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County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk
By: Stephanie Amador, Deputy
Stephanie Amador

1 KAMALA D. HARRIS
Attorney General of California
2 STEPHEN LEW
Supervising Deputy Attorney General
3 MATTHEW C. HEYN (State Bar No. 227474)
Deputy Attorneys General
4 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2444
Fax: (213) 897-5775
6 E-mail: Matthew.Heyn@doj.ca.gov

7 *Attorneys for Insurance Commissioner of the State
of California*

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11 CENTRAL CIVIL WEST COURTHOUSE

12 INSURANCE COMMISSIONER OF THE
13 STATE OF CALIFORNIA,

14 Applicant,

15 v.

16 SEECHANGE HEALTH INSURANCE
17 COMPANY,

18 Respondent.

Case No. BS152302
Assigned to Hon. Amy D. Hogue

INSURANCE COMMISSIONER'S
SECOND STATUS REPORT ON THE
LIQUIDATION OF SEECHANGE
HEALTH INSURANCE COMPANY AND
REQUEST FOR APPROVAL OF
LIQUIDATION COSTS; DECLARATION
OF JOSEPH HOLLOWAY

Status Conference

Date: April 29, 2016
Time 9:00 a.m.
Place: Central Civil West Courthouse
Department 307
600 South Commonwealth Avenue
Los Angeles, California 90005

Action Filed: November 18, 2014

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25
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27
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TABLE OF CONTENTS

	Page
I. Overview of the Liquidation Process.....	1
A. The Conservation Order and the Liquidation Order.....	1
B. Role of the Court and the Commissioner in the Liquidation Process.....	2
C. The Conservation & Liquidation Office	3
II. Liquidator’s Report of Activities in 2015	4
A. Completion of Wind-Down of SeeChange’s Activities.....	4
B. Guaranty Fund Payments	4
C. SeeChange Proof of Claim Process.....	5
D. December 31, 2015 Balance Sheet.....	6
III. Remaining Activities of Liquidator	7
IV. Request for Approval of Fees	8
V. Conclusion.....	11
DECLARATION OF JOSEPH HOLLOWAY	12

TABLE OF AUTHORITIES

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

Page

CASES

Carpenter v. Pacific Mut. Life Ins. Co.
(1937) 10 Cal.2d 3079

Commercial Nat. Bank v. Superior Court
(1993) 14 Cal.App.4th 3932

Gillespie v. California Standard Indemnity Co.
(1989) 212 Cal.App.3d 1351.....3

In re Executive Life Ins. Co.
(1995) 32 Cal.App.4th 3449

In re Title USA Corp.
(1996) 36 Cal.App.4th 3632

U.S. Dept. of Treasury v. Fabe
(1993) 508 U.S. 4918

STATUTES

California Insurance Code

§ 988.....1

§ 1010.....3

§ 1023.....6

§ 1024.....6

§ 1032.....2, 6

§ 1033 *passim*

§ 1035.....2, 3, 9

§ 1035.5.....8

§ 1036.....3, 9, 10

§ 1037.....3

§ 1057.....2

§ 1067.07.....4

Federal Affordable Care Act.....7

McCarran-Ferguson Act.....8

Uniform Insurers Rehabilitation Act.....2

31 United States Code

§ 3713.....8

1 **TO HON. AMY D. HOGUE, SEECCHANGE HEALTH INSURANCE COMPANY, AND**
2 **ALL OTHER INTERESTED PARTIES:**

3 The Insurance Commissioner of the State of California (the “**Commissioner**”), in his
4 capacity as the liquidator of SeeChange Health Insurance Company (“**SeeChange**”), hereby
5 submits the following status report setting forth, for the Court and all interested parties: (i) an
6 overview of the liquidation process, (ii) the actions taken by the Commissioner in his capacity as
7 liquidator of SeeChange (the “**Liquidator**”) to marshal assets of the estate, and (iii) anticipated
8 steps toward completing the orderly and efficient liquidation of SeeChange.

