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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MERCED

11
12 **INSURANCE COMMISSIONER OF THE**
13 **STATE OF CALIFORNIA,**

14 Applicant,

15 v.

16 **MERCED PROPERTY & CASUALTY**
17 **COMPANY, a California Corporation,**

18 Respondent.

Exempt from Filing Fees --
Gov. Code § 6103

Case No. 18CV-04739

**NOTICE OF APPLICATION AND
APPLICATION FOR ORDER
APPROVING LIQUIDATOR'S 1)
PAYMENT OF ADMINISTRATIVE AND
PROFESSIONAL FEES AND EXPENSES
FOR THE PERIOD OF MAY 1, 2021 TO
OCTOBER 31, 2022, AND 2) SECOND
INTERIM DISBURSEMENT OF
MERCED ASSETS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[FILED CONCURRENTLY WITH:

**1) DECLARATION OF SCOTT PEARCE;
AND**

2) INDEX OF EXHIBITS/EXHIBITS]

Date: February 23, 2023
Time: 8:15 a.m.
Dept: 8
Judge: The Honorable Brian McCabe
Action Filed: November 30, 2018

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 23, 2023, at 8:15 a.m., or as soon thereafter as the matter may be heard in Department 8 of the Superior Court of the State of California, Merced County, 627 W. 21st Street, Merced, California, 95340, applicant Insurance Commissioner of the State of California in his capacity as the Liquidator of Merced Property & Casualty Company (Merced), will and hereby does apply to the court for an order approving the Commissioner's 1) payment of administrative and professional fees and expenses for the period of May 1, 2021, to October 31, 2022, in the amount of \$661,591 and 2) disbursement of \$2,371,890 to the California Insurance Guarantee Association (CIGA) and \$1,259,064 to Merced policyholders for approved claims.

This application is made under Insurance Code sections 1035, 1035.5, 1036 and 1037 on the grounds that the Commissioner, as Liquidator, is authorized to pay the salaries and expenses necessary to carry out the functions of an insolvent insurer and to employ and compensate legal counsel to transact estate business, and is authorized to disburse assets to CIGA and Merced policyholders as necessary to successfully liquidate Merced.

This application is based on this notice, the accompanying memorandum of points and authorities in support thereof, the declaration of Scott Pearce filed concurrently with this application, the index of exhibits and exhibits filed concurrently with this application, the third status report of the Commissioner on the liquidation of Merced filed concurrently with this application, and such additional evidence and argument as may be offered at the time of the hearing on the application.

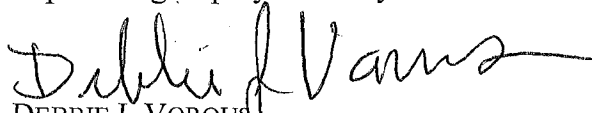
Pursuant to Local Rule 3.1 (F), the Court may issue a tentative ruling before the scheduled hearing date. Tentative rulings will be made available by telephone at 209-725-4240 and by posting on the Court's website at www.mercedcourts.ca.gov no later than 3:00 p.m. on the Court day preceding the scheduled hearing. If the Court has not directed argument in the tentative ruling, oral argument is permitted only if a party intending to appear notifies all other parties by telephone or in person by 4:00 p.m. on the Court day before the hearing of the party's intention to appear. A party also must notify the Court by telephone of the party's intention to appear by

1 calling 209-725-4240 by 4:00 p.m. on the Court day before the hearing. The tentative ruling will
2 become the ruling of the Court if the Court has not directed oral argument by its tentative ruling
3 and notice of intent to appear has not been given.

4 Dated: January 26, 2023

Respectfully submitted,

5 ROB BONTA
6 Attorney General of California
7 CRAIG RUST
8 Supervising Deputy Attorney General

9 
10 DEBBIE J. VOROUS
11 Deputy Attorney General
12 *Attorneys for Applicant Insurance*
13 *Commissioner of the State of California*

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1 **APPLICATION FOR APPROVAL OF FEES AND EXPENSES AND FOR SECOND,**
2 **INTERIM DISBURSEMENT OF ASSETS TO THE CALIFORNIA INSURANCE**
3 **GUARANTEE ASSOCIATION AND TO CERTAIN MERCED POLICYHOLDERS**

4 **INTRODUCTION**

5 In mid-November 2018, after severe wildfire losses resulting from the Camp Fire in Butte
6 County, California, Merced Property & Casualty Company (Merced) was rendered statutorily
7 insolvent. On December 3, 2018, the court issued an order appointing the Commissioner as
8 Liquidator of the Merced estate.

9 The Commissioner has submitted two prior applications to approve the payment of the
10 Merced estate's fees and expenses, and an application to make an interim disbursement of Merced
11 assets to the California Insurance Guarantee Association (CIGA) and to Merced policyholders for
12 payment of approved claims that developed in excess of the \$500,000 statutory limit of CIGA's
13 coverage. The court approved the Commissioner's applications.

14 This application is for the approval of fees and expenses from May 1, 2021, through
15 October 31, 2022 (Reporting Period). In addition, the Commissioner seeks approval to make a
16 second, interim disbursement of Merced assets to CIGA and to Merced policyholders for payment
17 of approved claims. The Commissioner has filed this application concurrently with his third status
18 report on the liquidation of Merced.

19 Under Insurance Code section 1035, the Commissioner is authorized to pay the expenses
20 necessary to carry out the functions of the management of an insolvent estate. Section 1036
21 further authorizes the Commissioner to employ and compensate legal counsel to represent him in
22 this action. The Commissioner seeks approval of administrative and professional fees and
23 expenses paid by the Merced estate for the Reporting Period in the total amount of \$661,591.

24 Insurance Code sections 1035.5 and 1037 authorize the Commissioner to disburse assets to
25 CIGA and to Merced policyholders for approved claims. The Commissioner seeks an order
26 authorizing a disbursement of \$2,371,890 to CIGA and \$1,259,064 to Merced policyholders for
27 approved claims, for a total disbursement of Merced estate assets of \$3,630,954.

28 The application should be approved.

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1 **ADMINISTRATIVE AND OPERATING FEES AND EXPENSES**

2 The Merced estate's fees and expenses, which total \$661,591, fall into two broad
3 categories: 1) \$503,634 for the Conservation and Liquidation Office's (CLO) allocated
4 administrative operating fees; and 2) \$157,957 for direct estate operating expenses (which include
5 estate fees and expenses of \$112,687 and legal fees and expenses of \$45,270). (Declaration of
6 Scott Pearce Supp. Applic. for Pymt of Fees and Expenses & Second Interim Disbursement of
7 Merced Assets (Pearce Decl.), ¶¶ 6 & 8; Index of Exhibits Supp. Applic. for Pymt of Fees and
8 Expenses & Second Interim Disbursement of Merced Assets (Index), Ex. A [Summary of Merced
9 Administrative Expenses].)

10 **I. CLO ALLOCATED ADMINISTRATIVE FEES**

11 As explained in the Commissioner's prior applications, CLO's allocated administrative fees
12 are overhead costs that it incurs for rent, salaries, email and data systems, etc., which it allocates
13 to each conservation or liquidation estate under its management and oversight on a pro rata basis.
14 (Pearce Decl. ¶ 9.) The CLO is comprised of insurance insolvency professionals who oversee the
15 liquidation of troubled insurance companies, and who provide administrative services directly to
16 each estate under its management and oversight. (*Ibid.*)

17 Each conservation or liquidation estate is charged a portion of the monthly allocated costs
18 based on the amount of time that CLO employees worked on estate matters. (Pearce Decl.,
19 ¶ 10.) To track the hours and costs, CLO maintains a timekeeping system in which each employee
20 records time spent for work on each estate, and the estate trust manager reviews the records to
21 ensure that the hours are accurate and billed to the correct estate. (*Ibid.*)

22 During the Reporting Period, the Merced estate incurred 2,313 direct hours out of 40,846
23 total CLO hours (or 5.66 percent) of the total direct hours of all insolvent insurer estates. (Pearce
24 Decl., ¶ 11; Index, Ex. B [summary of CLO overall direct hours & Merced hours].) Merced's
25 portion of the allocated costs for the Reporting Period based on 2,313 direct hours was \$503,634.
26 (Pearce Decl., ¶ 11; Index, Exs. A & B.) CLO allocated hours and costs for the Merced estate
27 were spread between five CLO departments:

28 ///

Departments	Total No. of Hours	Total Fees by Dept.
Estate Trust & Executive	1,175	\$ 255,734
Claims	544	\$ 120,321
Information Technology	20	\$ 4,234
Finance & Accounting	553	\$ 118,440
Reinsurance	22	\$ 4,905
Total	2,314	\$ 503,634

(Pearce Decl., ¶¶ 12-26; Index, Ex. C [CLO Total Incurred Hours and Total Fees.]

A. Estate Trust & Executive Department

A key milestone for the Estate Trust & Executive (Executive) Department during the Reporting Period was to sell the Merced home office building and adjacent vacant land in Atwater, California. (Pearce Decl., ¶ 13.) The Executive Department led the effort to locate a qualified buyer and negotiate an arms-length transaction at a fair market value. (*Ibid.*) The Merced estate closed the sale in May of 2022 and recovered approximately \$1,500,000 after customary costs of sale. (Pearce Decl., ¶ 13; see Order Approving Sale of Merced Real Property to Homen Properties, LLC, filed May 16, 2022, at p. 2.)

