

NO FEE - COVT. CODE 66103
 AMOUNT RECOVERABLE PURSUANT
 TO 6103.5 CC §
 PLUS A ONE TIME ADMINISTRATIVE FEE UPON JUDGMENT
 IF THE PARTY BECOMES A JUDGMENT CREDITOR.

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 NEMEROVSKI
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 The State Of California in his capacity as
 Conservator, Rehabilitator and Liquidator of
 Executive Life Insurance Company

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 Los Angeles Superior Court

JUN 01 2007

John A. Clarke, Executive Officer/Clerk
 By A. Hendrickson Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES

FAXED

INSURANCE COMMISSIONER OF THE
 STATE OF CALIFORNIA,

Applicant,

v.

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

Respondents.

No. BS 006912

NOTICE OF MOTION AND MOTION
 OF INSURANCE COMMISSIONER OF
 THE STATE OF CALIFORNIA FOR AN
 ORDER APPROVING DISTRIBUTION
 OF SPECIFIED ALTUS LITIGATION
 PROCEEDS CONSISTENT WITH
 FINAL ARBITRATION DECISION,
 AND SUPPORTING MEMORANDUM
 OF POINTS AND AUTHORITIES

Date: June 29, 2007
 Time: 8:30 a.m.
 Dep't: 36

NOT. OF MOT. & MPA ISO MOT. FOR ORDER AUTH DISTRIB OF SPEC. ALTUS LIT. PROCEEDS CONSISTENT WITH ARB. DECISION

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that at 8:30 a.m. on June 29, 2007, in the Courtroom of the Honorable Gregory Alarcon, Department 36 of the Los Angeles Superior Court, at 111 Hill Street, Los Angeles, California 90012, or as soon thereafter as the matter may be heard, the Insurance Commissioner of the State of California, in his capacity as conservator, rehabilitator and liquidator (the "Commissioner") of Executive Life Insurance Company ("ELIC"), will and hereby does move the Court (the "Motion") for entry of an Order approving the distribution of specified Altus Litigation proceeds consistent with the ELIC Rehabilitation Plan and the Final Decision dated April 23, 2007 (the "Final Arbitration Decision") issued by the arbitrator in the Court-ordered arbitration (the "arbitration") between the Commissioner and the National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA").

The issue in the arbitration was whether the Participating Guaranty Associations ("PGAs"), pursuant to Article 10 of the Enhancement Agreement, had assigned to the Non-Opt Out Contract Holders the PGAs' subrogation rights respecting specified Altus Litigation proceeds, such that in the distribution of such funds, the PGAs would not be entitled to any distribution on account of their assigned subrogation rights, and instead the applicable Non-Opt Out Contract Holders would receive such distributions.

Because the Commissioner prevailed in the arbitration, the practical effect of the relief requested in this Motion will be to authorize the Commissioner to distribute almost entirely for the benefit of Non-Opt Contract Holders (i.e., those policyholders who did not opt out of receiving restructured policies under the approved Rehabilitation Plan in this case) approximately \$300 million in funds that have been held by the Commissioner pending the outcome of the arbitration, as explained more fully below.

This Motion is made against the backdrop of the above-captioned Court's Order Granting NOLHGA's Motion to Compel Arbitration dated October 12, 2005, as well as the following three distribution motions filed by the Commissioner and granted by the above-captioned Court in this case regarding Altus Litigation proceeds ("the Prior Motions"):

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1 (1) Motion For An Order Approving Distribution Of \$100 Million Of Altus Litigation
2 Proceeds Pursuant To ELIC Rehabilitation Plan dated August 30, 2005 (the "8/30/05
3 Motion"), which was heard and approved by the Court on October 12, 2005; (2) Motion For
4 An Order Approving Distribution Of Opt Out Trust Portion Of Aurora Settlement Amount
5 and CDR Settlement Amount [etc.] dated December 13, 2005 (the "12/13/05 Motion"),
6 which was heard and approved by the Court on January 18, 2006; and (3) Motion For An
7 Order Approving Interim Distribution Of Specified Altus Litigation Proceeds dated January
8 18, 2006 and filed on January 19, 2006 (the "1/18/06 Motion"), which was heard by the
9 Court on March 3, 2006 and approved by the Court by order dated April 6, 2006.

10 Because this Motion is being noticed to and served upon the same parties as the Prior
11 Motions and because the background of this Motion is substantially similar to the Prior
12 Motions insofar as they all emanate from recoveries in the Altus Litigation and pertain to the
13 distribution of Altus Litigation proceeds, reference is made to the full description of factual
14 matters concerning the Altus Litigation set forth in the Prior Motions, and capitalized words
15 and terms used herein without definition shall have the meanings ascribed to them in the
16 Prior Motions. Nonetheless, recognizing that this Motion is the culmination of a series of
17 motion proceedings before this Court concerning the distribution of specified Altus
18 Litigation proceeds, the Commissioner in the factual background discussion below provides
19 a summary of the Altus Litigation, as well a brief overview of the relief sought and granted
20 in each of the Prior Motions.

21 This Motion is made pursuant to the Conservation Order entered by this Court on
22 April 11, 1991, the Order of Liquidation entered December 6, 1991, and the final orders
23 entered in this case approving the ELIC Rehabilitation Plan.¹ This Motion is based on the
24

25 ¹Any reference in this Motion to the "ELIC Rehabilitation Plan" or "Rehabilitation
26 Plan" means, collectively, all documents comprising the rehabilitation plan approved by the
27 above-captioned Court in this case, including, most importantly, the Amended and Restated
28 Agreement of Purchase and Sale [etc.] dated August 7, 1991, as amended to date (separately
referred to as the "Rehabilitation Agreement," where appropriate), and the Amended and
Restated Enhancement Agreement dated as of December 5, 1991, as amended to date
(separately referred to as the "Enhancement Agreement," where appropriate).

1 facts and legal argument set forth in this Notice of Motion and Motion, the accompanying
2 Memorandum of Points and Authorities (which constitutes a part of the Motion and is
3 incorporated by reference herein), the Declaration of Willard Roberts filed and served
4 herewith, all other pleadings and papers on file in this matter (including, without limitation,
5 the Petition To Confirm Arbitration Award filed and served concurrently herewith² and the
6 Prior Motions), and such oral argument of counsel or evidence as may be presented at the
7 hearing on the Motion.

8
9 DATED: May 31, 2007

10 Respectfully,

11 JEFFREY L. SCHAFER
12 ETHAN P. SCHULMAN
13 HOWARD RICE NEMEROVSKI CANADY
14 FALK & RABKIN
15 A Professional Corporation

16 By:

17 
18 JEFFREY L. SCHAFER

19 Attorneys for Movant INSURANCE
20 COMMISSIONER OF THE STATE OF
21 CALIFORNIA in his capacity as Conservator,
22 Rehabilitator and Liquidator of Executive Life
23 Insurance Company

24
25 ²Section 1285 of the California Code of Civil Procedure specifies a petition procedure
26 for confirming an arbitrator's decision where, as here, a disputed matter has been ordered by
27 the Court to binding arbitration. In compliance with such statute, the Commissioner
28 separately has filed his Petition To Confirm Final Arbitration Decision, which has been
noticed for hearing concurrently with this Motion. This Motion is predicated on the
assumption and expectation that an order granting such petition will be issued before an
Order granting this Motion is issued.

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MEMORANDUM OF POINTS AND AUTHORITIES**INTRODUCTION**

On October 12, 2005, the Court ordered that the so-called "Article 10/17 Dispute" between the Commissioner and NOLHGA (acting on behalf of itself and the PGAs) regarding the distribution of specified Altus Litigation proceeds be sent to binding arbitration pursuant to the contractual arbitration provision in the Enhancement Agreement. ELIC and NOLHGA subsequently jointly selected the retired Honorable Charles A. Legge, a former United States District Court judge, as the arbitrator. After considerable pre-arbitration proceedings and discovery, the arbitration hearing took place over a three-week period in October and November of 2006, under the auspices and pursuant to the rules of the American Arbitration Association. The arbitrator issued his Final Arbitration Decision on April 23, 2007, ruling in favor of the Commissioner. As provided by California law, the Commissioner has filed with the Court a separate Petition To Confirm Arbitration Decision, which is set for hearing at the same time as the Motion. Accordingly, by this Motion, the Commissioner seeks an order authorizing the distribution, consistent with the Rehabilitation Plan and the Final Arbitration Decision, of approximately \$300 million in Altus Litigation proceeds that the Commissioner has held pending the outcome of the arbitration.

I. RELEVANT FACTS³**A. The Altus Litigation**

As the Court and interested parties know from the Prior Motions, the Commissioner, acting on behalf of the ELIC estate, commenced a civil action in 1999 against various defendants, alleging that they had fraudulently and unlawfully obtained control over a California insurance company, ELIC's former bond portfolio and insurance assets in

³ The evidentiary basis for the relevant facts set forth herein is contained in the (1) the supporting Declaration of Willard Roberts filed herewith, (2) the Declarations of Willard Roberts, Karl Belgum and Lauren Roberson filed in support of the 8/31/05 Motion, (3) the Declaration of Willard Roberts filed in support of the 12/13/05 Motion, and (4) the Declarations of Richard Baum and Lauren Roberson filed in support of the 1/18/06 Motion.

1 violation of Federal and state laws prohibiting a foreign government-owned bank from
 2 acquiring control of a California insurance company. This litigation, styled as *John*
 3 *Garamendi as Insurance Commissioner of the State of California and as Conservator,*
 4 *Rehabilitator and Liquidator of the Estate of Executive Life Insurance Company v. Altus*
 5 *Finance S.A., et al.*, Case No. CV 99-02829 AHM (CWx), U.S. District Court for the Central
 6 District of California (the "District Court"), is referred to herein as the "Altus Litigation."

7 The relief sought by the Commissioner in the Altus Litigation includes both damages
 8 and restitution based on fraud and conspiracy. The Altus Litigation was consolidated for
 9 discovery and pre-trial purposes with two other subsequently commenced civil actions
 10 pending before the same District Court that have been brought by other plaintiffs.⁴

11 There have been partial or total settlements with several defendants (or groups of
 12 defendants) to date in connection with the Altus Litigation, resulting in approximately
 13 \$730.3 million in payments to the Commissioner.⁵ As set forth in more detail in the Prior
 14 Motions, these settlements include, most significantly, the following three settlements
 15 aggregating \$705.25 million (hereinafter collectively the "Major Settlements"): (1) the U.S.
 16 Department of Justice's settlement of certain criminal charges against various Artemis
 17 Defendants, which in 2004 resulted in an Artemis-funded payment of \$110 million to the
 18 Commissioner for the benefit of the ELIC Estate (the "Artemis DOJ Settlement"), with such
 19 settlement having been approved by the District Court subject to the proviso that such \$110
 20 million be credited toward any final judgment the Commissioner obtains against Artemis in
 21 the Altus Litigation; and (2) a settlement of \$80 million with Aurora, \$78.75 million of
 22 which was payable to the Commissioner for the benefit of the ELIC estate (the "Aurora
 23 Settlement"), reached shortly before trial of the Altus Litigation was scheduled to commence
 24

25 ⁴The two other actions that were consolidated with the Civil Action are styled as *Sierra*
 26 *National Insurance Holdings, et al. v. Credit Lyonnais S.A., et al.*, No. CV 01-1339 AHM
 (CWx), and *Garamendi v. SDI Vendome*, No. CV 02-5983 AHM (CWx).

27 ⁵The word "approximately" is used throughout this Motion with reference to specified
 28 dollar amounts because amounts sometimes have been rounded for ease of calculation and/or
 description.

