, the policyholder priority claims of all contract holders will

9 not be satisfied by the relief sought in the Application because the contract holders will not have

10 received the value of their contracts with Executive Life. Thus, in accordance with the priority

11 scheme set forth by statute and in the Plan, the Commissioner will not make a distribution to any

12 lower priority creditor class and thus no distribution will be made on any general creditor claims.

13 Insurance Code section 1037 provides the Commissioner with broad discretionary powers

14 in connection with the conservation of the estate, including but not limited to conserving assets,

15 collecting debts, settling claims and conducting the business of the conserved company. Section

16 1037(g) also grants the Commissioner broad general powers by stating that:

17 The enumeration, in this article, of the duties, powers and authorities of the Commissioner

18 in proceedings under this article shall not be construed as a limitation upon the

19 Commissioner, nor shall it exclude in any manner his or her right to perform and to do

20 such other acts not herein specifically enumerated, or otherwise provided for, which the

 Commissioner may deem necessary or expedient for the accomplishment or in aid of the

 purpose of such proceedings.

21 Cal. Ins. Code § 1037(g). It is well established that the exercise of the Commissioner's broad

22 discretion may only be disturbed if it is arbitrary and capricious or improperly discriminatory.

23 *See In re Executive Life Ins. Co.*, 32 Cal. App. 4th 344, 358-59 (1995) (neither trial court nor

24 appellate court review of the Commissioner's actions is *de novo*; both proceed under an abuse of

25 discretion standard, citing, *inter alia*, *Commercial Nat'l Bank v. Superior Court*, 14 Cal. App. 4th

26 393, 398 (1993)); *see also Carpenter v. Pacific Mutual Life Ins. Co.*, 10 Cal. 2d 307 (1938). The

27 relief sought by the Commissioner in the Application is fully within his discretion and consistent

28 with governing law and the prior orders of this Court.

1 Finally, with respect to the Commissioner's request for dissolution of Executive Life, this
2 request is authorized by Insurance Code section 1017(a). Cal. Ins. Code § 1017(a) ("In the
3 commissioner's application for an order for the liquidation of a domestic corporation, or at any
4 time thereafter, the commissioner may apply for, and the court shall make, an order dissolving the
5 corporation.").

6 Based on the foregoing, the Commissioner respectfully requests that the Court enter the
7 proposed Order submitted by the Commissioner granting the Commissioner's Application in its
8 entirety.

9 Dated: October 18, 2019

10 Respectfully submitted,

11 CYNTHIA J. LARSEN
12 ORRICK, HERRINGTON & SUTCLIFFE LLP

13 KAREN HO
14 ERVIN COHEN & JESSUP LLP

15
16 By: 

CYNTHIA J. LARSEN

17 Attorneys for Ricardo Lara, Insurance
18 Commissioner of the State of California in his
19 Capacity as Rehabilitator/Liquidator of
20 Executive Life Insurance Company
21
22
23
24
25
26
27
28

1 KAREN HO (State Bar No. 274027)
2 ERVIN COHEN & JESSUP LLP
3 9401 Wilshire Boulevard, Ninth Floor
4 Beverly Hills, California 90212-2974
5 Telephone: (310) 273-6333
6 Facsimile: (310) 859-2325
7 Email: kho@ecjlaw.com

8 CYNTHIA J. LARSEN (State Bar No. 123994)
9 ORRICK, HERRINGTON & SUTCLIFFE LLP
10 400 Capitol Mall, Suite 3000
11 Sacramento, California 95814
12 Telephone: (916) 447-9200
13 Facsimile: (916) 329-4900
14 Email: clarsen@orrick.com

**EXEMPT from filing fees per Govt.
Code § 6103**

15 Attorneys for Ricardo Lara, Insurance Commissioner
16 of the State of California in his Capacity as
17 Rehabilitator/ Liquidator of Executive Life Insurance
18 Company

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

21 INSURANCE COMMISSIONER OF THE
22 STATE OF CALIFORNIA,

23 Applicant,

24 v.

25 EXECUTIVE LIFE INSURANCE
26 COMPANY, a California corporation, and
27 DOES 1 through 1000, inclusive,

28 Respondents.

Case No. BS 006912

**DECLARATION OF DAVID WILSON
IN SUPPORT OF INSURANCE
COMMISSIONER'S APPLICATION
FOR ORDER: (1) APPROVING FINAL
ACCOUNTING; (2) APPROVING
CLOSING BUDGET; (3) APPROVING
DOCUMENT DESTRUCTION PLAN;
(4) APPROVING FINAL
DISTRIBUTION PLAN;
(5) DISSOLVING EXECUTIVE LIFE
INSURANCE COMPANY AND
DISCHARGING THE COMMISSIONER
AFTER FILING OF A DECLARATION
OF COMPLIANCE; AND
(6) ESTABLISHING PROCEDURES
FOR DISMISSING AND
TERMINATING PROCEEDINGS**

**Date: November 21, 2019
Time: 9:00 a.m.
Dept: 72
Judge: Hon. Ruth A. Kwan
RES ID: 752831062496**

1 I, David Wilson, declare as follows:

2 **A. BACKGROUND**

3 1. I am the Chief Executive Officer of the State of California's Conservation and
4 Liquidation Office ("CLO") and I am a Special Deputy Insurance Commissioner. I make this
5 declaration in support of Insurance Commissioner's Application for Order: (1) Approving Final
6 Accounting; (2) Approving Closing Budget; (3) Approving Document Destruction Plan;
7 (4) Approving Final Distribution Plan; (5) Dissolving Executive Life Company and Discharging
8 the Commissioner After Filing a Declaration of Compliance; and (6) Establishing Procedures for
9 Dismissing and Terminating Proceedings ("Application"). I have personal knowledge of the
10 matters set forth herein and if called upon as a witness, I would testify as set forth below.

11 2. I have been the Chief Executive Officer and Special Deputy Insurance
12 Commissioner since March 1, 2005. Previously, from 1991 through 2005, I was the owner of a
13 national insurance consulting firm, D.E. Wilson & Associates, Inc., which provided services to
14 the insurance industry, state insurance departments, and the National Organization of Life &
15 Health Insurance Guaranty Associations on general insurance matters, work-outs, rehabilitation,
16 and insolvency. I have been licensed as a Certified Public Accountant since 1974 and was a
17 partner at the public accounting firm of Ernst & Young.

18 3. The CLO had been delegated responsibility for management of all insolvencies for
19 which the Insurance Commissioner has been appointed as conservator, rehabilitator, and/or
20 liquidator, including Executive Life Insurance Company in Conservation, Rehabilitation and
21 Liquidation ("Executive Life," "Executive Life Estate" or "Estate"). When I was appointed as
22 Chief Executive Officer of the CLO, the CLO was managing 31 insolvencies with approximately
23 \$4.5 billion of assets under management. Entering 2019 the CLO was managing 15
24 insolvencies. Since 2005, the CLO has distributed approximately \$4.5 billion to injured
25 policyholders, claimants, and guaranty funds, with an additional \$176 million projected for
26 distribution in 2019. As Chief Executive Officer of the CLO, I am responsible for the oversight
27 of each insolvency including, but not limited to, the handling of policyholder claims, general
28 ///

1 creditor claims, reinsurance (billing, collection, and arbitration), collection and disposition of
2 assets, and litigation.

3 4. As Chief Executive Officer, I have responsibility for the administration of the
4 Executive Life Estate in the above-captioned case, including the preparation and execution of
5 distributions from the Estate. In this capacity, I work with my staff, outside consultants familiar
6 with the Executive Life Estate, outside legal counsel and, as needed, Department of Insurance
7 staff attorneys.

8 5. Executive Life is in the final stages of a statutory conservation, rehabilitation and
9 liquidation proceeding that began on April 11, 1991, when the Court granted the Commissioner's
10 application to place Executive Life into conservation because it was operating in a hazardous
11 financial condition. The Commissioner's Application seeks Court approval to close the Executive
12 Life Estate because the Commissioner, acting through the CLO, has determined that he has
13 marshalled the assets of Executive Life, paid or otherwise made provision for its liabilities, and
14 otherwise completed all tasks required to file an estate closing application in order to receive
15 Court approval to complete the liquidation of the Executive Life Estate.