The Executive Department also continued to actively work to advance the liquidation of the Merced estate in a manner that complied with federal and state audit and tax requirements, including to direct the estate's periodic reporting as well as support the preparation of its monthly financial records. (Pearce Decl., ¶ 14.) Additionally, the Executive Department (along with CLO's Accounting Department) started discussions with Merced's parent entity to confer on what steps would be necessary to close the estate and return any surplus assets to the entity. (*Ibid.*)

In October 2021, the court approved the Commissioner's request to make an interim disbursement of \$3,563,938 in Merced assets to 33 Class 2 Merced policyholders with "over-cap" claims (claims that develop in excess of the \$500,000 statutory limit of CIGA's coverage). (Ins. Code, §§ 1063.1, subd. (c)(7)(A); 1063.2 [CIGA is statutorily obligated to pay and discharge

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1 “covered claims” of insolvent insurers up to \$500,000]; Oct. 26, 2021 Order, p. 2.)¹ The
 2 Commissioner paid the claims in December 2021. (Pearce Decl., ¶ 15.) Thirty-two of the 33
 3 “over-cap” claims are Camp Fire related. (*Ibid.*) One payment of \$126,444 made toward an
 4 “over-cap” Camp Fire-related claim was not cashed and remains unpaid. (Pearce Decl., ¶ 15; see
 5 Index, Ex. E [POC 834234 (28th entry for “over-cap” claims)].) The payments made toward the
 6 remaining 31 “over-cap” Camp Fire-related claims (which total \$3,237,065) and the one non
 7 Camp Fire-related claim (which totals \$200,429) were cashed and paid. (Pearce Decl., ¶ 15; see
 8 Index, Ex. E.)

9 After the Commissioner paid the Camp Fire-related claims, the Executive Department
 10 worked with estate legal counsel and the Claims Department to submit proofs of liquidated
 11 payments on 31 Camp Fire-related claims (i.e., the \$3,237,065 paid) to the Subrogation Trust set
 12 up by the PG&E Corporation Bankruptcy proceedings to recover a portion of the amount paid on
 13 those claims. (Pearce Decl., ¶ 15.)² To date, the Merced estate has collected from the Subrogation
 14 Trust \$2,323,665. (Pearce Decl., ¶ 15; see Applic. filed Sept. 14, 2021, p. 15 [stating
 15 Commissioner expected to recover from Subrogation Trust approximately 70 percent of amounts
 16 paid on “over-cap” claims].)

17 **B. Claims Department**

18 The primary focus of the Claims Department during the Reporting Period was to continue
 19 its review of the Proof of Claims (POCs) filed against the Merced estate and determine the
 20 approval of any “non CIGA-covered” claims (or portions of non-covered claims), and to provide
 21 claims-handling support to CIGA as necessary. (Pearce Decl., ¶ 17.)

22 The Claims Department has received and reviewed 457 POCs as of October 31, 2022.
 23 (Pearce Decl., ¶ 18.) The Claims Department has taken the following actions with respect to the

24 ¹ Merced policyholders become Class 2 priority claimants to the residual assets of the
 25 estate after payment of the Commissioner’s Class 1 expenses of administration. (Ins. Code,
 § 1033, subd. (a)(1) & (2).)

26 ² On January 29, 2019, PG&E Corporation (Case No. 19-30088) and its subsidiary Pacific
 27 Gas and Electric Company (Case No. 19-30089) each filed with the United States Bankruptcy
 28 Court for the Northern District of California a voluntary petition for bankruptcy under chapter 11
 of the Bankruptcy Code. The Subrogation Trust was set up to administer claims related to the
 Camp Fire, among others. (Pearce Decl., ¶ 15.)

1 457 POCs: approved 40 Class 2 Merced policyholder claims; approved seven general creditor
2 claims; rejected 312 Class 2 Merced policyholder claims; rejected 25 general creditor claims; and
3 kept open 73 other creditor claims. (*Ibid.*) The approved 40 Class 2 Merced policyholder claims
4 consist of the 33 “over-cap” claims referenced above (including the Camp Fire-related claims),
5 and seven additional non “over-cap” claims, none of which relate to the Camp Fire. (*Id.* ¶ 18.)³

6 As discussed above, the Claims Department also worked with estate legal counsel and the
7 Executive Department to submit proofs of liquidated payments to the PG&E Subrogation Trust to
8 recover a portion of the payments made on the Camp Fire-related claims. Following recovery on
9 those claims as well as receipt of the proceeds from the sale of the Merced real property, the
10 Claims Department worked to develop the Commissioner’s second, interim proposal to disburse
11 Merced asset to CIGA and to Merced policyholders for approved claims. (Pearce Decl., ¶ 19; see
12 discussion *post* at pp. 12-14.)

13 C. Information Technology Department

14 After CLO transferred the Merced estate from Atwater to its offices in San Francisco in
15 September 2019, the Information Technology (IT) Department decommissioned all local Atwater
16 systems and infrastructure, with the exception of essential utilities and security for the Merced
17 home office property. (Pearce Decl., ¶ 21.) Once the property was sold in May 2022, the IT
18 Department shut down all final accounts and services associated with it. (*Ibid.*) However, it
19 continued to support the estate’s POC process by collecting, organizing and reporting the loss and
20 loss adjustment expenses associated with CIGA’s claim handling process. (*Ibid.*)

21 D. Finance & Accounting Department

22 Once CLO transferred the Merced estate’s financial records onto its accounting system in
23 2019, the estate has relied on the Finance & Accounting (Accounting) Department to manage and
24 report all financial aspects of the estate. (Pearce Decl., ¶ 23.) During the Reporting Period, the
25 Accounting Department prepared all entries, schedules and work papers for the estate, reconciled
26 all its cash receipts and disbursements, and produced financial reports for the estate monthly and
27

28 ³ The other POCs (those beyond the 40 Class 2 Merced policyholder claims) are discussed
in further detail in the Commissioner’s third status report to the court.

as needed. (*Ibid.*) The Accounting Department also continued to manage periodic independent reviews of the estate's financial statements by CLO's independent auditors as well as managed the annual tax return preparation for the estate. (*Ibid.*)

E. Reinsurance Department

As explained in the Commissioner's prior applications, the reinsurance program for the Merced estate is essentially exhausted with all properly submitted reinsurance billings collected. (Pearce Decl., ¶ 25.) The only reinsurance remaining is an excess of loss treaty covering individual policy claims that exceed \$1 million in losses. (*Ibid.*) During the Reporting Period, the Reinsurance Department continued to monitor the estate's losses to ensure that any individual claim that exceeds \$1 million would be reported and billed to the Merced excess of loss treaty covering individual "over-cap" claims. (*Ibid.*)

II. DIRECT ESTATE FEES AND EXPENSES

In addition to the CLO Allocated Expenses, the Merced estate also incurred operating costs that were paid directly out of estate assets. (Pearce Decl., ¶ 27.) For the Reporting Period, these fees and expenses totaled \$157,957, and comprised three types:

Types of Fees and Expenses	Fees & Expenses
Legal Fees and Expenses	\$ 45,270
Consultants and Contractors	\$ 49,750
Real Estates Holding & Office Expenses	\$ 62,937
Total	\$157,957

(Pearce Decl., ¶¶ 27-37; Index, Ex. A.)

A. Legal Fees and Expenses

During the Reporting Period, the Merced estate required the assistance and advice of legal counsel. (Pearce Decl., ¶ 28.) The Attorney General's Office represents the Commissioner in this proceeding and provided litigation services as needed, including the drafting of all litigation related pleadings and representation before the court. (*Id.* ¶ 29.) The Commissioner also required

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1 specialized legal services from the Wisner Nunnally law firm related to advice on specific policy
2 coverage terms and a POC submitted by the federal government. (*Id.* ¶ 30.)

3 **B. Consultants and Contractors**

4 The Merced estate incurred professional fees in connection with the marketing and sale of
5 the Merced home office building and adjacent vacant land in Atwater, California (independent of
6 the listing broker). (Pearce Decl., ¶ 34.) It also incurred fees in connection with the preparation
7 and filing of the estate's tax returns and in obtaining assistance with the annual audit
8 requirements. (*Ibid.*)

9 **C. Real Estate Holding & Office Expenses**

10 For the majority of the Reporting Period, the Merced estate incurred basic office expenses
11 to maintain a secure and clean environment at the Merced home office building while the
12 Commissioner was marketing it for sale. (Pearce Decl., ¶ 36.) Additionally, the estate incurred
13 basic monthly utility charges for the home office building, paid insurance premiums for hazard
14 and liability insurance, paid ad valorem taxes, and incurred modest consultancy expenses
15 associated with the final sale and closing of the building and adjacent land. (*Ibid.*) From May 1,
16 2021, through mid-June 2022, the estate also incurred travel expenses to secure, maintain, market
17 and sell the home office building and adjacent land. (*Ibid.*) With the sale of the property in late
18 May 2022, the estate will not incur any further real estate holding and office expenses. (*Ibid.*)

19 **PROPOSED INTERIM DISBURSEMENT OF MERCED ASSETS**

20 The Merced estate has total cash (or cash equivalent) assets of \$10,528,100 as of October
21 31, 2022. (Pearce Decl., ¶ 38; Index, Ex. D [Merced Property & Casualty Insurance Company,
22 Statement of Assets and Liabilities].) The Commissioner seeks authority for a second, interim
23 combined disbursement of \$3,630,954 from the total Merced cash (or cash equivalent) assets for
24 payment to CIGA and to Class 2 Merced policyholders for approved claims. (Pearce Decl., ¶ 39;
25 Index, Ex. E [Merced 2nd Interim Distribution].) Upon such disbursement, the Commissioner
26 will have retained \$6,897,146 from the total cash (or cash equivalent) assets of Merced. (Pearce
27 Decl., ¶ 39; Index, Exs. D & E.) As required by Insurance Code section 1035.5, subdivision
28 (b)(1), the Commissioner has reserved this amount for the payment of projected future

1 administrative expenses and further distributions, including the payment of claims of secured
2 creditors and claims falling within the priorities established in paragraphs (1) to (4) of subdivision
3 (a) of Section 1033. (Pearce Decl., ¶ 39.)