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1 and approved by the District Court and collected by the Commissioner in 2005, and (3) a
2 settlement of \$525 million with the CDR Parties, \$516.5 million of which was payable to the
3 Commissioner for the benefit of the ELIC estate (the "CDR Settlement"), again reached
4 shortly before trial of the Altus Litigation was scheduled to commence, and approved by the
5 District Court and collected by the Commissioner in 2005. In addition to the Major
6 Settlements, the \$730.3 million in total settlements collected to date includes a \$50,000
7 settlement from defendants known as the Mallart Defendants who settled out of the Altus
8 Litigation in 2004, and a settlement of \$25 million against the so-called MAAF Defendants
9 in 2006, satisfying default judgments that had been obtained against such parties in 2005.
10 (This \$25.05 million of total settlement recoveries from the MAAF Defendants and the
11 Mallart Defendants hereinafter is referred to as the "MAAF/Mallart Settlements.") The
12 Final Arbitration Decision applies to the 66.1% Non-Opt Out Percentage of the \$730.3
13 million in total settlement recoveries to date.⁶

14 **B. The Article 10/17 Distribution Dispute**

15 As described more fully in the Prior Motions, before the first material settlement
16 recovery in the Altus Litigation, a dispute arose between the Commissioner, on the one

17
18 ⁶ There remains one unresolved claim in the Altus Litigation, which is on appeal. In
19 the spring of 2005, the Commissioner proceeded to trial of the Altus Litigation against the
20 remaining non-settling and non-defaulting defendants, consisting of Artemis and several
21 affiliated parties (collectively, the "Artemis Defendants"). After the trial started, the
22 Commissioner dismissed his claims against peripheral and/or non-material Artemis
23 Defendants (including Artemis Finance S.N.C. and Artemis America), leaving Artemis as
24 the sole defendant.

25 On November 21, 2005, the District Court issued its "Fed R. Civ. P. 52 Findings of
26 Fact and Conclusions of Law Re Restitution" (the "Restitution Decision") in the Altus
27 Litigation. Pursuant to the Restitution Decision, the District Court found that Artemis had
28 been unjustly enriched as a result of making certain misrepresentations in connection with its
acquisition of its interest in Aurora. The District Court determined that judgment would be
entered against Artemis and in favor of the Commissioner in the amount of \$189,806,288,
plus interest on such amount at 7%, as restitution. After resolution of various disputes
including the calculation of interest, the District Court in February 2006 entered judgment
against Artemis in the amount \$241,092,020. The Commissioner and Artemis timely filed
cross-appeals on various issues, and such appeals remain pending with the U.S. Court of
Appeals for the Ninth Circuit. Accordingly, the only unresolved claim in the Altus
Litigation is the Commissioner's claim against Artemis, and, once such claim is resolved,
any further recoveries on such claim will be the subject of a separate motion by the
Commissioner for distribution authorization.

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1 hand, and NOLHGA (on behalf of itself and the PGAs that participated in the Enhancement
2 Agreement), on the other, regarding the extent to which the PGAs would share in the Non-
3 Opt Out Percentage of net Altus Litigation proceeds (i.e., the gross Altus Litigation proceeds
4 minus administrative expenses of the ELIC estate, including the costs of the Altus Litigation,
5 plus investment income). The heart of such dispute was whether (i) the PGAs' assignment
6 of their subrogation rights under Article 10 of the Enhancement Agreement covered the
7 claims of ELIC asserted in the Altus Litigation and the resulting Non-Opt Out Percentage of
8 net Altus Litigation proceeds, as maintained by the Commissioner (in which case the Non-
9 Opt Out Contract Holders, under the combined applications of Articles 10 and 17 of the
10 Enhancement Agreement, would receive distributions that otherwise would have gone to the
11 PGAs on account of their assigned subrogation rights), or (ii) the PGAs' assignment of their
12 subrogation rights under Article 10 of the Enhancement Agreement did not cover such
13 claims and the resulting Non-Opt Out Percentage of net Altus Litigation proceeds, as
14 maintained by NOLHGA (in which case the PGAs would, under Article 17 of the
15 Enhancement Agreement without giving effect to the assignment of subrogation rights under
16 Article 10 of the Enhancement Agreement, receive distributions giving effect to the PGAs'
17 subrogation rights). For convenient reference's sake, this dispute was referred to as the
18 "Article 10/17 Dispute" in the Prior Motions, since the disputed issue was whether the
19 PGAs' waiver of subrogation rights under Article 10 was applicable to the distribution of the
20 Non-Opt Out Percentage of the above-specified Altus Litigation recoveries.

21 The Article 10/17 Dispute had enormous practical significance. Simply stated, if, as
22 maintained by NOLHGA, Article 10's assignment of subrogation rights did not apply to the
23 Altus Litigation proceeds described above, the PGAs would, on account of their subrogation
24 rights, receive approximately 77% of the Non-Opt Out Percentage of net Altus Litigation
25 proceeds, while the Non-Opt Out Contract Holders would receive only approximately 23%
26 of such funds. Conversely, if, as contended by the Commissioner, Article 10's assignment
27 of subrogation rights did apply to the Altus Litigation recoveries, close to 100% of the Non-
28 Opt Out Percentage of the net Altus Litigation recoveries would be distributable to Non-Opt

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1 Out Contract Holders and not the PGAs.

2 **C. The Prior Motions**

3 Against the backdrop and pending resolution of the Article 10/17 Dispute, the
4 Commissioner desired to distribute as much of the Altus Litigation proceeds as possible
5 without prejudicing interested parties' rights and interests regarding the outcome of the
6 Article 10/17 Dispute. To that end, as the settlements constituting the Altus Litigation
7 proceeds were concluded and collected, the Commissioner brought the Prior Motions,
8 seeking authority to make specific distributions that either were not dependent on the
9 outcome of the Article 10/17 Dispute (in the case of the first two Prior Motions), or that
10 could be approximately "trued up" regardless which way the Article 10/17 Dispute was
11 resolved (in the case of the third Prior Motion). These Prior Motions are summarized as
12 follows:

13 **1. The 8/30/05 Motion and Resulting Order**

14 In the 8/30/05 Motion, the Commissioner sought authority to distribute to the Opt Out
15 Trust for the benefit of the Opt Out Contract Holders approximately \$33.9 million,
16 constituting the Opt Out Percentage (i.e., 33.9%) of \$100 million of the Artemis DOJ
17 Settlement funds (\$10 million of the aggregate \$110 million Artemis DOJ Settlement was
18 reserved for expenses). The Commissioner sought authority to make this distribution
19 because the portion of Altus Litigation proceeds payable to the Opt Out Trust was not
20 affected by the existence or outcome of the Article 10/17 Dispute (which pertains only to the
21 66.1% Non-Opt Out Percentage of Altus Litigation proceeds). The Court granted the
22 8/30/05 Motion following hearing on October 12, 2005, resulting in a \$33.9 million
23 distribution to the Opt Out Trust for the benefit of Opt Out Contract Holders.

24 **2. The 12/13/05 Motion and Resulting Order**

25 Similarly, once the \$78.75 million Aurora Settlement and the \$516.5 million CDR
26 Settlement were negotiated and close to consummation in late 2005, the Commissioner via
27 the 12/13/05 Motion sought authority to distribute to the Opt Out Trust for the benefit of Opt
28 Out Contract Holders the 33.9% Opt Out Percentage of the Aurora and CDR Settlements,

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1 after deduction of an appropriate expense reserve. The Court granted the 12/13/05 Motion
2 following hearing on January 18, 2006, resulting in the distribution of an additional
3 approximately \$174.5 million to the Opt Out Trust for the benefit of Opt Out Contract
4 Holders.

5 3. The 1/18/06 Motion and Resulting Order

6 Even after the distribution of approximately \$208.4 million to the Opt Out Trust
7 described above, the Commissioner in early 2006 was still holding several hundred million
8 dollars in Altus Litigation proceeds that but for the Article 10/17 Dispute would be available
9 for distribution pursuant to the ELIC Rehabilitation Plan. Given the fact that even a partial
10 distribution of those funds would be of benefit to Non-Opt Out Contract Holders whose
11 policies were not fully covered by a PGA guaranty ("uncovered Non-Opt Out Contract
12 Holders"), the Commissioner explored alternative methodologies and proposals for effecting
13 a partial distribution of those funds to uncovered Non-Opt Out Contract Holders that would
14 not prejudice the parties' rights/positions regarding the Article 10/17 Dispute and would
15 allow a practicable "true up" to be done after the Article 10/17 Dispute was resolved, giving
16 effect to such resolution.

17 After considerable analysis, the Commissioner concluded that there was only one
18 workable provisional distribution approach. This entailed a provisional calculation under
19 Article 17 of the Enhancement Agreement as to the available undistributed funds from the
20 \$705.25 million of Major Settlements collected by the Commissioner, *minus* the ELIC estate
21 expenses paid or reserved from such proceeds, *minus* the distributions that already had been
22 authorized and made to the Opt Out Trust pursuant to the first two Prior Motions described
23 above (hereinafter the "Available Undistributed Funds"). This calculation yielded a figure
24 that was estimated to be around \$93 million as the portion of such funds that would be
25 distributed to the uncovered Non-Opt Out Contract Holders assuming NOLHGA prevailed
26 on its position in the Article 10/17 Dispute. Under the Commissioner's interim distribution
27 proposed in the 1/18/06 Motion, then, the Commissioner proposed to (i) effect an interim
28 distribution of approximately \$93 million to the uncovered Non-Opt Out Contract Holders,

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1 and (ii) in order to preserve the status quo, maintain the approximately \$324.4 million
2 remainder of the Available Undistributed Funds (which was the amount of the Available
3 Undistributed Funds that the PGAs would receive if NOLHGA prevailed in the Article
4 10/17 Dispute) pending the outcome of the Article 10/17 Dispute, subject to the
5 Commissioner's distribution of the "floor" amount to the PGAs described below.

6 In his 1/18/06 Motion, the Commissioner noted that a practicable "true up" would be
7 done after resolution of the Article 10/17 Dispute, such that appropriate adjustments could
8 be made in a subsequent distribution to give effect to the resolution of the Article 10/17
9 Dispute.

10 Finally, as part of the 1/18/06 Motion, the Commissioner sought authority to distribute
11 to the PGAs a guaranteed "floor" amount of approximately \$46 million from the Available
12 Undistributed Funds. As explained in the 1/18/06 Motion, this proposed "floor" payment
13 was in consideration of and for several things, including releases procured from and
14 provided by NOLHGA and the PGAs as part of the CDR Settlement that produced \$516.5
15 million for the benefit of the ELIC estate.

16 The Court granted the 1/18/06 Motion after hearing by Order dated April 6, 2006 (the
17 "4/6/06 Order" or "Provisional Article 17 Distribution Order"). Unlike the distributions to
18 the Opt Out Trust under the first two Prior Orders that were effected directly by the
19 Commissioner to the Opt Out Trust under the Rehabilitation Plan, the distribution provided
20 for under the 4/6/06 Order, because it was a distribution pursuant to Article 17 of the
21 Enhancement Agreement on account of the Non-Opt Out Percentage for the benefit of Non-
22 Opt Out Contract Holders, had to be made through Aurora National Life Assurance
23 Company ("Aurora") under the Rehabilitation Plan. Such distribution required Aurora's
24 execution of the complex distribution mechanics under the Enhancement Agreement,
25 including running a series of precise calculations and then setting up the appropriate check
26 runs and postings. Accordingly, once the 4/6/06 Order authorizing the provisional Article
27 17 distribution was obtained, Aurora required several months of lead time before the
28 distribution checks could be issued and mailed.

1 The process was substantially completed on October 2, 2006, when Aurora, pursuant to
2 the Provisional Article 17 Distribution Order, (i) made a distribution of approximately \$97.9
3 million to uncovered Non-Opt Out Contract Holders pursuant to its calculations under
4 Section 17.1.2.2.1(i) and 17.1.2.2.2(i) of the Enhancement Agreement (representing the
5 portion of the Available Undistributed Funds that would be distributable to uncovered Non-
6 Opt Out Contract Holders under the Enhancement Agreement if, as NOLHGA contended,
7 the PGAs' assignment of subrogation rights under Article 10 did not apply), and
8 (ii) transferred to the Commissioner approximately \$324.4 million, representing the portion
9 of the Available Undistributed Funds that would be distributable to the PGAs calculated
10 pursuant to Section 17.1.2.2.1(ii) and 17.1.2.2.2(i) of the Enhancement Agreement. Then, as
11 the last step in the process of implementing the Provisional Article 17 Distribution Order,
12 the Commissioner distributed from this \$324.4 million the \$46.34 million "floor" amount to
13 the PGAs, with the Commissioner maintaining the rest of the funds pending the resolution of
14 the Article 10/17 Dispute.

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15 D. The Arbitration Decision

16 As already indicated, the arbitrator issued his Final Arbitration Decision on April 23,
17 2007, ruling in favor of the Commissioner. More specifically, the arbitrator ruled that (i) the
18 Non-Opt Out Percentage of the \$730.3 million in Altus Litigation proceeds at issue in the
19 arbitration are not "Securities Proceeds" under Section 2.77A of the Enhancement
20 Agreement, (ii) those proceeds are Assigned Assets under Section 2.10 of the Enhancement
21 Agreement, and the PGAs' assignment of their subrogation rights under Article 10 cover and
22 apply to those proceeds; and (iii) those proceeds shall be distributed in accordance with
23 specified terms of the Enhancement Agreement, as set forth in the Final Arbitration
24 Decision. In addition, the Final Arbitration Decision denied NOLHGA's alternative request
25 for equitable relief, and awarded the Commissioner \$4.5 million in attorneys' fees and costs
26 as the prevailing party in the arbitration, pursuant to the prevailing party contractual
27 provision in the Enhancement Agreement.

