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1 RODNEY C. LEE (SBN 217840)  
rlee@ecjlaw.com  
2 KAREN HO (SBN 274027)  
kho@ecjlaw.com  
3 ERVIN COHEN & JESSUP LLP  
9401 Wilshire Boulevard, Ninth Floor  
4 Beverly Hills, California 90212-2974  
Telephone: (310) 273-6333  
5 Facsimile: (310) 859-2325

6 THOMAS J. WELSH (SBN 142890)  
tomwelsh@orrick.com  
7 PATRICK B. BOCASH (SBN 262763)  
pbocash@orrick.com  
8 ORRICK, HERRINGTON & SUTCLIFFE LLP  
400 Capitol Mall, Suite 3000  
9 Sacramento, CA 95814-4497  
Telephone +1 916-447-9200  
10 Facsimile +1 916-329-4900

11 Attorneys for the Insurance Commissioner of the State  
12 of California in his capacity as Conservator, Liquidator  
and Rehabilitator of Executive Life Insurance  
13 Company

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES

**FAXED**

17 INSURANCE COMMISSIONER OF THE  
STATE OF CALIFORNIA,

18 Applicant,

19 v.

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

22 Respondents.  
23

No. BS 006912

NOTICE OF MOTION AND MOTION OF  
INSURANCE COMMISSIONER OF THE  
STATE OF CALIFORNIA FOR AN  
ORDER APPROVING INTERIM  
DISTRIBUTION OF \$110.8 MILLION OF  
ESTATE ASSETS PURSUANT TO ELIC  
REHABILITATION PLAN; SUPPORTING  
MEMORANDUM OF POINTS AND  
AUTHORITIES AND DECLARATION OF  
DAVID WILSON

Date: July 26, 2016  
Time: 9:00 a.m.  
Department: 72  
Judge: Hon. Ruth A. Kwan

RES ID: 160428124005

1 NOTICE OF MOTION AND MOTION

2 PLEASE TAKE NOTICE that at 9:00 a.m. on July 26, 2016, in the Courtroom of the  
3 Honorable Ruth A. Kwan, Department 72 of the Los Angeles Superior Court, at 111 Hill Street,  
4 Los Angeles, California 90012, or as soon thereafter as the matter may be heard, the Insurance  
5 Commissioner of the State of California, in his capacity as conservator, liquidator and  
6 rehabilitator (the "Commissioner") of Executive Life Insurance Company ("ELIC"), will and  
7 hereby does move the Court (the "Motion") for entry of an Order approving the distribution of  
8 approximately \$110.8 million of Artemis Settlement Proceeds (as defined below) and other cash  
9 pursuant to the ELIC Rehabilitation Plan.

10 This Motion is made pursuant to the Conservation Order entered by this Court on  
11 April 11, 1991, the Order of Liquidation entered December 6, 1991, and the final orders entered  
12 in this case approving the ELIC Rehabilitation Plan. This Motion is based on the facts and legal  
13 argument set forth in the accompanying Memorandum of Points and Authorities and supporting  
14 Declaration of David E. Wilson (all of which are incorporated by reference into the Motion and  
15 constitute a part of the Motion), all other pleadings and papers on file in this matter, and on such  
16 oral argument of counsel or evidence as may be presented at the hearing on the Motion.

17 Dated: June 29, 2016

18 RODNEY C. LEE  
Ervin Cohen & Jessup LLP

19  
20 By: 

21 \_\_\_\_\_  
RODNEY C. LEE  
Attorneys for Applicant  
22 CALIFORNIA INSURANCE COMMISSIONER  
DAVE JONES  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 This Motion seeks the Court's approval of the Commissioner's proposed distribution of  
5 \$110.8 million, primarily consisting of Artemis Settlement Proceeds (defined below), pursuant to  
6 the Rehabilitation Plan.<sup>1</sup> The Artemis Settlement Proceeds consist, in the aggregate, of \$200  
7 million paid to the ELIC estate pursuant to a settlement between Artemis S.A. ("Artemis") and  
8 the Commissioner, as Liquidator of ELIC. While the gross settlement amount was \$200 million,  
9 the first \$25 million of the Artemis Settlement Proceeds was immediately payable to Sierra  
10 National Insurance Holdings, Inc. ("Sierra") under a separate court-approved agreement between  
11 Sierra and the Commissioner. In determining the amount available for interim distribution to  
12 policyholders, the Commissioner added the remaining \$175 million in Artemis Settlement  
13 Proceeds to the other liquid assets in the estate, and then calculated appropriate reserves to cover  
14 priority liabilities of the ELIC estate. First, after extensive consultation with tax and other legal  
15 and financial advisors, the Commissioner determined that it is advisable to establish a tax reserve  
16 of \$61 million in anticipation of potential taxes on the Artemis Settlement Proceeds.<sup>2</sup> In addition,  
17 the Commissioner was required to reserve \$14 million against a claim filed by the bankruptcy  
18 trustee for Thelen LLC, the Commissioner's prior contingency fee counsel in the long-running  
19 *Altus* litigation, the case that eventually resulted in ELIC's receipt of the Artemis Settlement  
20 Proceeds.<sup>3</sup> After establishing these reserves as well as prudent reserves against future expenses of