4 **I. DISBURSEMENT TO CALIFORNIA INSURANCE GUARANTEE ASSOCIATION**

5 In October 2021, the court approved the Commissioner's request to make an interim
6 disbursement of Merced assets to CIGA in the total amount of \$20,220,137, which represented
7 approximately 75 percent of CIGA's projected net liability of \$26,960,183 as of March 31, 2021.
8 (Oct. 26, 2021 Order, p. 2; Index of Exhibits filed Sept. 14, 2021, Exs. E & F.) The
9 Commissioner made this disbursement in December 2021. (Pearce Decl., ¶ 40.)

10 As of September 30, 2022, CIGA reported a revised projected net liability of \$22,845,366.
11 (Pearce Decl., ¶ 41; Index, Ex. F [CIGA Statement of Operations as of Sept. 30, 2022].) CIGA
12 also reported total income received and accrued of \$20,473,476, which consists of the
13 Commissioner's \$20,220,137 interim disbursement of Merced assets and \$253,339 in
14 assessments CIGA received as a result of the Camp Fire and that serve to reduce its claim against
15 the Merced estate. (Pearce Decl., ¶ 42)

16 The Commissioner now proposes to make a second, interim disbursement of Merced assets
17 to CIGA in the total amount of \$2,371,890. (Pearce Decl., ¶ 43.) This disbursement reflects the
18 difference between CIGA's revised projected net liability of \$22,845,366 and its income received
19 and accrued of \$20,473,476, and represents its projected fund deficit as of September 30, 2022.
20 (Pearce Decl., ¶ 43; Index, Exs. E [CIGA claim proposed to be paid at 100 percent] & F.)⁴

21 Because CIGA has reported reserves of only \$40,454, the Commissioner does not expect
22 CIGA will make a further claim to recover on losses paid or that he will seek approval to make
23 another disbursement of Merced assets to CIGA. (Pearce Decl., ¶ 45; Index, Ex. F.) To the extent
24 further amounts will be due CIGA for additional administrative expenses and possibly loss or loss
25 ///

26 ⁴ For purposes of the Commissioner's disbursement calculations, Exhibit E lists CIGA's
27 "approved" claim as \$22,592,027, which is CIGA's revised projected net liability of \$22,845,366
28 less the \$253,339 in assessments received by CIGA. (Pearce Decl., ¶ 44; Index, Exs. E & F.)
CIGA's approved claim of \$22,592,027 less the Commissioner's initial disbursement of
\$20,220,137 equals \$2,371,890, i.e., CIGA's projected fund deficit. (*Ibid.*)

1 adjustment costs, those costs will be included in the Merced estate's final distribution of assets.
2 (Pearce Decl., ¶ 45.)

3 As required by Insurance Code section 1035.5, subdivision (b)(4), the Merced estate has
4 secured an agreement with CIGA to return to the estate the disbursed assets as may be required to
5 pay future claims of secured creditors and any claims falling within the priorities set forth in
6 Insurance Code section 1033, subdivision (a)(1)-(5). (Pearce Decl., ¶ 46.) The estate has also
7 provided notice to CIGA and all other interested parties as required by Section 1035.5,
8 subdivision (e). (*Ibid.*)

9 **II. DISBURSEMENT TO MERCED POLICYHOLDERS**

10 As explained, CLO's Claims Department approved 40 Class 2 Merced policyholder claims,
11 which consist of 33 "over-cap" claims and seven non "over-cap" claims. The Commissioner's
12 prior disbursement of \$3,563,938 in Merced assets toward the 33 "over-cap" claims represented
13 approximately 75 percent of the total approved "over-cap" claims of \$4,751,913, and left an
14 unpaid balance of \$1,187,975. (Pearce Decl., ¶ 47; see Index, Ex. E.) The Commissioner has
15 made no payment toward the additional seven policyholders with non "over-cap" claims, which
16 claims total \$71,089. (*Ibid.*)

17 The Commissioner now proposes to make an interim disbursement of \$1,259,064 in
18 Merced assets to all 40 Class 2 Merced policyholders. (Pearce Decl., ¶ 48; Index, Ex. E.) This
19 disbursement will be to fund 1) the remaining unpaid balance of \$1,187,975 for the 33 "over-cap"
20 claims and 2) 100 percent of the \$71,089 due for the seven non "over-cap" claims. (*Ibid.*) This
21 supplemental disbursement will provide all approved 40 Class 2 Merced policyholders with 100
22 percent recovery on their loss. (*Ibid.*)

23 Like before, the CLO will submit the information necessary to recover reimbursement from
24 the PG&E Subrogation Trust for a portion of the remaining unpaid balance due the Merced
25 policyholders with "over-cap" Camp Fire-related claims. (Pearce Decl., ¶ 49.) The Commissioner
26 expects to recover approximately 72 percent of this interim disbursement which funds, once
27 billed and received, will become part of the Merced estate and available for future expenses and
28 distributions. (*Ibid.*)

1 The policyholders who have a claim and will receive a disbursement upon entry of the
2 court's order approving disbursement will be notified by mail upon filing of this application that
3 the Commissioner has filed this application, which will be available for review at CLO's website,
4 www.caclo.org, and that if they wish to receive a copy of the application and proposed order to
5 contact the CLO and a copy will be provided. (Pearce Decl., ¶ 50.)

6 WHEREFORE, the Commissioner respectfully requests that the court enter an order as
7 follows:

8 1. Approving the Commissioner's payment of administrative and professional fees and
9 expenses in the total amount of \$661,591 for the period of May 1, 2021, through October 31,
10 2022;

11 2. Authorizing the Commissioner to disburse and pay a total of \$2,371,890 from the
12 assets of the Merced estate to the California Insurance Guarantee Association and to find that
13 proper notice of the application to approve this disbursement was provided to the California
14 Insurance Guarantee Association and to all interested parties pursuant to Insurance Code section
15 1035.5, subdivision (e);

16 3. Authorizing the Commissioner to disburse and pay a total of \$1,259,064 from the
17 assets of the Merced estate to the approved 40 Class 2 Merced policyholders for the unpaid
18 portion of the estate's 33 "over-cap" claims and for the seven additional non "over-cap" claims to
19 be paid at 100 percent; and

20 ///

21 ///

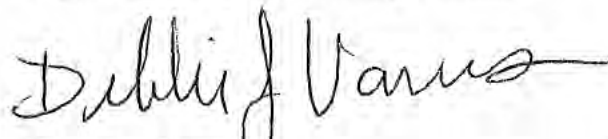
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1 4. Authorizing the Commissioner to take any and all action necessary to accomplish the
2 purposes of the order prayed for herein.

3
4 Dated: January 26, 2023

Respectfully submitted,

5 ROB BONTA
6 Attorney General of California
7 CRAIG RUST
8 Supervising Deputy Attorney General

9 

10 DEBBIE J. VOROUS
11 Deputy Attorney General
12 *Attorneys for Applicant Insurance*
13 *Commissioner of the State of California*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The Commissioner is vested with substantial discretion to conduct the liquidation of an
3 insolvent insurer subject to the limitation “that the exercise of discretion be neither arbitrary nor
4 improperly discriminatory.” (See *In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 356.)
5 The Commissioner’s decisions as to matters concerning an insolvent insurer are reviewed by the
6 court under an abuse of discretion standard. (*Id.* at 358.)

7 **I. THE COMMISSIONER APPROPRIATELY DETERMINED AND PAID THE**
8 **ADMINISTRATIVE AND OPERATING FEES AND EXPENSES OF THE MERCED ESTATE**

9 The Commissioner’s payment of the fees and expenses of an estate for the purposes of
10 administering the insolvent insurer are entitled to Class 1 priority status over and above all other
11 expenses of the estate. (Ins. Code, § 1033, subd. (a)(1).) Claimants of a lower priority are not
12 entitled to any distribution until claimants in a higher priority have been fully paid. (*Ibid.*)

13 Under Insurance Code section 1035, the Commissioner is authorized to reimburse the
14 payment of administrative and operating fees and expenses from the assets of the estate, as
15 follows:

16 The costs of employing special deputy commissioners, clerks, and assistants
17 appointed to carry out this article, and all expenses of taking possession of,
18 conserving, conducting, liquidating, disposing of, or otherwise dealing with the
19 business and property of that person under this article, shall be fixed by the
commissioner, *subject to the approval of the court*, and shall be paid out of the
assets of that person to the department.

