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Fee Exempt Pursuant to
Government. Code § 6103

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
10 **SPRING STREET COURTHOUSE**

12 INSURANCE COMMISSIONER OF
13 THE STATE OF CALIFORNIA,

14 Petitioner,

15 v.

16 SEECHANGE HEALTH INSURANCE
17 COMPANY,

18 Respondent.

Case No. BS152302
Assigned to Hon. Maren Nelson, Dept. SCC 17

**NOTICE OF APPLICATION AND
APPLICATION FOR ORDER:**

- 19 **(1) APPROVING LIQUIDATOR'S FINAL
REPORT AND ACCOUNTING,**
20 **(2) DIRECTING FINAL DISTRIBUTION OF
ESTATE ASSETS,**
21 **(3) APPROVING ADMINISTRATIVE
EXPENSES, AND**
22 **(4) DISCHARGING LIQUIDATOR AND
TERMINATING LIQUIDATION
PROCEEDING;**

**MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
JOSEPH HOLLOWAY; DECLARATION OF
RAYMOND MINEHAN**

23
24 Date: August 30, 2018
Time: 9:00 a.m.
25 Place: Dept. SCC 17
312 North Spring Street
26 Los Angeles, CA 90012

27 Action Filed: November 18, 2014

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NOTICE OF APPLICATION & APPLICATION

**TO HON. MAREN NELSON, SEECHANGE HEALTH INSURANCE COMPANY, AND
THOSE PERSONS AND ENTITIES WHO HAVE APPEARED OR ASSERTED AN
INTEREST IN THE ESTATE IN LIQUIDATION:**

PLEASE TAKE NOTICE that Dave Jones, Insurance Commissioner of the State of California, in his capacity as Liquidator (“**Liquidator**”) of SeeChange Health Insurance Company, (“**SeeChange**”) hereby applies for an Order (i) approving the Liquidator’s Final Report and Accounting, (ii) approving his proposed final distribution of assets, (iii) approving administrative expenses, and (iv) terminating the liquidation proceeding and discharging the Insurance Commissioner (the “**Application**”). The proposed distribution is attached as Exhibit A. The Application is based on this notice, the accompanying memorandum of points and authorities, the attached declarations of Joseph Holloway and Raymond Minehan, the attached exhibits, the files and pleadings in this case, and such oral arguments as may be made at the hearing on this matter.

PLEASE TAKE FURTHER NOTICE that the Liquidator will present the Application for hearing on August 30, 2018 at 9:00 in Department SS17 of the Courthouse located at 312 North Spring Street, Los Angeles, CA 90012. Any objection or opposition to this Application must be filed directly in Department SS17 and served on all parties on or before August 16, 2018. If no objection or opposition to this Application is received by the Court by that date, the Court may rule on the Application without a hearing.

WHEREFORE, the Liquidator respectfully requests that the Court enter the proposed order served and submitted concurrently with this Application.

Dated: July 17, 2018

XAVIER BECERRA
Attorney General of California

By: Matthew C. Heyn
Matthew C. Heyn, Deputy Attorney General
Attorneys for Applicant Dave Jones, Insurance
Commissioner, in his capacity as Liquidator

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1 On December 31, 2014, after serving as the SeeChange conservator for several months, the
2 Insurance Commissioner filed his *Application for Liquidation Order and Supplemental Injunctive*
3 *Relief*, which attached evidence of SeeChange’s insolvency. As noted above, on January 28,
4 2015, the Court granted the application and entered the Liquidation Order.

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

6 Generally, sections 1010 through 1062 of the Insurance Code govern conservation and
7 liquidation proceedings against insurers domiciled in California.¹ Under these provisions, the
8 Insurance Commissioner has the power to operate, wind down, liquidate, and distribute the assets
9 of an insolvent insurer to ensure the “orderly and equitable distribution of the assets” to those
10 entitled to share in those assets. (*In re Title USA Corp.* (1996) 36 Cal.App.4th 363, 372.)

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

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

- 20 • acts as the arbiter of disputed claims (Ins. Code, § 1032);
- 21 • approves the compensation of deputies, clerks and assistants (*Id.*, § 1035);
- 22 • approves the compensation of outside counsel employed to assist in the liquidation
23 (*Id.* § 1036);
- 24 • may approve compromises of any claims by or against the insurance company (*Id.*
25 § 1037, subd. (c));

26 _____
27 ¹ There are additional provisions governing conservation and liquidation proceedings
28 elsewhere in the Insurance Code. For example, California has adopted the Uniform Insurers
Rehabilitation Act for insurers domiciled in other states. (Ins. Code, §§ 1064.1-1064.12.)

- 1 • authorizes the acquisition or disposition of property in excess of \$20,000 (*Id.*, § 1037,
- 2 subd. (d)); and
- 3 • permits, under certain conditions, the investment of funds in excess of \$100,000 (*Id.*,
- 4 § 1037, subd. (g)).

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

6 To ensure an orderly liquidation, an insurance company in liquidation may be operated and
7 managed by the Commissioner. (See Ins. Code, §§ 1010, 1037.) The Liquidator may employ
8 people, utilize and update computers and facilities, contract with vendors and professionals and
9 do the many other things described below to perform the necessary tasks to marshal assets and
10 pay claims. (See, e.g., Ins. Code., § 1035.) To meet these goals, the Liquidator uses the services
11 of the Conservation and Liquidation Office (“**CLO**”) and certain former employees of
12 SeeChange. These services are supplemented by specialized vendors, contractors, consultants,
13 and professionals (including outside counsel).

14 The CLO is an administrative service entity created by the Commissioner to administer the
15 estates of insurers undergoing conservation or liquidation in California. Upon obtaining a
16 conservation or liquidation order, the Commissioner generally delegates his statutory
17 administrative duties over the insurer to the CLO and/or to special deputy insurance
18 commissioners, pursuant to section 1035 of the Insurance Code. The CLO now performs any
19 necessary functions for the liquidation of SeeChange on behalf of the Liquidator.

20
21 **II. LIQUIDATOR’S REPORT OF ACTIVITIES**

22 **A. Notice of Conservation and Liquidation to Interested Parties.**

23 Upon being appointed as statutory conservator of SeeChange (the “**Conservator**”, the
24 Insurance Commissioner immediately took possession of SeeChange and all of its assets. As
25 Conservator he operated SeeChange business from November 19, 2014 through January 28, 2015
26 (the “**Conservation Period**”), at which point the Court granted the Conservator’s application
27 under Insurance Code section 1016 to liquidate SeeChange.

1 After taking control of SeeChange, the Conservator promptly notified all interested parties
2 of the fact that SeeChange had been placed into statutory conservation. This notice was given to
3 a total of 3,151 potentially interested parties, including all employees, producers, policyholders,
4 vendors, banks, landlords, and other parties and individuals – anyone the Conservator could
5 reasonably determine had any interest in or relationship with SeeChange. The Conservator also
6 published legal notice of the Conservation Order in several newspapers of general circulation in
7 California and Colorado.

8 **B. Insurance Operations – Policy & Claims Administration**

9 For several months prior to the entry of the Conservation Order, SeeChange had been
10 notifying policyholders that the company would be ceasing to issue new or renewal insurance
11 policies. SeeChange’s management, working under the regulatory supervision of the Department
12 of Insurance, implemented an orderly transition of all of SeeChange’s in-force insurance business
13 to other insurance providers. Those transition activities continued during the early portion of the
14 Conservation Period. By December 31, 2014, all of SeeChange’s in-force insurance business had
15 either expired or had been short-term cancelled and transitioned to new, solvent health insurance
16 companies.