16 6. During my tenure as Chief Executive Officer of the CLO, the CLO has, with Court
17 approval, closed approximately a dozen estates, including life insurance companies. The
18 Commissioner's Application seeks an Order which contains similar features to closing orders
19 entered in other life insurer insolvencies, and which are viewed by the Commissioner and CLO as
20 customary with respect to closing an insolvent life insurer estate.

21 7. The Commissioner's intent with respect to the Application is to provide the Court
22 with information for the Court to determine that the Commissioner has properly exercised his
23 discretion in determining that closing of the Executive Life Estate should now occur and to
24 approve the Commissioner's final accounting, closing budget, document destruction plan, final
25 distribution plan and the procedures for dismissing and terminating the proceedings and
26 dissolving the Estate, and discharging the Commissioner from his role with respect to the
27 Executive Life Estate upon the filing by the Commissioner of a Declaration of Compliance. Once
28 the Application is granted by the Court, the Commissioner will move forward with the final

1 distribution of Estate assets, and will ultimately file a Declaration of Compliance to terminate the
2 liquidation proceedings and effect a discharge from his roles as conservator, rehabilitator and
3 liquidator.

4 **B. THE EXECUTIVE LIFE INSOLVENCY**

5 8. In the years leading up to its conservation in April of 1991, Executive Life had
6 placed 55 to 60 percent of its billions of dollars of invested assets into high yield “junk” bonds.
7 In late 1989, the junk bond market largely collapsed and, by early 1991, the Commissioner
8 determined that Executive Life’s financial statements, which had valued the bonds at
9 approximately \$6 billion, were grossly overstated. According to the Commissioner’s analysis, the
10 bond portfolio’s market value was between \$3.5 billion and \$4 billion. With this lower valuation,
11 Executive Life’s obligations far exceeded its assets and a liquidation Order was entered pursuant
12 to Insurance Code section 1016 on December 6, 1991.

13 9. After conserving Executive Life, the Commissioner focused first on stabilizing the
14 business and investment portfolio of the Executive Life Estate, and then turned to rehabilitating
15 Executive Life’s core insurance business. The Commissioner obtained Court approval to conduct
16 a bidding process to sell virtually all of Executive Life’s junk bond portfolio and through that
17 process identified Altus Finance (“Altus”)/MAAF¹ as the winning bidder. Its bid was approved
18 by the Conservation Court on December 26, 1991, and thereafter Executive Life’s junk bond
19 portfolio was sold. The Commissioner proceeded to develop a Plan of Rehabilitation and
20 Liquidation for Executive Life (“Rehabilitation Plan”) under which an investment group bought
21 the insurance company operations of Executive Life, naming the new insurer Aurora National
22 Life Assurance Company (“Aurora”). After significant disputes and discussions with stakeholder
23 representatives and certain modifications, the Rehabilitation Plan was approved by the Court and
24 took effect on September 3, 1993.

25 10. The primary contractual agreements embodying the Rehabilitation Plan are:
26 (1) the Amended and Restated Agreement of Purchase and Sale in connection with the
27 Rehabilitation of Executive Life Insurance Company dated August 7, 1991, as amended

28 ¹ MAAF is an acronym for Marthelli Assurance Artisan a le de France.

1 (“Rehabilitation Agreement”); (2) the Amended and Restated Reinsurance and Assumption
2 Agreement; and (3) the Amended and Restated Enhancement Agreement between the
3 Commissioner, Aurora, the National Organization of Life and Health Insurance Guaranty
4 Associations (“NOLHGA”) and the Participating Guaranty Associations dated as of December 5,
5 1991, as amended (“Enhancement Agreement”).

6 11. The Rehabilitation Plan provided for the restructuring of Executive Life’s
7 contracts to eliminate the differential between the value of Executive Life’s assets at the time of
8 their sale and the amount of its liabilities under its insurance contracts. The Rehabilitation Plan
9 provided for the Participating Guaranty Associations to fulfill their statutory coverage obligations
10 by providing benefits under the Enhancement Agreement. The Enhancement Agreement
11 provided that NOLHGA’s Participating Guaranty Associations would provide additional funding
12 to increase the recovery of certain classes of contract holders. NOLHGA’s Participating
13 Guaranty Associations have paid over \$2.5 billion net of subrogation recoveries for the benefit of
14 these contract holders under the terms of the Enhancement Agreement.

15 12. Under the Rehabilitation Plan, virtually all of Executive Life’s restructured
16 contracts were to be assumed by Aurora.² Each contract holder with an in-force Executive Life
17 contract at the time of the sale to Aurora had the option to either opt in or opt out of the
18 Rehabilitation Plan. By opting in a contract holder remained eligible to recover some or all of
19 any reduction in the restructured contract’s value through payments from Participating Guaranty
20 Associations, and could proportionally share in the liquidation of Executive Life’s remaining
21 assets. Contract holders who opted out terminated their policies in exchange for a cash payment
22 and proportionately share in the liquidation of Executive Life’s remaining assets. Under the
23 Rehabilitation Plan, based on each contract’s Conservation Date Statutory Reserve (“CDSR”),
24 approximately 33.9 percent of the distributable assets of Executive Life were to be paid to the
25 Opt-Out Trust for the benefit of the approximately 27,000 Opt-Out contract holders. The
26

27 ² Aurora was initially owned by a consortium of French companies. In 2001 Swiss Re Life Health America, Inc.
28 (“Swiss Re”) took control of Aurora. The outstanding stock of Aurora was thereafter sold to RGA Reinsurance
Company (“RGA Re”) in 2015, which replaced Swiss Re with respect to certain obligations under the Rehabilitation
Plan.

1 remaining approximately 66.1 percent of the distributable assets of Executive Life were to be
2 transferred to Aurora under the Rehabilitation Plan for the benefit of over 280,000 eligible Opt-In
3 contract holders.³

4 13. In exchange for Aurora's contractual commitments under the Rehabilitation Plan,
5 including Aurora's agreement to assume the restructured Executive Life policies, the Executive
6 Life Estate transferred to Aurora in September 1993 substantially all of Executive Life's
7 investment grade securities and operating assets, valued at over \$6 billion, to support the
8 liabilities assumed by Aurora under the Rehabilitation Plan. In addition, the transferred assets
9 supported initial cash payments to Opt-Out contract holders. Certain assigned assets remained in
10 the Executive Life Estate after the sale to Aurora conducted pursuant to the Rehabilitation Plan.
11 To maximize asset values, these assets were placed in the Enhancement Trusts, consisting of the
12 Executive Life Insurance Company Trust ("ELIC Trust"), the Executive Life Insurance Company
13 Real Estate Trust, and the Base Assets Trust for the benefit of Opt-Out and Opt-In contract
14 holders. The Enhancement Trusts had completed their missions by 1999 after distribution of
15 nearly \$1.1 billion to the Executive Life Estate and were terminated and their remaining assets
16 transferred to the Executive Life Estate.

17 14. Initially, the Executive Life Estate was managed by special deputy commissioners
18 and the trustees of the Enhancement Trust, under the oversight of the Commissioner. In mid-
19 1997, the CLO assumed the administration of the Estate and the CLO continues to administer it
20 today. After the termination of the three Enhancement Trusts, the Commissioner assumed the
21 responsibilities previously held by the trusts.

22 15. The Estate received significant recoveries shared by both Opt-In and Opt-Out
23 contract holders from multiple successful litigations. The Commissioner's lawsuit against
24 officers and directors of Executive Life's parent, First Executive Corporation ("FEC"), Michael
25 Milken, Drexel and others resulted in a receipt of litigation proceeds between 1992 and 2006 of
26

27 ³ Certain contractual undertakings with respect to Aurora's obligations under the Plan are contained in the
28 Administrative Services Agreement between the Commissioner and Aurora dated June 29, 1995, as amended, and the
subsequent 2012 Administrative Services Agreement, the AVI Distribution Cost and ERAV Return Agreement and
Agreement Regarding Review of AVI Distributions, between the Commissioner, Aurora and Swiss Re.