20 (Ins. Code, § 1035, subd. (a), italics added.) The “approval” language in section 1035 connotes an
21 initial discretion by the Commissioner to determine whether the fees and expenses are proper. (*In*
22 *re Executive Life Ins. Co.*, *supra*, 32 Cal.App.4th at pp. 401-403.)

23 The Commissioner continues to conduct a diligent and efficient liquidation of Merced.
24 This application, combined with the accompanying declaration of Liquidation Manager Scott
25 Pearce and the third status report of the Commissioner, explain that the Commissioner’s decisions
26 with respect to the payment of the administrative and operating fees and expenses have been
27 made with the best interest of policyholders and creditors in mind and are neither arbitrary nor
28 improperly discriminatory. The Commissioner properly exercised his discretion as Liquidator of

1 the Merced estate in paying the administrative and operating fees and expenses for the Reporting
2 Period. The court should approve them.

3 **II. THE COMMISSIONER APPROPRIATELY DETERMINED AND PAID THE LEGAL FEES**
4 **AND EXPENSES OF THE MERCED ESTATE**

5 Insurance Code section 1036 authorizes the Commissioner to employ legal counsel,
6 including legal counsel outside of state service to represent him as a liquidator in conservation
7 proceedings and to fix the fees with the court's approval.

8 The initial determination of the propriety of approving professional service fees for legal
9 work performed on behalf of an insolvent insurer lies within the Commissioner's discretion. (*In*
10 *re Executive Life Insurance Company, supra*, 32 Cal.App.4th at p. 401.) The standards that
11 govern the Commissioner's approval of legal fees include, among others, the Commissioner
12 "possess[ing] sufficient information to be able to determine from the billings any excessive or
13 duplicative charges, and seek clarification and correction where appropriate" and "supply[ing] the
14 court with adequate information to permit intelligent evaluation of the basis for the
15 Commissioner's determination." (*Ibid.*) The court "is not required by statute, nor is it practical,
16 for the court to undertake a detailed review of the invoices before approving payment." (*Ibid.*)

17 The standards for approval of legal fees are met in this case. The Wisener Nunnally law
18 firm provided to the Commissioner legal bills that describe in detail the tasks performed, the
19 person who performed the work, and the time expended on each task. The invoices were reviewed
20 by the Commissioner's Liquidation Manager who is familiar with the work performed, and he
21 approved the invoices for payment only to the extent they complied with the California
22 Department of Insurance's guidelines and were reasonable, necessary, accurate and appropriate.
23 (Pearce Decl., ¶¶ 30-33.)

24 The Commissioner properly exercised his discretion as Liquidator of the Merced estate in
25 paying the legal fees and expenses of the estate. The court should approve them as well.

26 ///

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28 ///

1 **III. THE COMMISSIONER HAS AUTHORITY TO MAKE INTERIM DISBURSEMENTS TO THE**
2 **CALIFORNIA INSURANCE GUARANTEE ASSOCIATION AND ESTATE POLICYHOLDERS**

3 The Commissioner is specifically granted the authority necessary to accomplish the
4 purposes of the conservation proceeding. Insurance Code section 1037 governs the powers of the
5 Commissioner as Liquidator. It provides, in part:

6 The enumeration, in this article, of the duties, powers and authority of the
7 commissioner in proceedings under this article shall not be construed as a
8 limitation upon the commissioner, nor shall it exclude in any manner his or her
9 right to perform and to do such other acts not herein specifically enumerated, or
otherwise provided for, which the commissioner may deem necessary or expedient
for the accomplishment or in aid of the purpose of such proceedings.

10 (Ins. Code, § 1037.)

11 As detailed in the Commissioner's prior applications for payment of fees and expenses and
12 in this application, the Commissioner has paid the administrative and professional fees and
13 expenses for the relevant reporting periods, which expenses are given first priority in the
14 liquidation of an insolvent insurer. (Ins. Code, § 1033, subd. (a)(1).)

15 The Commissioner is now seeking court approval to make a second, interim disbursement
16 of Merced assets to 1) CIGA to pay it for its projected fund deficit and 2) the approved 40 Class 2
17 Merced policyholders on a pro rata basis for a) the remaining unpaid balance (approximately 25
18 percent) of the 33 "over-cap" claims and b) 100 percent of the seven non "over-cap" claims. By
19 virtue of this payment, all 40 Class 2 Merced policyholders included in this contemplated
20 disbursement will be paid 100 percent of their approved claims. (*Commercial Nat. Bank v.*
21 *Superior Court* (1993) 14 Cal.App.4th 393, 398 [claimants within the same class are entitled to
22 share pro rata in the distribution to that class].) Disbursement of the assets is within the
23 Commissioner's general authority as Liquidator of the Merced estate and necessary to the overall
24 plan to timely and efficiently liquidate the estate.

25 CIGA has resolved and paid almost all of the Merced-related policy claims. Upon CIGA's
26 satisfaction of its obligations to pay and discharge covered claims of an insolvent insurer, CIGA
27 becomes a Class 2 priority claimant to the residual assets of the estate after the payment of the
28 expenses of administration. (Ins. Code, § 1033, subd. (a)(1) & (2).) Insurance Code section

1 1035.5 provides that the court may take action on the Commissioner's application for
2 disbursement of assets provided that notice of the application is given as provided for in
3 subdivision (e), and that the proposal complies with paragraphs (1) and (4) of subdivision (b).
4 (Ins. Code, § 1035.5, subd. (e).) As stated above, the Commissioner has notified CIGA and all
5 interested parties of the application pursuant to subdivision (e).

6 Insurance Code section 1035.5, subdivision (b)(1) requires that sufficient assets be reserved
7 for the payment of expenses and administration and the payment of claims of secured creditors (to
8 the extent of the value of the security held), and the payment of claims falling within the priorities
9 established in paragraphs (1) to (4) of subdivision (a) of Section 1033. Subdivision (b)(4) requires
10 that the Commissioner secure an agreement with CIGA to return to the Commissioner such assets
11 previously disbursed as may be required to pay claims of secured creditors and claims falling
12 within the priorities established in paragraph (1) to (5) of subdivision (a) of Section 1033. As
13 explained above, the Commissioner has secured such an agreement from CIGA, and withheld an
14 appropriate level of reserves to comply with his legal obligations to pay the further expenses of
15 administration and to protect the interests of policyholders and creditors.

16 Like with CIGA, Merced policyholders are Class 2 priority claimants. (Ins. Code, § 1033,
17 subd. (a)(2).) The CLO's Claims Department approved 40 Class 2 Merced policyholder claims,
18 which include 33 "over-cap" claims (32 Camp Fire related and 1 non-related) and 7 non "over-
19 cap" claims. The CLO's Claims Department (along with its Executive Department) submitted a
20 conditional and undetermined proof of claim to the PG&E Subrogation Trust set up by the PG&E
21 Corporation Bankruptcy proceedings to recover payment on the Camp Fire-related claims.
22 (Pearce Decl., ¶ 49.) However, to recover from the trust, the Commissioner must prove that the
23 policyholders received payment from the estate. (*Ibid.*) As noted, the Commissioner expects to
24 receive from the trust approximately 72 percent of the Merced estate's payment on the claims. To
25 that end, it is critical that the Commissioner obtain court authority to make a second disbursement
26 of assets to policyholders with Camp Fire-related claims so that the Claims Department can
27 submit proof of the payments to the bankruptcy trustee, obtain recovery on its proof of claim, and
28 continue the Commissioner's efforts to liquidate and wind up the Merced estate. (*Ibid.*)

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1 The Commissioner has determined that sufficient residual assets of the Merced estate exist
2 to make the requested disbursements to CIGA and to Merced policyholders for approved claims
3 at this time. Further, any additional funds received from the bankruptcy proceeding will be part of
4 the assets of the Merced estate and available for a future disbursement. The Commissioner has
5 put in place all the necessary and appropriate safeguards, and the disbursements should be
6 authorized.

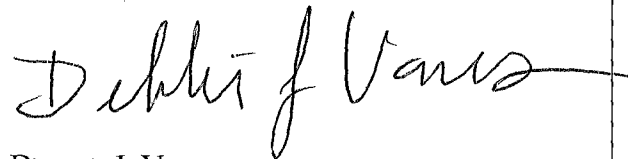
7 **CONCLUSION**

8 The Commissioner respectfully requests that the court approve the payment of the
9 administrative and professional fees and expenses sought herein and approve the second, interim
10 disbursement of Merced assets to the California Insurance Guarantee Association and to the
11 Merced Class 2 policyholders with approved claims.

12 Dated: January 26, 2023

Respectfully submitted,

13 ROB BONTA
14 Attorney General of California
15 CRAIG RUST
Supervising Deputy Attorney General

16 

17
18 DEBBIE J. VOROUS
19 Deputy Attorney General
Attorneys for Applicant Insurance
Commissioner of the State of California

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DECLARATION OF SERVICE BY E-MAIL

Case Name: **Insurance Commissioner of the State of California
v. Merced Property & Casualty Co.**
No.: **Superior Court of California, County of Merced, # 18CV-04739**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service.