17 With respect to claims administration, the Conservator continued to pay all health insurance
18 claims throughout the entire Conservation Period. The majority of the claims administration
19 work was performed by Loomis Company, Inc. (“**Loomis**”), a third-party claims administrator
20 under contract with SeeChange. During the Conservation Period, the Conservator paid a total of
21 approximately \$12 million in claims payable under SeeChange health insurance policies. The
22 Conservator’s claims payments terminated upon the entry of the Liquidation Order, at which time
23 the liability to pay claims transitioned to the several state life and health guarantee associations
24 (the “**Guarantee Associations**”), which became responsible for payment of SeeChange insurance
25 liabilities upon the liquidation and formal insolvency of SeeChange.

26 **C. Employment Matters**

27 At the commencement of the Conservation Period, the Conservator identified a number of
28 key employees whose continued service was critically important to the Conservator’s ability to

1 conduct the operations of the company in an efficient and effective manner. To retain these key
2 employees, the Conservator determined that it was necessary and reasonable to offer them a
3 retention agreement. This is a common practice in insurance conservatorships that is authorized
4 by section 1037 of the Insurance Code.

5 The Conservator prepared retention bonus agreements for eight employees of SeeChange.
6 These agreements provided an incentive for the selected employees to continue their employment
7 with SeeChange during the transitional period arising from the conservation and future
8 liquidation of the company. In exchange for the employee signing a General Release, the
9 Conservator agreed to pay a monetary retention bonus on the condition that each employee
10 committed to remain employed through March 31, 2015. The total aggregate amount of retention
11 bonuses was \$146,000. Pursuant to the retention bonus agreements, each employee would
12 receive a pro-rated share of the retention bonus in two periods, with effective dates of January 9,
13 2015 and March 31, 2015. The retained employees were terminated following the transition
14 period.

15 Pursuant to the Conservation Order, the Conservator was authorized to terminate
16 compensation and benefit arrangements with SeeChange employees as well as to assume, reject,
17 or modify any executory contracts. In January 2015, the Conservator rejected the employment
18 agreements for other employees.

19 **D. Real Estate Matters – Office Leases**

20 SeeChange was obligated under long-term leases for office space in Calabasas and Studio
21 City. Following the issuance of the Conservation Order, the Conservator reduced staffing levels
22 at the Calabasas location to the minimum needed to conduct SeeChange's claims handling needs.
23 The Conservator negotiated a letter agreement with the lessor, Kilroy Realty, amending the lease
24 for the Calabasas office space. Pursuant to the Letter Agreement, the lease terminated on April
25 30, 2015, rather than May 31, 2019. In exchange, SeeChange made monthly rent payments as
26 provided for in the lease through the new termination date, and forfeited its security deposit. As
27 of the termination of the lease, the parties waived all obligations under the lease (save for the
28 payments provided for in the Letter Agreement). In June of 2015, the Liquidator closed

1 SeeChange’s Calabasas office and transferred all operational functions to the CLO’s office in San
2 Francisco.

3 As of the date of the Conservation Order, SeeChange had entered into two leases – an
4 original lease and a sublease – related to the office space in Studio City, California. On June 19,
5 2012, SeeChange and the Studio City landlord had agreed to extend the term of the lease through
6 June 30, 2017. Just over one year later, SeeChange had subleased the Studio City office space to
7 a company known as Forward Studio City, Inc. The monthly rent received by SeeChange from
8 the sublease was slightly less than the amount owed under the original lease. After reviewing the
9 terms of the original lease and sublease, the Conservator concluded that it was in the best interest
10 of the estate to reject these agreements and he did so.

11 **E. Policy and Claims Administration Vendor Agreements**

12 In order to address policy claims and billing through the end of 2014, the Conservator
13 negotiated workouts with (i) CIGNA Health and Life Insurance Company (“CIGNA”), with
14 which SeeChange contracted for the use of its healthcare provider network, and (ii) Loomis, the
15 third-party administrator that SeeChange contracted to process provider claims and bills.

16 1. CIGNA Workout: SeeChange entered into an Administrative Services Agreement
17 with CIGNA on July 1, 2011. Pursuant to that agreement, CIGNA made certain health care
18 provider networks, including incorporated provider billing rates, available to SeeChange. In
19 return, SeeChange agreed to pay set fees based on a percentage of premiums and to purchase
20 certain CIGNA products, among other obligations. The agreement provided that, in the event
21 SeeChange desired run-out services following termination of its access to the network, CIGNA
22 would provide such services for 12 months in return for a payment equal to four months of the
23 agreed-upon monthly network access fee. In December 2014, the Conservator requested that
24 CIGNA provide run-out services, which continued through December 2015. SeeChange paid for
25 one of the four months’ cost for run-off services; the other three months’ cost was paid for by the
26 Guarantee Associations.

27 2. Loomis Workout: SeeChange entered into an Administrative Services Agreement with
28 Loomis on June 1, 2011. Pursuant to that agreement, Loomis provided claims administration and

1 bill processing services on SeeChange policyholder claims. The agreement was to continue for
2 two-year terms, automatically renewed, until terminated by either party. Following the issuance
3 of the Conservation Order, the Conservator negotiated and entered into an amendment to the
4 agreement with Loomis. Under that amendment, Loomis agreed to provide continuing services to
5 SeeChange’s estate through the entry of a Liquidation Order (or until all remaining claims
6 responsibilities had been transferred to the Guarantee Associations) in exchange for a one-time
7 fixed fee. Upon the termination of the agreement, the parties mutually waived all duties and
8 obligations. The amendment terminated on the date of the Liquidation Order, January 28, 2015.

9 **F. Guaranty Fund Payments**

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

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

1 The Commissioner is informed that the Guaranty Associations in the following states paid a
2 total of \$19,901,246.45 from the date of liquidation through March 31, 2018:

3	Arizona	14,289.85
4	California	17,700,512.20
5	Colorado	2,002,894.58
6	Florida	4,806.08
7	Idaho	1,906.15
8	Illinois	19,047.61
9	Indiana	29,791.59
10	Iowa	335.58
11	Kansas	3,229.35
12	Kentucky	31.47
13	Maryland	3,520.62
14	Michigan	3,994.73
15	Missouri	119.46
16	Nebraska	897.70
17	Nevada	10,096.33
18	North Dakota	213.34
19	Ohio	53.60
20	Oklahoma	6,845.04
21	Tennessee	1,116.45
22	Virginia	5,024.36
23	Wisconsin	<u>92,520.36</u>
24	Total	\$19,901,246.45

25 **G. Claim of Centers for Medicare & Medicaid Services**

26 A major challenge the Liquidator faced was resolving the claim by the U.S. Centers for
27 Medicare and Medicaid Services (“CMS”) and receiving a release from any other federal claims.
28 The CMS’s filed claim (of over \$4 million) was based on the Risk Adjustment Program and
Transitional Reinsurance requirements under the Patient Protection and Affordable Care Act
 (“ACA”). CMS asserted its claim was entitled to first-priority treatment under the Federal
 Priority Statute, 31 U.S.C. § 3713, which would have meant only a very limited distribution to
 other creditors.

1 On July 19, 2016, the Liquidator made determinations on the ACA claim, including
2 classifying it as a Class 3 claim. (Ins. Code, § 1033, subd. (a)(3).) On August 26, 2016, the U.S.
3 Department of Justice filed its *Application for Order to Show Cause* with this Court seeking to
4 postpone further action on the Liquidator’s determination of the ACA claim. However, following
5 lengthy discussions between counsel to the Liquidator and CMS, CMS and the United States
6 determined not to challenge the Liquidator’s classification of the ACA claim and stipulated with
7 the Liquidator to resolve CMS’s proof of claim and to withdraw its application. The stipulation
8 was approved by the Court on November 4, 2016. The Liquidator filed for a federal release with
9 the U.S. Department of Justice and the two sides agreed on the language of the release. The
10 Liquidator received this Court’s approval of the release on March 9, 2018.