1 \$346.7 million and \$45.3 million in interest thereon. The Commissioner brought a separate
2 lawsuit against the consortium of French companies (including Altus), that bought Executive
3 Life's junk bond portfolio and formed Aurora to purchase Executive Life's insurance business (a
4 transaction that violated federal and state banking and insurance laws). Finally, the 2003
5 settlement of criminal litigation brought by the United States Attorney General's Office against
6 Artemis, S.A., ("Artemis") an entity owned by Altus, and a variety of its affiliates, resulted in the
7 receipt of \$110 million by the Commissioner in 2004 as a victim compensation payment for the
8 benefit of the Executive Life Estate. The suit against the French companies, various individuals
9 and other companies, including Artemis, Mallart, Aurora, CDR, MAAF, Henin and Altus,
10 recovered approximately \$931 million (collectively "Altus Litigation Proceeds").

11 16. The CLO is responsible for distributions to Opt-Out contract holders through the
12 Opt-Out Trust, and Aurora is responsible for distributions to Opt-In contract holders. The
13 Opt-Out Trust is a grantor trust of the Executive Life Estate to receive and distribute funds (net of
14 investment income and distribution expenses) from the Executive Life Estate to the Opt-Out
15 contract holders. When distributions have occurred the relative percentage of funds is 66.1
16 percent for the Opt-In contract holders and their subrogees and 33.9 percent for the Opt-Out
17 Trust. Until the filing of this Application, the Commissioner has made interim distributions from
18 the Executive Life Estate totaling approximately \$1.92 billion (which was net of investment
19 income and distribution expenses) for the benefit of Executive Life contract holders. These
20 interim distributions are described below.

21 17. Distributions of Executive Life's non-litigation recovery assets were made to its
22 contract holders by way of the three Enhancement Trusts.⁴ Any of Executive Life's assets
23 transferred to one of the Enhancement Trusts for distribution were distributed in the 66.1 percent /
24 33.9 percent proportion for the benefit of Opt-In and Opt-Out contract holders respectively.
25 Distributions for the benefit of Opt-Out contract holders, or their subrogees, were made directly
26 to the Opt-Out Trust which then made appropriate distributions to the Opt-Out contract holders or
27 subrogees. Distributions for the benefit of Opt-In contract holders were provided to Aurora to be
28

⁴ The ELIC Trust was the main vehicle for liquidating miscellaneous assets.

1 distributed. These distributions resulted in payments to individual Opt-Out contract holders and
2 their subrogees of \$381.9 million and the payment of \$682 million to Aurora for Opt-In contract
3 holders and their subrogees. The termination of the three Trusts was approved by the Court in
4 1999.

5 18. Between September 1992 and March 2006, the Commissioner received
6 approximately \$346.7 million in FEC litigation proceeds and earned \$45.3 million in interest
7 thereon. The sum of \$319.7 million was distributed by the FEC Litigation Trust prior to the
8 transfer to the CLO. The remaining \$72.3 million FEC Litigation Trust was transferred to the
9 CLO and subsequently distributed to the Opt-In and Opt-Out contract holders.

10 19. Distribution of the Altus Litigation Proceeds took place in stages. After obtaining
11 Court approval, in February 2006, the CLO distributed just over \$211 million to the Opt-Out
12 contract holders and their subrogees and designated \$418 million for distribution to the Opt-In
13 contract holders and their subrogees. The foregoing amounts were inclusive of the distributable
14 portion of the \$110 million victim compensation payment under the United States Attorney's
15 settlement of criminal litigation described above. Thereafter, \$94 million was distributed in 2006,
16 and \$308.7 million was distributed in 2007 to Opt-In contract holders.

17 20. In 2016, the Commissioner sought and obtained Court approval for a distribution
18 to contract holders of \$110.8 million, primarily consisting of proceeds from a settlement between
19 the Commissioner and Artemis. The gross amount of the settlement was \$200 million, however,
20 \$25 million of the settlement was immediately payable to Sierra National Insurance Holdings,
21 Inc. ("Sierra") under a separate court approved agreement. In determining the total distribution,
22 the Commissioner added the remaining \$175 million to other liquid assets in the Estate, and then
23 deducted a reserve to cover other remaining potential priority liabilities of the Estate, including a
24 tax reserve of \$61 million. The Commissioner also reserved \$14 million against a claim filed by
25 the bankruptcy trustee for Thelen LLC (the Commissioner's prior contingency fee counsel in the
26 Altus litigation, which resulted in the Artemis settlement which was subsequently settled for
27 \$1.95 million). With this reserve, and a prudent reserve against future expenses, the
28 Commissioner, determined in 2016 that there was then \$110.8 million available for contract

1 holder distribution. Of that total, \$37.55 million was distributed to the Opt Out Trust. After a
2 reserve of \$2.55 million, \$35 million was distributed to approximately 27,000 Opt-Out former
3 contract holders and their subrogees and approximately \$73.2 million was distributed to Aurora
4 for the benefit of over 280,000 eligible Opt-In contract holders and their subrogees. Subsequent
5 to the 2016 distribution, there have been no further distributions up until the date of this
6 Application.

7 21. The Commissioner, acting through the CLO, has determined that the assets of the
8 Executive Life Estate have been appropriately marshalled and that its liabilities, including
9 contingent liabilities, have been appropriately resolved or accounted for. The Executive Life
10 Estate holds total assets of \$79,248,129 as of July 31, 2019. Executive Life's remaining assets
11 are inadequate to pay 100% of the remaining approximately \$7.5 billion of allowed contract
12 holder claims which have priority status after expenses of administration.⁵ Given that the Estate
13 lacks adequate funds to satisfy completely all allowed contractor holder liabilities, no payment
14 will be made with respect to lower priority claims, including general creditor claims. The
15 California statutory provisions contained in Insurance Code section 1033 prohibit payment to
16 lower priority creditors until senior allowed claims are paid in full.

17 22. Assuming approval of the Application, the Commissioner anticipates making a
18 final distribution of Executive Life assets on or about July 1, 2020. The distribution cannot
19 reasonably be accomplished at an earlier date due to the complexities associated with properly
20 administering final distributions for an Estate with over 300,000 eligible contract holders. After
21 the distribution occurs, the CLO will be required to respond to policyholder inquiries, escheat
22 undistributed funds and uncashed checks as required by law, provide for the cost of the final
23 distribution audit, satisfy document storage and destruction requirements as discussed in the
24 Application, complete the dissolution of the Estate, and conduct other closing related activities as
25 they arise. The CLO anticipates that these activities will be completed no later than July 31,
26 2021, after which the Commissioner will be discharged. There is no reason to believe that the
27

28 ⁵ In 1997, the Legislative amended California's priority status, Insurance Code section 1033(a) renumbering
policyholder claims from Class 5 to Class 2.

1 Executive Life Estate will in the future become entitled to any additional funds that are not
2 reflected in the Final Accounting. If such an unexpected event does occur, the Commissioner
3 believes the costs of reopening the Executive Life Estate to make a distribution would be
4 extremely significant and therefore unjustified except in the case of receipt of a very large
5 recovery. Accordingly, the Commissioner asks the Court to order that the Estate need not be
6 reopened except upon the Commissioner's request after receiving additional funds in amounts
7 that, in the Commissioner's discretion and judgment, justify the reopening of the Estate. The
8 Commissioner further requests that any smaller amounts insufficient to justify reopening of the
9 Estate be deposited with the Department of Insurance to defray its budgetary needs.