9 **I. OVERVIEW OF THE LIQUIDATION PROCESS**

10 **A. The Conservation Order and the Liquidation Order.**

11 SeeChange was a California domestic insurance company licensed to transact life, accident,
12 and health insurance. Its primary business was to provide value-based commercial group and
13 individual health coverage. SeeChange is wholly owned by SeeChange Health Management
14 Company, Inc., a Delaware corporation.

15 SeeChange was not profitable. It reported losses in 2012 and 2013, of \$19,345,256 and
16 \$37,766,179, respectively. On or about November 12, 2014, SeeChange filed its Quarterly
17 Statement with the Commissioner stating that, as of September 30, 2014, it had admitted assets of
18 \$23,357,058 and liabilities of \$22,149,297, with a reported paid-in capital and surplus of
19 \$1,207,761, which meant that SeeChange was “impaired” under the Insurance Code.¹ Based in
20 part on SeeChange’s impaired condition, on November 18, 2014, the Commissioner initiated this
21 case by filing a petition and application for appointment of a conservator. On November 19,
22 2014, the Court entered the *Stipulated Order Appointing Conservator and Restraining Order*,
23 which appointed the Commissioner as conservator of SeeChange.

24 On December 31, 2014, the Commissioner, acting as SeeChange’s conservator, filed his
25 *Notice of Application and Application for Liquidation Order and Supplemental Injunctive Relief*,

26 ¹ Insurance Code section 988 defines “impaired” as a “financial situation in which the
27 assets of an insurer are less than the sum of the insurer’s minimum required capital, minimum
28 required surplus and all liabilities as determined in accordance with the requirements for the
preparation and filing of the annual statement of an insurer.”

1 which attached evidence of SeeChange’s insolvency. On January 28, 2015, the Court granted the
2 application and entered the *Liquidation Order*. The *Liquidation Order* found that SeeChange was
3 insolvent and directed the Commissioner, as liquidator, “to liquidate and wind up the business of
4 SeeChange and to act in all ways and exercise all powers necessary for the purpose of carrying
5 out this Order and the liquidation provisions of the Insurance Code, Insurance Code sections 1010
6 *et seq.*” (Liquidation Order ¶ 1.)

7 **B. Role of the Court and the Commissioner in the Liquidation Process.**

8 Generally, sections 1010 through 1062 of the Insurance Code govern conservation and
9 liquidation proceedings against insurers domiciled in California.² Under these provisions, the
10 Commissioner has the power to operate, wind down, liquidate, and distribute the assets of an
11 insolvent insurer to ensure the “orderly and equitable distribution of the assets of an insolvent
12 insurer” to those entitled to share in those assets. (*In re Title USA Corp.* (1996) 36 Cal.App.4th
13 363, 372 [42 Cal.Rptr.2d 498].)

14 As the Liquidator, the Commissioner acts as a “trustee for the benefit of all creditors and
15 other persons interested in the estate of the person against whom the proceedings are pending.”
16 (Ins. Code, § 1057.) The Commissioner, as liquidator, is vested with “broad powers” to conduct
17 the liquidation process in the manner that he determines to be in the best interests of
18 policyholders and creditors. (*Commercial Nat. Bank v. Superior Court* (1993) 14 Cal.App.4th
19 393, 402 [17 Cal.Rptr.2d 884], as modified on denial of reh’g (Apr. 16, 1993).)

20 The Court also plays a vital role in the process. In addition to assisting the Liquidator in
21 enforcing the various injunctions set forth in the Liquidation Order (which injunctions were
22 specifically authorized by the Insurance Code), the Court:

- 23
- acts as the arbiter of disputed claims (Ins. Code, § 1032);
 - approves the compensation of deputies, clerks and assistants (Ins. Code, § 1035);
- 24

25

26 ² There are additional provisions elsewhere in the Insurance Code. For example,
27 California has adopted the Uniform Insurers Rehabilitation Act for insurers domiciled in other
28 states. (Ins. Code, §§ 1064.1-1064.12.)

