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12	Attorneys for Applicant Dave Jones,	. EXEMPLE CH C C
13	Insurance Commissioner of the State of Californ in his Capacity as Liquidator of	EXEMPT from filing fees per Govt. Code § 6103
14	CastlePoint National Insurance Company	
15	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
16	CITY AND COUNTY OF SAN FRANCISCO	
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18	DAVE JONES, INSURANCE COMMISSIONER OF THE STATE OF	Case No. CPF-16-515183
19	CALIFORNIA,	Reservation No. 03130412-06
20	Applicant,	INSURANCE COMMISSIONER'S NOTICE OF MOTION AND MOTION
21	V.	FOR APPROVAL OF TRANSACTION; MEMORANDUM OF POINTS AND
22	CASTLEPOINT NATIONAL INSURANCE COMPANY, and DOES 1-50, inclusive,	AUTHORITIES IN SUPPORT OF MOTION
23	, , , , , , , , , , , , , , , , , , ,	
24	Respondents.	Date: April 12, 2018 Time: 9:30 a.m.
25		Dept: 302 Judge: Hon. Harold E. Kahn
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INSURANCE COMMISSIONER'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF TRANSACTION

PLEASE TAKE NOTICE that on April 12, 2018, at 9:30 a.m., or as soon thereafter as may be heard in the above-entitled Court, located at 400 McAllister Street, San Francisco, CA 94103, Dave Jones, Insurance Commissioner ("Commissioner") of the State of California, as the statutory Liquidator of the estate of CastlePoint National Insurance Company ("CastlePoint"), will and hereby does move the Court for an Order granting the *Insurance Commissioner's Motion for Approval of Transaction* ("Motion") and approving and finding that the requested Transaction (as specified and defined in the accompanying Memorandum of Points and Authorities, but in sum involving the discounting and immediate payment of a long-term contractual account receivable) is reasonable, appropriate and necessary.

This Motion is made pursuant to the Commissioner's authority under California Insurance Code section 1037(d) to seek Court approval for transactions involving real or personal property of the liquidating insurer, CastlePoint, where the market value of the property exceeds \$20,000, and pursuant to the broad duties, powers, and authority of the Commissioner to act as necessary or expedient to serve the interests of the liquidation estate and creditors. This Motion is based on the content of this Notice of Motion and Motion, and is supported by the concurrently filed Memorandum of Points and Authorities annexed hereto, the Declaration of David E. Wilson, and all other pleadings, papers and records filed with the Court, and the facts and circumstances stated therein, as well as all evidence and arguments to be presented at the hearing on April 12, 2018.

PLEASE TAKE FURTHER NOTICE that pursuant to California Code of Civil Procedure sections 1005(b) & (c), any opposition to the Motion must be in writing, must be filed with the Court and served on all persons and entities who have requested notice of these proceedings, as reflected on the attached proof of service, and on counsel for the Commissioner at the address set forth in the upper left-hand corner of the first page hereof no later than nine (9) court days before the hearing (i.e., March 29, 2018), and served on counsel for the Commissioner by personal delivery, facsimile transmission, express mail or other means consistent with the provisions of California Code of Civil Procedure sections 1010, 1011, 1012, and 1013 that is reasonably

1 calculated to ensure delivery no later than the close of the next business day after the opposition is 2 filed with the Court. 3 WHEREFORE, the Commissioner respectfully requests that the Court enter an Order, 4 substantially in the form lodged with the Motion, approving the Transaction and confirming the 5 Commissioner's authority to enter into all necessary agreements and take all actions necessary to effectuate the Transaction. 6 7 8 Dated: March 16, 2018 XAVIER BECERRA 9 Attorney General of California 10 11 12 Deputy Attorney General 13 Attorneys for Applicant Dave Jones, 14 Insurance Commissioner of the State of California 15 16 THOMAS J. WELSH Dated: March 16, 2018 17 PATRICK B. BOCASH Orrick, Herrington & Sutcliffe LLP 18 19 20 21 Attorneys for Applicant Dave Jones, 22 Insurance Commissioner of the State of California 23 24 25 26 27

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INSURANCE COMMISSIONER'S MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF TRANSACTION

Dave Jones, Insurance Commissioner ("Commissioner") of the State of California, as the statutory Liquidator of the estate of CastlePoint National Insurance Company ("CastlePoint"), hereby submits this Memorandum of Points and Authorities in support of the *Insurance Commissioner's Motion for Approval of Transaction* ("Motion").