21 \_\_\_\_\_  
22 <sup>1</sup> Any reference in this Motion to the "ELIC Rehabilitation Plan" or "Rehabilitation Plan" means, collectively, all  
23 documents comprising the rehabilitation plan approved by the above-captioned Court in this case, including, most  
24 importantly, the Amended and Restated Agreement of Purchase and Sale [etc.] dated August 7, 1991, as amended to  
25 date (separately referred to as the "Rehabilitation Agreement," where appropriate), and the Amended and Restated  
26 Enhancement Agreement dated as of December 5, 1991, as amended to date (separately referred to as the  
27 "Enhancement Agreement," where appropriate). Except as otherwise specified, all capitalized words or terms used  
28 but not defined herein shall have the meanings ascribed to them in the ELIC Rehabilitation Plan.

<sup>2</sup> The Commissioner is working with the IRS under a "Pre-Filing Agreement" that is intended to permit the estate to  
pre-determine, with IRS approval, the correct amount of tax payable, if any, by the ELIC estate respecting the  
Artemis Settlement Proceeds and other income and expenses. This process should accelerate the timing of the Final  
Distribution, because it will eliminate the need for the Commissioner to wait several years for ELIC's final tax return  
year to formally close. Until that process is completed, the Commissioner is obligated to maintain a conservative  
reserve to ensure that the estate will retain sufficient assets to pay all taxes due.

<sup>3</sup> The initial structuring of this distribution, which must be prepared months in advance to allow time for necessary  
review by a number of necessary parties, including RGA RE/Aurora National Life Assurance Company and others,

1 administration, the Commissioner determined that there is \$110.8 million presently available for  
2 distribution to policyholders.

3 If the Motion is granted, of the \$110.8 million, approximately \$35 million<sup>4</sup> will be  
4 distributed to the Opt Out Trust, which in turn will effect a pro-rata distribution of such amount to  
5 the approximately 27,000 opt-out former policyholders who are the beneficiaries of the Opt Out  
6 Trust, and approximately \$73.2 million<sup>5</sup> will be distributed to RGA RE/Aurora National Life  
7 Assurance Company ("Aurora") for distribution to and/or crediting by Aurora principally for the  
8 benefit of the approximately 300,000 opt-in policyholders, all as more specifically described  
9 below.<sup>6</sup> In the aggregate, the majority of this \$110.8 million distribution is attributable to the  
10 obligation to pay statutory post-petition interest on policyholder claims, consistent with the fact  
11 that these claimants have been waiting more than 25 years for full payment.

12 The Court's Conservation Order and Final Order approving the Rehabilitation Plan  
13 provide proper and sufficient authority for effecting interim distributions. *See* Order Appointing  
14 Conservator, Establishment of Procedures, Issuance of Injunctions and Related Orders, Case No.  
15 BS006912, p. 3 (April 11, 1991) ("Conservation Order"); Statement Of Decision Regarding Final  
16 Approval Of Modified Plan Of Rehabilitation And Denial Of Motions To Rescind Transferred  
17 Bond Sale And Motion For Liquidation, Case No. BS006912 (August 13, 1993). However, given  
18 the amount to be distributed and the Commissioner's prior practice of seeking court approval, the  
19 Commissioner has determined it prudent to bring this Motion to allow any party that might

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20 was done prior to the Thelen settlement. Thus, the Commissioner determined it was necessary to reserve against the  
21 Thelen claim for the full *amount* of the claim (\$14 million), which the Commissioner believes is the maximum  
22 amount of assets to which the lien claim could encumber. As the Court is now aware, the Commissioner  
23 subsequently settled the Trustee's claim for \$1.95 million, which settlement was approved by the Court no June 28,  
2016. The settlement payment to the Thelen Trustee will be paid from the \$14 million reserve, and the remaining  
reserve funds (\$12.05 million) will be available for distribution to policyholders in the next distribution.

24 <sup>4</sup> The total amount allotted to the distribution for opt-out policyholders is \$37,550,932, or 33.9% of the total  
distribution, as required by the Rehabilitation Plan. In the interim, \$35 million of that amount will be paid to the opt-  
out policyholders, while the remaining \$2.55 million is the Commissioner's reserve for expenses including costs for  
25 the distribution and future administrative costs, leading up to the final distribution at which time any excess reserve  
will be paid to the opt-out policyholders.