- 1 • approves the compensation of outside counsel employed to assist in the liquidation
2 (Ins. Code, § 1036);
- 3 • may approve compromises of any claims by or against the insurance company (Ins.
4 Code, § 1037, subd. (c));
- 5 • authorizes the acquisition or disposition of property in excess of \$20,000 (Ins.
6 Code, § 1037, subd. (d)); and
- 7 • permits, under certain conditions, the investment of funds in excess of \$100,000
8 (Ins. Code, § 1037, subd. (g)).

9 Moreover, as the liquidation progresses, the Court may also be required to resolve collection
10 matters either by an order to show cause or by adversary complaint filed in this case. (See, e.g.,
11 *Gillespie v. California Standard Indemnity Co.*(1989) 212 Cal.App.3d 1351.) Finally, the
12 Liquidator may apply for authority or for orders designed to allow the efficient economic
13 liquidation of SeeChange. This Status Report aids the Court’s oversight of the Liquidator and
14 gives any interested parties an opportunity to raise any objections to the Liquidator’s proposed
15 course of action. This is the Liquidator’s second status report.

16 **C. The Conservation & Liquidation Office.**

17 In order to ensure an orderly liquidation, the Liquidator may employ people, use the
18 insurance company’s facilities, enter into contracts with vendors and professionals, and undertake
19 other operational activities necessary to marshal assets and pay claims. (See, e.g., Ins. Code., §
20 1035.) To fulfill his duties, the Liquidator uses the services of (i) the Commissioner’s
21 Conservation and Liquidation Office (“CLO”), (ii) certain former employees of SeeChange, (iii)
22 specialized vendors, contractors, and consultants, and (iv) a number of professionals (including
23 outside counsel). The CLO is an administrative service entity created by the Commissioner to
24 administer the estates of insurers undergoing conservation or liquidation in California. Upon
25 obtaining a conservation or liquidation order, the Commissioner generally delegates his statutory
26 administrative duties over the insurer to the CLO and/or to special deputy insurance
27 commissioners, pursuant to section 1035 of the Insurance Code. The CLO now performs any
28 necessary functions for the liquidation of SeeChange on behalf of the Liquidator.

1 **II. LIQUIDATOR’S REPORT OF ACTIVITIES IN 2015**

2 **A. Completion of Wind-Down of SeeChange’s Activities.**

3 SeeChange’s home office was located in Calabasas, California. The Liquidator entered
4 into a settlement agreement with SeeChange’s Calabasas landlord to allow SeeChange to remain
5 in its offices from the liquidation date through June 30, 2015. Under the settlement agreement the
6 landlord waived filing a proof of claim against the estate in exchange for the landlord retaining
7 SeeChange’s security deposit for lease of the premises. In June of 2015, the Liquidator closed
8 SeeChange’s Calabasas home office and transferred all operational functions to the CLO’s
9 headquarters in San Francisco.

10 **B. Guaranty Fund Payments.**

11 For several months prior to the filing of this case, SeeChange had been notifying its
12 policyholders that the company would cease issuing new or renewal insurance policies.
13 SeeChange’s management, working under the regulatory supervision of the Department of
14 Insurance, implemented an orderly transition of all of SeeChange’s in-force insurance business to
15 other insurance carriers. Effective January 1, 2015, SeeChange had no policies in force.

16 The cancellation or transition of SeeChange’s in-force business left only pending policy
17 claims at the date of the Liquidation Order. Once the Court entered its Liquidation Order with a
18 finding that SeeChange was insolvent, the individual statewide life and health insurance guaranty
19 associations (the “**Guaranty Associations**”) were obligated to pay the claims of SeeChange’s
20 policyholders. (See, e.g., Ins. Code, § 1067.07(b).) The Liquidator coordinates with the
21 Guaranty Associations through the National Organization of Life and Health Insurance Guaranty
22 Associations (“**NOLGHA**”). After the Court entered its Liquidation Order, the Liquidator
23 worked to transition all claims to be administered by NOLGHA and paid by the specific state
24 Guaranty Association. As a result of paying the claims, the Guaranty Associations subrogate to
25 the policyholders’ rights against SeeChange. Generally, these subrogated claims receive priority
26 treatment, subordinate only to expenses of administration of the liquidation. (Ins. Code § 1033,
27 subd. (a).)