28 The Commissioner notes that there is certain technical "implementing" language in the

1 Final Arbitration Decision that was agreed to by the Commissioner, Aurora and NOLHGA
2 and that was proffered jointly by the Commissioner and NOLHGA. More specifically,
3 after the arbitrator released two "draft" interim decisions making clear that he had
4 determined that the Altus Litigation proceeds at issue in the arbitration were not "Securities
5 Proceeds" and therefore were Assigned Assets covered by the PGAs' assignment of their
6 subrogation rights in Article 10, the parties recognized the need to consult with Aurora and
7 align the arbitrator's ruling with the necessary distribution calculations and mechanics to be
8 executed by Aurora. To that end, and after such consultations with Aurora, the
9 Commissioner and NOLHGA jointly proffered to the arbitrator the implementing language
10 referencing various provisions of the Enhancement Agreement, found at page 17 of the Final
11 Arbitration Decision. Such "implementing" language in the Final Arbitration Decision is
12 highly technical and was worked out jointly by the Commissioner, Aurora and NOLHGA
13 because of the complex and technical nature of proceeding with the calculations and
14 mechanics of the present distribution against the backdrop of the provisional Article 17
15 distribution that took place in October 2006. In addition, as set forth in Part II below, the
16 complexities of this distribution are such that the Commissioner, Aurora and NOLHGA have
17 entered into a further implementing agreement to proceed with and effect the distributions
18 requested by this Motion.

19 **E. The Funds On Hand Covered By This Motion**

20 The Final Arbitration Decision expressly covers the Non-Opt Out Percentage of \$730.3
21 million in Altus Litigation Proceeds. This \$730.3 million includes (i) the \$705.25 million in
22 Major Settlements, and (ii) the \$25.05 million from the MAAF/Mallart Settlements, the
23 lion's share of which was concluded in 2006 after the arbitration proceeding was
24 commenced and which the Commissioner and NOLHGA agreed were within the scope of
25 the arbitration.

26 Based on figures last calculated as of April 30, 2007, the Commissioner is still holding
27 approximately \$290 million pursuant to the Provisional Article 17 Distribution Order
28 (representing the still-undistributed portion of the Major Settlements, *minus* any estate

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1 expense disbursements from such funds, *plus* investment income earned on such funds while
2 maintained by the Commissioner) (hereinafter the "Retained Major Settlement Funds"). This
3 approximately \$290 million would have been distributable to the PGAs if NOLHGA had
4 prevailed in the Article 10/17 Dispute, and now instead will be distributable almost entirely
5 to Non-Opt Out Contract Holders as a result of the Commissioner having prevailed in the
6 arbitration.

7 In addition, again based on figures last calculated as of April 30, 2007, the
8 Commissioner is holding approximately \$26.67 million from the MAAF/Mallart Settlements
9 (no part of which has been distributed to date), which includes the \$25.05 million amount of
10 the MAAF/Mallart Settlements, plus investment income earned thereon to date.

11 Accordingly, the Commissioner by this Motion seeks authority to distribute, consistent
12 with the ruling in favor of the Commissioner in the Final Arbitration Decision and the
13 principles of the Rehabilitation Plan,

14 (i) the approximately \$290 million in Retained Major Settlement Funds; *plus*

15 (ii) approximately \$17.66 million attributable to the MAAF/Mallart Settlement,
16 which constitutes the Non-Opt Out Percentage of the MAAF/Mallart Settlement plus interest
17 thereon to date (the "MAAF/Mallart Settlement Funds"),⁷ *minus*

18 (iii) an estimate of costs paid or to be paid in connection with resolving the
19 Article 10/17 Dispute (which the Court has previously ruled is to be charged to the Non-Opt
20 Out Contract Holders via a deduction from the Non-Opt Out Percentage of recoveries from
21 the Altus Litigation) and with effecting the distributions pursuant to this Motion.

22
23
24 ⁷By a separate motion at a later date, the Commissioner will be seeking authority to
25 distribute to the Opt Out Trust the 33.9% Opt Out Percentage of the MAAF/Mallart
26 Settlement and any interest earned thereon (net of any expense allocation for general
27 administrative expenses of the estate). The Commissioner believes it is not economically
28 prudent to proceed with a distribution of under \$10 million by the Opt Out Trust to
thousands of Opt Out Contract Holders, when a more substantial amount hopefully will also
be distributable at a later date after resolution of the claim against Artemis that is the subject
of the pending appeal, and material efficiencies can be achieved by waiting and effecting
only one more distribution through the Opt Out Trust to Opt Out Contract Holders.

II.

THE PROPOSED DISTRIBUTIONS

In concept, this Motion is a simple and straight-forward one, seeking authority to effect approximately \$300 million in distributions consistent with the Final Arbitration Decision. However, as indicated in the Commissioner's 1/18/06 Motion that was the basis for the Provisional Article 17 Distribution Order, the Commissioner and interested parties contemplated that certain "true-up" adjustments would be necessary to implement the arbitrator's ruling if, as ultimately occurred, the arbitrator ruled in favor of the Commissioner. In addition, there are further complications because the MAAF/Mallart Settlement Funds, while included in the Final Arbitration Decision, were not part of the 1/18/06 Motion or resulting provisional distribution in October 2006, and therefore there is more than one calculation methodology that must be used to effectuate the Final Arbitration Decision.

Mindful of the need to move forward with the distribution of funds that have been maintained by the Commissioner pending the outcome of the arbitration, the Commissioner, Aurora and NOLHGA have devoted material time to discussing and addressing the technical calculations, adjustments and mechanics necessary to effect distributions consistent with the Final Arbitration Decision, against the backdrop of the distributions pursuant to the Provisional Article 17 Distribution Order. These cooperative discussions have resulted in the Commissioner, Aurora and NOLHGA entering into an Agreement Regarding Special AVI Distributions, a true and correct copy of which is attached to the Roberts Declaration as Exhibit A (the "Special AVI Agreement"), which sets forth the calculations, adjustments and procedures they have deemed necessary or appropriate to effect distributions consistent with the Final Arbitration Decision. In broad outline, the Special AVI Agreement provides for the following:

1. The payment and crediting by Aurora of the Retained Major Settlement Funds (net of funds needed for estate expenses) to the eligible Non-Opt Out Contract Holders pursuant to Article 9 of the Rehabilitation Agreement and Articles 10 and 17 of the Enhancement

1 Agreement (subject to any right of the PGAs to receive any applicable Reduction GA
2 Amounts, Proceeds Reduction, Set-Aside Amount and the covered portion of any Recovery
3 Increments, as each such term is used in the Rehabilitation Agreement or Enhancement
4 Agreement, as applicable);⁸

5 2. The payment and crediting by Aurora of the net MAAF/Mallart Settlement Funds
6 pursuant to the Final Arbitration Decision and the Rehabilitation Plan;

7 3. The payment to Aurora on a time and materials basis of the cost to Aurora of the
8 current contemplated distributions (because this is an "extra" round of distributions requiring
9 special calculations and adjustments), which is estimated to be approximately \$1.25 million;
10 and

11 4. The indemnification of Aurora, its agents, contractors and subcontractors (including
12 Reassure America Life Insurance Company) for effecting the distributions pursuant to the
13 Special AVI Agreement.

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15 ⁸In more technical terms, Sections 17.1.2.2.1 and 17.1.2.2.2 of the Enhancement
16 Agreement contain detailed provisions for, under specified circumstances, allocation of
17 distributions between the participating PGAs and Non-Opt Out Contract Holders based on
18 "covered" and "uncovered" percentages, and implement the effect of the assignment of the
19 PGAs' subrogation rights as to assets/proceeds to which Article 10 and Article 17 apply.
20 Those sections also incorporate other provisions of the Enhancement Agreement that pertain
21 to matters such as collection of "overloan balances," calculation and payment of "proceeds
22 reduction balances," and PGA collection of "set-aside" amounts. The Retained Major
23 Settlement Funds cannot simply be run through Sections 17.1.2.2.1 and 17.1.2.2.2 because
24 those sections would split the distribution between the "covered" and "uncovered"
25 percentages but, as the Court is aware, the distribution pertaining to the "uncovered"
26 percentage has already been effected via the Provisional Article 17 Distribution Order.
27 Accordingly, and as contemplated by the Provisional Article 17 Distribution Order, a "true
28 up" of the distribution mechanism in Sections 17.1.2.2.1 and 17.1.2.2.2 is necessary to
implement the distribution of the "covered percentage" pursuant, in light of the Final
Arbitration Decision, to Articles 10 and 17. The Special AVI Agreement specifies the
mechanism for implementing Sections 17.1.2.2.1 and 17.1.2.2.2 as to only the "covered
percentage" of the Retained Major Settlement Funds. The Special AVI Agreement also takes
into account the fact that the distribution of the "uncovered percentage" pursuant to the
Provisional Article 17 Distribution Order was based on the full \$418.4 million that the
Commissioner transferred to Aurora. Per the Provisional Article 17 Distribution Order, the
Commissioner subsequently paid the \$46.3 million "floor" amount to NOLHGA and
therefore that payment has to be accounted for. The Special AVI Agreement "trues up" each
Non-Opt Out Contract Holder's share of the Retained Major Settlement Funds for purposes
of Article 10 and Article 17 calculations by accounting for the payment of the "floor"
amount to NOLHGA.

1 The Commissioner incorporates by reference the Special AVI Agreement and, as part
2 of this Motion, requests that he be authorized to enter into such Agreement and that the
3 Commissioner and Aurora be authorized to proceed with distributions (including payments
4 and/or crediting) in accordance with such Agreement.

5
6 **III.**

7 **THE DE MINIMIS EXCEPTION TO THE PROPOSED**
8 **DISTRIBUTIONS**

9 As part of the Motion, the Commissioner requests that the foregoing proposed
10 distributions be subject to the exception described in this Part III (the "de minimis
11 exception") pertaining to any distribution check that is issuable by Aurora to any Non-Opt
12 Out Contract Holder that would be in the amount of \$2.00 or less.

13 As explained in the Prior Motions, when Aurora makes a distribution to Non-Opt Out
14 Contract Holders, whether or not a Non-Opt Out Contract Holder receives cash for his or her
15 allocation of the distribution (effected by the issuance of a check to such Non-Opt Out
16 Contract Holder) or receives a credit to his or her Restructured Account Value depends upon
17 the type of policy held by such Non-Opt Out Contract Holder. Declaration of Lauren
18 Roberson filed August 31, 2005 in Support of 8/31/05 Motion ("8/31/05 Roberson Decl.")
19 ¶6. There are significant costs associated with cash distributions effected by checks. Those
20 costs include check-printing costs, mailing costs, costs associated with provision of annual
21 tax forms (1099s) and escheatment costs. *Id.* Based on an analysis of costs incurred in
22 making various prior distributions, these costs are estimated to be approximately \$2.00 per
23 check issued. *Id.*

24 Accordingly, in order to provide that the cost of a cash distribution to any Non-Opt Out
25 Contract Holder does not exceed the cash amount distributable to such policyholder, this
26 Motion proposes that no check shall be issued by Aurora to any Non-Opt Out Contract
27 Holder, where the cash amount distributable to such contract holder is \$2.00 or less.
28 Further, because such amount is de minimis, and because the cost of carrying a future credit

1 for the account of any affected Non-Opt Out Contract Holder would be disproportionate to
2 the de minimis benefit, the Motion also proposes that no credit or future benefit with regard
3 to any such undistributed amount of \$2.00 or less shall be maintained or provided by Aurora,
4 and instead that any such undistributed amounts shall be distributed by Aurora back to the
5 Commissioner/ELIC and maintained as part of the ELIC estate, and included in the next or
6 final distribution by the Commissioner/ELIC.

