

Electronically Received 10/18/2019 02:59 PM

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

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

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

**FILED**  
Superior Court of California  
County of Los Angeles

12/04/2019

Sherri R. Carter, Executive Officer / Clerk of Court

By: S. Barrera Deputy

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

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”<sup>1</sup>) 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 \_\_\_\_\_  
<sup>1</sup> 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. 4<sup>th</sup> 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.*<sup>2</sup> 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 <sup>2</sup> 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 ///

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

3 IT IS SO ORDERED.

4 Dated: 12/04/2019




**Ruth Ann Kwan**

HONORABLE RUTH A. KWAN  
JUDGE OF THE SUPERIOR COURT  
Ruth Ann Kwan / Judge

7 **Submitted by:**

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

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

16  
17 By:   
Cynthia J. Larsen  
18 Attorneys for Ricardo Lara, Insurance Commissioner  
of the State of California in his Capacity as Rehabilitator/  
19 Liquidator of Executive Life Insurance Company

# **EXHIBIT A**

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

— 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