1 The Commissioner is informed that the Guaranty Associations in the following states paid
2 a total of \$19,425,195 from the date of liquidation through December 31, 2015:

3	Arizona	16,306
4	California	17,267,669
5	Colorado	1,953,751
6	Florida	4,806
7	Idaho	2,364
8	Illinois	19,295
9	Indiana	30,560
10	Iowa	479
11	Kansas	3,229
12	Kentucky	185
13	Maryland	3,520
14	Michigan	4,264
15	Missouri	119
16	Nebraska	960
17	Nevada	10,176
18	North Dakota	213
19	Ohio	53
20	Oklahoma	8,395
21	Tennessee	1,116
22	Virginia	5,547
23	Wisconsin	<u>92,278</u>
24	Total	<u>\$19,425,195</u>

25
26 **C. SeeChange Proof of Claim Process.**

27 The Liquidation Order provides that “ The rights and liabilities of claimants, policyholders,
28 shareholders, members and all other persons interested in the assets of SeeChange are fixed as of

1 the date of entry of this Order.” (Liquidation Order, ¶ 28.) It also provides that any party with
2 rights against SeeChange may assert those rights only through a proof of claim:

3
4 Any and all claims against SeeChange – including without limitation those
5 claims which in any way affect or seek to affect any of the assets of SeeChange,
6 wherever or however such assets may be owned or held – must be filed no later
7 than December 31, 2015 (the “Claims Bar Date”) in accordance with the
8 provisions of Insurance Code sections 1010 et seq. (including without limitation
9 Insurance Code section 1023). **The claim must be timely filed on the form
10 provided by the Liquidator, together with proper proofs thereof, and must
11 be supplemented with 1023(f).** As provided in Insurance Code section 1024,
12 any claims not filed by the Claims Bar Date shall be conclusively deemed forever
13 waived and no action may be maintained thereon.

14 (Liquidation Order ¶ 29.)

15 The Court established December 31, 2015 as a bar date for proofs of claim. The Liquidator
16 mailed 3,113 proofs of claim to policyholders, providers, brokers, employees and other creditors.
17 The notice of the bar date was also published in three California newspapers shortly after the
18 Court issued the Liquidation Order. Proof of service of the notices to creditors was filed with the
19 Court. In response to the notice, 154 creditors executed and returned proofs of claim. The total
20 asserted value of the returned proofs of claim is \$28,911,183.42. This amount includes claims
21 filed by the Guaranty Associations based on the amount of policyholder claims that have been
22 statutorily funded. All filed proofs of claim are in the process of being adjudicated by the
23 Liquidator. Parties who are dissatisfied with the adjudication of their claims may seek relief from
24 this Court under section 1032. However, it is not anticipated that there will be any distributions
25 beyond payment to priority creditors (which are, primarily, the Guaranty Associations).

26 ///

27 ///

28 ///

1 **D. December 31, 2015 Balance Sheet.**

2 The following is the December 31, 2015 balance sheet prepared by the Liquidator and
3 currently subject to routine audit by the California Department of Finance:

4 **641 SeeChange Ins. Co.**

5 **STATEMENT OF ASSETS AND LIABILITIES**
6 **As of December 31, 2015**

7 (unaudited)³

8 **ASSETS**

9 Cash and cash equivalents:

10 Unrestricted	52,886
11 Participation in pooled investments, at market	7,122,602
Accrued investment income	19,079
Recoverable from reinsurers, net of allowances	1,182,586
Other receivable	<u>78,347</u>