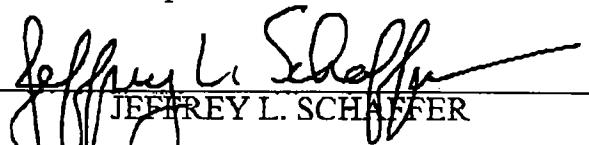
CONCLUSION

7
8
9 Based on the foregoing, the Commissioner respectfully requests that the Court grant
10 the Motion and enter an order (in the proposed form submitted herewith) authorizing the
11 distribution of the specified Altus Litigation proceeds consistent with the Final Arbitration
12 Decision and the Rehabilitation Plan, including authorization of the Commissioner to enter
13 into the Special AVI Agreement and authorizing Aurora to proceed with the calculations and
14 distributions as set forth therein.

15
16 DATED: May 31, 2007

17 Respectfully,

18 JEFFREY L. SCHAFFER
19 ETHAN P. SCHULMAN
20 HOWARD RICE NEMEROVSKI CANADY
21 FALK & RABKIN
22 A Professional Corporation

23 By: 
24 JEFFREY L. SCHAFFER

25 Attorneys for Movant INSURANCE
26 COMMISSIONER OF THE STATE OF
27 CALIFORNIA in his capacity as Conservator,
28 Rehabilitator and Liquidator of Executive Life
Insurance Company

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 Executive Life Insurance Company

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 Los Angeles Superior Court

JUN 01 2007

John A. Clarke, Executive Officer/Clerk
 By A. Hendrickson Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES

INSURANCE COMMISSIONER OF THE
 STATE OF CALIFORNIA,

Applicant,

v.

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

Respondents.

No. BS 006912

DECLARATION OF WILLARD
 ROBERTS IN SUPPORT OF MOTION
 OF INSURANCE COMMISSIONER OF
 THE STATE OF CALIFORNIA FOR AN
 ORDER APPROVING DISTRIBUTION
 OF SPECIFIED ALTUS LITIGATION
 PROCEEDS CONSISTENT WITH
 FINAL ARBITRATION DECISION,
 AND SUPPORTING MEMORANDUM
 OF POINTS AND AUTHORITIES

Date: June 29, 2007
 Time: 8:30 a.m.
 Dep't: 36

DEC. OF W. ROBERTS ISO MOT. OF COMM'R FOR ORDER APP.
 DISTRIB. OF SPEC. ALTUS LIT. PROCEEDS PER FINAL ARB DECISION

1 I, Willard Roberts, declare as follows:

2 1. I am employed by the Conservation & Liquidation Office of the California
3 Department of Insurance, and serve as the Estate Trust Officer for Executive Life Insurance
4 Company ("ELIC"), a position I have held since July 1996. I make this declaration in
5 support of the motion of the Insurance Commissioner of the State of California, in his
6 capacity as conservator, rehabilitator and liquidator (the "Commissioner") of ELIC, for an
7 order approving distribution of specified Altus Litigation proceeds consistent with Final
8 Arbitration Decision (the "Motion").. I know the following of my own knowledge (except
9 as to any matters stated on information and belief, and as to such matters, I am informed and
10 believe they are true), and could and would competently testify there if called upon to do so.
11 I have reviewed the Motion, and capitalized words or terms used herein without definition
12 have the same meanings ascribed to them in the Motion.

13 2. The Motion is made against the backdrop of the above-captioned Court's
14 Order Granting NOLHGA's Motion to Compel Arbitration dated October 12, 2005, as well
15 as the following three distribution motions filed by the Commissioner and granted by the
16 Court in this case regarding Altus Litigation proceeds ("the Prior Motions"): (1) Motion For
17 An Order Approving Distribution Of \$100 Million Of Altus Litigation Proceeds Pursuant To
18 ELIC Rehabilitation Plan dated August 30, 2005 (the "8/30/05 Motion"), which was heard
19 and approved by the Court on October 12, 2005; (2) Motion For An Order Approving
20 Distribution Of Opt Out Trust Portion Of Aurora Settlement Amount and CDR Settlement
21 Amount [etc.] dated December 13, 2005 (the "12/13/05 Motion"), which was heard and
22 approved by the Court on January 18, 2006; and (3) Motion For An Order Approving
23 Interim Distribution Of Specified Altus Litigation Proceeds dated January 18, 2006 and filed
24 on January 19, 2006 (the "1/18/06 Motion"), which was heard by the Court on March 3,
25 2006 and approved by the Court by order dated April 6, 2006.

26 3. On October 12, 2005, the Court ordered that the so-called "Article 10/17
27 Dispute" between the Commissioner and NOLHGA (acting on behalf of itself and the
28

-1-

DEC. OF W. ROBERTS ISO MOT. OF COMM'R FOR ORDER APP.
DISTRIB. OF SPEC. ALTUS LIT. PROCEEDS PER FINAL ARB. DECISION

PGAs) regarding the distribution of specified Altus Litigation proceeds be sent to binding arbitration pursuant to the contractual arbitration provision in the Enhancement Agreement. ELIC and NOLHGA subsequently jointly selected the retired Honorable Charles A. Legge, a former United States District Court judge, as the arbitrator. After considerable pre-arbitration proceedings and discovery, the arbitration hearing took place over a three-week period in October and November of 2006, under the auspices and pursuant to the rules of the American Arbitration Association. The arbitrator issued his Final Arbitration Decision on April 23, 2007, ruling in favor of the Commissioner. As provided by California law, the Commissioner has filed with the above-captioned Court a separate Petition To Confirm Final Arbitration Decision, which is set for hearing at the same time as the Motion. Accordingly, by the Motion, the Commissioner seeks an order authorizing the distribution, consistent with the Rehabilitation Plan and the Final Arbitration Decision, of approximately \$300 million in Altus Litigation proceeds that the Commissioner has held pending the outcome of the arbitration.

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4. There have been partial or total settlements with several defendants (or groups of defendants) to date in connection with the Altus Litigation, resulting in approximately \$730.3 million in payments to the Commissioner.¹ As set forth in more detail in the Prior Motions, these settlements include, most significantly, the following three settlements aggregating \$705.25 million (hereinafter collectively the "Major Settlements"): (1) the U.S. Department of Justice's settlement of certain criminal charges against various Artemis Defendants, which in 2004 resulted in an Artemis-funded payment of \$110 million to the Commissioner for the benefit of the ELIC Estate (the "Artemis DOJ Settlement"), with such settlement having been approved by the District Court subject to the proviso that such \$110 million be credited toward any final judgment the Commissioner obtains against Artemis in the Altus Litigation; and (2) a settlement of \$80 million with Aurora, \$78.75

¹The word "approximately" is used throughout the Motion with reference to specified dollar amounts because amounts sometimes have been rounded for ease of calculation and/or description.

1 million of which was payable to the Commissioner for the benefit of the ELIC estate (the
2 "Aurora Settlement"), reached shortly before trial of the Altus Litigation was scheduled to
3 commence and approved by the District Court and collected by the Commissioner in 2005,
4 and (3) a settlement of \$525 million with the CDR Parties, \$516.5 million of which was
5 payable to the Commissioner for the benefit of the ELIC estate (the "CDR Settlement"),
6 again reached shortly before trial of the Altus Litigation was scheduled to commence, and
7 approved by the District Court and collected by the Commissioner in 2005. In addition to
8 the Major Settlements, the \$730.3 million in total settlements collected to date includes a
9 \$50,000 settlement from defendants known as the Mallart Defendants who settled out of the
10 Altus Litigation in 2004, and a settlement of \$25 million against the so-called MAAF
11 Defendants in 2006, satisfying default judgments that had been obtained against such parties
12 in 2005. (This \$25.05 million of total settlement recoveries from the MAAF Defendants and
13 the Mallart Defendants hereinafter is referred to as the "MAAF/Mallart Settlements.") The
14 Final Arbitration Decision applies to the 66.1% Non-Opt Out Percentage of the \$730.3
15 million in total settlement recoveries to date.²

16
17 ² There remains one unresolved claim in the Altus Litigation, which is on appeal. In
18 the spring of 2005, the Commissioner proceeded to trial of the Altus Litigation against the
19 remaining non-settling and non-defaulting defendants, consisting of Artemis and several
20 affiliated parties (collectively, the "Artemis Defendants"). After the trial started, the
21 Commissioner dismissed his claims against peripheral and/or non-material Artemis
22 Defendants (including Artemis Finance S.N.C. and Artemis America), leaving Artemis as
23 the sole defendant.

24 On November 21, 2005, the District Court issued its "Fed R. Civ. P. 52 Findings of
25 Fact and Conclusions of Law Re Restitution" (the "Restitution Decision") in the Altus
26 Litigation. Pursuant to the Restitution Decision, the District Court found that Artemis had
27 been unjustly enriched as a result of making certain misrepresentations in connection with its
28 acquisition of its interest in Aurora. The District Court determined that judgment would be
entered against Artemis and in favor of the Commissioner in the amount of \$189,806,288,
plus interest on such amount at 7%, as restitution. After resolution of various disputes
including the calculation of interest, the District Court in February 2006 entered judgment
against Artemis in the amount \$241,092,020. The Commissioner and Artemis timely filed
cross-appeals on various issues, and such appeals remain pending with the U.S. Court of
Appeals for the Ninth Circuit. Accordingly, the only unresolved claim in the Altus
Litigation is the Commissioner's claim against Artemis, and, once such claim is resolved,
any further recoveries on such claim will be the subject of a separate motion by the
Commissioner for distribution authorization.

1 5. The Article 10/17 Dispute had enormous practical significance. Simply
2 stated, if, as maintained by NOLHGA, Article 10's assignment of subrogation rights did not
3 apply to the Altus Litigation proceeds described above, the PGAs would, on account of their
4 subrogation rights, receive approximately 77% of the Non-Opt Out Percentage of net Altus
5 Litigation proceeds, while the Non-Opt Out Contract Holders would receive only
6 approximately 23% of such funds. Conversely, if, as contended by the Commissioner,
7 Article 10's assignment of subrogation rights did apply to the Altus Litigation recoveries,
8 close to 100% of the Non-Opt Out Percentage of the net Altus Litigation recoveries would
9 be distributable to Non-Opt Out Contract Holders and not the PGAs.

10 6. Against the backdrop and pending resolution of the Article 10/17 Dispute,
11 the Commissioner desired to distribute as much of the Altus Litigation proceeds as possible
12 without prejudicing interested parties' rights and interests regarding the outcome of the
13 Article 10/17 Dispute. To that end, as the settlements constituting the Altus Litigation
14 proceeds were concluded and collected, the Commissioner brought the Prior Motions,
15 seeking authority to make specific distributions that either were not dependent on the
16 outcome of the Article 10/17 Dispute (in the case of the first two Prior Motions), or that
17 could be approximately "trued up" regardless which way the Article 10/17 Dispute was
18 resolved (in the case of the third Prior Motion). These Prior Motions are summarized as
19 follows:

20 7. In the 8/30/05 Motion, the Commissioner sought authority to distribute to
21 the Opt Out Trust for the benefit of the Opt Out Contract Holders approximately \$33.9
22 million, constituting the Opt Out Percentage (i.e., 33.9%) of \$100 million of the Artemis
23 DOJ Settlement funds (\$10 million of the aggregate \$110 million Artemis DOJ Settlement
24 was reserved for expenses). The Commissioner sought authority to make this distribution
25 because the portion of Altus Litigation proceeds payable to the Opt Out Trust was not
26 affected by the existence or outcome of the Article 10/17 Dispute (which pertains only to the
27 66.1% Non-Opt Out Percentage of Altus Litigation proceeds). The Court granted the
28

1 8/30/05 Motion following hearing on October 12, 2005, resulting in a \$33.9 million
2 distribution to the Opt Out Trust for the benefit of Opt Out Contract Holders.

3 8. Similarly, once the \$78.75 million Aurora Settlement and the \$516.5
4 million CDR Settlement were negotiated and close to consummation in late 2005, the
5 Commissioner via the 12/13/05 Motion sought authority to distribute to the Opt Out Trust
6 for the benefit of Opt Out Contract Holders the 33.9% Opt Out Percentage of the Aurora and
7 CDR Settlements, after deduction of an appropriate expense reserve. The Court granted the
8 12/13/05 Motion following hearing on January 18, 2006, resulting in the distribution of an
9 additional approximately \$174.5 million to the Opt Out Trust for the benefit of Opt Out
10 Contract Holders.