26 <sup>5</sup> This amount is equal to 66.1% of the \$110.8 million available for distribution, as required by the Rehabilitation  
Plan. In addition to this amount, \$2,660,136 in recovered "A2 funds" will also be distributed to opt-in policyholders,  
27 bringing the total payment to Aurora for distribution to this group to \$75,908,005.

28 <sup>6</sup> The word "approximately" is used throughout this Motion with reference to any specified percentage or specified  
dollar amount, because the Opt Out Percentage and Non-Opt Out Percentage as described in Part III below have been  
rounded to the nearest tenth of a percentage point for ease of description and calculation.

1 oppose the proposed interim distribution the opportunity to assert their positions to the Court  
2 before the interim distribution of the \$110.8 million is made.

3 For the reasons set forth in this motion, the Commissioner has determined that the making  
4 of an interim distribution of \$110.8 million to policyholders of ELIC is necessary and  
5 appropriate, and is in the best interests of the ELIC estate and its policyholders and claimants.

6 II.

7 FACTUAL BACKGROUND.

8 In April 1991, ELIC was declared insolvent and placed into conservation, and later  
9 liquidation, by the Commissioner. Wilson Decl.,<sup>7</sup> ¶ 5. The Commissioner sought to rehabilitate  
10 ELIC through the assumption and reinsurance of its life insurance and annuity policies by a  
11 California-domiciled insurance company. *Id.* Several French and Swiss companies obtained  
12 ownership of a California-domiciled insurer ("Aurora") and bid successfully to assume ELIC's  
13 multi-billion dollar asset portfolio and reinsure ELIC's insurance policies. *Id.* Unknown to the  
14 Commissioner at the time, Aurora was owned and controlled by another French company, Altus  
15 Finance S.A. ("Altus"), which was owned by the French government. *Id.*

16 The Commissioner, acting on behalf of the ELIC estate, commenced a civil action in 1999  
17 against Altus and various other defendants alleging they had fraudulently and unlawfully obtained  
18 control over the former bond portfolio and insurance assets of ELIC in violation of federal and  
19 state laws prohibiting a foreign government-owned bank from acquiring control of a California  
20 insurance company. *Id.* Among the defendants were Aurora, the insurance company that received  
21 the Transferred Assets and issued the Restructured Policies under the Rehabilitation Plan, Altus,  
22 the entity that purchased and received the Transferred Bonds pursuant to the Rehabilitation Plan,  
23 and Artemis, which at all times material hereto was owned, in part, by Altus. *Id.* The relief  
24 sought by the Commissioner in the Civil Action included both damages and restitution based on  
25 fraud and conspiracy. *Garamendi v. Artemis S.A.*, Case No. 99-CV-02829 (C.D. Cal. 1999).

26  
27  
28 <sup>7</sup> Declaration Of David Wilson In Support Of Motion Of Insurance Commissioner Of The State Of California For An  
Order Approving Interim Distribution Of \$110.8 Million Of Estate Assets Pursuant To ELIC Rehabilitation Plan  
("Wilson Decl.").

1           While the Civil Action was pending, the United States Attorney's Office for the Central  
2 District of California ("U.S. Attorney") indicted a number of the civil litigation defendants,  
3 including Artemis. *See United States v. Credit Lyonnais, et al.*, Case No. CR 03-CR-760 DT  
4 (C.D. Cal. 2003) (the "Criminal Case"). *See Wilson Decl.*, ¶ 6. On December 15, 2003, the U.S.  
5 Attorney entered into a Final Settlement Agreement (the "FSA") with Artemis in the Criminal  
6 Case. Pursuant to the FSA, Artemis was required to establish and fund a \$185 million settlement  
7 fund (the "Settlement Fund") in exchange for the ultimate resolution of criminal charges against  
8 Artemis and various affiliated parties. *Id.* The \$185 Million Settlement Fund was paid by  
9 Artemis to the U.S. Attorney on or about March 11, 2004. *Id.*

10           The FSA also required that the U.S. Attorney transfer \$110 million of the \$185 million  
11 Settlement Fund to the Commissioner as a victim compensation payment for the benefit of the  
12 ELIC estate after the District Court presiding over the Civil Action approved proposed payment  
13 instructions. The Commissioner agreed that the \$110 million amount to be disbursed to the  
14 Commissioner pursuant to the payment instructions would be credited in favor of the "Artemis  
15 Parties" (defined in the FSA to mean Artemis and various affiliated parties) against any amount  
16 that any of the Artemis Parties might be responsible to pay under a judgment or court-approved  
17 settlement in the Civil Actions.

