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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF MERCED

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

13 Applicant,

14 v.

15
16 **MERCED PROPERTY & CASUALTY
COMPANY, a California Corporation,**

17 Respondent.

Case No. 18CV-04739

**NOTICE OF APPLICATION AND
APPLICATION FOR ORDER TO
APPROVE LIQUIDATOR'S 1)
PAYMENT OF ADMINISTRATIVE AND
PROFESSIONAL FEES AND EXPENSES
FOR THE PERIOD OF NOVEMBER 1,
2022 TO SEPTEMBER 30, 2024; 2)
APPROVE EXECUTED RELEASE
AGREEMENT WITH THE FEDERAL
GOVERNMENT; 3) AUTHORIZE FINAL
DISBURSEMENT OF MERCED
ASSETS; 4) ESCHEAT UNCLAIMED
FUNDS TO STATE; 5) RETAIN
CLOSING RESERVE; 6) AUTHORIZE
DISPOSAL OF LEGACY RECORDS; 7)
REMIT RESIDUAL ESTATE ASSETS
TO PARENT ENTITY; AND 8) CLOSE
ESTATE; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

**[Filed concurrently with: 1) Final Status
Report; 2) Declaration of Scott Pearce; 3)
Index of Exhibits; and 4) [Proposed]
Order]**

24
25
26 Date: April 2, 2025
27 Time: 8:15 a.m.
28 Dept: 8
Judge: Hon. Stephanie Jamieson
Action Filed: November 30, 2018

Application for Order to Approve Payment of Fees and Expenses; Approve Executed Federal Release and Waiver Agreement; Authorize Final Disbursement of Assets; Escheat Unclaimed Funds; Retain Closing Reserve; Authorize Disposal of Legacy Records; Remit Residual Estate Assets to Parent Entity; and Close the Estate (18CV-04739)

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TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 2, 2025, 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 to do the following: 1) pay administrative and professional fees and expenses for the period of November 1, 2022, to September 30, 2024, in the amount of \$692,196; 2) approve the executed release and waiver agreement with the federal government; 3) disburse \$370,203 to Merced general creditors and equity class creditors holding approved unpaid claims; 4) escheat up to \$213,600 in unclaimed funds; 5) retain a closing reserve of \$350,000; 6) obtain authority to destroy legacy records; 7) remit all residual assets after completion of all disbursements and closure requirements to Merced’s parent company and owner, United Heritage Financial Group; and 8) close the estate.

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, to employ and compensate legal counsel to transact estate business, and to authorize the disbursement of assets to Merced’s Class 7 and Class 8 creditors as necessary to successfully liquidate Merced.

This application is based on this notice, the accompanying memorandum of points and authorities in support thereof, the supporting declaration of Scott Pearce and Index of Exhibits, the Commissioner’s concurrently filed Final Status Report on the liquidation of Merced, 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

1 telephone or in person by 4:00 p.m. on the court day before the hearing of the party's intention to
2 appear. A party also must notify the Court by telephone of the party's intention to appear by
3 calling 209-725-4240 by 4:00 p.m. on the court day before the hearing. The tentative ruling will
4 become the ruling of the Court if the Court has not directed oral argument by its tentative ruling
5 and notice of intent to appear has not been given.

6
7 Dated: February 20, 2025

Respectfully submitted,

8 ROB BONTA
9 Attorney General of California
10 LISA W. CHAO
11 Supervising Deputy Attorney General



12
13 CAROLINE C. LAM
14 Deputy Attorney General
15 *Attorneys for Applicant Insurance*
16 *Commissioner of the State of California*
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1 **APPLICATION FOR COURT APPROVAL AND AUTHORITY TO PAY FEES AND**
2 **EXPENSES, APPROVE EXECUTED RELEASE AND WAIVER AGREEMENT WITH**
3 **THE FEDERAL GOVERNMENT, RELEASE A FINAL DISTRIBUTION OF ESTATE**
4 **ASSETS, ESCHEAT UNCLAIMED FUNDS TO THE STATE, RETAIN A CLOSING**
5 **RESERVE, DISPOSE OF LEGACY RECORDS, REMIT RESIDUAL ASSETS TO**
6 **PARENT ENTITY, AND CLOSE THE ESTATE**

7 **INTRODUCTION**

8 In mid-November 2018, severe wildfire losses resulting from the Camp Fire in Butte
9 County, California rendered Merced Property & Casualty Company (Merced) statutorily
10 insolvent. On December 3, 2018, the Court issued an order pursuant to Insurance Code¹ section
11 1035 appointing the Commissioner as Liquidator of the Merced estate.

12 The Commissioner previously submitted three applications to this Court for approval of
13 payments of the Merced estate’s fees and expenses. The Commissioner also previously submitted
14 two applications for approval to release early access/interim disbursements of Merced assets to
15 the California Insurance Guarantee Association (CIGA) and Merced policyholders for payment of
16 approved “over-cap” claims (claims that developed in excess of the \$500,000 statutory limit of
17 CIGA’s coverage). The Court approved all of the Commissioner’s applications.