11 9. Even after the distribution of approximately \$208.4 million to the Opt Out
12 Trust described in paragraphs 7 and 8 above, the Commissioner in early 2006 was still
13 holding several hundred million dollars in Altus Litigation proceeds that but for the Article
14 10/17 Dispute would be available for distribution pursuant to the ELIC Rehabilitation Plan.
15 Given the fact that even a partial distribution of those funds would be of benefit to Non-Opt
16 Out Contract Holders whose policies were not fully covered by a PGA guaranty ("uncovered
17 Non-Opt Out Contract Holders"), the Commissioner explored alternative methodologies and
18 proposals for effecting a partial distribution of those funds to uncovered Non-Opt Out
19 Contract Holders that would not prejudice the parties' rights/positions regarding the Article
20 10/17 Dispute and would allow a practicable "true up" to be done after the Article 10/17
21 Dispute was resolved, giving effect to such resolution.

22 10. After considerable analysis, the Commissioner concluded that there was
23 only one workable provisional distribution approach. This entailed a provisional calculation
24 under Article 17 of the Enhancement Agreement as to the available undistributed funds from
25 the \$705.25 million of Major Settlements collected by the Commissioner, *minus* the ELIC
26 estate expenses paid or reserved from such proceeds, *minus* the distributions that already had
27 been authorized and made to the Opt Out Trust pursuant to the first two Prior Motions
28

1 described above (hereinafter the "Available Undistributed Funds"). This calculation yielded
2 a figure that was estimated to be around \$93 million as the portion of such funds that would
3 be distributed to the uncovered Non-Opt Out Contract Holders assuming NOLHGA
4 prevailed on its position in the Article 10/17 Dispute. Under the Commissioner's interim
5 distribution proposed in the 1/18/06 Motion, then, the Commissioner proposed to (i) effect
6 an interim distribution of approximately \$93 million to the uncovered Non-Opt Out Contract
7 Holders, and (ii) in order to preserve the status quo, maintain the approximately \$324.4
8 million remainder of the Available Undistributed Funds (which was the amount of the
9 Available Undistributed Funds that the PGAs would receive if NOLHGA prevailed in the
10 Article 10/17 Dispute) pending the outcome of the Article 10/17 Dispute, subject to the
11 Commissioner's distribution of the "floor" amount to the PGAs described below.

12 11. In his 1/18/06 Motion, the Commissioner noted that a practicable "true up"
13 would be done after resolution of the Article 10/17 Dispute, such that appropriate
14 adjustments could be made in a subsequent distribution to give effect to the resolution of the
15 Article 10/17 Dispute.

16 12. Finally, as part of the 1/18/06 Motion, the Commissioner sought authority
17 to distribute to the PGAs a guaranteed "floor" amount of approximately \$46 million from the
18 Available Undistributed Funds. As explained in the 1/18/06 Motion, this proposed "floor"
19 payment was in consideration of and for several things, including releases procured from and
20 provided by NOLHGA and the PGAs as part of the CDR Settlement that produced \$516.5
21 million for the benefit of the ELIC estate.

22 13. The Court granted the 1/18/06 Motion after hearing by Order dated April 6,
23 2006 (the "4/6/06 Order" or "Provisional Article 17 Distribution Order"). Unlike the
24 distributions to the Opt Out Trust under the first two Prior Orders that were effected directly
25 by the Commissioner to the Opt Out Trust under the Rehabilitation Plan, the distribution
26 provided for under the 4/6/06 Order, because it was a distribution pursuant to Article 17 of
27 the Enhancement Agreement on account of the Non-Opt Out Percentage for the benefit of
28

1 Non-Opt Out Contract Holders, had to be made through Aurora National Life Assurance
2 Company ("Aurora") under the Rehabilitation Plan. Such distribution required Aurora's
3 execution of the complex distribution mechanics under the Enhancement Agreement,
4 including running a series of precise calculations and then setting up the appropriate check
5 runs and postings. Accordingly, once the 4/6/06 Order authorizing the provisional Article
6 17 distribution was obtained, Aurora required several months of lead time before the
7 distribution checks could be issued and mailed.

8 14. The process was substantially completed on October 2, 2006, when Aurora,
9 pursuant to the Provisional Article 17 Distribution Order, (i) made a distribution of
10 approximately \$97.9 million to uncovered Non-Opt Out Contract Holders pursuant to its
11 calculations under Section 17.1.2.2.1(i) and 17.1.2.2.2(i) of the Enhancement Agreement
12 (representing the portion of the Available Undistributed Funds that would be distributable to
13 uncovered Non-Opt Out Contract Holders under the Enhancement Agreement if, as
14 NOLHGA contended, the PGAs' assignment of subrogation rights under Article 10 did not
15 apply), and (ii) transferred to the Commissioner approximately \$324.4 million, representing
16 the portion of the Available Undistributed Funds that would be distributable to the PGAs
17 calculated pursuant to Section 17.1.2.2.1(ii) and 17.1.2.2.2(i) of the Enhancement
18 Agreement. Then, as the last step in the process of implementing the Provisional Article 17
19 Distribution Order, the Commissioner distributed from this \$324.4 million the \$46.34
20 million "floor" amount to the PGAs, with the Commissioner maintaining the rest of the
21 funds pending the resolution of the Article 10/17 Dispute.

22 15. There is certain technical "implementing" language in the Final Arbitration
23 Decision that was agreed to by the Commissioner, Aurora and NOLHGA and that was
24 proffered jointly by the Commissioner and NOLHGA. More specifically, after the
25 arbitrator released two "draft" interim decisions making clear that he had determined that the
26 Altus Litigation proceeds at issue in the arbitration were not "Securities Proceeds" and
27 therefore were Assigned Assets covered by the PGAs' assignment of their subrogation rights
28

1 in Article 10, the parties recognized the need to consult with Aurora and align the
2 arbitrator's ruling with the necessary distribution calculations and mechanics to be executed
3 by Aurora. To that end, and after such consultations with Aurora, the Commissioner and
4 NOLHGA jointly proffered to the arbitrator the language referencing various provisions of
5 the Enhancement Agreement, found at page 17 of the Final Arbitration Decision. Such
6 "implementing" language in the Final Arbitration Decision is highly technical and was
7 worked out jointly by the Commissioner, Aurora and NOLHGA because of the complex and
8 technical nature of proceeding with the calculations and mechanics of the present
9 distribution against the backdrop of the provisional Article 17 distribution that took place in
10 October 2006. In addition, as set forth further below, the complexities of this distribution
11 are such that the Commissioner, Aurora and NOLHGA have entered into a further
12 implementing agreement to proceed with and effect the distributions requested by the
13 Motion.

14 16. The Final Arbitration Decision covers the Non-Opt Out Percentage of
15 \$730.3 million in Altus Litigation Proceeds. This \$730.3 million includes (i) the \$705.25
16 million in Major Settlements, and (ii) the \$25.05 million from the MAAF/Mallart
17 Settlements, the lion's share of which was concluded in 2006 after the arbitration proceeding
18 was commenced and which the Commissioner and NOLHGA agreed were within the scope
19 of the arbitration.

20 17. Based on figures last calculated as of April 30, 2007, the Commissioner is
21 still holding approximately \$290 million pursuant to the Provisional Article 17 Distribution
22 Order (representing the still-undistributed portion of the Major Settlements, *minus* any estate
23 expense disbursements from such funds, *plus* investment income earned on such funds while
24 maintained by the Commissioner) (hereinafter the "Retained Major Settlement Funds"). This
25 approximately \$290 million would have been distributable to the PGAs if NOLHGA had
26 prevailed in the Article 10/17 Dispute, and now instead will be distributable almost entirely
27 to Non-Opt Out Contract Holders as a result of the Commissioner having prevailed in the
28

1 arbitration.

2 18. In addition, again based on figures last calculated as of April 30, 2007, the
3 Commissioner is holding approximately \$26.67 million from the MAAF/Mallart Settlements
4 (no part of which has been distributed to date), which includes the \$25.05 million amount of
5 the MAAF/Mallart Settlements, plus investment income earned thereon to date.

6 19. The Commissioner by the Motion seeks authority to distribute, consistent
7 with the ruling in favor of the Commissioner in the Final Arbitration Decision and the
8 principles of the Rehabilitation Plan,

9 (i) the approximately \$290 million in Retained Major Settlement Funds; *plus*

10 (ii) approximately \$17.66 million attributable to the MAAF/Mallart Settlement,
11 which constitutes the Non-Opt Out Percentage of the MAAF/Mallart Settlement plus interest
12 thereon to date (the "MAAF/Mallart Settlement Funds"), *minus*

13 (iii) an estimate of costs paid or to be paid in connection with resolving the
14 Article 10/17 Dispute (which the Court has previously ruled is to be charged to the Non-Opt
15 Out Contract Holders via a deduction from the Non-Opt Out Percentage of recoveries from
16 the Altus Litigation) and with effecting the distributions pursuant to the Motion.

17 20. By a separate motion at a later date, the Commissioner will be seeking
18 authority to distribute to the Opt Out Trust the 33.9% Opt Out Percentage of the
19 MAAF/Mallart Settlement and any interest earned thereon (net of any expense allocation for
20 general administrative expenses of the estate). The Commissioner believes it is not
21 economically prudent to proceed with a distribution of under \$10 million by the Opt Out
22 Trust to thousands of Opt Out Contract Holders, when a more substantial amount hopefully
23 will also be distributable at a later date after resolution of the claim against Artemis that is
24 the subject of the pending appeal, and material efficiencies can be achieved by waiting and
25 effecting only one more distribution through the Opt Out Trust to Opt Out Contract Holders.

26 21. In concept, the Motion is a simple and straight-forward one, seeking
27 authority to effect approximately \$300 million in distributions consistent with the Final
28

-9-

DEC. OF W. ROBERTS ISO MOT. OF COMM'R FOR ORDER APP.
DISTRIB. OF SPEC. ALTUS LIT. PROCEEDS PER FINAL ARB. DECISION

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1 Arbitration Decision. However, as indicated in the Commissioner's 1/18/06 Motion that was
2 the basis for the Provisional Article 17 Distribution Order, the Commissioner and interested
3 parties contemplated that certain "true-up" adjustments would be necessary to implement the
4 arbitrator's ruling if, as ultimately occurred, the arbitrator ruled in favor of the
5 Commissioner. In addition, there are further complications because the MAAF/Mallart
6 Settlement Funds, while included in the Final Arbitration Decision, were not part of the
7 1/18/06 Motion or resulting provisional distribution in October 2006, and therefore there is
8 more than one calculation methodology that must be used to effectuate the Final Arbitration
9 Decision.

10 22. Mindful of the need to move forward with the distribution of funds that
11 have been maintained by the Commissioner pending the outcome of the arbitration, the
12 Commissioner, Aurora and NOLHGA have devoted material time to discussing and
13 addressing the technical calculations, adjustments and mechanics necessary to effect
14 distributions consistent with the Final Arbitration Decision, against the backdrop of the
15 distributions pursuant to the Provisional Article 17 Distribution Order. These cooperative
16 discussions have resulted in the Commissioner, Aurora and NOLHGA entering into an
17 Agreement Regarding Special AVI Distributions, a true and correct copy of which is
18 attached hereto as Exhibit A (the "Special AVI Agreement"), which sets forth the
19 calculations, adjustments and procedures they have deemed necessary or appropriate to
20 effect distributions consistent with the Final Arbitration Decision. In broad outline, the
21 Special AVI Agreement provides for the following:

22 A. The payment and crediting by Aurora of the Retained Major Settlement Funds
23 (net of funds needed for estate expenses) to the eligible Non-Opt Out Contract Holders
24 pursuant to Article 9 of the Rehabilitation Agreement and Articles 10 and 17 of the
25 Enhancement Agreement (subject to any right of the PGAs to receive any applicable
26 Reduction GA Amounts, Proceeds Reduction, Set-Aside Amount and the covered portion of
27 any Recovery Increments, as each such term is used in the Rehabilitation Agreement or
28

1 Enhancement Agreement, as applicable);³

2 B. The payment and crediting by Aurora of the net MAAF/Mallart Settlement
3 Funds pursuant to the Final Arbitration Decision and the Rehabilitation Plan;

4 C. The payment to Aurora on a time and materials basis of the cost to Aurora of
5 the current contemplated distributions (because this is an "extra" round of distributions
6 requiring special calculations and adjustments), which is estimated to be approximately
7 \$1.25 million; and

8 D. The indemnification of Aurora, its agents, contractors and subcontractors for
9 effecting the distributions pursuant to the Special AVI Agreement.