18           On May 5, 2004, the District Court presiding over the Civil Action issued its Amended  
19 Order granting the Payment Motion, expressly authorizing the payment of \$110 million to the  
20 Commissioner for the benefit of the ELIC estate and providing that such amount would be  
21 credited against any amount that any of the Artemis Parties become responsible for under any  
22 judgment or court-approved settlement in the Civil Actions. *See Amended Order Approving*  
23 *Payment Instructions For Transfer To The California Insurance Commissioner, In His Capacity*  
24 *As Conservator, Rehabilitator, And Liquidator Of Executive Life Insurance Company Of*  
25 *California, Of \$110,000,000 Contributed By Defendant Artemis S.A. Pursuant To Its Final*  
26 *Settlement Agreement With The United States, (C.D. Cal., Case No. CV-99-02829, Dkt. No.*  
27 *1726).* Consistent with such Amended Order, the Commissioner received the \$110 million  
28 payment from the U.S. Department of Treasury on May 25, 2004. *Wilson Decl.*, ¶ 6.

1 The Civil Action went to trial in April 2005. Wilson Decl., ¶ 7. After a jury trial and  
2 multiple appeals,<sup>8</sup> the parties settled on July 8, 2015 (“Artemis Settlement”). *Id.* Under the  
3 Settlement, Artemis agreed to pay \$200 million to the ELIC estate (\$310 million, less the \$110  
4 million paid to the Commissioner as part of the Criminal Settlement and already distributed to the  
5 policyholders in 2006-07). *Id.* The Artemis Settlement Proceeds, net of the first \$25 million that  
6 was contractually payable to Sierra Holdings, are ELIC estate assets to be used for the benefit of  
7 ELIC claimants, including both the contract holders who elected not to receive Restructured  
8 Policies from Aurora and instead chose to receive payments approximating the liquidation value  
9 of their former policies (the “Opt Out Contract Holders”) and the former policyholders who  
10 elected to receive Restructured Policies from Aurora (the “Non-Opt Out Contract Holders”, also  
11 sometimes referred to as “opt-in” policyholders). From that settlement and other assets of the  
12 estate, the Commissioner presently seeks to distribute \$110.8 million to ELIC policyholders.  
13 Wilson Decl., ¶ 11.

14 III.

15 \$110.8 MILLION SHALL BE DISTRIBUTED TO SATISFY POLICYHOLDER CLAIMS,  
16 INCLUDING STATUTORY POST-PETITION INTEREST.

17 The seizure of ELIC in 1991 produced an immediate moratorium on the more than  
18 330,000 ELIC policyholders who had trusted ELIC with their assets and retirement savings by  
19 purchasing life insurance policies and various forms of annuities. The various forms of access to  
20 their money that these policyholders had enjoyed up until the day of ELIC’s conservation was  
21 suddenly cut off by operation of law. *See* Conservation Order, ¶ 5. While the Rehabilitation Plan  
22

23 <sup>8</sup> The jury found Artemis liable for fraud and awarded \$700 million in punitive damages and no compensatory  
24 damages. The District Court struck the punitive damages award but awarded the Commissioner \$241,092,020 in  
25 restitution on its equitable claims, to be offset by \$110 million in fines already paid to the U.S. Attorney. The  
26 Commissioner and Artemis both appealed, and in August 2008 the Ninth Circuit reversed on the ground that the  
27 District Court erred by not allowing the Commissioner to present a specific theory of damages raised by the National  
28 Organization of Life and Health Insurance Guaranty Associations (“NOLHGA”), a third party claiming that the  
Commissioner would have accepted its bid to assume and reinsure ELIC’s policies but for Artemis’ fraud (the  
“NOLHGA Premise”). The court vacated the District Court’s restitution award and remanded the case for a retrial on  
the issue of damages. The damages retrial occurred in October 2012. The jury found that the Commissioner had not  
proven the NOLHGA Premise, and on April 2, 2013, the District Court reinstated the \$241 million restitution award.  
Both the Commissioner and Artemis again appealed. The Ninth Circuit agreed to hold the appeal in abeyance so that  
the parties could pursue a settlement.

1 adopted and approved several years later provided procedural certainty, it did not make  
2 policyholders whole, nor did it eliminate the inevitable delays policyholders experienced in  
3 recovering on their claims and their right to post-petition interest. This distribution will begin to  
4 compensate policyholders, in part, for this decades-long delay in the form of post-petition  
5 interest.<sup>9</sup>

6 California law requires that creditors of insolvent insurance companies recover in the  
7 order of priority laid out by Insurance Code § 1033. Further, California law requires that interest  
8 on policyholder claims be paid before claims further down the distribution ladder. Section  
9 1033(f) of the California Insurance Code provides, in pertinent part:

10 In proceedings involving life insurance companies, no payment  
11 shall be made for any claim [by general creditors, contribution  
12 certificate holders or shareholders] unless and until all claims . . .  
13 [of policyholders and guaranty associations] have been paid the  
full value of the policy or contract upon which the claim is based  
as of the time of distribution to claimants . . . .