12 Total ASSETS 8,455,499

13 **LIABILITIES**

14 Claims against policies, including guaranty
15 associations (Class 2) 19,631,769
16 All other claims (Class 7) 4,565,424

17 Total LIABILITIES 24,197,193

18 NET ASSETS (DEFICIENCY) (15,741,693)

19 **III. REMAINING ACTIVITIES OF LIQUIDATOR**

20 The Liquidator continues to bill and collect reinsurance from SeeChange's reinsurers in
21 accordance with their contracts. All reinsurance claims must be submitted for reimbursement by
22 April 30, 2016 in accordance with the requirements of the contracts. The Liquidator believes,
23 with the contingency noted below, that the SeeChange insolvency *can* be closed in 2017. The
24 main two activities over the next twelve months will be the determination of valid proofs of claim
25 and the final billing of reinsurance and collection. Once these items can be completed, a plan to
26 disburse assets and a closing budget for the estate can be determined.

27 _____
28 ³ Numbers do not add up precisely due to rounding.

1 The major challenge facing the estate is the adjudication of the claim from the Centers for
2 Medicare and Medicaid Services (“**CMS**”). The claim (over \$4 million) is based on the Risk
3 Adjustment Program and Transitional Reinsurance requirements under the Federal Affordable
4 Care Act (“**ACA**”). CMS asserted its claim as a priority claim under the Federal Priority Statute,
5 31 U.S.C. § 3713,⁴ and asserts that such claims are entitled to first-priority treatment. The
6 Liquidator is currently investigating the claim and determining whether the Federal Priority
7 Statute would give the claim priority. The issue of the priority of the claim, and whether the
8 Federal Priority Statute applies in this proceeding (in light of the McCarran-Ferguson Act)⁵, may
9 have to be resolved by this Court (or a Federal court). The timing of the Liquidator’s proposal to
10 distribute assets under Insurance Code section 1035.5 is totally dependent upon the resolution of
11 this claim priority.

12 13 **IV. REQUEST FOR APPROVAL OF FEES**

14 In the process of administering the liquidation of SeeChange, the Liquidator incurred costs
15 in the total amount of \$1,451,596 from January 1, 2015 through December 31, 2015. The chart
16 that follows is an accounting of all costs incurred by the Liquidator in that time period.

17
18
19
20 ⁴ 31 U.S.C. § 3713(a)(1) provides:

- 21 (1) A claim of the United States Government shall be paid first when—
22 (A) a person indebted to the Government is insolvent and—
23 (i) the debtor without enough property to pay all debts makes a voluntary
24 assignment of property;
25 (ii) property of the debtor, if absent, is attached; or
26 (iii) an act of bankruptcy is committed; or
27 (B) the estate of a deceased debtor, in the custody of the executor or
28 administrator, is not enough to pay all debts of the debtor.

26 ⁵ In *U.S. Dept. of Treasury v. Fabe* (1993) 508 U.S. 491, the Supreme Court held that the
27 Federal Priority Statute was reverse-preempted in insurance insolvency proceedings to the extent
28 (as is the case here) a state’s insurance insolvency law gave priority to a liquidator’s
administrative claims and the claims of policyholders.