11 12 **III. LIQUIDATOR’S FINAL ACCOUNTING**

13 Having completed the liquidation of SeeChange, the Liquidator submits the following
14 accounting.

15 **A. Financial Statements**

16 The Statement of Income and Expenses for SeeChange for the period November 19, 2014
17 (the date of conservation) to March 31, 2018, is attached as Exhibit C. The balance sheet for
18 March 31, 2018 is attached as Exhibit D. These financial statements show that, as of March 31,
19 2018, SeeChange had assets in the total amount of \$4,070,600 and liabilities in the total amount
20 of \$20,047,100, which result in a net asset deficiency of \$15,976,500.

21 **B. Claims**

22 The Liquidation Order provides that “The rights and liabilities of claimants, policyholders,
23 shareholders, members and all other persons interested in the assets of SeeChange are fixed as of
24 the date of entry of this Order.” (Liquidation Order, ¶ 28.) It also provides that any party with
25 rights against SeeChange may assert those rights only through a proof of claim. (Liquidation
26 Order, ¶ 29, emphasis added.)

27 The Court established December 31, 2015 as a bar date for proofs of claim. Pursuant to
28 Insurance Code section 1021, the Liquidator published notices to creditors that claims against the

1 insolvent estate of SeeChange had to be filed by no later than the Claims Bar Date. The
2 Liquidator mailed approximately 3,100 Proof of Claim (“POC”) forms to all persons possibly
3 interested in making a claim against SeeChange. There were 159 POC forms that were timely
4 filed. The claims that were covered by state insurance guaranty associations were forwarded to
5 NOLHGA to be consolidated with its proof of claim. The Liquidator completed the substantive
6 review of the proofs of claim that were timely filed. This total includes “non-covered” and “over
7 cap” claims.

8 The Liquidator approved 38 total claims, and the amount approved for these 38 claims is
9 \$27,156,247.26. Of the 38 approved POCs, there were 36 Class 2 approved claims for a total of
10 \$21,956,132.03, one Class 3 claim (of CMS), and one Class 4 claim (of the Department of
11 Insurance). Of the \$21,956,132.03 in Class 2 claims, \$21,806,179.00 (over 99%) was for
12 NOLGHA and its Guaranty Association members. The other 35 approved Class 2 POCs were
13 non-IGA covered claims; they were approved for a total of \$149,953.03. Attached hereto as
14 Exhibit A is a list showing the Class 2 claims that were allowed and the allowed amount of the
15 claims. A copy of this report has been served on every party that filed an approved proof of claim
16 as well as each of the life and health guaranty associations.

17 The Liquidator also approved the Class 3 claim of CMS for \$5,199,666.61 and the Class 4
18 claim of the California Department of Insurance for \$448.62. There will be no distribution on
19 account of the Class 3 or Class 4 claims.

20 The Liquidator rejected 39 Class 7 claims. The Class 7 claimants were sent letters and their
21 claims were closed after it became clear the estate had insufficient assets to make any
22 distribution to Class 7. Additionally, three claims were closed and rejected as duplicate filings.
23 Under Insurance Code section 1032, “When a claim is rejected by the commissioner, written
24 notice of rejection shall be given by mail, addressed to the claimant at the address set forth in his
25 claim. Within thirty days after the mailing of the notice the claimant may apply to the court in
26 which the liquidation proceeding is pending for an order to show cause why the claim should not
27 be allowed.” More than 30 days have elapsed since the Liquidator mailed notice of rejection and
28 no claimant has applied for an order to show cause.

1 In summary, all claims against the estate have been reviewed, final determinations have
2 been made, and the time to challenge those determinations has expired.

3 **C. Reinsurance**

4 Over the course of the conservation and liquidation of SeeChange, the Liquidator's
5 reinsurance department billed and adjusted for \$3,556,979.61. Of this amount, the Liquidator
6 collected \$2,485,511.47 and wrote off as uncollectable \$1,071,468.14. The amount reflected as
7 reinsurance recoverable and written off in the current period was part of an estimate made prior to
8 the liquidation by company management. The liquidation staff determined that all amounts due
9 under the reinsurance contract had been collected and wrote off the remaining balance. The final
10 reinsurance transactions are completed.

11 **D. Legal Matters**

12 All legal matters have been resolved.

13
14 **IV. PROPOSED DISTRIBUTION.**

15 Insurance Code section 1057 provides that the Commissioner shall be deemed to be trustee
16 for all creditors. "It was his duty to collect the assets (§ 1037, Ins. Code) and distribute them
17 ratably among the creditors (§ 1025, Ins. Code) subject to certain priorities (§ 1033, Ins. Code)
18" (*W.J. Jones & Son, Inc. v. Independence Indemnity Co.* (1942) 52 Cal.App.2d 374, 378, 379.)

19 Pursuant to the priority scheme of Insurance Code section 1033, subdivision (a), the
20 Liquidator is required to distribute any amounts first to pay administrative claims (in Class 1),
21 next to pay any claims of the insurance guarantee associations and policy holders (in Class 2),
22 next to pay claims of the U.S. Government (in Class 3), and next to pay claims of the State of
23 California. Claims within a priority class must be paid in full before lower priority claims receive
24 anything; claimants within a priority class receive pro rata treatment.

25 As required by Insurance Code section 1035.5, the Liquidator developed a plan to make
26 early access distributions to Life and Health Insurance Guaranty Associations with valid claims in
27 the SeeChange liquidation and entered into an agreement with NOLHGA to provide early
28 distributions to such Associations through NOLHGA. On April 4, 2017, the Court entered its

1 order approving the early-access plan, approved the agreement with NOLHGA, and authorized
2 the Liquidator to disburse \$5 million of the liquidated assets of SeeChange, subject to
3 adjustments. As allowed by the Court's order, the Liquidator has made early access distributions
4 of \$5,053,800.

5 After paying administrative fees and reserving for further anticipated administrative fees,
6 approximately \$3,727,921.69 remains to be distributed. The Liquidator proposes to make a final
7 distribution to Class 2 claimants as set forth on the list attached as Exhibit A. Each Class 2
8 claimant with an allowed claim will receive a pro rata distribution of slightly less than 40% of the
9 amount of their allowed claim.

10 The Liquidator requests that the Court order that any unclaimed distribution (i.e., uncashed
11 checks) be dealt with as provided by Code of Civil Procedure section 1517 and Insurance Code
12 section 12937. Code of Civil Procedure section 1517, subdivision (b) provides:

13 All property distributable in the course of voluntary or involuntary dissolution or
14 liquidation of an insurer ... that is unclaimed by the owner after six months of the
15 date of final distribution shall be transferred to the Department of Insurance, with
any proceeds of sale of property and other funds to be deposited in the Insurance
Fund for expenditure as provided in Section 12937 of the Insurance Code.

16 Insurance Code section 12937 provides:

17 (a) Escheated funds deposited in the Insurance Fund pursuant to subdivision (b) of
18 section 1517 of the Code of Civil Procedure shall be available for expenditure by
19 the commissioner to fund proceedings and to pay expenses on nonasseted estates
for which liabilities have been or will be incurred.

20 (b) A policyholder who was entitled to funds described in subdivision (a) pursuant
21 to an order of distribution and who has not previously received an appropriate
22 distribution may submit a claim to the commissioner. The commissioner shall pay
the claim from the escheated funds deposited in the Insurance Fund pursuant to
subdivision (a) upon verification that the claim is valid.

23 (c) The department shall not be required to conduct outreach programs to attempt
24 to locate policyholders described in subdivision (b).

25 In accordance with the foregoing provisions, the Commissioner will wait the six-month
26 time provided by Code of Civil Procedure section 1517. Thereafter, the Commissioner will void
27 checks that have not been negotiated and escheat all undeliverable amounts and amounts of non-
28 negotiated checks to the Insurance Fund pursuant to Insurance Code section 12937.