14 The full contract value includes interest (calculated according to the “contract” rate, as opposed to  
15 the statutory rate given to other priority claims). While subsection (f) was added to section 1033  
16 in 1999, the legislative history describes the amendment as a codification of existing law (and  
17 therefore the same rule applies to the ELIC estate).

18 Insolvent insurance companies in liquidation first pay the principal amount of  
19 policyholder claims in full before paying any interest. *McConnell v. Pac. Mut. Life Ins. Co.*, 205  
20 Cal. App. 2d 469, 480 (Ct. App. 1962); *see also Grevy v. Rainey*, 2 Cal.2d 338 (1935); *In re*  
21 *Pacific Coast Building-Loan Ass’n*, 15 Cal.2d 134 (1940). Interest continues to accrue on these  
22 claims during the period of liquidation, beginning from the date of conservation if the principal  
23 amount is “capable of being made certain by calculation.” *McConnell*, 205 Cal. App. 2d at 480-  
24 81.

25  
26 <sup>9</sup> Determination of the precise allocation of the \$110.8 million that is payment towards post-petition interest is an  
27 exceedingly complicated task, and beyond the scope of this Motion. The final determination of the interest  
28 component of this interim distribution as well as future and final distributions will require further analysis. Suffice it  
to say, however, that ELIC policyholders will be receiving some compensation for their long wait as a result of the  
Artemis Settlement and this Interim Distribution.



1 Under the Rehabilitation Plan, Policyholder claims were calculated as a percentage of  
2 ELIC's "conservation date statutory reserves," ("CDSR"). The CDSR became the basis for  
3 allocating available assets ratably among the policyholders, whether they opted-in or opted-out of  
4 the Rehabilitation Plan.<sup>10</sup> Over the course of the ELIC conservation and liquidation, the ELIC  
5 estate has tracked policyholder recoveries against the CDSR amount of policyholder claims. To  
6 date, however, the ELIC estate has not had sufficient funds available to completely pay off the  
7 CDSR amount on policyholder claims and make distributions on account of accrued post-petition  
8 interest. The portion of the Artemis Settlement Proceeds paid out in this distribution will be  
9 sufficient to pay the remainder of the outstanding CDSR due to policyholders and some of the  
10 interest due to these policyholders. However, the total interest owing on policyholder claims,  
11 which the Commissioner estimates to be several billion dollars, will far exceed the funds  
12 remaining after paying off CDSR, leaving no available funds for downstream creditors.

#### 13 IV.

#### 14 THE PROPOSED DISTRIBUTION PURSUANT TO THE 15 APPLICABLE PROVISIONS OF THE REHABILITATION PLAN.

16 Under the Rehabilitation Plan, the Opt Out Trust is entitled to receive the Opt Out  
17 Percentage of any distributions from the ELIC Trust, which was closed in 1999 with the  
18 responsibility of the ELIC Trust passed on to the ELIC Estate. The Opt Out Percentage is  
19 approximately 33.9%, which is the claim value of the former ELIC contracts held by Opt Out  
20 Contract Holders, as a percentage of the claim value of all of the former ELIC contracts held by  
21 Opt Out Contract Holders and Non-Opt Out Contract Holders. Wilson Decl., ¶ 12; Rehabilitation  
22 Agreement §7.7; ELIC Trust Agreement §§ 3.5, 4.1 and 5.3.2; Amended and Restated Opt Out  
23 Trust Agreement dated August 17, 1994 (the "Opt Out Trust Agreement"), Article Three & §6.5.  
24 Accordingly, under the Commissioner's proposed distribution of the \$110.8 million of Artemis  
25 Settlement Proceeds, approximately \$37.55 million will be distributed by the Commissioner to  
26

27 <sup>10</sup> Under the Rehabilitation Plan, policyholders were given an option between "Opting In" to the Plan and accepting a  
28 restructured policy from a new life insurance company, Aurora Life, or "Opting Out" of the Plan and accepting a  
liquidation value payment plus the possibility of additional future payments from litigation recoveries of funds  
developed from the disposition of certain other contingent or troubled assets.