10 23. As part of the Motion, the Commissioner requests that he be authorized to
11 enter into the Special AVI Agreement and that the Commissioner and Aurora be authorized
12 to proceed with distributions (including payments and/or crediting) in accordance with such

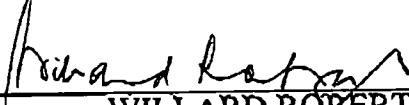
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15 ³In more technical terms, Sections 17.1.2.2.1 and 17.1.2.2.2 of the Enhancement
16 Agreement contain detailed provisions for, under specified circumstances, allocation of
17 distributions between the participating PGAs and Non-Opt Out Contract Holders based on
18 "covered" and "uncovered" percentages, and implement the effect of the assignment of the
19 PGAs' subrogation rights as to assets/proceeds to which Article 10 and Article 17 apply.
20 Those sections also incorporate other provisions of the Enhancement Agreement that pertain
21 to matters such as collection of "overloan balances," calculation and payment of "proceeds
22 reduction balances," and PGA collection of "set-aside" amounts. The Retained Major
23 Settlement Funds cannot simply be run through Sections 17.1.2.2.1 and 17.1.2.2.2 because
24 those sections would split the distribution between the "covered" and "uncovered"
25 percentages but, as the Court is aware, the distribution pertaining to the "uncovered"
26 percentage has already been effected via the Provisional Article 17 Distribution Order.
27 Accordingly, and as contemplated by the Provisional Article 17 Distribution Order, a "true
28 up" of the distribution mechanism in Sections 17.1.2.2.1 and 17.1.2.2.2 is necessary to
implement the distribution of the "covered percentage" pursuant, in light of the Final
Arbitration Decision, to Articles 10 and 17. The Special AVI Agreement specifies the
mechanism for implementing Sections 17.1.2.2.1 and 17.1.2.2.2 as to only the "covered
percentage" of the Retained Major Settlement Funds. The Special AVI Agreement also takes
into account the fact that the distribution of the "uncovered percentage" pursuant to the
Provisional Article 17 Distribution Order was based on the full \$418.4 million that the
Commissioner transferred to Aurora. Per the Provisional Article 17 Distribution Order, the
Commissioner subsequently paid the \$46.34 million "floor" amount to NOLHGA and
therefore that payment has to be accounted for. The Special AVI Agreement "trues up" each
Non-Opt Out Contract Holder's share of the Retained Major Settlement Funds for purposes
of Article 10 and Article 17 calculations by accounting for the payment of the "floor"
amount to NOLHGA.

1 Agreement.

2 24. Also as part of the Motion, the Commissioner requests that the foregoing
3 proposed distributions be subject to the "de minimis" exception described in Part III of the
4 Motion for the reasons stated in Part III of the Motion.

5 I declare under penalty of perjury under the laws of the United States of America
6 that the foregoing is true and correct to the best of my knowledge, information and belief,
7 and that this Declaration was executed in San Francisco, California, on June 1, 2007.

8 
9 _____
WILLARD ROBERTS

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WARD
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DEC. OF W. ROBERTS ISO MOT. OF COMM'R FOR ORDER APP.
DISTRIB. OF SPEC. ALTUS LIT. PROCEEDS PER FINAL ARB. DECISION

EXHIBIT A

AGREEMENT REGARDING SPECIAL AVI DISTRIBUTION

This Agreement (the "Agreement") Regarding Special AVI Distribution is entered into as of the ___th day of May, 2007, by and among Mr. Steve Poizner in his capacity as Insurance Commissioner of the State of California as conservator, rehabilitator and liquidator ("Rehabilitator") of Executive Life Insurance Company ("ELIC"), Aurora National Life Assurance Company ("Aurora"), the National Organization of Life & Health Insurance Guaranty Associations ("NOLHGA") on behalf of itself and the PGAs (as defined below), Reassure America Life Insurance Company, an Illinois domiciled life insurance company ("Reassure") and New California Life Holdings, Inc., a Delaware corporation ("Holdco").

RECITALS

A. The Rehabilitator, Aurora and Holdco are parties to that certain Amended and Restated Agreement of Purchase and Sale in Connection with the Rehabilitation of Executive Life Insurance Company dated as of August 7, 1991 (as supplemented and amended, the "Rehabilitation Agreement");

B. The Rehabilitator, Aurora, NOLHGA and certain state life and health insurance guaranty associations (each, a "Participating Guaranty Association" or "PGA") are parties to that certain Amended and Restated Enhancement Agreement dated as of December 5, 1991 (as supplemented and amended, the "Enhancement Agreement"). (Capitalized terms not otherwise defined herein shall have the meanings set forth in the Rehabilitation Agreement, or if not defined therein, the meanings set forth in the Enhancement Agreement, or if not defined therein, in the Provisional Article 17 Distribution Order (as defined below) or the Commissioner's January 19, 2006 Motion in Support of the Provisional Article 17 Distribution Order.)

C. Reassure has executed a Modified Coinsurance Agreement with Aurora, dated April 25, 2001 ("Coinsurance Agreement"), pursuant to which, among other things, it acts as a third party administrator for Aurora.

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D. Pursuant to the Conservation Court's order dated April 6, 2006 ("Provisional Article 17 Distribution Order"), the Commissioner distributed to Aurora the approximately \$66.1 million Artemis Settlement Fund Distribution Reserve, the approximately \$45 million Distributable Aurora Settlement Amount and the approximately \$295.5 million Distributable CDR Settlement Amount, plus accrued interest (the aggregate amounts so distributed to Aurora shall be referred to as the "Aggregate Settlement Amounts").

E. Pursuant to the Provisional Article 17 Distribution Order, Aurora made a distribution of approximately \$97.9 million on October 2, 2006 (the "2006 Distribution Date") to Non-Opt Out Contract Holders ("2006 AVI Distribution"), representing the portion of the Aggregate Settlement Amounts owing to Non-Opt Out Contract Holders pursuant to Sections 17.1.2.2.1(i) and 17.1.2.2.2(i) of the Enhancement Agreement, assuming the Aggregate Settlement Amounts were "Deemed Securities Proceeds."

F. Pursuant to the Provisional Article 17 Distribution Order, Aurora transferred to the Commissioner approximately \$324.4 million, representing the portion of the Aggregate Settlement Amounts that would have been payable to the Participating Guaranty Associations pursuant to Section 17.1.2.2.1(ii) and 17.1.2.2.2(i) of the Enhancement Agreement, assuming the Aggregate Settlement Amounts were "Deemed Securities Proceeds." Approximately \$46.3 million of the funds received by the Commissioner pursuant to the preceding sentence were distributed to NOLHGA pursuant to the May 13 Letter Agreement and the Provisional Article 17 Distribution Order. (The funds so received by the Commissioner, as reduced by the distribution to NOLHGA, including interest and earnings thereon through April 30, 2007, amount to approximately \$290 million in the aggregate. Such funds, as reduced by any applicable expenses of the Commissioner, and as increased by any interest or earnings prior to the date such amounts are transmitted to Aurora, shall be referred to as the "Remaining Settlement Amounts.")

G. The Rehabilitator has also received a payment of approximately \$25 million in the aggregate from MAAF Assurances S.A., of which approximately \$16.5 million is for the benefit of Non-Opt Out Contract Holders and the PGAs in accordance with the Rehabilitation Plan of ELIC (as defined in the Conservation Court Order dated August 13, 1993, and as subsequently amended, the "Rehabilitation Plan" or "Plan"), and a payment of approximately \$50,000 from the Mallart defendants representing settlements of additional litigation claims, of which approximately \$33,050 is for the benefit of Non Opt-Out Contract Holders and the PGAs in accordance with the Plan (such amounts, as increased by any earnings thereon and as reduced by the Commissioner's costs and expenses, shall be referred to as the "MAAF/Mallart Additional Litigation Funds").

H. The Rehabilitator and NOLHGA (on behalf of the PGAs) have engaged in arbitration to determine whether the funds comprising the Aggregate Settlement Amounts and the MAAF/Mallart Additional Litigation Funds are "Securities Proceeds" within the meaning of the Enhancement Agreement.

I. In an arbitration decision dated December 29, 2006 (as made final on April 23, 2007, the "Final Arbitration Decision"), it was determined that the funds comprising the Aggregate Settlement Amounts and the MAAF/Mallart Additional Litigation Funds were not "Securities Proceeds" under the Enhancement Agreement.

J. The Rehabilitator wishes to cause the distribution of the Remaining Settlement Amounts in a manner that is consistent with the Final Arbitration Decision, the 2006 AVI Distribution and the Plan and wishes to cause the distribution of the MAAF/Mallart Additional Litigation Funds as provided for in the Final Arbitration Decision and the Plan.

K. In order to (i) facilitate the intent and purposes of the Plan and the Final Arbitration Decision, and (ii) provide for the payment and crediting of the amounts described above, the Rehabilitator, NOLHGA and Aurora propose to modify the Plan to adopt the provisions set forth herein which set forth a process to determine the payment and

crediting and distribution of the Remaining Settlement Amounts and to provide for a de minimis payment exception as set forth herein.

AGREEMENTS

Accordingly, in consideration of the mutual promises, covenants, conditions and undertakings set forth herein, and other good and valuable consideration, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Distribution of Remaining Settlement Amounts. The Remaining Settlement Amounts shall be paid or credited pursuant to Article 9 of the Rehabilitation Agreement and Articles 10 and 17 of the Enhancement Agreement (subject to right of the Participating Guaranty Associations to receive any applicable Reduction GA Amounts, Proceeds Reduction, Set-Aside Amount and the Covered Percentage of any Recovery Increments). In order to implement the foregoing, the following procedure shall be conducted:

(a) Aurora shall calculate, for each Non-Opt Out Contract (excluding ELIC Restructured APWL and SPWL Contracts with respect to which a death benefit has been paid on or before the original August 23, 2006 eligibility date for the 2006 AVI Distribution), an amount equal to the portion of the Aggregate Settlement Amounts (based on the original Aggregate Settlement Amounts that formed the basis of the 2006 AVI Distribution) that would be allocated to such Contract pursuant to Section 9.4.1 of the Rehabilitation Agreement. For each such Contract, this amount shall be reduced (but not below zero) by the Overloan Balance (as of the 2006 Distribution Date), if any, with respect to such Contract. The aggregate amount of such reductions (i.e., the Recovery Increments) shall be reallocated among all such Contracts pursuant to Section 9.7.1 of the Rehabilitation Agreement. To the extent the allocation of Recovery Increments results in a positive allocation to a Contract with an Overloan Balance, the operations in the preceding two sentences shall be repeated until the collected Recovery Increments are inconsequential. For each such Contract, the product of (i) the amount resulting from the foregoing calculations

in this Section 1(a), times (ii) the Contract's Covered Percentage shall be referred to as the "Baseline Allocation" for each Contract).

(b) With respect to each Contract, an amount equal to the Recovery Increments allocated to such Contract pursuant to Section 1(a), multiplied by the Covered Percentage of such Contract, shall belong to the PGAs in accordance with Section 17.1.2.2.1(ii) of the Enhancement Agreement. On the Distribution Date (as defined in Section 1(i) below), Aurora shall pay such amounts plus interest at an annual interest rate of 4.19% from the 2006 Distribution Date through the Distribution Date (as defined in Section 1(i) below) to NOLHGA on behalf of the PGAs. The Baseline Allocation for each Contract shall be reduced by the amount so paid (excluding interest) to NOLHGA with respect to such Contract.

(c) The Proceeds Reduction for each such Contract shall be increased (as of the 2006 Distribution Date) by the Covered Percentage of the Overloan Balance that was collected from the Contract and reallocated to other Contracts pursuant to Section 1(a). On the Distribution Date (as defined in Section 1(i) below), Aurora shall pay to NOLHGA (on behalf of the PGAs) the amount of any Proceeds Reduction with respect to each such Contract as of the 2006 Distribution Date (but not in excess of the Baseline Allocation for such Contract, as calculated pursuant to Section 1(a) and (b)) plus interest at an annual interest rate of 4.19% from the 2006 Distribution Date through the Distribution Date. The Baseline Allocation for each Contract shall be reduced by the amount of Proceeds Reduction paid to NOLHGA pursuant to the preceding sentence (excluding interest).

(d) The "True-Up Eligible Contracts" shall consist of all Covered Non-Opt Out Contracts (excluding any APWL and SPWL Restructured Contracts with respect to which a death benefit was paid prior to the True-Up Eligibility Date). The "True-Up Eligibility Date" shall mean: June 23, 2007, but only if the Agreement Approval Order (as defined below) is entered by the Conservation Court on or prior to July 31, 2007. If the Agreement Approval Order is entered by the Conservation Court after July 31, 2007, the

"True-Up Eligibility Date" shall mean the last day of the calendar month which ends closest to the date which is ninety (90) days prior to the date Aurora has selected as the Distribution Date. "Agreement Approval Order" shall mean an order entered by the Conservation Court, reasonably acceptable to all parties hereto, approving the terms and conditions of this Agreement.