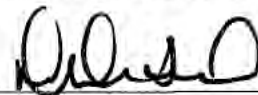
On **January 27, 2023**, I served the attached **NOTICE OF APPLICATION AND APPLICATION FOR ORDER APPROVING LIQUIDATOR'S 1) PAYMENT OF ADMINISTRATIVE AND PROFESSIONAL FEES AND EXPENSES FOR THE PERIOD OF MAY 1, 2021 TO OCTOBER 31, 2022, AND 2) SECOND INTERIM DISBURSEMENT OF MERCED ASSETS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by transmitting a true copy via electronic mail, addressed as follows:

Jeffrey D. Neumeyer, Esq.
Sr. Vice President, General Counsel and
Corporate Secretary
United Heritage Financial Group
Email to jneumeyer@unitedheritage.com

Brad Roeber
Executive Director
California Insurance Guarantee Association
Email to roeberb@ciga.org

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **January 27, 2023**, at Sacramento, California.

Danielle Jones
Declarant


Signature

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8 *the State of California*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MERCED

11
12
13 **INSURANCE COMMISSIONER OF THE**
14 **STATE OF CALIFORNIA,**

15 Applicant,

16 v.

17 **MERCED PROPERTY & CASUALTY**
18 **COMPANY, a California Corporation,**

19 Respondent.

Case No. 18CV-04739

**DECLARATION OF SCOTT PEARCE IN
SUPPORT OF THIRD STATUS REPORT
OF INSURANCE COMMISSIONER ON
THE LIQUIDATION OF MERCED
PROPERTY & CASUALTY COMPANY**

Date: February 23, 2023
Time: 8:15 a.m.
Dept: 8
Judge: Hon. Brian McCabe
Action Filed: November 30, 2018

20
21 I, Scott Pearce, declare:

22 1. I am the Senior Estate Trust Officer of the California Insurance Commissioner's
23 Conservation and Liquidation Office (CLO). The CLO's office is located in San Francisco,
24 California.

25 2. I make this declaration in support of the third status report of the Insurance
26 Commissioner of the State of California (Commissioner) on the liquidation of Merced Property &
27 Casualty Company (Merced). The following information is true and correct and based on my
28 personal knowledge and, if called to do so, I could and would testify competently to it.

1 **THE CONSERVATION AND LIQUIDATION OFFICE**

2 3. On December 3, 2018, the court found that Merced was involved and issued an order
3 appointing the Commissioner as Liquidator of the Merced estate. The Commissioner delegated
4 his statutory administrative duties to liquidate the Merced estate over to the CLO and Deputy
5 Liquidator Joseph Holloway. (Oct. 26, 2021 Am. Liq. Order, p. 2.)

6 4. The court appointed me as the Liquidation Manager for the Merced estate, and
7 empowered me to carry out any and all duties and exercise the authority of the Liquidator and the
8 Deputy Liquidator as may be delegated by the Liquidator and Deputy Liquidator. As the
9 Liquidation Manager, I have primary responsibility for the overall administration of the Merced
10 estate, including but not limited to, matters pertaining to Merced's financial reporting, claim
11 administration, legal matters, reinsurance contracts, estate expenditures, and ongoing activities of
12 the liquidation. I am also responsible for the management of Merced's books and records, and I
13 have overall custody and control of them.

14 5. The CLO transitioned all of the Merced estate's physical and electronic records to its
15 office in San Francisco, and is managing all remaining long-term run off activities and liquidation
16 requirements from that office.

17 **THE COMMISSIONER'S OPERATIONS**

18 **CIGA's payment of claims and expenses, and projected net liability**

19 6. After the court issued its December 3, 2018 Liquidation Order in this matter, the
20 Commissioner transitioned all of the Merced estate claims data and claims handling processes to
21 the California Insurance Guarantee Association (CIGA) so that CIGA could make payment on
22 Merced policyholder claims. By March 2021, CIGA had reported a projected net liability of
23 \$26,960,183 related to the Merced liquidation. (Commissioner's Index of Exhibits filed Sept. 14,
24 2021, Ex. F [CIGA's Statement of Operations as of March 31, 2021].) Thus, in December 2021,
25 the Commissioner made a court-approved interim disbursement of Merced assets to CIGA in the
26 total amount of \$20,220,137, which represented approximately 75 percent of CIGA's projected
27 net liability as of March 31, 2021. (Commissioner's Index of Exhibits filed Sept. 14, 2021, Ex. E
28 [Merced 1st Early Access Distribution].)

1 7. According to CIGA, it had resolved and paid the majority of Merced-related policy
2 claims and loss adjustment expenses as of September 30, 2022. Attached as Exhibit F to the Index
3 of Exhibits filed in support of the Commissioner's application for payment of fees and expenses
4 and second interim disbursement of Merced assets is a true and correct copy of a Statement of
5 Operations I received from CIGA showing CIGA's income, expenses, and reserves as of
6 September 30, 2022.

7 8. As of September 30, 2022, CIGA reported a revised projected net liability of
8 \$22,845,366. (Index, Ex. F.) CIGA also reported net income received and accrued of
9 \$20,473,476, which includes the Commissioner's interim disbursement of \$20,220,137 in Merced
10 assets to CIGA and \$253,339 in assessments CIGA received as a result of the Camp Fire and that
11 reduce its claim against the Merced estate. After taking into account CIGA's projected revised net
12 liability and its income received to date, CIGA's projected fund deficit is \$2,371,890.

13 **CLO's review of Proof of Claims and disbursement of Merced assets to policyholders**
14 **for approved "over-cap" claims**

15 9. The December 3, 2018 Liquidation Order required that the Commissioner mail a
16 Proof of Claim form to interested parties notifying them of their right to submit a claim for
17 recovery from the Merced estate. As a result of that mailing, CLO's Claim Department has now
18 received and reviewed 457 Proof of Claims ("POCs") filed.

19 10. CLO's Claims Department has taken the following action with respect to the 457
20 POCs: 1) approved 40 Class 2 policyholders claims; 2) rejected 312 Class 2 policyholder claims;
21 3) kept open and undetermined one federal government Class 3 claim; 4) approved 7 general
22 creditor Class 7 claims; 5) kept open and undetermined 72 Class 8 certificate of contribution
23 claims; and 6) rejected 25 other mixed Class 3 to 8 claims.

24 11. The 40 Class 2 Merced policyholder claims consist of 1) 33 "over-cap" claims
25 (claims that develop in excess of the \$500,000 statutory limit of CIGA's coverage) (\$4,751,913)
26 and 2) seven non "over-cap" claims (\$71,089). The Commissioner made a court-approved
27 disbursement of \$3,563,938 in Merced assets toward the 33 "over-cap" claims in December 2021.
28 The disbursement represented approximately 75 percent of the approved claim amount of

1 \$4,751,913, and left a balance of \$1,187,975. Attached as Exhibit E to the Index of Exhibits filed
2 in support of the Commissioner's application for payment of fees and expenses and interim
3 disbursement of Merced assets is a true and correct copy of a spreadsheet that details the
4 approved policyholder claims, the distributions to date, and the proposed further disbursements
5 (discussed below). No payment has been made toward the seven non "over-cap" claims.

6 12. With respect to the non-approved POCs, the Claims Department rejected the 312
7 Class 2 Merced policyholder claims because they are not "over-cap" claims and were handled by
8 CIGA or the asserted claim was not covered under a Merced policy. It rejected the 25 Mixed
9 Class 3 to 8 claims as nothing was deemed to be owed. The Claims Department is in the process
10 of reviewing and determining the federal government claim and the 72 creditor Class 8 claims,
11 which it expects to complete by mid-2023.

12 **CLO's recovery of funds from the PG&E Subrogation Trust on payments made for**
13 **Camp Fire-related claims**

14 13. As previously explained, PG&E Corporation and its subsidiary Pacific Gas and
15 Electric Company each filed a voluntary petition for bankruptcy under chapter 11 of the
16 Bankruptcy Code on January 29, 2019. As part of this proceeding, the bankruptcy court
17 established the PG&E Subrogation Trust to consider and pay claims for liquidated damages
18 caused by the November 2018 Camp Fire.

19 14. Thirty-two of the 33 Class 2 Merced "over-cap" claims discussed above in paragraph
20 11 are Camp Fire related. To that end, the CLO submitted a conditional and undetermined proof
21 of claim to the PG&E Subrogation Trust for reimbursement on those claims. After the
22 Commissioner paid the Camp Fire-related claims, the CLO submitted the information necessary
23 to recover partial reimbursement from the PG&E Subrogation Trust for payment of \$3,237,065
24 made on 31 of the 32 claims. Because the policyholder for one Camp Fire-related claim did not
25 cash the payment made, CLO did not seek reimbursement for that claim.

26 15. The \$3,563,938 in court-approved disbursements toward the 33 Class 2 Merced
27 "over-cap" claims (discussed in paragraph 11 above) included the following: 1) 31 paid Camp
28 Fire-related claims (\$3,237,065); 2) one Camp Fire-related claim that remains unpaid (\$126,444);

1 and 3) one paid non Camp Fire-related claim (\$200,429). (See Index, Ex. E [“over-cap” claim
2 entries 1 to 27 and 29 to 32 reflect paid “over-cap” claims; entry 28 (POC 834234) reflects unpaid
3 “over-cap” claim; and entry 33 (POC 835272) reflects paid non “over-cap” claim].) To date, the
4 Merced estate has collected \$2,323,665 from the Subrogation Trust on the 31 paid Camp Fire-
5 related claims.