1 the Opt Out Trust, of which \$35 million is to be distributed pro rata based on relative claim values  
2 to the approximately 27,000 Opt Out Contract Holders that are the beneficiaries of the Opt Out  
3 Trust. Approximately \$2.55 million will be held as the reserve for expenses, including the costs  
4 of the distribution and future administrative costs. Wilson Decl., ¶ 12. Any excess reserves will  
5 be paid to the opt-out policyholders as part of a final distribution by the Opt Out Trust. *Id.*

6 Pursuant to the terms of the Rehabilitation Plan, the remaining approximately 66.1% of  
7 any distribution by the ELIC Estate is the Non-Opt Out Percentage, which is the claim value of  
8 the former ELIC contracts held by Non-Opt Out Contract Holders, as a percentage of the total  
9 claim value of all of the former ELIC contracts (including those held by Opt Out Contract  
10 Holders and those held by Non-Opt Out Contract Holders). Wilson Decl., ¶ 13. Under the  
11 Rehabilitation Plan, such Non-Opt Out Percentage is paid to Aurora for distribution for the  
12 benefit of Non-Opt Out Contract Holders (and their subrogees, if applicable) pursuant to the  
13 terms of the Enhancement Agreement. *Id.* Accordingly, approximately \$73.25 million of the  
14 proposed \$110.8 million distribution is distributable to Aurora.<sup>11</sup> *Id.* Additionally, \$2.66 million  
15 in recovered A2 funds are separately payable to the Non-Opt Out Contract Holders, bringing the  
16 total distribution to this group to approximately \$75.9 million. *Id.* Of this total, roughly \$10.9  
17 million is characterized as Article 17 funds, while \$65.0 million is characterized as Article 10  
18 funds.

19 Aurora will distribute the \$75.9 million for the benefit of Non-Opt Out Contract Holders  
20 (and their subrogees, if applicable) as provided in the Enhancement Agreement. *Id.*;  
21 Rehabilitation Agreement §9.6; Enhancement Agreement, Articles 4, 10, 12 and 17; ELIC Trust  
22 Agreement §5.3.4. Such distribution by Aurora takes the form of cash distributions to some Non-  
23 Opt Out Contract Holders and credits to Restructured Account Values of other Non-Opt Out  
24 Contract Holders, depending on the type and status of a policy. Wilson Decl., ¶ 13;  
25 Rehabilitation Agreement §9.1.

26  
27 <sup>11</sup> Unlike for Opt Out Contract Holders, the calculation of the distribution to Aurora does take account of the costs of  
28 effecting the ultimate distribution to non-Opt Out policyholders. This is because whereas the Opt Out Trust bears the  
costs of effecting the distribution to opt-out policyholders, Aurora administers the non-Opt Out distribution.



1 include check-printing costs, mailing costs, costs associated with provision of annual tax forms  
2 (1099s) and escheatment costs. Wilson Decl., ¶ 14. Based on an analysis of costs incurred in  
3 making various prior distributions, these costs are estimated to be approximately \$2.00 per check  
4 issued. *Id.*

5 Further, because such amount is de minimis, and because the cost of carrying a future  
6 credit for the account of any affected Non-Opt Out Contract Holder would be disproportionate to  
7 the de minimis benefit, the Motion also proposes that no credit or future benefit with regard to  
8 any such undistributed amount of less than \$2.00 shall be maintained or provided by Aurora, and  
9 instead that any such undistributed amounts shall be distributed by Aurora back to the  
10 Commissioner/ELIC.

11 Similarly, the Commissioner requests that the foregoing proposed distribution be subject  
12 to the exception described in this Part V (the “de minimis exception”) pertaining to any  
13 distribution check that is issuable by the Opt Out Trust to any Opt Out Contract Holder where the  
14 cash amount distributable to such contract holder is less than the amount of \$10.00.

15 For any cash distributions by the Opt Out Trust (for the benefit of Opt Out Contract  
16 Holders), there are significant costs associated with cash distributions effected by checks. In  
17 order to provide that the cost of a cash distribution to any Opt Out Contract Holder does not  
18 exceed the cash amount distributable to such policyholder, this Motion proposes that no check  
19 shall be issued by the Opt Out Trust to any Opt Out Contract Holder, where the cash amount  
20 distributable to such contract holder is less than \$10.00 and the funds will be held in the Opt Out  
21 Contract Holder’s account for payment in the final distribution.

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VI.

CONCLUSION

For all the reasons set forth above, the Commissioner respectfully requests that the Court grant this Motion and enter an Order approving the interim distribution in the amount of \$110.8 million from the ELIC estate, and enter the Proposed Order Approving Interim Distribution Of \$110.8 Million submitted herewith.