	Fees and Expense as of Date of Liquidation	Outside Attorney Fees and Professional Fees	DOI Legal and DOJ Legal	Administrative Office Expense	Allocated Expenses/CLO Direct Hours	Total Expenses by Month
January 2015	\$ 54,337	\$ 7,395	\$ 851	\$ 37,663	\$ 100,246 ⁶	
February 2015	\$ 103,564	\$ 12,524	\$ 2,341	\$ 37,060	\$ 155,489	
March 2015	\$ 27,992	\$ -	\$ 9,579	\$ 80,473	\$ 118,043	
April 2015	\$ 202,494	\$ 5,744	\$ 39,286	\$ 66,058	\$ 313,583	
May 2015	\$ 169,220	\$ 14,064	\$ 13,657	\$ 59,044	\$ 255,985	
June 2015	\$ 67,651	\$ 1,016	\$ 6,715	\$ 52,616	\$ 127,998	
July 2015	\$ 1,033	\$ 758	\$ 3,053	\$ 39,642	\$ 44,486	
August 2015	\$ 71,089	\$ -	\$ 22,138	\$ 34,487	\$ 127,714	
Sept. 2015	\$ 33,448	\$ 3,545	\$ 4,834	\$ 26,985	\$ 68,812	
October 2015	\$ 358	\$ 248	\$ 3,522	\$ 19,196	\$ 23,322	
Nov. 2015	\$ 113	\$ -	\$ 3,353	\$ 15,700	\$ 19,165	
Dec. 2015	\$ 64,790	\$ 554	\$ 10	\$ 31,401	\$ 96,755	
Total Expense by Service⁷	\$ 796,088	\$ 45,847	\$ 109,338	\$ 500,323	\$ 1,451,596	

As noted above, Insurance Code section 1035 authorizes the Liquidator to employ the CLO, professionals, and others to handle the business of the insolvent insurers during liquidation. Section 1035 also authorizes the Liquidator to be reimbursed for all administration costs from the assets of the estate:

The costs of employing special deputy commissioners, clerks, and assistants appointed to carry out this article, and all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of that person under this article, shall be fixed by the

⁶ Certain of the expenses in January 2015, were incurred prior to the date of the Liquidation Order by the Commissioner in his capacity as Conservator of SeeChange. These fees and costs are approved and paid under the same standard as the other liquidation expenses.

⁷ Numbers do not add up precisely due to rounding.

1 commissioner, subject to the approval of the court, and shall be paid out of the
2 assets of that person to the department.

3 (Ins. Code, § 1035, subd. (a).) Insurance Code section 1036 similarly authorizes the Liquidator to
4 compensate legal counsel with the Court's approval.

5 The Liquidator is vested with substantial discretion to conduct the liquidation of an
6 insolvent insurer subject to the limitation "that the exercise of discretion be neither arbitrary nor
7 improperly discriminatory." (See *In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 356
8 [citing *Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal.2d 307, 329].) His decisions to pay
9 administrative expenses in the ordinary course of business are reviewed by the Court on an abuse
10 of discretion standard. (*In re Executive Life, supra*, 32 Cal.App.4th at 358.)

11 The Commissioner is a public officer designated as the steward for the funds of
12 the insolvent insurer whose estate he or she administers. The Commissioner's
13 initial determination necessarily requires adequately detailed information
14 describing the work performed, by whom it was performed, the time spent and
15 when it was spent, and the rate and amount billed, unless an approved contract
specifies a different basis of compensation. ... The Commissioner should possess
sufficient information to be able to determine from the billings any excessive or
duplicative charges, and seek clarification and correction where appropriate

16 To obtain court approval for payment of the fees deemed appropriate, the
17 Commissioner must supply the court with adequate information to permit
18 intelligent evaluation of the basis for the Commissioner's determination. The
19 court must be satisfied that the Commissioner has performed his duty to protect
20 the interests of the estate. It is not required by statute, nor is it practical, for the
court to undertake a detailed review of the invoices before approving payment.
The Commissioner must, however, be ready to provide whatever documentation
the court may find necessary in determining the propriety of the Commissioner's
request that payment be approved.

21 (*Id.* [affirming the trial court's approval of payment of legal fees under Insurance Code section
22 1036].)

23 The standards for approval of the fees and costs have been met. The professionals
24 employed for the liquidation of SeeChange provided the Liquidator invoices that describe in
25 detail the tasks performed, the person who performed the work, and the time expended on each
26 task. Invoices are reviewed by the Liquidator's staff who are familiar with the work performed
27 and are approved for payment only to the extent they comply with CLO guidelines and are
28 reasonable, necessary, accurate and appropriate. As described in the attached Declaration of

1 Joseph Holloway submitted herewith, through his staff, the Liquidator carefully managed all fees
2 and expenses to ensure that they were reasonable and necessary considering the circumstances
3 and exigencies of this case. Accordingly, the Liquidator respectfully requests that the Court
4 approve the payment of the fees and expenses.