I. INTRODUCTION

The Commissioner, in his capacity as the statutory Liquidator of the estate of CastlePoint, has the discretion and authority to manage the liquidation and assets of CastlePoint, an insolvent insurer undergoing statutory liquidation in this proceeding, as necessary and as he determines to be in the best interests of the estate to protect policyholders, claimants and other parties-in-interest. On behalf of CastlePoint, the Commissioner has the opportunity to resolve an illiquid, long term account receivable of approximately \$11 million by discounting the receivable and obtaining an immediate \$8.4 million in cash on the terms described in detail below (the "Transaction"). As the value of the property at issue in the Transaction exceeds \$20,000, the Commissioner seeks the Court's approval of the Transaction pursuant to California Insurance Code section 1037(d). As the Commissioner explains herein, he has determined that the terms of the proposed Transaction are fair and reasonable and that completing the Transaction is in the best interests of the CastlePoint estate and its creditors. On that basis, the Commissioner recommends that the Court approve the Transaction and authorize the Commissioner to take all actions necessary to effectuate the Transaction forthwith.

II. FACTUAL BACKGROUND

A. The CastlePoint Conservation and Liquidation

CastlePoint was placed into conservation on July 28, 2016. On September 13, 2016, the Court approved the Commissioner's Conservation and Liquidation Plan for CastlePoint (the "Plan"), and the Commissioner undertook to implement the provisions of the Plan. The Court entered its Liquidation Order for CastlePoint on March 30, 2017, and the Order became effective on April 1, 2017.

B. The Transaction

Prior to CastlePoint being placed into Conservation, CastlePoint, along with CastlePoint Bermuda Holdings Ltd. ("Holdings"), a company incorporated in Bermuda, and CastlePoint Reinsurance Company Ltd. ("CPRe"), a Bermuda entity with its entire issued share owned by Holdings, were all members of an affiliated group of companies. Declaration of David Wilson In Support Of Insurance Commissioner's Motion For Approval Of Transaction ("Wilson Decl."), ¶ 6. CastlePoint (directly and through its several predecessors by merger) and CPRe were parties to a reinsurance agreement under which CPRe had assumed liability to pay all claims accruing under CastlePoint's policies, in exchange for the transfer from CastlePoint of materially all of CastlePoint's assets that supported its liability reserves. *Id.* After the full implementation of the Plan, CastlePoint was no longer affiliated with Holdings, CPRe or any other prior affiliate. *Id.*

One of the court-approved agreements entered into to effectuate the Plan was an agreement to commute (settle and terminate) the in-force reinsurance agreement between CastlePoint and CPRe ("Commutation Agreement"). *Id.*, ¶7. Pursuant to the Commutation Agreement, CPRe was released from all reinsurance obligations to CastlePoint in exchange for CPRe's agreement to pay all of its tangible net assets to CastlePoint over time, after certain priority obligations were paid or reserved against and after such periodic payments were approved by CPRe's regulator in Bermuda. *Id.* CPRe has made periodic payments to CastlePoint under the Commutation Agreement since the implementation of the Plan. *Id.* As of September 30, 2017, CPRe's financial statements show the estimated amount that CastlePoint may expect to receive in the future under the Commutation Agreement to be approximately \$11.3 million. *Id.*, ¶8. CastlePoint has booked an account receivable in that amount. *Id.* This CastlePoint account receivable is an illiquid asset that is subject to considerable uncertainty regarding the final amount that will be realized and the timing for receiving payments. *Id.*

Near the end of 2017, Acumen Management Ltd. ("Acumen"), a company incorporated in Bermuda that specializes in acquiring insurance run-off operations, expressed interest in acquiring the entire issued capital of CPRe from Holdings, but subject to CastlePoint and CPRe contemporaneously agreeing on a final amount due to CastlePoint under the Commutation

Agreement. Id., ¶ 9. Based on that inquiry, the Commissioner's staff undertook a detailed financial and collection risk analysis to evaluate the uncertainty associated with CastlePoint's accounts receivable due from CPRe in order to determine a range of reasonable values for compromising and accelerating CastlePoint's receipt of funds due from CPRe. Id., ¶ 10. The Commissioner then engaged in arms-length negotiations with CPRe and Acumen, and those negotiations resulted in an agreement in principle with respect to CPRe's participation in the Transaction with CastlePoint, subject to approval of the Court. Id.