1 **V. LIQUIDATION COSTS**

2 In summary, from the date the conservation of SeeChange began on November 19,
3 2014, the SeeChange estate incurred the following expenses:

4	General and Administrative Expenses:	\$ 110,799
5	Legal and Professional Fees:	985,850
6	Allocation Expenses:	807,394
7	Other Expenses	<u>1,065,660</u>
8	Total Expenses Incurred:	\$2,969,703

9 In addition to these expenses, the Commissioner proposes to retain a reserve of \$250,000
10 for payment of administrative expenses incurred by the Commissioner after March 31, 2018 for
11 administrative and closing costs. This reserved sum represents the estimated expenses of
12 administration post-closing such as legal fees, final audits fees, final tax advice and preparation
13 fees, and administrative expenses. To the extent administrative expenses after April 1, 2018 are
14 greater than \$250,000, the Commissioner should be authorized to pay any excess closing and
15 administrative costs out of the funds appropriated for the maintenance of the Department of
16 Insurance. (Declaration of Joseph Holloway, attached hereto, ¶ 14.) To the extent administrative
17 expenses after April 1, 2018 are less than \$250,000, the Commissioner should be authorized and
18 directed to pay the remaining reserve pro rata to approved Class 2 claimants as set forth in Exhibit
19 A to the Application; provided that the Commissioner should be excused from making a
20 distribution of less than \$10 (ten dollars).

21 The Court has previously approved payment of all requested expenses incurred from the
22 beginning of the liquidation through and including September 30, 2018. The Liquidator requests
23 that the Court approve all fees and expenses incurred and paid from October 1, 2017 through
24 March 31, 2018 as well as the aforementioned reserve. The following is an accounting of such
25 fees and expenses:

	Fees and Expense as of Date of Liquidation	Other Legal and Professional Fees	DOJ Legal	Administrative Office Expense	Allocated Expenses/CLO Direct Hours	Total Expenses by Month
October 2017	\$ 35	\$ -	\$ 13	\$ 6,686	\$ 6,733	
November 2017	\$ 263	\$ 128	\$ 13	\$ 5,974	\$ 6,377	
December 2017	\$ 114	\$ -	\$ 22	\$ 5,544	\$ 5,680	
January 2018	\$ 666	\$ 3,953	\$ 13	\$ 10,836	\$ 15,468	
February 2018	\$ 74	\$ -	\$ 81	\$ 21,073	\$ 21,228	
March 2018	\$ 980	\$ 43	\$ 31	\$ 20,154	\$ 21,208	
Total Expense by Service²	\$ 2,132	\$ 4,123	\$ 173	\$ 70,267	\$ 76,694	

The administrative fees and expenses fall into two categories: (1) the CLO’s administrative operating expenses, which are allocated among all insolvent insurer estates administered by the Commissioner (“**Allocated Expenses**”), and (2) direct estate operating expenses, which are specifically expended for SeeChange (“**Direct Expenses**”).

A. Allocated Expenses

The CLO incurs normal business expenses such as salaries, rent, depreciation of fixed assets, and certain organizational infrastructure costs, such as those associated with accounting, investments, technology network and services, human resources, and day-to-day maintenance of estates. (Declaration of Raymond Minehan, attached hereto, ¶ 5.) The CLO’s administrative expenses are allocated to each conservation or liquidation estate under its management and oversight.

Under the cost-allocation methodology, each estate is charged a portion of the monthly allocated expense based on the amount of time that CLO employees worked on estate matters. (*Id.*, ¶ 5.) The CLO maintains a timekeeping system in which employees’ record time spent on each estate for the work they perform for that estate. (*Ibid.*) The employee time records are

² Numbers may not add up exactly due to rounding.

1 reviewed monthly by the estate trust manager for each estate to ensure that the hours are accurate
2 and billed to the correct estate. (Holloway Decl., ¶ 5.)

3 From October, 2017 through March, 2018, CLO employees in five different departments
4 helped the Liquidator administer the SeeChange estate. Those five departments and the services
5 the CLO employees provided are as follows:

6 **1. Estate Trust and Executive Department.** The Estate Trust Department (under the
7 oversight of executive management) was responsible for the overall administration and
8 management of the liquidation estate. It coordinated and directed the activities of all other
9 departments and resources. From October, 2017 through March, 2018, this department was
10 responsible for overseeing the continuing liquidation of SeeChange, preparing financial records
11 of SeeChange, coordinating the payment of claims by the Colorado and California Guaranty
12 Funds, working with CMS on the filing of a proof of claim, and complying with audit and tax
13 requirements of the estate. (Holloway Decl., ¶ 5(a).)

14 **2. The Claims Department.** The Claims Department was responsible for the
15 adjudication of all proofs of claim filed against the SeeChange estate. The bulk of the claims
16 work from October, 2017 through March, 2018 was the resolution of the final proofs of claim.

17 **3. Information Technology Department.** Administering the SeeChange liquidation
18 required information technology (“IT”) services, which were provided by the CLO’s IT
19 Department. Such services include email, phone and imaging systems. From October, 2017
20 through March, 2018, the CLO’s IT Department supported the Liquidator’s proof of claim
21 process by collecting, organizing and reporting the loss and loss adjustment expenses associated
22 with the Guaranty Associations’ handling of all open claims, which the Guaranty Associations
23 assumed at the time of liquidation. (*Id.*, ¶ 5(c).)

24 **4. Finance and Accounting Department.** The CLO’s Finance and Accounting
25 Department is responsible for administering and reporting all financial aspects of the SeeChange
26 estate, including:

- 27 • General Ledger, Financial Statements & Account Reconciliation
- 28 • Cash Management, Investments and Banking Relationships

- 1 • Accounts Payable
- 2 • Receivable accounting related to collections and cash receipts
- 3 • Audit & Compliance
- 4 • Responding to Guaranty Associations' requests for check copies

5 This department maintains the general ledgers inherited from SeeChange. The Finance
6 Department also adjusts and corrects errors in the inherited financial information. The staff
7 prepares all entries, schedules and work papers, and produces all manner of financial analysis and
8 reports. The Finance Department is responsible for the reconciliation of all cash receipts and
9 disbursements of the estate. It also manages the periodic independent review of SeeChange's
10 financial statements by the CLO's auditors. (*Id.*, ¶ 5(d).)

11 **5. Administration/Facilities.** The Administration/Facilities Department is responsible
12 for managing the records in storage and the relocation efforts related to off-site locations
13 associated with conservation and liquidation estates. All of SeeChange's physical records that
14 were taken into possession at the time of liquidation are still held by the CLO at their offices in
15 San Francisco or in offsite storage maintained by the CLO. (*Id.*, ¶ 5(e).)

16 * * *

17 From October 1, 2017 through March 31, 2018, the SeeChange estate incurred 281.81
18 hours of employee time out of 12,634.16 total hours of all insolvent insurer estates, which
19 represents approximately 2.2% of the CLO's total hours. (Minehan Decl., ¶ 7 and Ex. E.) The
20 total allocated expenses for October 1, 2017 through March 31, 2018 is \$70,268.72, which
21 represents approximately 2.3% of the total CLO allocated expenses of \$3,105,618.17 for that time
22 period. (Minehan Decl., ¶ 8.)

23 **B. Direct Expenses**

24 In addition to the Allocated Expenses, the SeeChange estate also incurred non-overhead
25 expenses, which are directly paid out of estate assets as described in detail below. These
26 expenses are paid to third-party vendors, contractors and consultants necessary for the
27 administration of the SeeChange estate. (Minehan Decl., ¶ 11.) The total amount of non-legal
28 direct operating expenses paid to third-party vendors and professionals from October 1, 2017

1 through March 31, 2018 was \$1,271. Exhibit B attached hereto shows the non-legal Direct
2 Expenses incurred by the SeeChange estate. (*Id.*, ¶ 10.)