5 **V. CONCLUSION**

6 Consistent with his obligations and the authority set forth under the Liquidation Order, the
7 Liquidator is conducting a diligent and efficient liquidation of SeeChange. Thus, based on this
8 Report, the Liquidator respectfully requests that the Court enter the proposed order served and
9 lodged concurrently herewith, approve the fees and costs described herein, and set a continued
10 status conference to take place in approximately 12 months.

11 Dated: March 29, 2016

Respectfully Submitted,

12 KAMALA D. HARRIS
13 Attorney General of California
14 STEPHEN LEW
15 Senior Assistant Attorney General

16 
17 _____
18 MATTHEW C. HEYN
19 Deputy Attorney General
20 *Attorneys for Insurance Commissioner of the*
21 *State of California*
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DECLARATION OF JOSEPH HOLLOWAY

I, Joseph Holloway, hereby declare as follows:

1. I am over 18 years old. I have personal, first-hand knowledge of the facts set forth in this declaration. If called upon to testify to the facts below, I could and would competently do so. I make this declaration in support of the *Insurance Commissioner's Second Status Report on the Liquidation of SeeChange Health Insurance Company and Request for Approval of Liquidation Costs* (the "**Second Liquidation Report**").

2. In Paragraph 3 of its *Liquidation Order* entered on January 28, 2015 (the "**Liquidation Order**"), the Court appointed Insurance Commissioner Dave Jones to serve as Liquidator of SeeChange Health Insurance Company ("**SeeChange**"). In that paragraph the Court appointed me to serve as the on-site Liquidation Manager for SeeChange. I also served as the on-site Conservation Manager for SeeChange from November 19, 2014 through January 28, 2015.

3. I have a Bachelor of Arts degree in accounting from North Carolina State University and hold the designation of Certified Financial Examiner from the Society of Financial Examiners. From 1985 to 2005, I worked as an examiner, regulatory specialist, and chief forensic accountant for the North Carolina Department of Insurance. Since 2005, I have worked for the Insurance Commissioner's Conservation & Liquidation Office. I have over 25 years of experience working with insurance companies experiencing financial difficulties, including companies in supervision, conservation, rehabilitation, and liquidation.

4. As a result of my appointment as Liquidation Manager of SeeChange, I am knowledgeable concerning all of the steps taken by SeeChange and by the Liquidator to take possession of and manage SeeChange's assets and records, and otherwise to manage SeeChange in liquidation.

5. I have read the foregoing Second Liquidation Report and I believe that the facts set forth in the report are true.

1 6. Through his staff, the Liquidator prepared a statutory-basis balance sheet for
2 SeeChange for December 31, 2015. I supervised the preparation of the balance sheet and I
3 believe it is accurate. The balance sheet is accurately reproduced in the foregoing Second
4 Liquidation Report.

5 7. Pursuant to the authority vested in the Liquidator by the Liquidation Order, the
6 Liquidator retained professionals and incurred expenses necessary to allow him to perform all of
7 his duties and obligations. An accurate monthly breakdown of all fees and expenses that the
8 Liquidator paid during 2015 is included in the foregoing Second Liquidation Report.

9 8. Through his staff, the Liquidator carefully managed and reviewed all expenses and
10 fees incurred. He approved fees and expenses only when they were reasonable and proper
11 considering the circumstances and exigencies of SeeChange's liquidation. If the Court
12 determines that it is necessary, I am ready to provide whatever documentation the Court may
13 find necessary in determining the propriety of the fees and expenses paid.

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

16
17 Date: *March 29, 2016*

Joseph Holloway
Joseph Holloway

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19 LA2014512962

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