Under the proposed Transaction, Acumen will pay CastlePoint \$8,400,000 in full and final settlement of all amounts owing under the Commutation Agreement ("Settlement Amount"). *Id.*, ¶ 11. The Settlement Amount remains subject to minor adjustment pursuant to a true-up process that will be completed following the completion of CPRe's financial statements for the year ended December 31, 2017. *Id.* That financial reporting and true-up process should be completed prior to the hearing on the Motion, and the Commissioner will report to the Court if the Settlement Amount has been adjusted. *Id.*

III. DISCUSSION AND LEGAL AUTHORITY

California Insurance Code Section 1037(d) requires the Commissioner to seek approval of the Court for transactions involving real or personal property where the market value of the property exceeds \$20,000. Specifically, section 1037(d) provides that the Commissioner:

[s]hall have authority without notice, to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any real or personal property of that person at its reasonable market value, or, in cases other than acquisition, sale, or transfer on the basis of reasonable market value, upon such terms and conditions as the commissioner may deem proper. However, no transaction involving real or personal property shall be made where the market value of the property involved exceeds the sum of twenty thousand dollars (\$20,000) without first obtaining permission of the court, and then only in accordance with any terms that court may prescribe.

(Cal. Ins. Code § 1037(d).)

The Commissioner is vested with substantial discretion to conduct the liquidation of an insolvent insurer subject to certain statutory limitations and the limitation "that the exercise of

discretion be neither arbitrary nor improperly discriminatory." *In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 356 (citing *Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal. 2d 307, 329.) His decisions as to matters concerning an insolvent insurer are reviewed by the Court on an abuse of discretion standard. (*In re Executive Life, supra,* 32 Cal.App.4th at 358.) The Commissioner has carefully considered the Transaction at issue and believes and represents that, given an estate of this size and the complexity and uncertainty surrounding the current amount due from CPRe to CastlePoint, approval of the Transaction is necessary, reasonable, and appropriate and in the best interests of the CastlePoint estate. Wilson Decl., ¶ 12.

The risks evaluated by the Commissioner include that the final amount and timing of payments of the approximately \$11 million owed by CPRe to CastlePoint under the Commutation Agreement is currently subject to significant uncertainty. Id., ¶ 13. In short, fixing the Settlement Amount at \$8.4 million, and receiving the full amount in cash at closing of the Transaction, will eliminate all future risk associated with this illiquid asset. Id. The Commissioner therefore seeks the approval of the Court to resolve the approximately \$11 million illiquid account receivable, which will not be paid in full for many years, for an immediate payment of \$8.4 million (subject to the true-up process). This cash will then be immediately available for the benefit of CastlePoint's policyholders and claimants as the Commissioner continues to manage the liquidation and prepare for a future distribution to claimants. Id., ¶ 14.

IV. CONCLUSION

Based on the foregoing, the Commissioner respectfully requests that the Court grant the Motion and enter the proposed order approving the Transaction and authorizing the Commissioner to enter into all agreements and transactions necessary to effectuate the Transaction.

, ground,	Dated: March 16, 2018	Xavier Becerra Attorney General of California
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3		By: Marquents C. Atriple
5	• .	MARGUERITE C. STRICKLIN Deputy Attorney General
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7		Attorneys for Applicant Dave Jones, Insurance Commissioner of the State of California
8	Datad: Marah 16, 2019	Thomas J. Welsh
9	Dated: March 16, 2018	PATRICK B. BOCASH Orrick, Herrington & Sutcliffe LLP
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1.1		By: Marra- Will
12	,	By: THOMAS J. WELSH
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14		Attorneys for Applicant Dave Jones, Insurance Commissioner of the State of California
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