3 **1. Accounting and Audit.** As required by Insurance Code section 1061, the California
4 Department of Finance (“**DOF**”) conducts annual estate financial reviews and procedural audits
5 for which it charges the Liquidator. From October 1, 2017 through March 31, 2018, SeeChange
6 paid expenses totaling \$1,010 relating to the DOF’s review of SeeChange’s 2017 financial
7 statements. (Minehan Decl., ¶ 14 and Ex. A.)

8 **2. Miscellaneous Office Expenses.** The SeeChange also made miscellaneous payments
9 totaling \$173 to vendors which provided services such as telephone, postage, and record storage
10 and retrieval. (Minehan Decl., ¶ 15.)

11 **3. Legal Services.** Generally, non-litigation legal services are provided to the
12 Liquidator by and/or under the direction of the California Department of Insurance’s Corporate
13 Affairs Bureau (“**CAB**”). In addition, the Attorney General’s Office (“**AGO**”) provides the
14 litigation services needed by the Liquidator. (Holloway Decl., ¶ 7.) The services provided by
15 the AGO from October 1, 2017 through March 31, 2018 included (i) preparing the fourth report
16 on the status of the liquidation (for January through September 2017) and (ii) preparing the
17 supplemental request for approval of estate expenses (which the Court granted). (*Id.*, ¶ 8.)

18 The Liquidator also required specialized legal services and, pursuant to Insurance Code
19 section 1036, retained Wisener Nunnally Roth LLP for advice regarding CMS’s claim as well as
20 negotiating with CMS to resolve the dispute. (*Id.*, ¶ 9.)³ The total legal fees and expenses
21 incurred by the SeeChange estate from October 1, 2017 through March 31, 2018 are \$5,156. (*Id.*,
22 ¶¶ 8, 9.)

23 The California Department of Insurance has guidelines governing the hiring and
24 compensation of private law firms that perform services in conservation and liquidation matters.
25 Those guidelines require, *inter alia*, that outside law firms submit monthly bills describing each
26 task performed, the date the task was performed, and the time expended on each task (reported in

27 _____
28 ³ If the Court requests, the Liquidator will make available the invoices for *in camera* review.

1 increments of tenths of an hour). With respect to disbursements, i.e. expenses incurred by the law
2 firms, the Department requires that invoices contain an itemization of disbursements by category.
3 (*Id.*, ¶ 10.)

4 When the Liquidator receives invoices for legal services, his staff carefully reviews the
5 invoices in order to determine whether they comply with the Department's guidelines and
6 whether the fees and expenses sought are reasonable, necessary, accurate and appropriate. Only
7 after invoices have been carefully reviewed and approved will outside law firms be paid the
8 amounts sought in their invoices. The procedures established by the Department are meant to
9 ensure that no unreasonable or unnecessary fees or expenses are approved and paid. (Holloway
10 Decl., ¶ 11.) The CLO and Department personnel who review the bills have regular contact with
11 the attorneys, actually see the attorneys' work product, and are knowledgeable about the legal
12 work being performed by the outside law firms. (*Id.*, ¶ 12.)

13 In accordance with the Department's guidelines, the Liquidator's staff has reviewed the
14 invoices submitted by the outside law firm and has determined that the amounts sought are
15 reasonable, necessary, accurate, appropriate and that the associated services were in the best
16 interest of SeeChange. (*Id.*, ¶ 11.)

17
18 **VI. CONCLUSION**

19 Consistent with his obligations and authority in the Liquidation Order and the Insurance
20 Code, the Insurance Commissioner has conducted a diligent and efficient liquidation of
21 SeeChange. The Insurance Commissioner respectfully requests that the Court enter the proposed
22 order submitted concurrently with this report and thereby discharge him so that this case can be
23 closed.

24 Dated: July 16, 2018

Respectfully Submitted,

25 XAVIER BECERRA
26 Attorney General of California

27 By: 
28 MATTHEW C. HEYN, DEPUTY ATTORNEY GENERAL
*Attorneys for Insurance Commissioner of the
State of California, as Liquidator*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. THE ESTATE IN LIQUIDATION SHOULD BE CLOSED.**

3 Insurance Code section 1057 provides that the Insurance Commissioner shall be deemed to
4 be a trustee for all creditors in the administration of insolvent insurers. “It was his duty to collect
5 the assets [Ins. Code, § 1037] and distribute them ratably among the creditors [Ins. Code, § 1025]
6 subject to certain priorities (Ins. Code, § 1033)” (*W.J. Jones & Son, Inc. v. Independence*
7 *Indemnity Co.* (1942) 52 Cal.App.2d 374, 378-379.)

8 Insurance Code section 1035, subdivision (a), authorizes the Commissioner to pay all
9 expenses incurred in the administration of an insolvent insurer from the assets of that estate. The
10 Commissioner has paid his expenses pursuant to Insurance Code section 1035 by directly paying,
11 through November 30, 2016, the provider of goods or services to the estate.

12 Insurance Code section 1033, subdivision (a) also sets forth the priority for distribution of
13 assets on claims made against an insolvency insurer’s estate. Claimants in a lower priority class
14 are not entitled to any distribution until the claimants in a higher priority class are paid in full.
15 Claimants within the same class are entitled to share pro rata in distributions made to that class.
16 (*Commercial Nat’l Bank v. Superior Court (Garamendi)* (1993) 14 Cal.App.4th 393, 398.) No
17 distribution may be made to creditors in classes 8 and 9 until all prior classes are paid in full
18 together with interest at the legal rate. (Ins. Code, § 1033, subd. (f).) The relevant priority
19 provisions of section 1033, subdivision (a), in this case are as follows:

- 20 (1) expense of administration;
21 (2) all claims of the insurance guarantee association and policyholders.

22 The Commissioner has completed marshaling and liquidating SeeChange’s assets and has
23 adjusted or otherwise made provision for the adjustment of all claims. Therefore, the
24 Commissioner should be authorized to make final pro rata distributions to all approved claimants.
25 Once this occurs, this estate can and should be closed and the liquidator discharged. The
26 discharge order operates as res judicata as to any claims of liability against the Liquidator in his
27 official capacity. (*Aviation Brake Systems Ltd. v. Voorhis* (1982) 133 Cal.App.3d 230, 234.) The
28 proposed order submitted with the Application implements the discharge and is consistent with

1 the many other orders that this office has proposed – and courts have approved – to finalize
2 insurance company liquidations.

3 **II. THE LIQUIDATOR’S FEES SHOULD BE APPROVED.**

4 Insurance Code section 1035 authorizes the Liquidator to employ the CLO to handle the
5 business of the insolvent insurers. Section 1035 also authorizes the Liquidator to be reimbursed
6 for all administration costs from the assets of the estate:

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

13 (Ins. Code, § 1035, subd. (a).) Insurance Code section 1036 similarly authorizes the
14 Liquidator to employ and to compensate legal counsel with the Court’s approval.

15 The Liquidator is vested with substantial discretion to conduct the liquidation of an
16 insolvent insurer subject to the limitation “that the exercise of discretion be neither arbitrary nor
17 improperly discriminatory.” (See *In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 356,
18 citing *Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal.2d 307, 329.) His decisions to pay
19 administrative expenses in the ordinary course are reviewed by the Court on an abuse of
20 discretion standard:

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

To obtain court approval for payment of the fees deemed appropriate, the
Commissioner must supply the court with adequate information to permit
intelligent evaluation of the basis for the Commissioner’s determination. The
court must be satisfied that the Commissioner has performed his duty to protect
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

1 (*Id.*, at p. 358 [affirming the trial court’s approval of payment of legal fees under Insurance Code
2 section 1036].)