(e) The Commissioner shall transfer the Remaining Settlement Amounts to Aurora as soon as practicable after the Agreement Approval Order is entered by the Conservation Court (but no later than three (3) business days after such date). "Net Remaining Settlement Amounts" shall mean (i) the Remaining Settlement Amounts transferred to Aurora, plus (ii) interest on such Remaining Settlement Amounts calculated at the Average Yield on the Reference 5-Year Treasury Bond calculated as set forth below from the date such amounts are received by Aurora until the Distribution Date, and (iii) reduced by the aggregate amounts paid to NOLHGA (including interest) on behalf of the PGAs pursuant to Section 1(b) and Section 1(c) above. The Average Yield on the Reference 5-Year Treasury Bond for these purposes shall mean the arithmetic average of the offered yields on the 5-Year Treasury Bond as published in the Wall Street Journal during the thirty day period beginning on the day after the date on which the Commissioner transfers the Remaining Settlement Amounts to Aurora; provided, however, if the Agreement Approval Order is entered on or prior to July 31, 2007, such thirty day period shall begin no later than July 8, 2007.

(f) Aurora shall calculate a percentage (the "True-Up Percentage") for each True-Up Eligible Contract equal to (i) the Baseline Allocation for such True-Up Eligible Contract (after application of Section 1(a), Section 1(b) and Section 1(c) above), divided by (ii) the aggregate Baseline Allocations for all True-Up Eligible Contracts (after application of Section 1(a), Section 1(b) and Section 1(c) above).

(g) Aurora shall calculate, with respect to each True-Up Eligible Contract Holder, an amount ("Adjusted Subrogation Amount") equal to such True-Up Eligible Contract Holder's True-Up Percentage of the Net Remaining Settlement Amounts.

(h) Aurora shall pay or credit to each True-Up Eligible Contract Holder (subject to the \$2 "de minimis" exception described at Section 3 below) the amount (if any) that such True-Up Eligible Contract Holder is eligible to receive based on the assignment and application of the aggregate Adjusted Subrogation Amounts pursuant to Article 10 of the Enhancement Agreement (but subject to reduction for Set-Aside Amounts required to be collected pursuant to clause (y) of Section 17.1.2.2.2(iv) of the Enhancement Agreement). (For clarification, the Adjusted Subrogation Amount is not the amount that Contract Holders are eligible to receive; rather, the Adjusted Subrogation Amount is the amount that will be input into the Article 10 calculations on behalf of a Contract Holder.) On the Distribution Date, Aurora shall pay any such Set-Aside Amounts to NOLHGA for the benefit of the PGAs. For purposes of the computations described in this Section 1(h), the Allocable Percentages shall be calculated excluding any ELIC Restructured APWL and SPWL Contracts with respect to which a death benefit has been paid on or before the True-Up Eligibility Date.

(i) The "Distribution Date" shall be the date Aurora effects the payment or credit to True-Up Eligible Contract Holders pursuant to Section 1(h) above. Aurora shall use commercially reasonable efforts to cause the Distribution Date to occur as soon as reasonably practicable after the Commissioner transfers the Remaining Settlement Amounts and MAAF/Mallart Additional Litigation Funds to Aurora; provided, however, if the Agreement Approval Order is not entered on or prior to July 31, 2007, the parties acknowledge that the Distribution Date may be delayed significantly.

2. Distribution of MAAF/Mallart Additional Litigation Funds. The Commissioner shall transfer the MAAF/Mallart Additional Litigation Funds to Aurora as soon as practicable after the Agreement Approval Order is entered by the Conservation

Court (but no later than three (3) business days after such date). On the Distribution Date, Aurora shall pay or credit (subject to the \$2 "de minimis" exception described at Section 3 below) the MAAF/Mallart Additional Litigation Funds (plus interest thereon at the Average Yield on the Reference 5-Year Treasury Bond as determined in Section 1(e) above, from the date such amounts are received by Aurora until the date such amounts are paid or credited pursuant to this Agreement) to all Non-Opt Out Contract Holders (excluding any APWL and SPWL Restructured Contracts with respect to which a death benefit was paid prior to the True-Up Eligibility Date) in accordance with Article 9 of the Rehabilitation Agreement and Articles 10 and 17 of the Enhancement Agreement (subject to any Reduction GA Amounts, Proceeds Reductions, Set-Aside Amounts and the Covered Percentage of Recovery Increments due to the Participating Guaranty Associations pursuant to the Enhancement Agreement). On the Distribution Date, Aurora shall pay to NOLHGA, for the benefit of the PGAs, any such Reduction GA Amounts, Proceeds Reduction, Set Aside Amounts and the Covered Percentage of any Recovery Increments due to the PGAs with respect to the MAAF/Mallart Additional Litigation Funds.

3. De Minimis Payments. In order to provide that the cost of distribution to any Contract Holder does not exceed the amount to be distributed to such Contract Holder, checks shall not be issued pursuant to this Agreement to any Contract Holder if the amount of such check would be \$2.00 (two dollars) or less. Any such amounts that are not distributed shall be paid to ELIC and shall be retained as a general asset of the ELIC estate and no credit, account or future benefit with regard to such amount shall be maintained or provided by the Rehabilitator on behalf of any such Contract Holder. For the avoidance of doubt, the foregoing restriction shall not apply to any Contracts where the means of distribution is through an account credit or any other means that does not involve a check.

4. Acknowledgement With Respect to Payments to NOLHGA. NOLHGA acknowledges and agrees on behalf of the PGAs that any amounts paid by Aurora to NOLHGA on behalf of the PGAs pursuant to this Agreement shall be in lieu of credits that Aurora would otherwise be required to grant such PGAs on account of such amounts pursuant to the Enhancement Agreement.

5. Reimbursement and Indemnification.

(a) The Rehabilitator shall promptly reimburse Aurora and Reassure for all reasonable costs and expenses incurred in connection with the preparation, negotiation, execution and approval of this Agreement (including reasonable legal fees and expenses). In addition, the Rehabilitator shall reimburse Aurora and Reassure and their contractors and subcontractors for all costs and expenses related to the calculation, allocation, crediting or payment of the Remaining Settlement Amounts and MAAF Additional Litigation Funds, and all costs of performing under this Agreement, including, without limitation, any actions taken by Aurora or Reassure in connection with any calculations, payments, credits or distributions by Aurora or Reassure hereunder and any assistance provided to the Rehabilitator in the calculation, payment or crediting of the amounts payable or creditable to each Non-Opt Out Contract Holder or the amounts owing by the Rehabilitator to each PGA or other party hereunder, and any actions taken pursuant to Section 6(o), in each case in accordance with the terms of the Administrative Services Agreement or such other agreement as may be entered into by the parties.

(b) In accordance with the terms and provisions of the Administrative Services Agreement, ELIC shall reimburse, hold harmless, indemnify and defend Aurora, Reassure and their contractors and subcontractors and the other Indemnified Parties from and against any and all Indemnity Losses which pertain to, arise out of, or otherwise relate to actions taken by Aurora, Reassure and their contractors and subcontractors pursuant to this agreement and any claims or suits asserted by any Contract Holder or any other person or entity in respect of the amounts paid, credited or distributed under this Agreement, or in

respect of actions taken by Aurora, Reassure and their contractors or subcontractors, pursuant to this Agreement.

6. Miscellaneous.

(a) Each party hereto shall execute and deliver all letters, applications, certificates, endorsements, assignments and other documents as reasonably requested by any other party hereto in order to effect or carry out the provisions of this Agreement.

(b) All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the successors and assigns of the parties hereto and the PGAs.

(c) This Agreement is part of the Rehabilitation Plan.

(d) This Agreement shall be governed and construed in accordance with the laws of the State of California, without giving effect to the principles of conflicts of law thereof, provided that any matter relating to the authority, powers, obligations or rights of the PGAs as they relate to determining coverage and assessment issues under their respective Guaranty Association Acts shall be governed by the laws of the state of such PGAs.

(e) All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

(f) The recitals to this Agreement shall be deemed to be part of this Agreement.

(g) This Agreement may be executed in any number of counterparts and by facsimile transmission (including portable document format or similar electronic means), each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

(h) All references in the Rehabilitation Agreement, the Enhancement Agreement or in any of the Definitive Agreements to an agreement that is amended or

supplemented by this Agreement or to the Rehabilitation Plan shall be deemed to refer to such agreement or the Rehabilitation Plan as clarified, modified or supplemented by this Agreement. The parties intend that the Plan be modified to the extent provided herein solely to carry out the payment and crediting and distribution of the Remaining Settlement Amount and the MAAF/Mallart Additional Litigation Funds, but the parties intend that otherwise the Plan remains in full force and effect as written and that no party thereto waives or releases any rights thereunder. Without limiting the foregoing, the parties acknowledge and agree that Section 18.3 of the Enhancement Agreement is not being amended by this Agreement and remains in effect.

(i) This Agreement may be amended only in a writing signed by all the parties hereto. No waiver of any provision of this Agreement, nor consent to any departure therefrom shall be effective unless the same shall be in writing and signed by all of the parties hereto and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(j) The Rehabilitator is a party to this Agreement only in his capacity as Conservator, Rehabilitator and Liquidator of ELIC, and the parties hereto agree and acknowledge that the Rehabilitator shall not have any personal liability for any matters or obligations hereunder and further that the State of California is not a party and shall have no liability with respect hereto.

(k) For the purposes of establishing NOLHGA's authority to enter into this Agreement on behalf of the PGAs, NOLHGA hereby confirms that the NOLHGA ELIC Task Force has determined that (i) the Enhancement Agreement, as amended or supplemented herein, provides for substantially similar benefits to ELIC Contract Holders at substantially similar costs to the PGAs as a whole, (ii) the Closing Agreement and exhibits thereto, as amended and supplemented herein, provide for substantially the same liabilities and costs to the PGAs taken as a whole, and (iii) the Second Amended and Restated Modification to Rehabilitation Agreement and Certain Other Specified Agreements, dated as

of June 28, 1993, as amended and supplemented herein, provides for substantially the same liabilities and costs to the PGAs taken as a whole.

(l) Nothing in this Agreement shall limit, restrict or affect the PGAs' rights under Section 10.4 of the Enhancement Agreement.

(m) Reassure, by its execution hereof, consents to Aurora's execution of this Agreement and agrees to perform all services required of Aurora hereunder as a service provider on behalf of Aurora pursuant to the terms of the Coinsurance Agreement. The parties acknowledge and agree that, despite its execution of this Agreement, (i) Reassure is not a party to the Rehabilitation Plan, and that (ii) Reassure need not be a party to any amendment or modification to any Rehabilitation Plan document.

(n) In connection with any transfer of Remaining Settlement Amounts or MAAF/Mallart Additional Litigation Funds to Aurora, the Commissioner shall specify which funds are Remaining Settlement Amounts and which are MAAF/Mallart Additional Litigation Funds.

(o) Review and Testing.

(i) The Rehabilitator may, prior to the Distribution Date, at reasonable times and in a reasonable manner, review the plans, established processes and calculations prepared or used by Aurora, Reassure and their contractors and subcontractors for the distribution of the Remaining Settlement Amount and the MAAF/Mallart Additional Litigation Funds (each a "Distribution," and collectively, the "Distributions").

(ii) The Rehabilitator shall promptly advise Aurora and Reassure in writing, and in no event later than ten (10) business days before the Distribution Date, as to any matters related to the Distributions that the Rehabilitator believes require correction. In addition, the Rehabilitator may observe the mailing process on the Distribution Date. It is understood that changes in calculations or procedures as a consequence of the reviews provided for herein may delay the Distribution Date.

(iii) After the Distributions are made, the Rehabilitator may, at reasonable times and in a reasonable manner, review Aurora's records, provided, the Rehabilitator's post-Distribution review right pursuant to this Section 6(o) shall be limited solely to determining that amounts that were to be credited to the accounts of Non Opt-Out Contract Holders in connection with the Distributions were in fact so credited. Any such review that is conducted subsequent to the Distribution Date shall be concluded no later than 60 days after the Distribution Date.

(iv) All such reviews shall be at the Rehabilitator's sole cost and expense, and Aurora, Reassure and their contractors and subcontractors shall be compensated pursuant to the Administrative Services Agreement for all costs and expenses incurred by them in connection with any such review(s).