10 23. During the long course of this complex proceeding, the Commissioner has filed
11 numerous motions and applications to obtain periodic court approvals of all transactions, and all
12 expenditures for which court approval was or is required. Reference is made to all prior
13 applications for instructions and other related motions filed herein, including without limitation
14 the Conservation Order, the Rehabilitation Order, the Claims Procedures Order, the Distribution
15 Orders and all Applications for Instructions, and incorporates by reference into this final
16 accounting all such prior motions and applications and the orders entered thereon. The
17 Commissioner believes that this complex Estate has been efficiently and effectively administered,
18 within the lawful discretion of the Commissioner, throughout the duration of the proceeding and
19 respectfully requests that the Final Accounting of the Commissioner for the period of January 1,
20 1997 through July 31, 2019, attached to the Declaration of Raymond Minehan as Exhibit A, and
21 all amounts set forth therein, be deemed settled and approved and that the Closing Budget
22 attached to the Declaration of Raymond Minehan as Exhibit B, which is reasonable and

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 appropriate, likewise be approved, and that all other relief sought in this Application be granted
2 and the proposed Order submitted herewith be entered by the Court.

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

5 Executed this 16 day of October, 2019, in San Francisco California.

6
7 David E Wilson

8 David Wilson
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

KAREN HO (State Bar No. 274027)
ERVIN COHEN & JESSUP LLP
9401 Wilshire Boulevard, Ninth Floor
Beverly Hills, California 90212-2974
Telephone: (310) 273-6333
Facsimile: (310) 859-2325
Email: kho@ecjlaw.com

CYNTHIA J. LARSEN (State Bar No. 123994)
ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
Sacramento, California 95814
Telephone: (916) 447-9200
Facsimile: (916) 329-4900
Email: clarsen@orrick.com

**EXEMPT from filing fees per Govt.
Code § 6103**

Attorneys for Ricardo Lara, Insurance Commissioner
of the State of California in his Capacity as
Rehabilitator/ Liquidator of Executive Life Insurance
Company

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,

Applicant,

v.

EXECUTIVE LIFE INSURANCE
COMPANY, a California corporation, and
DOES 1 through 1000, inclusive,

Respondents.

Case No. BS 006912

**DECLARATION OF RAYMOND
MINEHAN IN SUPPORT OF
INSURANCE COMMISSIONER'S
APPLICATION FOR ORDER:
(1) APPROVING FINAL ACCOUNTING;
(2) APPROVING CLOSING BUDGET;
(3) APPROVING DOCUMENT
DESTRUCTION PLAN; (4) APPROVING
FINAL DISTRIBUTION PLAN;
(5) DISSOLVING EXECUTIVE LIFE
INSURANCE COMPANY AND
DISCHARGING THE COMMISSIONER
AFTER FILING OF A DECLARATION
OF COMPLIANCE; AND
(6) ESTABLISHING PROCEDURES
FOR DISMISSING AND
TERMINATING PROCEEDINGS**

**Date: November 21, 2019
Time: 9:00 a.m.
Dept: 72
Judge: Hon. Ruth A. Kwan
RES ID: 752831062496**

1 I, Raymond Minehan, declare as follows:

2 1. I am the Chief Financial Officer ("CFO") of the California Insurance
3 Commissioner's Conservation & Liquidation Office ("CLO"). I make this declaration in support
4 of Insurance Commissioner's Notice of Application and Application for Order: (1) Approving
5 Final Accounting; (2) Approving Closing Budget; (3) Approving Document Destruction Plan;
6 (4) Approving Final Distribution Plan; (5) Dissolving Executive Life Insurance Company and
7 Discharging the Commissioner after Filing of a Declaration of Compliance and (6) Establishing
8 Procedures for Dismissing and Terminating Proceedings ("Application"). I have personal
9 knowledge of the facts set forth herein and if called upon as a witness, I would testify as set forth
10 below.

11 2. I have served as the CFO of the CLO since May 2005. Previously, I was a CFO
12 and Chief Administrative Officer at two investment banks. Prior to that, I spent 17 years, the last
13 five of which were as an audit partner, at Arthur Andersen & Co., from 1982 through 1989. I
14 have over 30 years of experience in the preparation of financial statements.

15 3. My duties at the CLO include oversight of the finance department and human
16 resources activities. In this capacity, I have responsibility for all accounting functions, including
17 financial reporting with respect to the estates of insolvent insurers under administration by the
18 CLO, including the Executive Life Insurance Company estate. In addition, I am a member of the
19 Executive Committee of the CLO.

20 4. I am familiar with the financial statements of the Executive Life Estate
21 ("Executive Life," "Executive Life Estate" or "Estate"). I am also familiar with its financial
22 condition since January 1, 1997 when the CLO assumed responsibility for administration of the
23 Executive Life Estate.

24 5. The Commissioner's Final Accounting, a true and correct copy of which is
25 attached hereto as Exhibit A, consists of a set of Closing Liquidation-Basis Financial Statements
26 which include a Statement of Sources and Application of Funds for the period January 1, 1997 to
27 July 31, 2019; a Statement of Net Assets as of July 31, 2019; a Statement of Changes in Net
28 Assets and; a Statement of Cash Flows, the latter two covering the period from January 1, 1997

1 until July 31, 2019. *See* Ex. A, pp. 1-4.¹ Based on my professional judgment, knowledge, and
2 experience, this Final Accounting accurately represents the financial condition of the Estate and is
3 properly within the Commissioner's lawful discretion.

4 6. An additional part of the Commissioner's Final Accounting is a closing budget
5 ("Closing Budget") for the Executive Life Estate. The Commissioner's Closing Budget is based
6 on calculations as to appropriate reserves for administrative expenses of the CLO, including
7 third-party consultants, and attorneys' fees, incurred since the closing date of the Final
8 Accounting in Exhibit A, and estimated future administrative expenses and attorneys' fees
9 through Estate closure estimated to occur in July 2021 ("Closing Expenses"). A true and correct
10 copy of the Closing Budget is attached hereto as Exhibit B. The Closing Expenses include,
11 among other things, legal, consulting and internal CLO expenses in connection with: bringing this
12 Application; preparing for and processing the final distribution to Aurora (including the required
13 audit of Aurora's final distribution and escheatment) including the use of consultants and third
14 parties to assist in the distribution and audit; the pending Order to Show Cause ("OSC")
15 proceeding by National Structured Settlements Trade Association, *et al.*; the final audits for 2019,
16 2020 and 2021 mandated by Insurance Code section 1061; any final tax compliance obligations;
17 processing the formal dissolution of Executive Life Estate with the Secretary of State's Office;
18 the preparation and filing of the Declaration of Compliance. In addition, expenses will be
19 incurred providing for the required storage and ultimate disposal of the voluminous business
20 records of Executive Life and the Estate. Two years after the entry of the Order sought in the
21 Application, these records will be destroyed, except that financial records necessary for tax or
22 audit purposes will be retained for three years after the date of the Order.

23 7. The Commissioner, through the CLO, has engaged in a diligent process to estimate
24 CLO Closing Expenses for the Executive Life Insurance Estate and has determined that a
25 reasonable calculation of such expenses is \$2,115,660 for the two-year period from August 1,
26

27 ¹ With Court approval, the Executive Life Estate was migrated to the CLO for management in 1997, after having
28 been managed since 1991 by Special Deputy Commissioners. The CLO's financial reporting for the Estate since
1997 has been based on a set of "opening financials" reflecting the financial records the CLO received from prior
administrators in 1997.

1 2019 through July 31, 2021, as set forth in Exhibit B. I have been personally involved in the
2 Commissioner's estimate of Closing Expenses and, based on my knowledge and experience, I
3 believe this estimate to be accurate and reasonable under the circumstances and within the
4 Commissioner's lawful discretion. The Commissioner requests that the Court authorize the
5 Commissioner to (1) retain and provide to the CLO the sum of \$2,115,660 for the Executive Life
6 Closing Expenses; and (2) pay any excess Closing Expenses that exceed such amount out of the
7 funds appropriated for the maintenance of the Department of Insurance as authorized by
8 Insurance Code section 1035; and (3) deposit any funds remaining in the Closing Budget not
9 utilized for the Closing Expenses to the Department of Insurance expense fund. The deposit of all
10 such unused funds is appropriate, given the Department of Insurance allocates significant funds
11 each year from the CDI expense fund to cover any shortfalls experienced by the CLO in funding
12 its work to conserve or liquidate insolvent insurers.