3 The standards for approval of the fees and costs have been met. The professionals
4 employed for the liquidation of SeeChange provided the Liquidator invoices that describe in
5 detail the tasks performed, the person who performed the work, and the time expended on each
6 task. Invoices are reviewed by the Liquidator’s staff who are familiar with the work performed
7 and are approved for payment only to the extent they comply with CLO guidelines and are
8 reasonable, necessary, accurate and appropriate. As described in the attached Declaration of
9 Joseph Holloway submitted herewith, through his staff, the Liquidator carefully managed all fees
10 and expenses to ensure that they were reasonable and necessary considering the circumstances
11 and exigencies of this case. Accordingly, the Liquidator respectfully requests that the Court
12 approve the payment of the fees and expenses.

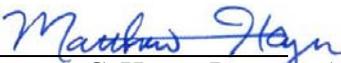
13 **III. CONCLUSION.**

14 The Application should be granted. The proposed order lodged concurrently with the
15 Application should be entered and the case should be closed following distribution to the
16 claimants on Exhibit A.

17 Dated: July 17, 2018

Respectfully Submitted,

18 XAVIER BECERRA
19 Attorney General of California

20 By: 
21 MATTHEW C. HEYN, DEPUTY ATTORNEY GENERAL
22 *Attorneys for Insurance Commissioner of the*
23 *State of California, as Liquidator*
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1 **DECLARATION OF JOSEPH HOLLOWAY**

2 I, Joseph Holloway, declare:

3 1. I am over 18 years old. I have personal, first-hand knowledge of the facts set forth in
4 this declaration. If called upon to testify to the facts below, I would competently do so.

5 2. I have a Bachelor of Arts degree in accounting from North Carolina State University
6 and hold the designation of Certified Financial Examiner from the Society of Financial
7 Examiners. From 1985 to 2005, I worked as an examiner, regulatory specialist, and chief forensic
8 accountant for the North Carolina Department of Insurance. Since 2005, I have worked for the
9 Insurance Commissioner’s Conservation & Liquidation Office (the “**CLO**”). I have over 25
10 years of experience working with insurance companies experiencing financial difficulties,
11 including companies in supervision, conservation, rehabilitation, and liquidation.

12 3. Under Paragraph 3 of the Court’s Liquidation Order entered on January 28, 2015 (the
13 “**Liquidation Order**”), the Court appointed Insurance Commissioner Dave Jones to serve as
14 Liquidator of SeeChange Health Insurance Company (“**SeeChange**”). In that paragraph, the
15 Court appointed me to serve as the on-site Liquidation Manager for SeeChange. I also served as
16 the on-site Conservation Manager for SeeChange during the period from November 19, 2014
17 through January 28, 2015. As a result of my appointment to these roles, I am knowledgeable of
18 all of the steps taken by SeeChange and by the Liquidator to take possession of and manage
19 SeeChange’s assets and records, and otherwise to manage SeeChange in liquidation. As the
20 Liquidation Manager of SeeChange, I oversee the overall administration of the SeeChange
21 liquidation estate, including but not limited to matters pertaining to SeeChange’s financial
22 reporting, claim administration, legal matters, reinsurance contracts and estate expenditures.

23 4. I have read the foregoing Liquidator’s Final Report And Accounting. I believe that
24 the facts in it are true. In particular:

- 25 a. Upon taking control of SeeChange, on November 19, 2014, my staff promptly notified all
26 interested parties of the fact that SeeChange had been placed into statutory conservation.
27 This notice was given to a total of 3,151 potentially interested parties, including all
28 employees, producers, policyholders, vendors, banks, landlords, and other parties and

1 individuals that the Conservator could reasonably determine had any interest in or
2 relationship with SeeChange. We also published legal notice of the Conservation Order in
3 several newspapers of general circulation.

4 b. As ordered by the Court, my staffed mailed approximately 3,113 proofs of claim to
5 SeeChange policyholders, providers, brokers, employees and other creditors. The proof of
6 claim notice was also published in general circulation newspapers. Proof of service of the
7 notices to creditors was filed with the Court. In response to the notice, 159 creditors
8 executed and returned their proofs of claim. The total stated value of the returned proofs
9 of claim is \$28,911,183.42.

10 c. The Liquidator completed the substantive review of the proofs of claim that were timely
11 filed. This total includes “non-covered” and “over cap” claims. The Liquidator approved
12 38 total claims. The amount approved for these 38 claims is \$27,156,247.26. Of the 38
13 approved Proofs of Claim, there were 36 Class 2 approved claims for a total of
14 \$21,956,132.03. Of this amount, \$21,806,179.00 was approved for NOLGHA and their
15 members. The other 35 approved Class 2 Proofs of Claim were non-IGA covered claims,
16 and they were approved for a total of \$149,953.03.

17 d. The Liquidator also approved the Class 3 claim of the Center for Medicare and Medicaid
18 Services for \$5,199,666.61 and the Class 4 claim of the California Department of
19 Insurance for \$448.62. The Liquidator rejected 79 Class 7 Proofs of Claim. All 79 Class
20 7 claimants were sent letters and their claims closed when it became clear the estate had
21 insufficient assets to make any distribution to Class 7. This occurred more than 30 days
22 ago. Three claims were closed as duplicate filings. Attached hereto as Exhibit A is a list
23 showing the Class 2 claims that were allowed and the allowed amount of the claims.

24 e. Over the course of the conservation and liquidation of SeeChange, the Liquidator’s
25 reinsurance department billed and adjusted for \$3,556,979.61. Of this amount, the
26 Liquidator collected \$2,485,511.47 and wrote off as uncollectable \$1,071,468.14. The
27 amount reflected as reinsurance recoverable and written off in the current period was part
28 of an estimate made prior to the liquidation by company management. The liquidation

- 1 staff determined that all amounts due under the reinsurance contract had been collected
2 and wrote off the remaining balance. The final reinsurance transactions are completed.
- 3 f. The Statement of Income and Expenses for SeeChange for the period November 19, 2014
4 (date of conservation) to March 31, 2018 is attached as Exhibit C. The balance sheet for
5 March 31, 2018 is attached as Exhibit D. I have supervised the preparation of the
6 documents and I believe they are accurate. These financial statements show that, as of
7 March 31, 2018, SeeChange had assets in the total amount of \$4,070,600 and liabilities in
8 the total amount of \$20,047,100, which result in a net asset deficiency of \$15,976,500.
- 9 g. Other than the final distribution, the SeeChange estate has been fully administered.

10 **Allocated Expenses**

11 5. I am also responsible for the monthly review of the time billed by CLO staff to the
12 SeeChange estate. The CLO staff provided estate administration services to the SeeChange estate
13 in five areas:

- 14 a. The Estate Trust and Executive Department (under the oversight of executive management)
15 is responsible for the overall administration and management of the liquidation estate. It
16 coordinates and directs the activities of all other departments and resources as they relate
17 to the estate's plan. From October 1, 2017 through March 31, 2018, the Department was
18 responsible for overseeing the continuing operation of the SeeChange estate, preparing
19 financial records of SeeChange, coordinating the payment of claims by the Colorado and
20 California Guaranty Funds, working with CMS on the filing of a proof of claim and
21 complying with audit and tax requirements of the estate.
- 22 b. The Claims Department is responsible for the adjudication of all proof of claims filed
23 against the SeeChange estate. The bulk of their work from October 1, 2017 through
24 March 31, 2018 was resolution of the final proofs of claim.
- 25 c. The SeeChange estate uses information technology (“IT”) services, such as email, phone
26 and imaging systems. From October 1, 2017 to March 31, 2018, the CLO's IT Department
27 supported the Liquidator's proof of claim process by collecting, organizing and reporting
28

1 the loss and loss adjustment expenses associated with the Guaranty Associations' handling
2 of all open claims.