18 The present application seeks approval from this Court for the payment of administrative
19 and professional fees and expenses for the period of November 1, 2022, through September 30,
20 2024 (Reporting Period). As discussed below and in the concurrently filed Final Status Report on
21 the liquidation of Merced, the Commissioner has completed a final determination of all timely
22 filed claims and all estate assets have been marshaled. Under section 1035, the Commissioner is
23 authorized to pay the administrative expenses necessary to carry out the functions of the
24 management of an insolvent estate. Section 1036 further authorizes the Commissioner to employ
25 and compensate legal counsel to represent him in this action. The Commissioner seeks approval
26 of administrative and professional fees and expenses paid by the Merced estate for the Reporting
27 Period in the total amount of \$692,196.

28 Subsequently, Sections 1035.5 and 1037 authorize the Commissioner to disburse assets to
Merced creditors for approved claims. The payment of claims must be paid in the order of their

¹ Unless otherwise noted, all section references will be to the Insurance Code.

1 priority, as set forth in section 1033, with the estate's administrative expenses constituting Class 1
2 claims, and no class may be paid unless all prior classes have been paid or resolved in full. (Ins.
3 Code, § 1033.) All classes of claims are addressed after the estate's administrative expenses have
4 been paid. Since all Class 2 claims have been paid (as described in further detail below and in the
5 concurrently filed Final Status Report), the Commissioner now seeks the Court's approval of the
6 federal release and waiver agreement with the United States government to resolve the federal
7 government's Class 3 claim. The federal release and waiver agreement will ensure the full and
8 proper release of the Commissioner, the Deputy Liquidator, and the Merced estate from potential
9 liability resulting from any super-priority claims brought by the federal government and so that
10 the estate may make payments to approved lower priority claims.

11 In this application, the Commissioner also seeks authority to make a final disbursement of
12 Merced assets to Class 7 general creditors and Class 8 equity class creditors in the amount of
13 \$172,917 and \$197,286, respectively. The disbursement to Class 7 and 8 claims would occur after
14 the executed federal release and waiver agreement becomes effective. The Commissioner
15 additionally seeks authority to escheat unclaimed funds in the amount of \$213,611 to the
16 California State Treasurer's Office. Finally, the Commissioner requests authority to retain a final
17 reserve fund of \$350,000 to complete and pay for all required tasks to properly close the Merced
18 liquidation estate, to dispose of all legacy records, to discharge the Commissioner, and thereafter
19 to return all residual assets to Merced's parent and owner, United Heritage Financial Group.

20 The application should be approved.

21 **ADMINISTRATIVE AND OPERATING FEES AND EXPENSES**

22 This application first seeks approval from this Court for the payment of the estate's fees and
23 expenses. The Merced estate's fees and expenses for the Reporting Period, which total \$692,196,
24 fall into two broad categories: 1) \$595,230 for the Conservation and Liquidation Office's (CLO)
25 allocated administrative operating fees; and 2) \$96,967 for direct estate operating expenses,
26 consisting of estate-specific fees and expenses of \$73,081 and legal fees and expenses of \$23,885.
27 (Declaration of Scott Pearce (Pearce Decl.), ¶ 3; Index of Exhibits (Index), Ex. A [Merced
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1 Property & Casualty Insurance Company Administrative Expenses for the Period November 1,
2 2022 to September 30, 2024].)

3 **I. CLO ALLOCATED ADMINISTRATIVE FEES**

4 CLO's allocated administrative fees are overhead costs incurred for rent, salaries, e-mail
5 and data systems, etc.; these fees are allocated to each conservation or liquidation estate under its
6 management and oversight on a pro rata basis. (Pearce Decl. ¶ 4.) The CLO is comprised of
7 insurance insolvency professionals who oversee the liquidation of troubled insurance companies
8 and who provide administrative services directly to each estate under its management and
9 oversight. (*Ibid.*)

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

15 During the Reporting Period, the Merced estate incurred 2,618 direct hours out of 48,707
16 total CLO hours worked on all insolvent insurer estates (or 5.37 percent of all CLO hours).
17 (Pearce Decl., ¶ 6; Index, Ex. B [Conservation and Liquidation Office (CLO) Summary of Hours
18 for All Companies and for Merced Property & Casualty Only (November 1, 2022 to September
19 30, 2024].) Merced's portion of the allocated costs for the Reporting Period, based on 2,618 direct
20 hours, was \$595,236. (Pearce Decl., ¶ 6; Index, Exs. A & B.) These 2,618 direct hours and costs
21 incurred on behalf of the Merced estate were spread between five CLO departments:

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23 Departments	Total No. of Hours	Total Fees by Dept.
24 Estate Trust & Executive	1,543	\$ 350,758
25 Claims	266	\$ 60,526
26 Information Technology	63	\$ 14,378
27 Finance & Accounting	728	\$ 165,482

Reinsurance	18	\$ 4,092
Total	2,618	\$ 595,238²

(Pearce Decl., ¶¶ 6-7; Index, Ex. C [Detailed CLO Allocated Hours and Fees Spreadsheet for Merced Property & Casualty (November 1, 2022 to September 30, 2024)].)