(p) The Rehabilitator shall use his best efforts to cause the Conservation Court to enter the Agreement Approval Order. If the Agreement Approval Order is not entered prior to December 31, 2007, then this Agreement shall terminate. If an appeal to the Agreement Approval Order is filed on a timely basis, the parties shall confer as to how to proceed; provided, however, any party hereto may terminate this Agreement by providing written notice of termination to the other parties hereto within twenty (20) days after such party receives written notice of the appeal. If this Agreement is terminated pursuant to this Section 6(p), (i) the Agreement shall be of no force and effect (other than Section 5 hereof and this Section 6(p), which shall remain in full force and effect), and (ii) Aurora shall transfer to the Rehabilitator, within three (3) business days after the date of termination, the Remaining Settlement Amounts and MAAF/Mallart Additional Litigation Funds, together with interest on such amounts at the Average Yield on the Reference 5-Year Treasury Bond as determined in Section 1(e) above, from the date that such amounts were paid to Aurora pursuant to Section 1(e) and 2 until the date that such amounts are paid to the Rehabilitator.

* * * * *

[SIGNATURE PAGE TO AGREEMENT REGARDING
SPECIAL AVI DISTRIBUTION]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers (or attorneys-in-fact) thereunto duly authorized (or appointed), as of the date first set forth above.

STEVE POIZNER, IN HIS CAPACITY
AS CONSERVATOR OF EXECUTIVE
LIFE INSURANCE COMPANY

AURORA NATIONAL LIFE
ASSURANCE COMPANY

By: David E. Wilson
David Wilson, Special Deputy Insurance
Commissioner and Chief Executive Officer
of the Conservation and Liquidation Office

By: _____
Its: _____

NATIONAL ORGANIZATION OF LIFE
AND HEALTH INSURANCE
GUARANTY ASSOCIATIONS

NEW CALIFORNIA LIFE HOLDINGS,
INC.

By: _____
Its: _____

By: _____
Its: _____

REASSURE AMERICA LIFE
INSURANCE COMPANY

By: _____
Its: _____

[SIGNATURE PAGE TO AGREEMENT REGARDING
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AS CONSERVATOR OF EXECUTIVE
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AURORA NATIONAL LIFE
ASSURANCE COMPANY

By: _____
David Wilson, Special Deputy Insurance
Commissioner and Chief Executive Officer
of the Conservation and Liquidation Office

By: _____
Its: _____

NATIONAL ORGANIZATION OF LIFE
AND HEALTH INSURANCE
GUARANTY ASSOCIATIONS

NEW CALIFORNIA LIFE HOLDINGS,
INC.

By: 
Its: Executive Vice President

By: _____
Its: _____

REASSURE AMERICA LIFE
INSURANCE COMPANY

By: _____
Its: _____

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LIFE INSURANCE COMPANY

AURORA NATIONAL LIFE
ASSURANCE COMPANY

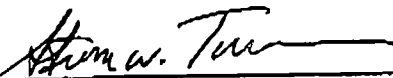
By: _____
David Wilson, Special Deputy Insurance
Commissioner and Chief Executive Officer
of the Conservation and Liquidation Office

By: 
Its: S.V.P.

NATIONAL ORGANIZATION OF LIFE
AND HEALTH INSURANCE
GUARANTY ASSOCIATIONS

NEW CALIFORNIA LIFE HOLDINGS,
INC.

By: _____
Its: _____

By: 
Its: CFO

REASSURE AMERICA LIFE
INSURANCE COMPANY

By: _____
Its: _____

1647964.12

[SIGNATURE PAGE TO AGREEMENT REGARDING
SPECIAL AVI DISTRIBUTION]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers (or attorneys-in-fact) thereunto duly authorized (or appointed), as of the date first set forth above.

STEVE POIZNER, IN HIS CAPACITY
AS CONSERVATOR OF EXECUTIVE
LIFE INSURANCE COMPANY

AURORA NATIONAL LIFE
ASSURANCE COMPANY

By: _____
David Wilson, Special Deputy Insurance
Commissioner and Chief Executive Officer
of the Conservation and Liquidation Office

By: _____
Its: _____

NATIONAL ORGANIZATION OF LIFE
AND HEALTH INSURANCE
GUARANTY ASSOCIATIONS

NEW CALIFORNIA LIFE HOLDINGS,
INC.

By: _____
Its: _____

By: _____
Its: _____

REASSURE AMERICA LIFE
INSURANCE COMPANY

By: *Alvin Stoll*
Its: *Vice President*

1047964.12

 COPY

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2 ETHAN P. SCHULMAN (Bar No. 112466)
3 HOWARD, RICE, NEMEROVSKI, CANADY,
4 FALK & RABKIN

5 A Professional Corporation
6 Three Embarcadero Center, 7th Floor
7 San Francisco, California 94111-4065
8 Telephone: 415/434-1600
9 Facsimile: 415/217-5910

REC'D

JUN 01 2007

FILING WINDOW

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

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES

 FAXED

16 INSURANCE COMMISSIONER OF THE
17 STATE OF CALIFORNIA,

No. BS 006912

Applicant,

v.

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

Respondents.

[PROPOSED] ORDER GRANTING
MOTION OF INSURANCE
COMMISSIONER OF THE STATE OF
CALIFORNIA FOR AN ORDER
APPROVING DISTRIBUTION OF
SPECIFIED ALTUS LITIGATION
PROCEEDS CONSISTENT WITH
FINAL ARBITRATION DECISION

Date: June 29, 2007

Time: 8:30 a.m.

Dep't: 36

[PROPOSED] ORDER APPROV. DISTRIB. OF SPECIFIED ALTUS LITIGATION PROCEEDS [ETC.]

1 This matter came before the above-captioned Court (the "Court") on the motion
2 (the "Motion"), dated May 31, 2007, of the Insurance Commissioner of the State of
3 California, in his capacity as conservator, rehabilitator and liquidator (the "Commissioner")
4 of Executive Life Insurance Company ("ELIC"), for an order approving the distribution of
5 specified Altus Litigation proceeds consistent with the Final Arbitration Decision. Jeffrey L.
6 Schaffer and Ethan P. Schulman of Howard Rice Nemerovski Canady Falk & Rabkin, A
7 Professional Corporation, appeared on behalf of the Commissioner at the hearing on the
8 Motion held by the Court on June 29, 2007 at 8:30 a.m. (the "Hearing"). Other appearances
9 at the Hearing were as noted on the record. The Court having considered the papers filed in
10 support of and in opposition or other response to the Motion, the statements and arguments
11 of counsel at the Hearing, and all pertinent pleadings filed with the Court; and all capitalized
12 words or terms not defined herein having the meanings ascribed to them in the Motion; and
13 due and proper notice of the Motion and the Hearing having been given; and the Court on
14 this date having issued its Judgment In Conformity With Final Arbitration Decision pursuant
15 to the Commissioner's Petition To Confirm Final Arbitration Decision dated May 31, 2007;
16 and after due deliberation and consideration, and based on the foregoing and good and
17 sufficient cause appearing therefor,

18 THE COURT HEREBY ORDERS AND ADJUDGES THAT:

- 19 1. The Motion is granted;
- 20 2. The Commissioner is authorized to take all actions necessary to proceed
21 with the distribution of the Altus Litigation proceeds specified in the Motion as set forth in
22 the Motion;
- 23 3. Without limiting the generality of paragraph 2 above, the Commissioner is
24 authorized to enter into the Special AVI Agreement with Aurora and NOLHGA, and the
25 Special AVI Agreement shall be binding upon the Commissioner and the ELIC estate;
- 26 4. Aurora is authorized to proceed with the performance of its obligations
27 under the Special AVI Agreement, including, without limitation, the distributions by way of
28 payments and creditings provided for thereunder; and

1 5. All distributions (whether by way of payments or creditings) provided for
2 under the Special AVI Agreement are hereby authorized and approved.

3
4 Dated: _____
5

6
7 HON. GREGORY ALARCON
JUDGE OF THE SUPERIOR COURT

8 W03 053107-155930001/W01/1391207
9
10
11
12

13 HOWARD
RICE
NEMERLOVSKI
CANADY
FALK
& RABKIN
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Attorneys for the Insurance Commissioner Of
 The State Of California in his capacity as
 Conservator, Rehabilitator and Liquidator of
 Executive Life Insurance Company


 **COPY**

CONFORMED COPY

OF ORIGINAL FILED
 Los Angeles Superior Court

JUN 01 2007

John A. Clarke, Executive Officer/Clerk

By  Deputy
 A. Hendrickson

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES

INSURANCE COMMISSIONER OF THE
 STATE OF CALIFORNIA,

Applicant,

v.

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

Respondents.

No. BS 006912

Date: June 29, 2007

Time: 8:30 a.m.

Dep't: 36

 **FAXED**

PROOF OF SERVICE REGARDING (1) NOTICE OF MOTION AND MOTION OF
 INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA FOR AN ORDER
 APPROVING DISTRIBUTION OF SPECIFIED ALTUS LITIGATION PROCEEDS
 CONSISTENT WITH FINAL ARBITRATION DECISION, AND SUPPORTING
 MEMORANDUM OF POINTS AND AUTHORITIES; (2) DECLARATION OF
 WILLARD ROBERTS IN SUPPORT OF MOTION OF INSURANCE COMMISSIONER
 OF THE STATE OF CALIFORNIA FOR AN ORDER APPROVING DISTRIBUTION OF
 SPECIFIED ALTUS LITIGATION PROCEEDS CONSISTENT WITH FINAL
 ARBITRATION DECISION, AND SUPPORTING MEMORANDUM OF POINTS AND
 AUTHORITIES; (3) [PROPOSED] ORDER GRANTING MOTION OF INSURANCE
 COMMISSIONER OF THE STATE OF CALIFORNIA FOR AN ORDER APPROVING
 DISTRIBUTION OF SPECIFIED ALTUS LITIGATION PROCEEDS CONSISTENT
 WITH FINAL ARBITRATION DECISION; (4) NOTICE OF HEARING ON PETITION
 AND PETITION BY INSURANCE COMMISSIONER OF THE STATE OF
 CALIFORNIA TO CONFIRM FINAL ARBITRATION DECISION; SUPPORTING
 MEMORANDUM OF POINTS AND AUTHORITIES; (5) PETITION BY INSURANCE
 COMMISSIONER OF THE STATE OF CALIFORNIA TO CONFIRM FINAL
 ARBITRATION DECISION; (6) [PROPOSED] JUDGMENT IN CONFORMITY WITH
 FINAL ARBITRATION DECISION

PROOF OF SERVICE

PROOF OF SERVICE

I, Kathryn A. Sakamoto, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is Three Embarcadero Center, Seventh Floor, San Francisco, California 94111-4024. On June 1, 2007, I served the following document(s) described as

NOTICE OF MOTION AND MOTION OF INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA FOR AN ORDER APPROVING DISTRIBUTION OF SPECIFIED ALTUS LITIGATION PROCEEDS CONSISTENT WITH FINAL ARBITRATION DECISION, AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES;

DECLARATION OF WILLARD ROBERTS IN SUPPORT OF MOTION OF INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA FOR AN ORDER APPROVING DISTRIBUTION OF SPECIFIED ALTUS LITIGATION PROCEEDS CONSISTENT WITH FINAL ARBITRATION DECISION, AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES;

[PROPOSED] ORDER GRANTING MOTION OF INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA FOR AN ORDER APPROVING DISTRIBUTION OF SPECIFIED ALTUS LITIGATION PROCEEDS CONSISTENT WITH FINAL ARBITRATION DECISION;

NOTICE OF HEARING ON PETITION AND PETITION BY INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA TO CONFIRM FINAL ARBITRATION DECISION; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES; [PROPOSED] JUDGMENT;

PETITION BY INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA TO CONFIRM FINAL ARBITRATION DECISION;

[PROPOSED] JUDGMENT IN CONFORMITY WITH FINAL ARBITRATION DECISION

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date.

☒ for listed parties with a "By US Mail" designation by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.

☒ for listed parties with a "By E-Mail" designation by transmitting via email the document(s) listed above to the email address(es) set forth below on this date before 5:00 p.m. P.S.T.

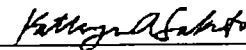
☒ for listed parties with a "By Federal Express" designation by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

PLEASE SEE ATTACHED LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on June 1, 2007.



Kathryn A. Sakamoto

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