13 8. The Closing Expenses are based on estimates of planned closing activities. The
14 Executive Life Estate has one open OSC proceeding referred to in paragraph 6 hereof. This OSC
15 is scheduled for Court hearing on December 5, 2019. The CLO believes that the Executive Life
16 Estate has no liability related to this OSC and has not included any amount to cover any future
17 Court-ordered Executive Life Estate liability. If such a liability is established, the appropriate
18 modifications to the estimated Closing Expenses and resulting net distributable amount due to
19 adverse resolution of this OSC will be made by the Commissioner. In addition, the
20 Commissioner may make minor adjustments to the estimated interest projection (either up or
21 down) and/or significant true-ups of other estimates up to the time that the final distributable
22 amount is fixed. The Commissioner requests that the Order entered on this Application recognize
23 and permit such modifications.

24 9. Based on my professional judgment, knowledge, and experience, the
25 above-described format and content of Final Accounting, including the Closing Budget, is the
26 appropriate and the most efficient way to conduct a final accounting for the Executive Life Estate.
27 The Final Accounting, including the Closing Budget, presents an accurate and appropriate
28 summary of the Executive Life Estate's financial condition as of July 31, 2019, and the reasonable

1 and appropriate estimated costs of closing of the Executive Life Estate and terminating these
2 proceedings.

3 10. During the long course of this complex proceeding, the Commissioner has filed
4 numerous motions and applications to obtain periodic Court approvals of all transactions and all
5 expenditures for which Court approval was or is required. Reference is made to all prior
6 applications for instructions and other related motions filed herein, including without limitation
7 the Conservation Order, the Rehabilitation Order, Distribution Orders and all Applications for
8 Instructions, and all such prior motions and applications and the orders entered thereon, are
9 incorporated by reference into the Final Accounting. The Commissioner has requested that his
10 Final Accounting, and all amounts set forth therein, be deemed settled and approved in their
11 entirety.

12 11. As the CFO of the CLO, I believe that the Executive Life Estate has been
13 efficiently and effectively administered throughout the duration of the proceeding, first by Special
14 Deputy Commissioners acting on behalf of the Insurance Commissioner, and, since 1997 by the
15 CLO, acting on behalf of the Commissioner. During the course of these proceedings all expenses
16 of administration and third-party administrative expenses along with attorneys' fees and expenses
17 have been paid from the assets of Executive Life in accordance with Insurance Code sections
18 1035 and 1036, all of which have been accounted for in the Commissioner's final accounting set
19 forth above.

20 12. Upon the entry of an Order granting the relief sought in the Application, the
21 Commissioner will retain at the CLO the Executive Life Estate Closing Budget amount of
22 \$2,115,660 as a reserve for expenses of administration, which are entitled to Class 1 priority in
23 liquidation. Insurance Code section 1033(a). The Commissioner, on behalf of the Executive Life
24 Estate, will distribute an estimated \$80,266,930 for the benefit of the Opt-In and the Opt-Out
25 contract holders, according to their percentage distributions under the Rehabilitation Plan, as
26 calculated below.

27 ///

28 ///

Executive Life Estate Assets as of July 31, 2019	\$79,248,129
Estimated additional interest income and recoveries	
Interest income net of tax	1,286,461
Other recoveries	<u>1,848,000</u>
Total estimated available assets	82,382,590
Less Executive Life estate closing budget	(2,115,660)
Net estimated assets available for distribution	<u><u>\$80,266,930</u></u>
Distribution to RGA/Aurora for Opt-In contract holders 66.1%	\$53,056,441
Distribution to Opt-Out Trust 33.9%	\$27,210,489

13. The CLO is responsible for the distribution to approximately 27,000 Opt-Out Trust contract holders of funds distributed by the Executive Life Estate to the Opt-Out Trust. Approximately \$1,322,818 (the \$2,316,209 Opt-Out closing budget less \$769,734 in Opt-Out Trust funds available at July 31, 2019 and estimated interest income of \$223,657) will be held by the Opt-Out Trust as a reserve for expenses. The Opt-Out closing budget expenses include, among other things: a portion of consulting and internal CLO expenses incurred in the preparation and filing of this Application; preparing for the final distribution to Opt-Out contract holders and their subrogees; a pre-distribution mailing as required by IRS guidelines; processing the final distribution; a CPA audit of the final distribution; the mailing of 1099-R information and post-distribution escheatment of unclaimed funds.

14. Given that the Estate lacks adequate funds to satisfy completely all allowed contract holder liabilities, no payment will be made with respect to lower priority claims, including general creditors. The Commissioner expects to make the foregoing distribution on or about July 1, 2020.

15. Subsequent to the final distribution, the Commissioner plans to escheat unclaimed property and funds as permitted by applicable law.

16. As to distributions to Opt-In and Opt-Out contract holders or their subrogees, there are significant costs associated with cash distributions effected by checks. Based on an analysis of costs incurred in making various prior distributions, these costs are estimated to be approximately \$2.00 per check issued. Accordingly, the Commissioner requests that the Order entered on the Application provide that any distributions of balances of less than \$2.00 be deemed de minimis and provided to the Commissioner to defray the costs of closing the Estate, rather than to the contract holders and their subrogees. The CLO estimates that total de minimis amounts under this provision will be less than \$7,000 dollars.

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

Executed this 16th day of October, 2019, in SAN FRANCISCO California.



Raymond Minehan

EXHIBIT A

Exhibit A

**Insurance Commissioner of the State of California
Conservation & Liquidation Office**

**Executive Life Insurance Company
Financial Statements**

As of July 31, 2019

(Prepared on a Liquidation Basis of Accounting)

Index Statement of Sources and Application of Funds	Page 1
Statement of Net Assets	Page 2
Statement of Changes in Net Assets	Page 3
Statement of Cash Flows	Page 4

Note: These financial statements should be read in conjunction with the Report on Reviews of the Executive Life Insurance Company in Liquidation, with the review opinion by the California Department of Finance Office of State Audits and Evaluations.

**Insurance Commissioner of the State of California
Conservation & Liquidation Office**

Executive Life Insurance Company

Statement of Sources and Application of Funds

January 1, 1997 to July 31, 2019

(Liquidation Basis of Accounting)

Cash at January 1, 1997 (\$13,725)

Sources of funds

Litigation Recoveries	931,372,039
Other realized gains	40,880,750
Investment Income	71,653,344
Holdback funds for Opt Ins from ELIC Trust	40,571,890
ELIC owned contract receipts	1,526,888
Return of ELIC Restricted Account Values (ERAV)/A2 from Aurora	26,143,034
Subrogation recovery from the Michigan book of business	2,548,013
Other revenue	16,705,146
Total sources	<u>1,131,401,103</u>

Uses of funds

Distributions to claimant policyholders (834,819,752)

Estate liquidation expenses

Legal	(126,032,774)
Consulting	(8,858,528)
Compensation to ELIC employees through transfer of estate to CLO	(912,010)
Office expense	(3,316,114)
CLO allocated expense	(10,960,243)
Holdback funds released for Opt In policy holders	(40,571,890)
Portion of Artemis recovery remitted to Sierra Holdings	(25,000,000)
Executive pre 1993 death claims paid	(1,559,705)
A2 fund for Aurora in 2012 for post September 1993 corrections	(314,778)
Total liquidation expenses	<u>(217,526,041)</u>

Cash - July 31, 2019 \$79,041,585

**Insurance Commissioner of the State of California
Conservation & Liquidation Office**

Executive Life Insurance Company

Statement of Net assets

As of July 31, 2019

(Liquidation Basis of Accounting)

Assets

Cash and Investments	\$ 79,041,585
Accrued Interest Receivable	<u>206,544</u>
Total Assets	79,248,129