Dated: June 29, 2016

RODNEY C. LEE  
Ervin Cohen & Jessup LLP

By:   
\_\_\_\_\_  
RODNEY C. LEE  
Attorneys for Applicant  
CALIFORNIA INSURANCE  
COMMISSIONER DAVE JONES

COPY

1 RODNEY C. LEE (SBN 217840)  
rlee@ecjlaw.com  
2 KAREN HO (SBN 274027)  
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8 ORRICK, HERRINGTON & SUTCLIFFE LLP  
400 Capitol Mall, Suite 3000  
9 Sacramento, CA 95814-4497  
Telephone +1 916-447-9200  
10 Facsimile +1 916-329-4900

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Superior Court Of California  
County Of Los Angeles

JUN 29 2016

Sherril R. Carter, Executive Officer/Clerk  
By: Anabella Figueroa, Deputy

11  
12 Attorneys for the Insurance Commissioner of the State  
of California in his capacity as Conservator, Liquidator  
and Rehabilitator of Executive Life Insurance  
13 Company

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

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DOES 1 through 1000,

22 Respondents.

No. BS 006912

DECLARATION OF DAVID WILSON IN  
SUPPORT OF MOTION OF INSURANCE  
COMMISSIONER OF THE STATE OF  
CALIFORNIA FOR AN ORDER  
APPROVING INTERIM DISTRIBUTION  
OF \$110.8 MILLION OF ESTATE  
ASSETS PURSUANT TO ELIC  
REHABILITATION PLAN

Date: July 26, 2016  
Time: 9:00 a.m.  
Department: 72  
Judge: Hon. Ruth A. Kwan

RES ID: 160428124005

26  
27  
28

1 I, David Wilson, declare as follows:

2 1. I am the Chief Executive Officer of the State of California's Conservation and  
3 Liquidation Office ("CLO") and am a Special Deputy Insurance Commissioner. I make this  
4 declaration in support of Insurance Commissioner Dave Jones' Motion For An Order Approving  
5 Distribution Of \$110.8 Million Of Artemis Settlement Proceeds Pursuant To ELIC Rehabilitation  
6 Plan. I have personal knowledge of the matters set forth herein and if called upon as a witness, I  
7 would testify as set forth below.

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

15 3. As Chief Executive Officer of the CLO, I am responsible for management of all  
16 insolvencies for which the Insurance Commissioner has been appointed as conservator,  
17 rehabilitator, and/or liquidator, including Executive Life Insurance Company ("ELIC"). When I  
18 was appointed as Chief Executive Officer of the CLO, the CLO was managing 31 insolvencies  
19 with \$4.5 billion of assets under management. The CLO now manages 18 insolvencies. Since  
20 2005, the CLO has distributed approximately \$4 billion to injured policyholders, claimants, and  
21 guaranty funds. As Chief Executive Officer of the CLO, I am responsible for the oversight of  
22 each insolvency, including the handling of policyholder claims, general creditor claims,  
23 reinsurance (billing, collection, and arbitration), collection and disposition of assets, and  
24 litigation.

25 4. As Chief Executive Officer, I have responsibility for the administration of the  
26 ELIC estate in the above-captioned case, including the preparation and execution of distributions  
27 from the estate. In this capacity, I work with my staff, Department of Insurance staff attorneys,  
28 and outside counsel.

1           5.       ELIC was declared insolvent and placed into conservation in April 1991. It was  
2 later placed into liquidation. As part of the attempted rehabilitation of ELIC, the Commissioner  
3 sought to have ELIC's life insurance and annuity policies assumed and reinsured by a California-  
4 domiciled insurer. Several French and Swiss companies combined to submit a successful bid to  
5 have ELIC's asset portfolio assumed by their California-domiciled insurer, Aurora National Life  
6 Assurance Company ("Aurora"). Unknown to the Commissioner at the time, Aurora was owned  
7 and controlled by another French company, Altus Finance S.A. ("Altus"), which was owned by  
8 the French government, contrary to California and federal law. Upon learning of this fraud, the  
9 Commissioner commenced a civil action in 1999. Among the defendants were Aurora, the  
10 insurance company that received the Transferred Assets and issued the Restructured Policies  
11 under the Rehabilitation Plan, Altus, the entity that purchased and received the Transferred Bonds  
12 pursuant to the Rehabilitation Plan, and Artemis, which at all times material hereto was owned, in  
13 part, by Altus.

14           6.       While the commissioner's civil action was pending, the United States Attorney's  
15 Office for the Central District of California indicted several of the civil litigation defendants,  
16 including Artemis. On December 15, 2013, the U.S. Attorney entered into a final settlement  
17 agreement with Artemis in its criminal case, pursuant to which Artemis established a \$185  
18 million settlement fund. Under that criminal settlement, \$110 million of the \$185 million  
19 settlement fund was to be transferred to the Commissioner as a victim compensation payment for  
20 the benefit of the ELIC estate. On May 5, 2004, the district court presiding over the civil action  
21 authorized the payment of the \$110 million to the Commissioner, and the payment was made on  
22 or about May 25, 2004.

23           7.       The Civil action went to trial in April 2005. Following a jury trial and multiple  
24 appeals, the parties settled on July 8, 2015 ("Artemis Settlement"). Pursuant to the Artemis  
25 Settlement, Artemis agreed to pay \$200 million to the ELIC estate (\$310 million, less the \$110  
26 million paid to the Commissioner as part of its criminal settlement, which was already distributed  
27 to policyholders in 2006-07).