6 **Sale of Merced home office and adjacent vacant land**

7 16. The Merced estate owned a home office building and adjacent vacant lot in Atwater,
8 California. The Commissioner placed the property on the open market in October 2019. After
9 more than 18 months of marketing, with one nominal price adjustment, the Commissioner
10 received an all cash, non-contingent offer from Homen Properties, LLC (Homen) to purchase the
11 property for \$1,665,000. Following proper due diligence, Homen accepted the property in its “as
12 is” condition. On May 16, 2022, the court approved the Commissioner’s sale of the property to
13 Homen. The Commissioner closed the transaction with Homen on May 31, 2022, and collected
14 net proceeds of approximately \$1.50 million after payment of commissions and standard closing
15 costs.

16 **Statement of Assets and Liabilities for the Merced estate**

17 17. The Commissioner holds all of the Merced cash balances or cash equivalent assets in
18 the CLO Investment Pool. The Statement of Assets and Liabilities for the Merced estate as of
19 October 31, 2022, shows that the Merced estate has cash balances or cash equivalent assets of
20 \$10,528,100 as well as \$38,600 in accrued investment income. The Statement also shows a
21 salvage and subrogation recoverable of \$858,000 that represents the contingent amount the
22 Commissioner expects to receive from the PG&E Subrogation Trust (approximately 72 percent)
23 after he makes a further disbursement of Merced assets to Merced policyholders with approved
24 claims as discussed below. In total, the Merced estate has \$11,424,700 in estimated total assets as
25 of October 31, 2022. Attached as Exhibit D to the Index of Exhibits filed in support of the
26 Commissioner’s application for payment of fees and expenses and interim disbursement of
27 Merced assets is a true and correct copy of the Merced estate Statement of Assets and Liabilities
28 as of October 31, 2022.

1 18. The Statement of Assets and Liabilities also shows total estimated liabilities of
2 \$6,076,400. The total includes Class 2 liabilities (CIGA and the approved policyholder claims
3 before disbursements) of \$27,678,000, and the reduction of the total liability by the
4 Commissioner's combined interim distribution of \$23,784,100 in Merced assets to CIGA and to
5 the 33 Class 2 policyholders with "over-cap" claims. In addition, the Statement reports \$177,900
6 in pre-liquidation claims, \$4,700 in accrued administrative expenses, \$57,800 in state and federal
7 government claims, and \$1,942,100 in both the general creditor and equity classes. Taken
8 together, the assets and liabilities result in a net asset position of \$5,348,300.

9 19. There is a \$262,971 difference between the approved total distribution amount of
10 \$27,415,029 shown in Exhibit E (Merced's 2nd Interim Distribution) and the total liability
11 amount of \$27,678,000 shown in Exhibit D (Merced's Statement of Assets and Liabilities). This
12 difference is because Merced's Statement (as of October 31, 2022) does not reflect the \$253,339
13 in assessments CIGA received and \$9,632 in reserves for claim amounts that CLO has since
14 determined to not be covered. Both the assessments received and the reserves will reduce the
15 liability amount. The \$25 difference between the distribution to date amount of \$23,784,075
16 shown in Exhibit E and the amount of \$23,784,100 shown in Exhibit D is due to the Statement's
17 rounding of numbers

18 20. Also, Merced's Statement of Assets and Liabilities reflects payment by the
19 Commissioner, subject to the court's approval, of \$661,591 in Merced administrative and
20 professional liquidation fees and expenses for the period May 1, 2021, through October 31, 2022.
21 These fees and expenses were paid from the CLO Investment Pool.

22 **THE COMMISSIONER'S ONGOING ACTIVITIES**

23 **Administration of the Merced estate**

24 21. CLO's Information Technology (IT), Finance & Accounting (Accounting), and
25 Claims Department (handling non-CIGA covered claims) continue to be responsible for handling
26 all operational aspects of the Merced estate.

27 22. The IT Department supports the Merced estate by providing on-going technical
28 assistance in updating and maintaining historical and CIGA claims databases (loss and adjustment

1 files) and electronic data files. The IT Department will continue this monthly support through the
2 final disbursement of Merced assets to creditors and closure of the estate.

3 23. The Accounting Department continues to support the Merced estate by preparing all
4 entries, schedules and work papers for the estate and is responsible for the reconciliation of all
5 cash receipts and disbursements of the estate. It also produces financial reports for the Merced
6 estate monthly and as needed, and continues to manage periodic independent reviews of Merced's
7 financial statements by CLO's independent auditors as well as manage the annual tax return
8 preparation for the estate.

9 24. The Claims Department continues to provide claims-handling support to CIGA as
10 necessary, and to review and determine the approval of any "non CIGA-covered" claims (or
11 portions of non-covered claims).

12 **Completion of claim validation and resolution**

13 25. According to CIGA, as of September 30, 2022, it has only a few open claims that
14 have extenuating circumstances or issues which continue to prolong the claims handling process,
15 but that it expects to resolve those claims during the first quarter of 2023. The Claims Department
16 will continue to assist CIGA by providing policy coverage confirmation and documents as needed
17 to resolve the remaining open claims. To the extent further amounts will be due CIGA for
18 additional administrative expenses and possibly loss or loss adjustment costs, the Claims
19 Department will work with CIGA to determine those expenses and costs and will include them in
20 the Merced estate's final distribution of assets.

21 26. In addition to assisting CIGA with its final resolution of open claims, the Claims
22 Department continues to review and determine the federal government's claim and the 72 Class 8
23 creditor claims, which it expects to complete by mid 2023. With respect to the federal claim, the
24 Claims Department is actively working with its lawyers to obtain a release related to any potential
25 environmental exposures or other federal obligations. The 72 Class 8 claims were filed by Merced
26 certificate of contribution holders who represent a group of unsecured creditors in the company
27 and are potentially due principle and interest payments. Resolving these claims will likely require
28

1 additional legal review and determination, and will be a priority in 2023 as the estate works
2 toward a final distribution of assets. Any approved amount for these claims will be included in a
3 final distribution of Merced assets later in 2023.

4 27. Lastly, the Claims Department continues to provide outreach and assistance to
5 individual claimants in understanding the liquidation process. This activity will likely see an
6 uptick in volume as additional proposed distributions are released in 2023.

7 **2020 and 2021 Tax Returns**

8 28. Merced prepared its 2020 proforma tax return in accordance with the United
9 Heritage group's tax sharing agreement and provided the return to be included in the group's
10 consolidated tax filing. Merced will prepare its 2021 proforma tax return for inclusion in the
11 group's 2021 consolidated tax return.

12 **THE COMMISSIONER'S FURTHER INTERIM DISBURSEMENT OF ASSETS**

13 29. The Commissioner, upon the court's approval, intends to make a further interim
14 disbursement of \$3,630,954 in Merced assets to CIGA and to the 40 Class 2 Merced
15 policyholders with approved claims, both of which are entitled to Class 2 priority status. (See
16 Index, Ex. E.) The disbursement to CIGA represents its projected fund deficit of \$2,371,890 as of
17 September 30, 2022, and to the Merced Class 2 policyholders payment of 1) \$1,187,975 for the
18 unpaid balance due the 33 "over-cap" claimants and 2) \$71,089 for 100 percent due the seven non
19 "over-cap" claimants. (Index, Ex. E.) The Commissioner intends to disburse these funds as soon
20 as possible after the court approves his request.

21 30. After the Commissioner disburses the \$3,630,954, he will have retained \$6,897,146
22 from the \$10,528,100 in cash or cash equivalent assets of the Merced estate for the payment of
23 projected future administrative expenses and further disbursements as required by law. (Index
24 Exs. D & E.) Also, by disbursing the proposed payments to the Merced policyholders with "over-
25 cap" Camp Fire-related claims, the Merced estate will have paid the remaining unpaid portion of
26 those claims, and the CLO will immediately prepare and submit to the PG&E Subrogation Trust
27 the information necessary to obtain partial reimbursement for paid claims. The subrogation trust
28 administrator and lawyers already approved and paid a portion of those claims in 2022 as


1 explained above, and therefore will already be familiar with the remaining "over-cap" claims
2 submitted for reimbursement. And, as also explained above, the amount paid to the Merced
3 policyholders is a liquidated claim against the PG&E Subrogation Trust.

4 **ANTICIPATED FINAL DISBURSEMENT OF MERCED ASSETS AND CLOSURE**
5 **OF ESTATE**

6 31. Following receipt of any final recovery from the PG&E Subrogation Trust, the
7 Commissioner expects to prepare for a final disbursement to all approved creditors by year-end
8 2023, and work toward closing the Merced estate. The final disbursement will include any
9 remaining settlement with CIGA and all approved POCs properly received and approved from all
10 priority classes of creditors, including the previously approved seven general creditor Class 7
11 claims. The Executive Department, together with the Accounting Department, have discussed
12 with Merced's parent entity the eventual return of any surplus assets, and will continue to do so.
13 Before returning any assets (or control) of the estate back to Merced's parent entity, the Executive
14 Department will ensure that all valid obligations of the estate have been addressed to conclusion.