- 3 d. The CLO's Finance and Accounting Department is responsible for all financial aspects of
4 the SeeChange estate, including: (i) General Ledger, Financial Statements & Account
5 Reconciliation; (ii) Cash Management, Investments and Banking Relationships; (iii)
6 Accounts Payable; (iv) Receivable accounting related to collections and cash receipts; (v)
7 Audit & Compliance; and (vi) Responding to Guaranty Associations' requests for check
8 copies. This department maintains the general ledgers inherited from SeeChange. It also
9 adjusts and corrects errors in the inherited financial information. The staff prepares all
10 entries, schedules and work papers, and produces all manner of financial analysis and
11 reports. The department is responsible for the reconciliation of all cash receipts and
12 disbursements of the estate. The Finance Department also manages the periodic
13 independent review of SeeChange's financial statements by the CLO's auditors.
- 14 e. The Administration/Facilities Department is responsible for managing the records in
15 storage and the relocation efforts related to off-site locations associated with conservation
16 and liquidation estates. All of SeeChange's physical records that were taken into
17 possession at the time of liquidation are still held by the CLO at their offices in San
18 Francisco or in offsite storage maintained by the CLO.

19 **Direct Expenses**

20 6. My responsibilities in the liquidation proceeding also include, but are not limited to,
21 requesting, reviewing and monitoring services provided by attorneys for the Liquidator.

22 7. Generally, non-litigation legal services are provided to the Liquidator by and/or under
23 the direction of the California Department of Insurance's Corporate Affairs Bureau ("CAB"). In
24 addition, the Attorney General's Office provides the litigation services needed by the Liquidator.

25 8. From October 1, 2017 through March 31, 2018, the Attorney General's Office
26 (i) prepared the fourth report on the status of the liquidation (for January through September
27 2017), and (ii) prepared a supplemental request for approval of estate expenses (which was
28

1 granted). The total amount of fees and costs paid to the Attorney General's Office for October 1,
2 2017 through March 31, 2018 is \$4,124.

3 9. The Liquidator required specialized legal services and retained the law firm of
4 Wisener Nunnally Gold for advice regarding CMS's claim as well as negotiating with CMS to
5 resolve the dispute.

6 10. The California Department of Insurance has guidelines governing the hiring and
7 compensation of private law firms that perform services in conservation and liquidation matters.
8 Those guidelines require, *inter alia*, that outside law firms submit monthly bills and that billing
9 invoices contain detailed information describing each task performed, including, but not limited
10 to, the date the task was performed, and the time expended. With respect to disbursement (i.e.,
11 expenses incurred by the law firms), the Department of Insurance requires that invoices contain
12 an itemization of disbursements by category.

13 11. In accordance with the Department of Insurance's procedures and guidelines, the
14 CLO requires that, when invoices are received, they are carefully reviewed by staff in order to
15 determine whether the fees and expenses sought are reasonable, necessary, correct, and
16 appropriate. Only after invoices have been carefully reviewed and approved will outside law
17 firms be paid the amounts sought in their invoices. The procedures established by the
18 Department are meant to ensure that no unreasonable or unnecessary fees or expenses are
19 approved and paid.

20 12. The CLO and Department of Insurance personnel who review the bills have regular
21 contact with the attorneys, actually see the attorneys' work product, and are knowledgeable about
22 the legal work being performed by the outside law firms.

23 13. The legal bills submitted to the SeeChange estate are reviewed by the CLO's staff
24 members who are responsible for matters concerning SeeChange. The legal bills are also
25 reviewed by attorneys in the CAB. In consideration of the foregoing, I have reviewed the
26 invoices and have approved the amounts sought by each of the law firms as reasonable,
27 necessary, accurate, and appropriate and determined that the services provided are in the best
28 interest of the SeeChange estate.

1 7. For the SeeChange Health Insurance Company (“**SeeChange**”) estate, 281.81 hours
2 were spent by CLO employees and contractors from October 1, 2017 through March 31, 2018.
3 This amount represents 2.2% of the total of 12,634.16 hours spent by CLO employees and
4 contractors on all estates, during that time period.

5 8. The total allocated expenses charged to SeeChange for the reporting period is
6 \$70,268.72, which represents approximately 2.3% of the total CLO allocated expenses of
7 \$3,105,618.17 for October 1, 2017 through March 31, 2018.

8 9. Exhibit B attached hereto is a detailed report prepared by the CLO’s accounting
9 department under my direction. It shows the total allocated and direct expenses incurred by the
10 SeeChange estate from October 1, 2017 through March 31, 2018.

11 10. [intentionally omitted]

12 **Direct Expenses**

13 11. In addition to the Allocated Expenses, SeeChange also incurred operating expenses
14 that are directly paid out of estate assets. These expenses are paid primarily to third-party
15 vendors, contractors and consultants necessary for the administration of the SeeChange estate.

16 12. The total amount of non-legal direct operating expenses paid to third-party vendors
17 and professionals for October 1, 2017 through March 31, 2018 was \$1,270.

18 13. Vendor invoices received by the CLO are imaged and stored electronically. The
19 estate trust officer and the CLO’s chief executive officer review each invoice and approve it
20 for payment. The invoice is then reviewed by the accounting department and processed for
21 payment.

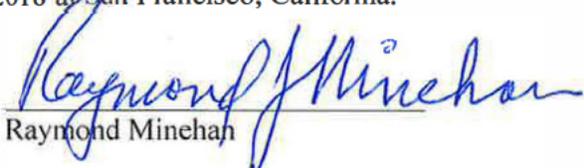
22 14. The California Department of Finance (“**DOF**”) conducts annual estate financial
23 reviews and procedural audits for which it charges the estates. From October 1, 2017 through
24 March 31, 2018, SeeChange paid expenses totaling \$1,010 relating to the DOF’s review of
25 SeeChange’s financial statements.

26 15. The SeeChange estate also made miscellaneous payments totaling \$171 to vendors
27 which provided services such as telephone, postage, and record storage and retrieval.

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

Executed on this 16 day of July 2018 at San Francisco, California.