Liabilities

Liabilities before Distributions	8,329,987,223
Distributions	<u>(834,819,752)</u>
Total Liabilities	7,495,167,471

Net assets (deficiency)	<u><u>\$ (7,415,919,341)</u></u>
--------------------------------	----------------------------------

**Insurance Commissioner of the State of California
Conservation & Liquidation Office**

Executive Life Insurance Company

Statement of Changes in Net Assets

January 1, 1997 to July 31, 2019

(Liquidation Basis of Accounting)

Revenues

Litigation Recoveries	\$ 931,372,039
Portion of Artemis recovery remitted to Sierra Holdings	(25,000,000)
Other realized gains	40,880,750
Other income	38,623,283
Total Revenues	<u>985,876,072</u>

Expenses

Legal	(126,032,774)
Consulting	(8,858,528)
Total Legal and Consulting	<u>(134,891,302)</u>

Compensation to ELIC employees through transfer of estate to CLO	(912,010)
Office expense	(3,316,114)
Total Compensation and Office	<u>(4,228,124)</u>

Loss and Loss expense net of Distributions	(5,355,183,352)
--	-----------------

Allocated expenses	(10,960,243)
Total Operating Expenses	<u>(5,505,263,021)</u>

Loss from Operations	(4,519,386,949)
-----------------------------	------------------------

Investment Income	71,859,888
--------------------------	-------------------

Net Loss	<u><u>\$ (4,447,527,061)</u></u>
-----------------	----------------------------------

**Insurance Commissioner of the State of California
Conservation & Liquidation Office**

Executive Life Insurance Company

Statement of Cash Flows
January 1, 1997 to July 31, 2019
(Liquidation Basis of Accounting)

Cash flows from operating activities

Loss from Operations	(\$4,519,386,949)
Increase (decrease) in unpaid policyholder liability	8,329,987,028
Reevaluation of deficiency in net assets	(2,968,378,361)

Cash Flows from investing activities

71,653,344

Distributions

(834,819,752)

Cash at January 1, 1997

(13,725)

Cash at July 31, 2019

\$79,041,585

Supplemental disclosure of cash flow information

Distributions - 1991 to July 31, 2019

\$1,918,174,771

EXHIBIT B

Exhibit B

Executive Life Insurance Estate Closing Budget

Legal Expense	
Orrick Herrington	\$ 219,098
Ervin Cohen & Jessup	79,504
California Dept of Insurance	4,800
Audit and Tax Services	74,552
Other Consulting	
W Roberts	190,969
N Singley	254,911
G Cohen	161,011
Milliman Actuarial	84,996
Total Legal and Consulting	<u>1,069,841</u>
RGA A2 Fund	40,300
Office Expense	
Record Storage and Destruction	162,300
Other Office Expense	37,219
Total Office Expense	<u>199,519</u>
CLO Allocation of Internal Expense	806,000
Total Closing Budget	<u><u>\$ 2,115,660</u></u>

KAREN HO (State Bar No. 274027)
ERVIN COHEN & JESSUP LLP
9401 Wilshire Boulevard, Ninth Floor
Beverly Hills, California 90212-2974
Telephone: (310) 273-6333
Facsimile: (310) 859-2325
Email: kho@ecjlaw.com

CYNTHIA J. LARSEN (State Bar No. 123994)
ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
Sacramento, California 95814
Telephone: (916) 447-9200
Facsimile: (916) 329-4900
Email: clarsen@orrick.com

**EXEMPT from filing fees per Govt.
Code § 6103**

Attorneys for Ricardo Lara, Insurance Commissioner
of the State of California in his Capacity as
Rehabilitator/ Liquidator of Executive Life Insurance
Company

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,

Applicant,

v.

EXECUTIVE LIFE INSURANCE
COMPANY, a California corporation, and
DOES 1 through 1000, inclusive,

Respondents.

Case No. BS 006912

**[PROPOSED] ORDER GRANTING
INSURANCE COMMISSIONER'S
APPLICATION FOR ORDER:
(1) APPROVING FINAL
ACCOUNTING; (2) APPROVING
CLOSING BUDGET; (3) APPROVING
DOCUMENT DESTRUCTION PLAN;
(4) APPROVING FINAL
DISTRIBUTION PLAN;
(5) DISSOLVING EXECUTIVE LIFE
INSURANCE COMPANY AND
DISCHARGING THE
COMMISSIONER AFTER FILING OF
A DECLARATION OF
COMPLIANCE; AND
(6) ESTABLISHING PROCEDURES
FOR DISMISSING AND
TERMINATING PROCEEDINGS**

**Date: November 21, 2019
Time: 9:00 a.m.
Dept: 72
Judge: Hon. Ruth A. Kwan
RES ID: 752831062496**

1 The Application of the Insurance Commissioner as Liquidator of the Executive Life
2 Insurance Company (“Executive Life,” “Executive Life Estate” or “Estate”) For Order:
3 (1) Approving Final Accounting; (2) Approving Closing Budget; (3) Approving Document
4 Destruction Plan; (4) Approving Final Distribution Plan; (5) Dissolving Executive Life Insurance
5 Company and Discharging the Commissioner After Filing of A Declaration of Compliance; and
6 (6) Establishing Procedures for Dismissing and Terminating Proceedings (“Application”¹) was
7 heard before this Court on November 21, 2019. Cynthia Larsen of Orrick, Herrington & Sutcliffe
8 LLP and Karen Ho of Ervin Cohen & Jessup LLP appeared on behalf of the Commissioner. Any
9 other appearances were as noted in the record.

10 The Court, having reviewed and considered the Application and the Points and Authorities
11 and the Declarations and supporting documents in support thereof, and having heard arguments of
12 counsel appearing at the hearing, and GOOD CAUSE appearing therefor, the Court determines
13 and orders that the Commissioner's Application is granted in all respects as follows:

14 1. The Commissioner has provided proper and adequate notice of the Application and
15 of the hearing date and time on the Application to all interested parties and to those who have
16 requested notice herein. Such notice is fair, reasonable and sufficient, and no other or further
17 notice is necessary or required of the Application, the hearing thereon, or to carry out the
18 provisions of this Order, except as otherwise set forth herein. No timely or proper objections to
19 the Application have been received and, if any exist, consistent with the requirements of the
20 Notice of Application they are waived and released by this Order. In addition, consistent with the
21 Notice of Application and Application, any and all claims, demands, complaints and objections,
22 however and whenever arising, concerning the administration of the Estate, the payment of costs
23 of administration, the resolution of claims and demands, and all litigations and claims, known or
24 unknown, that have or could be brought against the Estate, the Commissioner, its Conservation
25 and Liquidation office, and their agents and attorneys, are fully and finally resolved and/or
26 released, except as otherwise provided in this Order including with respect to the pending Order
27 to Show Cause proceeding identified in paragraph 6 of this Order.

28

¹ Capitalized terms used herein shall have the same meaning as defined in the Application.

1 2. The Commissioner possesses broad discretionary powers in connection with the
2 conservation, rehabilitation and liquidation of insolvent insurers, which may only be disturbed if
3 the Commissioner's actions are arbitrary and capricious or improperly discriminatory. *See In re*
4 *Executive Life Ins. Co.*, 32 Cal. App. 4th 344, 358-59 (1995); *see also Carpenter v. Pacific Mutual*
5 *Life Ins. Co.*, 10 Cal. 2d 307 (1938). The relief sought by the Commissioner in the Application is
6 fully within the Commissioner's discretion and consistent with governing law and the prior
7 Orders of the Court.

8 3. The Final Accounting of the Commissioner for the Executive Life Estate for the
9 period January 1, 1997 to July 31, 2019, attached to the Declaration of Raymond Minehan as
10 Exhibit A, is hereby settled and approved and all matters therein, including all administrative fees
11 and expenses incurred by the Commissioner and not previously approved pursuant to Orders
12 entered by the Court, are hereby approved, and there may be no further objections to the
13 foregoing Final Accounting, the matters therein, or the administrative fees and expenses incurred
14 by the Commissioner with respect to the Executive Life Estate.