15 I declare under penalty of perjury of the laws of the State of California that the foregoing is
16 true and correct. Executed this 26th day of January, 2023, at MINNEAPOLIS, MN.

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Scott Pearce

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DECLARATION OF SERVICE BY E-MAIL

Case Name: **Insurance Commissioner of the State of California
v. Merced Property & Casualty Co.**
No.: **Superior Court of California, County of Merced, # 18CV-04739**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service.

On **January 27, 2023**, I served the attached **DECLARATION OF SCOTT PEARCE IN SUPPORT OF THIRD STATUS REPORT OF INSURANCE COMMISSIONER ON THE LIQUIDATION OF MERCED PROPERTY & CASUALTY COMPANY** by transmitting a true copy via electronic mail, addressed as follows:

Jeffrey D. Neumeyer, Esq.
Sr. Vice President, General Counsel and
Corporate Secretary
United Heritage Financial Group
Email to jneumeyer@unitedheritage.com

Brad Roeber
Executive Director
California Insurance Guarantee Association
Email to roeberb@ciga.org

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **January 27, 2023**, at Sacramento, California.

Danielle Jones
Declarant


Signature

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1 ROB BONTA
Attorney General of California
2 CRAIG RUST
Supervising Deputy Attorney General
3 DEBBIE J. VOROUS
Deputy Attorney General
4 State Bar No. 166884
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7349
Fax: (916) 323-7095
7 E-mail: Debbie.Vorous@doj.ca.gov
Attorneys for Applicant Insurance Commissioner of
8 the State of California

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MERCED

11
12
13 **INSURANCE COMMISSIONER OF THE**
14 **STATE OF CALIFORNIA,**

15 Applicant,

16 v.

17 **MERCED PROPERTY & CASUALTY**
18 **COMPANY, a California corporation,**

19 Respondent.

Case No. 18CV-04739

**INDEX OF EXHIBITS AND EXHIBITS
IN SUPPORT OF COMMISSIONER'S
APPLICATION FOR ORDER
APPROVING LIQUIDATOR'S 1)
PAYMENT OF ADMINISTRATIVE AND
PROFESSIONAL FEES AND EXPENSES
FOR THE PERIOD MAY 1, 2021 TO
OCTOBER 31, 2022, AND 2) SECOND
INTERIM DISBURSEMENT OF
MERCED ASSETS**

Date: February 23, 2023

Time: 8:15 a.m.

Dept: 8

Judge: Hon. Brian McCabe

Action Filed: November 30, 2018

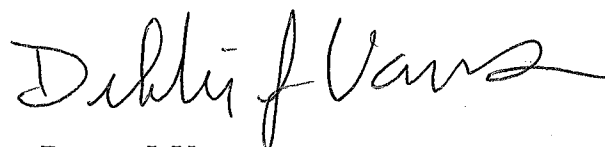
23 Pursuant to California Rules of Court, rule 3.1110(f), Applicant Insurance
24 Commissioner of the State of California submits this index of exhibits in support of his
25 application for an order approving the 1) payment of administrative and professional fees and
26 expenses for the period of May 1, 2021, to October 31, 2022, and 2) second interim
27 disbursement of Merced assets.
28

Exhibit Letter	Exhibit Page Number	Exhibit Description
A	1	Merced Property & Casualty Fees & Expenses Detailed Spreadsheet for the Period May 1, 2021, through October 31, 2022
B	2	Conservation and Liquidation Office (CLO) Summary of Hours for All Companies and for Merced Property & Casualty Only (May 2021 through October 2022)
C	3	Detailed CLO Allocated Hours and Fees Spreadsheet for Merced Property & Casualty (May 2021 through October 2022)
D	4	Merced Property & Casualty Statement of Assets and Liabilities as of October 31, 2022
E	5	Merced Property & Casualty Detailed Spreadsheet: Merced 2nd Interim Distribution
F	6	California Insurance Guarantee Association Statement of Operations for Merced Property & Casualty Co. as of September 30, 2022

Dated: January 26, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
CRAIG RUST
Supervising Deputy Attorney General



DEBBIE J. VOROUS
Deputy Attorney General
Attorneys for Applicant Insurance
Commissioner of the State of California

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EXHIBIT A

Merced Property & Casualty Insurance Company
Administrative Expenses

		May- Dec 2021	Jan - Oct 2022	May 2021 to October 2022
	Legal			
62001	DOI Legal	4,617	7,854	12,471
62002	DOJ Legal	16,555	13,220	29,775
62003	Other Legal Expense	2,433	591	3,024
	Total Legal Expenses	23,605	21,666	45,270
	Consultants and Contractors			
63002	Accounting & Auditing	5,372	12,449	17,821
63007	Other Professional Fees	6,604	3,919	10,522
63008	Tax Consulting and Compliance	8,506	12,900	21,406
	Total Consultant Expenses	20,482	29,268	49,750
	Office Expenses			
65002	Postage	61	84	145
65004	Office Supplies	2,481	-	2,481
65005	Insurance	18,398	-	18,398
65007	Misc Licenses, Fees and Taxes	25	825	850
65012	Repair & Maint.-IT	201	-	201
65014	Repairs & Maintenance, Other	304	200	504
65017	Telephone	1,619	908	2,527
65018	Travel & Company Meetings	615	-	615
65019	Delivery	644	30	675
65021	Utilities	7,182	5,460	12,642
65027	Bank Charges	-	553	553
66003	Real Estate Holding Expense	5,013	5,040	10,053
66004	Property Taxes Expense	6,647	6,647	13,295
	Total Office Expenses	43,191	19,746	62,937
	Allocated Expenses			
70002	Allocated Expenses	205,873	297,761	503,634
	Total Net Allocated Expenses	205,873	297,761	503,634
	<i>Direct Admin Exp only</i>	<i>87,278</i>	<i>70,680</i>	<i>157,957</i>
	Total Admin Expenses	293,150	368,441	661,591

EXHIBIT B

May 2021 - October 2022 Direct Hours

May-21	All Companies	Merced Only	
Direct Hours Acct. 92002	2,171.25	124.42	
Jun-21	All Companies	Merced Only	
Direct Hours Acct. 92002	2,432.50	167.51	
Jul-21	All Companies	Merced Only	
Direct Hours Acct. 92002	2,364.26	110.71	
Aug-21	All Companies	Merced Only	
Direct Hours Acct. 92002	2,440.75	100.21	
Sep-21	All Companies	Merced Only	
Direct Hours Acct. 92002	2,562.00	102.21	
Oct-21	All Companies	Merced Only	
Direct Hours Acct. 92002	2,402.25	105.16	
Nov-21	All Companies	Merced Only	
Direct Hours Acct. 92002	1,928.00	116.25	
Dec-21	All Companies	Merced Only	
Direct Hours Acct. 92002	2,304.99	168.21	
Jan-22	All Companies	Merced Only	
Direct Hours Acct. 92002	2,286.75	101.84	
Feb-22	All Companies	Merced Only	
Direct Hours Acct. 92002	2,061.75	89.61	
Mar-22	All Companies	Merced Only	
Direct Hours Acct. 92002	2,505.00	144.92	
Apr-22	All Companies	Merced Only	
Direct Hours Acct. 92002	2,180.75	147.34	
May-22	All Companies	Merced Only	
Direct Hours Acct. 92002	2,103.00	115.12	
Jun-22	All Companies	Merced Only	
Direct Hours Acct. 92002	2,194.50	142.77	
Jul-22	All Companies	Merced Only	
Direct Hours Acct. 92002	1,981.50	144.78	
Aug-22	All Companies	Merced Only	
Direct Hours Acct. 92002	2,401.50	140.25	
Sep-22	All Companies	Merced Only	
Direct Hours Acct. 92002	2,209.50	148.74	
Oct-22	All Companies	Merced Only	
Direct Hours Acct. 92002	2,316.00	143.43	
Total Direct Hours Acct. 92002	All Companies	Merced Only	%
	40,846.25	2,313.48	5.664

EXHIBIT C

	Total Incurred Hours May-2021 to Oct 2022	Total Charge \$
ETD/Exec	1,174.76 \$	255,733.85
IT	20.00 \$	4,234.06
Acctg	552.77 \$	118,440.34
Reins	22.45 \$	4,905.05
Claims	543.50 \$	120,320.70
	<u>2,313.48 \$</u>	<u>503,634.00</u>

	May-2021 to Dec-2021	Charge
ETD/Exec	516.18 \$	106,899.98
IT	13.50 \$	2,760.22
Acctg	301.73 \$	61,896.85
Reins	22.00 \$	4,799.79
Claims	141.25 \$	29,512.06
	<u>994.66 \$</u>	<u>205,868.90</u>

	Jan-2022 to Oct-2022	Charge
ETD/Exec	658.58 \$	148,833.88
IT	6.50 \$	1,473.84
Acctg	251.04 \$	56,543.49
Reins	0.45 \$	105.26
Claims	402.25 \$	90,808.64
	<u>1,318.82 \$</u>	<u>297,765.10</u>

2,313.48 \$ 503,634.00

EXHIBIT D

273 **273 Merced Property & Casualty Ins**
STATEMENT OF ASSETS AND LIABILITIES
As of October 31, 2022