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1           8.       Out of the \$200 million Artemis Settlement Proceeds, the first \$25 million was  
2 immediately payable to Sierra National Insurance Holdings (“Sierra”) under a separate court-  
3 approved agreement between Sierra and the Commissioner. The ELIC Estate has also agreed to  
4 make a \$1.95 million payment pursuant to the Commissioner’s settlement of the claim asserted by  
5 the bankruptcy trustee for the estate of Thelen LLP. The Estate’s settlement with the Thelen  
6 trustee was approved by the Court on June 28, 2016.

7           9.       In determining the amount available for this interim distribution, the  
8 Commissioner combined the remaining uncommitted funds with other liquid assets in the ELIC  
9 estate and then calculated appropriate reserved to cover priority liabilities of the estate. In order  
10 to ensure that sufficient funds remain in the estate to cover all possible tax liabilities and other  
11 costs, the Commissioner has determined that approximately \$75 million of estate assets should be  
12 reserved. This includes \$61 million in anticipation of potential taxes on proceeds from the  
13 Artemis settlement and \$12.05 million out of an initial \$14 million reserved against the now-  
14 settled claim of the Trustee of the Thelen LLP bankruptcy estate, the Commissioner’s prior  
15 contingency fee counsel in the *Altus* litigation.

16           10.      The Commissioner is working with the Internal Revenue Service with regard to  
17 establishing the correct tax liability to the ELIC estate with respect to the proceeds from the  
18 Artemis settlement, which the Commissioner hopes will be substantially less than the amount  
19 reserved. The Commissioner also hopes and believes that the estate’s other costs will be less than  
20 the amount reserved for those expenses. However, because distributions cannot be called back  
21 once made, the Commissioner is erring on the side of reserving adequate funds to cover all  
22 potential costs to the estate. Any reserved assets not ultimately spent on these costs will be  
23 distributed in the future.

24           11.      After accounting for these reserves and other payments, the Commissioner  
25 determined that there is approximately \$110.8 million presently available for distribution from the  
26 ELIC Estate. Of that total, approximately \$37,550,932 million will be allotted to the Opt Out  
27 Trust, of which \$35 million will be distributed pro rata to the approximately 27,000 opt-out  
28 former policy holders who are the beneficiaries of the trust, and approximately \$73,247,869 will

1 be distributed to Aurora for distribution and/or crediting by Aurora for the benefit of the roughly  
2 300,000 opt-in policyholders.

3 12. The total amount allotted to the distribution for opt-out policyholders is  
4 \$37,550,932, or 33.9% of the total distribution, as required by the Rehabilitation Plan. That  
5 percentage is the claim value of the former ELIC contracts held by Opt Out Contract Holders, as  
6 a percentage of the claim value of all of the former ELIC contracts held by Opt Out Contract  
7 Holders and Non-Opt Out Contract Holders. Approximately \$2.55 million will be held as the  
8 reserve for expenses, including the costs of the distribution and future administrative costs, and  
9 any excess reserves will ultimately be paid to opt-out policyholders as part of a final distribution  
10 by the Opt Out Trust. The total amount being distributed to the Opt Out Trust is therefore  
11 approximately \$35 million.

12 13. The \$73,247,869 to be distributed to Aurora for distribution to opt-in  
13 policyholders is 66.1% of the approximately \$110.8 million available for distribution, as required  
14 by the Rehabilitation Plan. That percentage is the claim value of the former ELIC contracts held  
15 by Non-Opt Out Contract Holders, as a percentage of the total claim value of all of the former  
16 ELIC contracts. In addition to that amount, approximately \$2,660,136 in recovered A2 funds has  
17 also become available and will be distributed to opt-in policyholders, bringing the total payment  
18 to Aurora for distribution to that group to approximately \$75,908,005. The distribution by Aurora  
19 will take the form of cash distribution to some opt-in contract holders as well as credits to the  
20 "restructured account values" of others, depending on the type and status of a policy.

21 14. There are significant costs associated with any cash distributions to either opt-in or  
22 opt-out contract holders, including check-printing costs, mailing costs, costs associated with the  
23 provision of annual tax forms (1099s), and escheatment costs. Based on an analysis of the costs  
24 incurred in prior distributions, the Commissioner estimates these costs to be around \$2.00 per  
25 check issued for Non-Opt Out Contract Holders, and around \$10.00 per distribution to Opt Out  
26 Contract Holders.

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15. The Commissioner has determined that the making of an interim distribution of \$110.8 million to policyholders is necessary and appropriate, and is in the best interests of the ELIC Estate, its policyholders, and claimants.

This declaration was executed this 29th day of June, 2016, in San Francisco, California.

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

  
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David E. Wilson