15 4. The Commissioner's Closing Budget for the Executive Life Estate attached as
16 Exhibit B to the Declaration of Raymond Minehan, which includes incurred but unpaid expenses
17 and anticipated future expenses of the CLO, its outside attorneys, consultants and other third-
18 party service providers, is approved. The Court finds that the Closing Budget reflects a
19 reasonable estimate of the incurred but unpaid and future expenses for closing the Estate
20 including, without limitation, legal services, tax compliance, accounting services, statutory estate
21 audit fees, and document storage and destruction. The Commissioner is hereby authorized to
22 retain the full amount of the Closing Budget for such incurred and future expenses, and the
23 Commissioner is authorized to expend funds pursuant thereto without further order of the Court.
24 To the extent the Closing Budget is subsequently determined to be inadequate to defray the
25 Commissioner's future expenses of administration, the Commissioner is authorized to pay any
26 excess expenses of administration out of the funds appropriated by the Legislature for the
27 maintenance of the Department of Insurance, as authorized by Insurance Code section 1035. If
28 the Closing Budget is not fully utilized for the closing of Executive Life, the excess funds not

1 utilized for Closing Expenses shall be deposited to the California Department of Insurance
2 expense fund.

3 5. The Commissioner is authorized to destroy all records of Executive Life and the
4 Executive Life Estate commencing two years after the date of this Order, except that financial
5 records necessary for tax purposes, or for examination by the Department of Finance or other
6 auditors pursuant to Insurance Code section 1061, shall be retained by the Commissioner for three
7 years after the date of the Order and shall be destroyed thereafter.

8 6. Excluding the amount set forth in the Closing Budget, which is to be retained by
9 the Commissioner, the Commissioner is authorized to make a final distribution of all of the
10 residual assets of the Executive Life Estate. The net estimated assets available for distribution are
11 estimated to be \$80,266,930, however, the Commissioner is authorized to make such
12 modifications to the net assets available for distribution as he deems appropriate by reason of
13 accounting adjustments, true-ups of expected tax recoveries and investment returns, and the
14 resolution of the pending Order to Show Cause proceeding brought by National Structured
15 Settlements Trade Association, *et al.*² Consistent with the Rehabilitation and Enhancement
16 Agreements, the relative percentage shares of the Opt-In and Opt-Out contract holders in the
17 foregoing distribution shall be as in prior distributions, i.e., 66.1 percent for the Opt-In
18 policyholders and 33.9 percent for the Opt-Out Trust. Due to the costs required to make
19 distributions to contract holders or their subrogees with balances of less than \$2.00, the
20 Commissioner is excused from making such de minimis distributions and is authorized to retain
21 such amounts for use by the CLO in performing activities required to close the Executive Life
22 Estate. The Commissioner is authorized to escheat unclaimed property and funds as permitted by
23 applicable law.

24 7. The corporation or other business entity known as Executive Life Insurance
25 Company, the Executive Life Insurance Company Estate, and/or Executive Life Insurance
26 Company in Conservation and Liquidation shall be and hereby is ordered DISSOLVED pursuant
27

28 ² The liability asserted against the Estate in the referenced Order to Show Cause proceeding has not been finally
determined by the Court as of the date of this Order, and thus it is not resolved or released by this Order.

1 to California Insurance Code section 1017(a). At such time as he deems appropriate, the
2 Commissioner shall file and the California Secretary of State shall accept for filing without fee or
3 other charge, a certified copy of this Order to record this Court-ordered dissolution. No further
4 forms, charges or clearances shall be requested or required by the Secretary of State's Office.

5 8. To apprise the Court of the Commissioner's interim progress under this Order, the
6 Commission shall file a progress update on the first anniversary date of entry of this Order. This
7 case shall be terminated upon the filing by the Commissioner of a Declaration of Compliance
8 with the Court's Order and a Request for Dismissal substantially in the form attached hereto as
9 **Exhibit A.**

10 9. Upon the filing of the Declaration of Compliance, the Insurance Commissioner
11 shall be and is hereby fully discharged from any and all duties and responsibilities as statutory
12 Conservator, Rehabilitator and Liquidator of Executive Life.

13 10. Although it is not anticipated that there will be any future recoveries by Executive
14 Life, in the event the Estate or Commissioner come into possession of Executive Life funds not
15 reflected in the Application or supporting documents, due to the significant costs of reopening the
16 Estate, the Estate will not be reopened or revived except upon the Commissioner's request after
17 receiving additional amounts that, in his discretion and judgment, justify reopening of the Estate.
18 Any such funds received by the Commissioner which are insufficient, in the Commissioner's
19 discretion or judgment, to justify reopening or reviving of the Estate shall be deposited by the
20 Commissioner into the Department of Insurance expense fund to defray the costs of activities of
21 the Department of Insurance.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

11. The Commissioner is authorized to take any action necessary to accomplish the activities and items approved herein and to fulfill the purposes of this Order.

IT IS SO ORDERED.

Dated: _____

HONORABLE RUTH A. KWAN
JUDGE OF THE SUPERIOR COURT

Submitted by:

KAREN HO (State Bar No. 274027)
ERVIN COHEN & JESSUP LLP
9401 Wilshire Boulevard, Ninth Floor
Beverly Hills, California 90212-2974
Telephone: (310) 273-6333
Facsimile: (310) 859-2325
Email: kho@ecjlaw.com

CYNTHIA J. LARSEN (State Bar No. 123994)
ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
Sacramento, California 95814
Telephone: (916) 447-9200
Facsimile: (916) 329-4900
Email: clarsen@orrick.com

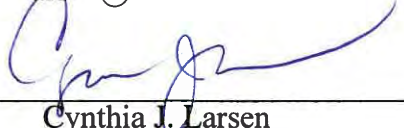
By: 
Cynthia J. Larsen
Attorneys for Ricardo Lara, Insurance Commissioner
of the State of California in his Capacity as Rehabilitator/
Liquidator of Executive Life Insurance Company

EXHIBIT A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Cynthia J. Larsen (SBN 123994) ORRICK, HERRINGTON & SUTCLIFFE LLP 400 Capitol Mall, Suite 3000 Sacramento, CA 95814 ATTORNEY FOR (Name): California Insurance Commissioner	TELEPHONE NO.: (916) 447-9200	FOR COURT USE ONLY
Insert name of court and name of judicial district and branch court, if any: Superior Court of the State of California, County of Los Angeles		
PLAINTIFF/PETITIONER: Ricardo Lara, Insurance Commissioner of the State of California DEFENDANT/RESPONDENT: Executive Life Insurance Company, et al.		
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Conservation & Liquidation Proceedings		CASE NUMBER: <div style="text-align: center; font-size: 1.2em;">BS 006912</div>

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. **TO THE CLERK:** Please **dismiss** this action as follows:

- a. (1) ☒ With prejudice (2) ☐ Without prejudice
- b. (1) ☐ Complaint (2) ☐ Petition
 (3) ☐ Cross-complaint filed by (name):
 (4) ☐ Cross-complaint filed by (name):
 (5) ☒ Entire action of all parties and all causes of action
 (6) ☐ Other (specify):*

on (date):
on (date):

Date: _____, 2019

Cynthia J. Larsen

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

(SIGNATURE)

Attorney or party without attorney for:

- ☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

** If a cross-complaint—or Response (Family Law) seeking affirmative relief—is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(SIGNATURE)

Attorney or party without attorney for:

- ☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

(To be completed by clerk)

3. ☐ Dismissal entered as requested on (date):
 4. ☐ Dismissal entered on (date): as to only (name):
 5. ☐ Dismissal **not entered** as requested for the following reasons (specify):

 6. ☐ a. Attorney or party without attorney notified on (date):
 b. Attorney or party without attorney not notified. Filing party failed to provide
 ☐ a copy to conform ☐ means to return conformed copy

Date:

Clerk, by _____, Deputy

1 KAREN HO (State Bar No. 274027)
2 ERVIN COHEN & JESSUP LLP
3 9401 Wilshire Boulevard, Ninth Floor
4 Beverly Hills, California 90212-2974
5 Telephone: (310) 273-6333
6 Facsimile: (310) 859-2325
7 Email: kho@ecjlaw.com

8 CYNTHIA J. LARSEN (State Bar No. 123994)
9 ORRICK, HERRINGTON & SUTCLIFFE LLP
10 400 Capitol Mall, Suite 3000
11 Sacramento, California 95814
12 Telephone: (916) 447-9200
13 Facsimile: (916) 329-4900
14 Email: clarsen@orrick.com

**EXEMPT from filing fees per Govt.
Code § 6103**

15 Attorneys for Ricardo Lara, Insurance Commissioner
16 of the State of California in his Capacity as
17 Rehabilitator/ Liquidator of Executive Life Insurance
18 Company

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

21 INSURANCE COMMISSIONER OF THE
22 STATE OF CALIFORNIA,

23 Applicant,

24 v.