	Oct 31 2022
ASSETS	
Participation in pooled investments, at market	10,528,100
Accrued investment income	38,600
Salvage and subrogation recoverable	858,000
Total Available Assets	11,424,700
LIABILITIES	
Secured claims	177,900
Accrued administrative expenses	4,700
Claims against policies, including guaranty associations, before distributions	27,678,000
Early access and other Class 2 distributions	(23,784,100)
California and Federal claims having preference	57,800
All other claims	1,942,100
Total Estimated Liabilities	6,076,400
NET ASSETS (DEFICIENCY)	5,348,300

EXHIBIT E

Merced 2nd Interim Distribution

issco	Company	POC No.	app_amount	Est Total Payout	Dist to Date	Dist Check	% Payout
15768	Merced	831465	31,886.00	31,886.00	23,915.00	7,971.00	100.00000%
15768	Merced	833928	48,750.00	48,750.00	36,563.00	12,187.00	100.00000%
15768	Merced	833219	411,678.00	411,678.00	308,759.00	102,919.00	100.00000%
15768	Merced	831969	132,793.00	132,793.00	99,595.00	33,198.00	100.00000%
15768	Merced	835288	56,783.83	56,783.83	42,588.00	14,195.83	100.00000%
15768	Merced	833721	32,557.48	32,557.48	24,418.00	8,139.48	100.00000%
15768	Merced	831916	114,719.00	114,719.00	86,039.00	28,680.00	100.00000%
15768	Merced	834488	280,307.28	280,307.28	210,230.00	70,077.28	100.00000%
15768	Merced	835673	8,136.92	8,136.92	6,103.00	2,033.92	100.00000%
15768	Merced	832035	118,304.97	118,304.97	88,729.00	29,575.97	100.00000%
15768	Merced	830929	118,991.91	118,991.91	89,244.00	29,747.91	100.00000%
15768	Merced	832853	523,171.00	523,171.00	392,378.00	130,793.00	100.00000%
15768	Merced	834904	204,688.04	204,688.04	153,516.00	51,172.04	100.00000%
15768	Merced	832757	8,740.00	8,740.00	6,555.00	2,185.00	100.00000%
15768	Merced	834981	246,811.00	246,811.00	185,108.00	61,703.00	100.00000%
15768	Merced	832716	62,069.00	62,069.00	46,552.00	15,517.00	100.00000%
15768	Merced	832571	64,871.60	64,871.60	48,654.00	16,217.60	100.00000%
15768	Merced	832149	87,751.00	87,751.00	65,813.00	21,938.00	100.00000%
15768	Merced	830249	142,601.55	142,601.55	106,951.00	35,650.55	100.00000%
15768	Merced	832500	315,612.00	315,612.00	236,709.00	78,903.00	100.00000%
15768	Merced	830808	142,458.56	142,458.56	106,844.00	35,614.56	100.00000%
15768	Merced	831871	215,312.00	215,312.00	161,484.00	53,828.00	100.00000%
15768	Merced	833132	186,454.00	186,454.00	139,841.00	46,613.00	100.00000%
15768	Merced	832607	45,238.00	45,238.00	33,929.00	11,309.00	100.00000%
15768	Merced	834524	60,625.00	60,625.00	45,469.00	15,156.00	100.00000%
15768	Merced	834669	28,864.49	28,864.49	21,648.00	7,216.49	100.00000%
15768	Merced	832034	140,040.95	140,040.95	105,031.00	35,009.95	100.00000%
15768	Merced	834234	168,592.49	168,592.49	126,444.00	42,148.49	100.00000%
15768	Merced	832381	32,236.81	32,236.81	24,178.00	8,058.81	100.00000%
15768	Merced	830298	233,707.60	233,707.60	175,281.00	58,426.60	100.00000%
15768	Merced	832202	134,930.13	134,930.13	101,198.00	33,732.13	100.00000%
15768	Merced	831594	84,991.00	84,991.00	63,743.00	21,248.00	100.00000%
15768	Merced	835272	267,238.65	267,238.65	200,429.00	66,809.65	100.00000%
Over Cap Claims Subtotal			4,751,913.26	4,751,913.26	3,563,938.00	1,187,975.26	
15768	Merced	832485	3,050.00	3,050.00	-	3,050.00	100.00000%
15768	Merced	832833	1,533.00	1,533.00	-	1,533.00	100.00000%
15768	Merced	834076	2,500.00	2,500.00	-	2,500.00	100.00000%
15768	Merced	836873	293.00	293.00	-	293.00	100.00000%
15768	Merced	837101	30,526.75	30,526.75	-	30,526.75	100.00000%
15768	Merced	833022	22,686.06	22,686.06	-	22,686.06	100.00000%
15768	Merced	834151	10,500.00	10,500.00	-	10,500.00	100.00000%
Non-Over Cap Claims Subtotal			71,088.81	71,088.81	-	71,088.81	
15768	Merced	837085	22,592,027.42	22,592,027.42	20,220,137.00	2,371,890.42	100.00000%
Gurantee Association Subtotal			22,592,027.42	22,592,027.42	20,220,137.00	2,371,890.42	
Grand Total			27,415,029.49	27,415,029.49	23,784,075.00	3,630,954.49	

EXHIBIT F

CA Insurance Guarantee Association

144

Merced Property & Casualty Co.

STATEMENT OF OPERATIONS

From Inception to Friday, September 30, 2022

California - Liq. date 12/3/18

	Automobile & Homeowners	All Other	Workers Compensation	Totals
INCOME				
Assessments	\$0.00	\$253,339.28	\$0.00	\$253,339.28
Recoupments	0.00	0.00	0.00	0.00
Total Assessments & Recoupments	0.00	253,339.28	0.00	253,339.28
Interest - Members				
Assessment Interest	0.00	0.00	0.00	0.00
Investment Interest	0.00	0.00	0.00	0.00
Accrued Interest	0.00	0.00	0.00	0.00
Liquidator Advances	18,313,163.10	1,906,973.90	0.00	20,220,137.00
Reserve for Excess Advances	0.00	0.00	0.00	0.00
Interest on Advances	0.00	0.00	0.00	0.00
Accrued Interest on Advances	0.00	0.00	0.00	0.00
Reinsurance Incurred	0.00	0.00	0.00	0.00
Total Income Received & Accrued	18,313,163.10	2,160,313.18	0.00	20,473,476.28
EXPENSES				
Losses Paid	69,778,698.67	7,503,409.16	0.00	77,282,107.83
Recovery on CIGA Paid Claims	(53,692,718.57)	(5,562,887.59)	0.00	(59,255,606.16)
Net Losses Paid	16,085,980.10	1,940,521.57	0.00	18,026,501.67
Loss Adjustment Expenses Paid	295,847.52	28,606.77	0.00	324,454.29
Total Loss & LAE Paid	16,381,827.62	1,969,128.34	0.00	18,350,955.96
Return Premiums	2,984,383.36	0.00	0.00	2,984,383.36
Administrative Expenses	1,278,388.27	191,184.84	0.00	1,469,573.11
Returned to Member Insurers	0.00	0.00	0.00	0.00
Bond Expense	0.00	0.00	0.00	0.00
Total Paid	20,644,599.25	2,160,313.18	0.00	22,804,912.43
RESERVES				
Case Reserves	30,001.00	0.00	0.00	30,001.00
IBNR Reserves	0.00	0.00	0.00	0.00
Total Case & IBNR Reserves	30,001.00	0.00	0.00	30,001.00
Loss Adj. Exp. Resv. - Case	10,453.27	0.00	0.00	10,453.27
Loss Adj. Exp. Resv. - IBNR	0.00	0.00	0.00	0.00
Total LAE Case & IBNR Reserves	10,453.27	0.00	0.00	10,453.27
Unearned Premium Reserves	0.00	0.00	0.00	0.00
Penalties and Other Reserves	0.00	0.00	0.00	0.00
Total Reserves	40,454.27	0.00	0.00	40,454.27
Total Incurred	20,685,053.52	2,160,313.18	0.00	22,845,366.70
Fund Balance (Deficit)	(2,371,890.42)	0.00	0.00	(2,371,890.42)

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Insurance Commissioner of the State of California
v. Merced Property & Casualty Co.**
No.: **Superior Court of California, County of Merced, # 18CV-04739**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service.

On **January 27, 2023**, I served the attached **INDEX OF EXHIBITS AND EXHIBITS IN SUPPORT OF COMMISSIONER'S APPLICATION FOR ORDER APPROVING LIQUIDATOR'S 1) PAYMENT OF ADMINISTRATIVE AND PROFESSIONAL FEES AND EXPENSES FOR THE PERIOD MAY 1, 2021 TO OCTOBER 31, 2022, AND 2) SECOND INTERIM DISBURSEMENT OF MERCED ASSETS** by transmitting a true copy via electronic mail, addressed as follows:

Jeffrey D. Neumeyer, Esq.
Sr. Vice President, General Counsel and
Corporate Secretary
United Heritage Financial Group
Email to jneumeyer@unitedheritage.com

Brad Roeber
Executive Director
California Insurance Guarantee Association
Email to roeberb@ciga.org

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **January 27, 2023**, at Sacramento, California.

Danielle Jones
Declarant


Signature

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