Raymond Minehan

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EXHIBIT A

EXHIBIT A

POC		POC Amount	%	Total Distribution
	NATIONAL ORGANIZATION OF LIFE & HEALTH			
501840	GUARANTY ASSOCIATIONS	\$21,806,179.00	99.3170%	8,721,745.47 *
503100	MT WHITNEY DAIRY	\$31,670.00	0.14424%	12,666.95
501423	ROYAL ROBBINS LLC	\$21,291.00	0.09697%	8,515.69
500642	DEVERO INC DBA HOME HEALTHCARE SOS	\$11,040.00	0.05028%	4,415.63
501219	ONE LLP	\$9,991.99	0.04551%	3,996.46
500629	DELTA TESTING SERVICES INC	\$9,772.00	0.04451%	3,908.47
500623	DECORATIVE PLUMBING DISTRIBUTORS	\$8,762.00	0.03991%	3,504.51
501303	POONGSAN CORP CA BRANCH	\$7,849.00	0.03575%	3,139.34
501625	THE CORE GROUP/MEADE CONSTRUCTION	\$6,952.00	0.03166%	2,780.57
500808	GOREN MARCUS MASINO & MARSH CPAS LLP	\$5,824.00	0.02653%	2,329.41
500812	GRACE BAPTIST CHURCH SANTA BARBARA	\$5,102.00	0.02324%	2,040.63
501323	PROCESSING POINT INC	\$4,238.00	0.01930%	1,695.06
501301	POLLAK VIDA & BARER	\$3,814.37	0.01737%	1,525.62
501559	STEPHENS REIDINGER & BELLER LLP	\$2,849.00	0.01298%	1,139.51
501906	BAY AREA BUILDERS	\$2,446.00	0.01114%	978.32
500470	CARLSON BECK LLC	\$1,667.00	0.00759%	666.74
500060	JOHN MORAN	\$1,608.20	0.00732%	643.23
500897	INSPIRED PRODUCTS GROUP LLC DBA KIDSEMBRACE	\$1,579.00	0.00719%	631.55
500092	MARCY LUNELL	\$1,326.60	0.00604%	530.60
501539	SOUTH VALLEY MEDICINE AND CARDIOLOGY	\$1,326.00	0.00604%	530.36
501447	SANDEE DESIGN	\$1,219.00	0.00555%	487.56
501328	PROTEA GROUP INTERNATIONAL INC	\$1,013.59	0.00462%	405.40
501629	MAUREEN VERDUYN	\$985.05	0.00449%	393.99
501720	ANNE & JOHN ALDERETE	\$985.00	0.00449%	393.97
501237	OUTPOST RECREATION & EDUCATION INC	\$975.00	0.00444%	389.97
500291	ANTHONY J DUTRA	\$963.00	0.00439%	385.17
500223	ABI OFFICE FURNITURE INC	\$754.00	0.00343%	301.57
503117	ASHLEY E NORMAN	\$644.58	0.00294%	257.81
500770	FUSION FLORAL LLC	\$626.00	0.00285%	250.38
500240	AF TECHNOLOGY LLC	\$505.00	0.00230%	201.98
500074	KELSEY HILTON	\$486.20	0.00221%	194.46
503096	HSIU-YU LU	\$403.11	0.00184%	161.23
501406	ROCKY MOUNTAIN VICTIM LAW CENTER	\$393.34	0.00179%	157.32
501609	DIANA TRAN	\$350.00	0.00159%	139.99
500345	BEAUTY SOLUTIONS LLC	\$327.00	0.00149%	130.79
503118	RACHEL S WALENSKY	\$215.00	0.00098%	85.99
Total		\$21,956,132.03	100%	8,781,721.69

* Because NOLHGA already received interim distribution of \$5,053,800, the final distribution will only be \$3,667,945.47

EXHIBIT B

Administrative Expenses

	Oct2017	Nov2017	Dec2017	Jan2018	Feb2018	Mar2018	Oct 2017 to Mar 2018
Legal and Consulting							
62002 Dept of Justice Legal	-	128	-	3,953	-	43	4,123
62003 Other Legal Expense	-	263	114	655	-	-	1,031
63002 Accounting & Auditing Exp	-	-	-	-	30	980	1,010
63005 Temporary Help Expense	-	-	-	11	44	-	55
63007 Other Professional Fees	35	-	-	-	-	-	35
Total Legal and Consulting	35	390	114	4,618	74	1,023	6,253
Office							
65002 Postage	-	-	-	0	30	18	49
65015 Storage Rent	13	13	13	13	13	13	76
65016 Record Retrieval	-	-	-	-	38	-	38
65019 Delivery	-	-	9	-	-	-	9
Total Office Expenses	13	13	21	13	81	31	171
70002 Allocated CLO Internal Expenses*	6,686	5,974	5,544	10,836	21,073	20,154	70,269
Allocated Expenses	6,686	5,974	5,544	10,836	21,073	20,154	70,269
Admin Expenses	6,733	6,377	5,680	15,468	21,228	21,208	76,694

EXHIBIT C

Exhibit C

SeeChange Health Insurance Company in Liquidation Statement of Income and Expense November 19, 2014 through March 31, 2018

Income:

Investment Income	201,282
Recoveries	1,767,743
Other Revenue	<u>285,043</u>

Total Income **2,254,068**

Expenses:

Legal Expenses	180,864
Consultants and Temps	804,986
Office Expenses	110,799
Allocated Overhead Expenses	<u>807,394</u>
Total Administrative Expenses	1,904,043

Loss Expenses	416,429
Other Expenses	<u>649,231</u>

Other Expenses 1,065,660

Total Expenses **2,969,703**

Net Income / (Loss) **(715,635)**

EXHIBIT D

EXHIBIT D

641 SeeChange

STATEMENT OF ASSETS AND LIABILITIES

As of March 31, 2018

	Mar 31
	<u>2018</u>
ASSETS	
Participation in pooled investments, at market	3,769,300
Accrued investment income	14,300
Statutory deposits held by other states	208,600
Other receivable	<u>78,400</u>
Total Available Assets	4,070,600
LIABILITIES	
Accrued administrative expenses	-
Claims against policies, including guaranty associations, before distributions	19,901,200
Early access and other Class 2 distributions	(5,053,800)
California and Federal claims having preference	<u>5,199,700</u>
Total Estimated Liabilities	<u>20,047,100</u>
NET ASSETS (DEFICIENCY)	<u><u>(15,976,500)</u></u>

DECLARATION OF SERVICE BY E-MAIL AND U.S. MAIL

Case Name: **Insurance Commissioner of the State of California v. SeeChange Health Insurance Company**

Case No.: **BS152302**

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. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On July 17, 2018, I served the foregoing

NOTICE OF APPLICATION AND APPLICATION FOR ORDER: (1) APPROVING LIQUIDATOR'S FINAL REPORT AND ACCOUNTING, (2) DIRECTING FINAL DISTRIBUTION OF ESTATE ASSETS, (3) APPROVING ADMINISTRATIVE EXPENSES, AND(4) DISCHARGING LIQUIDATOR AND TERMINATING LIQUIDATION PROCEEDING; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JOSEPH HOLLOWAY; DECLARATION OF RAYMOND MINEHAN

by transmitting a true copy via electronic mail to the persons on the attached list at the indicated email addresses. In addition, I placed a true copy thereof enclosed in a sealed envelope as first class mail, in the internal mail system of the Office of the Attorney General, to each of the persons and entities set forth on the attached list.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 17, 2018, at Los Angeles, California.

Carolina Castillo

Declarant

Signature

Case Name: Insurance Commissioner of the State of California v. SeeChange Health Insurance Company
Case No.: BS152302

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Claimants¹

STEPHENS REIDINGER & BELLER LLP
Bay Area Builders
CARLSON BECK LLC
JOHN MORAN
INSPIRED PRODUCTS GROUP LLC DBA:
KIDSEMBRACE
MARCY LUNELL
SOUTH VALLEY MEDICINE AND
CARDIOLOGY
SANDEE DESIGN
PROTEA GROUP INTERNATIONAL INC
MAUREEN VERDUYN
ANNE & JOHN ALDERETE
OUTPOST RECREATION & EDUCATION INC
ANTHONY J DUTRA
ABI OFFICE FURNITURE INC
ASHLEY E NORMAN
FUSION FLORAL LLC

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Claimants¹

St. Mary's Medical Center
MT WHITNEY DAIRY
ROYAL ROBBINS LLC
DEVERO INC DBA HOME HEALTHCARE
ONE LLP
DELTA TESTING SERVICES INC
DECORATIVE PLUMBING
DISTRIBUTORS
POONGSAN CORP CA BRANCH
THE CORE GROUP/MEADE
CONSTRUCTION
GOREN MARCUS MASINO & MARSH
CPAS LLP
GRACE BAPTIST CHURCH SANTA
BARBARA
PROCESSING POINT INC
POLLAK VIDA & BARER
HSIU-YU LU
ROCKY MOUNTAIN VICTIM LAW
CENTER
DIANA TRAN
BEAUTY SOLUTIONS LLC
RACHEL S WALENSKY
AF TECHNOLOGY LLC
KELSEY HILTON

¹ Addresses of claimants served with this proof of service are withheld to protect their privacy. A full address list will be submitted to the court on request.