25 EXECUTIVE LIFE INSURANCE
26 COMPANY, a California corporation, and
27 DOES 1 through 1000, inclusive,

28 Respondents.

Case No. BS 006912

**DECLARATION OF SERVICE BY U.S.
MAIL**

Date: November 21, 2019
Time: 9:00 a.m.
Dept: 72
Judge: Hon. Ruth A. Kwan
RES ID: 752831062496

1 I am a citizen of the United States, more than eighteen years old and not a party to this
2 action. My business address is Orrick, Herrington & Sutcliffe LLP, 400 Capitol Mall, Suite 3000,
3 Sacramento, California 95814. On October 18, 2019, I served the following documents:

- 4 • **INSURANCE COMMISSIONER'S NOTICE OF APPLICATION AND APPLICATION FOR ORDER: (1) APPROVING FINAL ACCOUNTING; (2) APPROVING CLOSING BUDGET; (3) APPROVING DOCUMENT DESTRUCTION PLAN; (4) APPROVING FINAL DISTRIBUTION PLAN; (5) DISSOLVING EXECUTIVE LIFE INSURANCE COMPANY AND DISCHARGING THE COMMISSIONER AFTER FILING OF A DECLARATION OF COMPLIANCE; AND (6) ESTABLISHING PROCEDURES FOR DISMISSING AND TERMINATING PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**
- 10 • **DECLARATION OF DAVID WILSON IN SUPPORT OF INSURANCE COMMISSIONER'S APPLICATION FOR ORDER: (1) APPROVING FINAL ACCOUNTING; (2) APPROVING CLOSING BUDGET; (3) APPROVING DOCUMENT DESTRUCTION PLAN; (4) APPROVING FINAL DISTRIBUTION PLAN; (5) DISSOLVING EXECUTIVE LIFE INSURANCE COMPANY AND DISCHARGING THE COMMISSIONER AFTER FILING OF A DECLARATION OF COMPLIANCE; AND (6) ESTABLISHING PROCEDURES FOR DISMISSING AND TERMINATING PROCEEDINGS;**
- 15 • **DECLARATION OF RAYMOND MINEHAN IN SUPPORT OF INSURANCE COMMISSIONER'S APPLICATION FOR ORDER: (1) APPROVING FINAL ACCOUNTING; (2) APPROVING CLOSING BUDGET; (3) APPROVING DOCUMENT DESTRUCTION PLAN; (4) APPROVING FINAL DISTRIBUTION PLAN; (5) DISSOLVING EXECUTIVE LIFE INSURANCE COMPANY AND DISCHARGING THE COMMISSIONER AFTER FILING OF A DECLARATION OF COMPLIANCE; AND (6) ESTABLISHING PROCEDURES FOR DISMISSING AND TERMINATING PROCEEDINGS; and**
- 20 • **[PROPOSED] ORDER GRANTING INSURANCE COMMISSIONER'S APPLICATION FOR ORDER: (1) APPROVING FINAL ACCOUNTING; (2) APPROVING CLOSING BUDGET; (3) APPROVING DOCUMENT DESTRUCTION PLAN; (4) APPROVING FINAL DISTRIBUTION PLAN; (5) DISSOLVING EXECUTIVE LIFE INSURANCE COMPANY AND DISCHARGING THE COMMISSIONER AFTER FILING OF A DECLARATION OF COMPLIANCE; AND (6) ESTABLISHING PROCEDURES FOR DISMISSING AND TERMINATING PROCEEDINGS**

24 on the interested parties in this action by placing true and correct copies thereof in sealed
25 envelopes addressed as follows:

26 **SEE ATTACHED SERVICE LIST**

27 I am employed in the county from which the mailing occurred. On the date indicated
28 above, I placed the sealed envelope(s) for collection and mailing at this firm's office business

1 address indicated above. I am readily familiar with this firm's practice for the collection and
2 processing of correspondence for mailing with the United States Postal Service. Under that
3 practice, the firm's correspondence would be deposited with the United States Postal Service on
4 this same date with postage thereon fully prepaid in the ordinary course of business.

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

7 Executed on October 18, 2019, at Sacramento, California.

8
9 
10 Wanda Peters

SERVICE LIST

David M. Higgins
The Settlement Law Group
11355 West Olympic Blvd., Suite 200
Los Angeles, CA 90064

Phillip Warden, Esq.
Pillsbury Winthrop LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 95111

Roger McNitt
Blanchard, Krasner & French
800 Silverado, Street, Second Floor
La Jolla, CA 92037

Jeffrey W. Dulberg, Esq.
Palchulski, Stang, Ziehl & Young
10100 Santa Monica Blvd., Suite 1100
Los Angeles, CA 90067

Barry E. Hinkle, Esq.
Linda Baldwin Jones, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

Peter J. Gregora, Esq.
Irell & Manella
1800 Avenue of the Stars
Los Angeles, CA 90067

Willard Roberts, Esq.
Estate Trust Manager
California Department of Insurance
Conservation & Liquidation Office
P.O. Box 26894
San Francisco, CA 94126-0894

Robert Wallan, Esq.
Catherine Meyer, Esq.
Pillsbury Winthrop LLP
725 South Figueroa, Suite 2800
Los Angeles, CA 90017

Christopher E. Prince, Esq.
Lesnick Prince & Pappas LLP
315 West Ninth Street, Suite 705
Los Angeles, CA 90015

Michael M. Maddigan
Hogan Lovells US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067

Jeffrey L. Schaffer, Esq.
Arnold & Porter Kay Scholer
Three Embarcadero Center, Tenth Floor
San Francisco, CA 94111-4075

Joseph W. Cotchett, Esq.
Cotchett, Pitre, Simon & McCarthy
San Francisco Airport
Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010

Franklin D. O'Loughlin, Esq.
Cindy C. Oliver, Esq.
Lewis Roca Rothgerber Christie LLP
One Tabor Center, Suite 3000
1200 Seventeenth Street
Denver, CO 80202-5855

William Carlisle Herbert
Foley & Lardner
321 North Clark Street, Suite 2800
Chicago, IL 60610

Daniel T. Glowski
Vice President and Assistant General Counsel
RGA Reinsurance Company
16000 Swingley Ridge Road
Chesterfield, MO 63017

Charles O. Monk, II, Esq.
Saul, Ewing Weinberg & Green
Lockwood Place, 8th Floor
500 East Pratt Street
Baltimore, MD 21202

1 Joshua Anderson
2 **Sidley Austin LLP**
3 555 West Fifth Street, 40th Floor
4 Los Angeles, CA 90013-1010

Karen Ho
Ervin Cohen & Jessup LLP
9401 Wilshire Boulevard, Ninth Floor
Beverly Hills, CA 90212-2974

5 *(Copied for Informational Purposes Only):*

(Copied for Informational Purposes Only):

6 Alex Padilla
7 California Secretary of State
8 1500 11th Street
9 Sacramento, CA 95814

Betty T. Yee
State of Controller
State of California
300 Capitol Mall, Suite 1850
Sacramento, CA 95814