A. Estate Trust & Executive Department

The Estate Trust & Executive (“Executive”) Department is responsible for the overall administration and management of the Merced estate. (Pearce Decl., ¶ 8.) The Executive Department coordinates and directs the activities of the other CLO departments and their resources utilized in furthering the Merced estate’s plan of liquidation. (*Ibid.*) The Executive Department continued the primary oversight and management of the Merced estate’s remaining work during the Reporting Period. (Pearce Decl., ¶ 9.) It focused on claims resolution and subrogation reimbursements, and it worked to secure a waiver and release agreement from the federal government in order to ultimately position the estate for a final distribution of estate assets to general creditors and equity class creditors. (*Ibid.*)

The Executive Department coordinated with the CLO Accounting Department to continue to ensure the liquidation of the Merced estate complied with federal and state audit and tax requirements. (Pearce Decl., ¶ 10.) Both departments reviewed and adjusted the estate’s periodic reporting as well as assisted in the preparation of its quarterly financial reporting. (*Ibid.*) Additionally, both departments have continued to provide periodic updates to Merced’s parent entity to confer on the pending closure of the estate and eventual return of any surplus assets to it. (*Ibid.*)

The Court previously approved the Commissioner’s requests to make disbursements of \$4,823,003 in Merced assets to 33 Class 2 Merced policyholders with “over-cap” claims. (Ins. Code, §§ 1063.1, subd. (c)(7)(A); 1063.2 [CIGA is statutorily obligated to pay and discharge “covered claims” of insolvent insurers up to \$500,000]; Order Approving Liquidator’s Payment

² There is a \$3.00 rounding error due to rate inflation.

This e-copy is the official court record (GC68150)

1 of Fees and Interim Disbursement of Merced Assets, dated October 26, 2021, p. 2.)³ The
2 Commissioner issued the second disbursement in March 2023, essentially paying off all of the
3 estate’s approved Class 2 policyholder obligations in full. (Pearce Decl., ¶ 11; see Order
4 Approving Liquidator’s Payment of Fees and Second Interim Disbursement of Merced Assets,
5 dated February 23, 2023.) As initially reported in the Commissioner’s Second Status Report and
6 related application, there is a payment of \$168,592 made toward an “over-cap” Camp Fire-related
7 claim that has not been cashed and remains unpaid. (Pearce Decl., ¶ 12; see Index, Ex. E [Merced
8 Property & Casualty Detailed Spreadsheet: Merced Final Distribution Calculation, POC 834234
9 (28th entry for “over-cap” claims)].)

10 After Class 2 approved claims associated with the Camp Fire were paid, the Executive
11 Department worked with estate legal counsel and the Claims Department to submit proofs of total
12 liquidated payments on 31 Camp Fire-related claims (i.e., the \$4,823,002 disbursement paid to all
13 approved Class 2 policyholders with Camp Fire-related “over-cap” claims) to the Subrogation
14 Trust set up by the PG&E Corporation Bankruptcy proceedings to recover a portion of the
15 amount paid on those claims. (Pearce Decl., ¶ 13.)⁴ To date, the Merced estate has collected
16 approximately \$3,300,000 from the Subrogation Trust. (Pearce Decl., ¶ 15; see Second
17 Application for Approval of Payment of Fees and First Interim Disbursement of Merced Assets,
18 filed on September 14, 2021, p. 15 [stating Commissioner expected to recover from Subrogation
19 Trust approximately 70 percent of amounts paid on “over-cap” claims].)

20 Additionally, for the last two years the Executive Department has been working with the
21 Claims Department and estate counsel to secure a final release and waiver from the United States
22 Department of Justice regarding the federal government’s Class 3 claim. (Pearce Decl. ¶ 16;
23 Index, Ex. F [Executed Federal Release and Waiver Agreement].) While there is no payment

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25 ³ Merced policyholders become Class 2 priority claimants to the residual assets of the
26 estate after payment of the Commissioner’s Class 1 expenses of administration. (Ins. Code,
27 § 1033, subd. (a)(1) & (2).)

28 ⁴ On January 29, 2019, PG&E Corporation (Case No. 19-30088) and its subsidiary Pacific
Gas and Electric Company (Case No. 19-30089) each filed with the United States Bankruptcy
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., ¶ 14.)¹⁰

1 associated with the Class 3 claim, the estate must obtain the Court's approval of the executed
2 federal release and waiver agreement before making any final distributions to the remaining
3 creditors. (*Ibid.*) It is necessary for the Court to approve the executed federal release and waiver
4 agreement so that the Commissioner is not subjected to personal liability for any super-priority
5 claims brought by the federal government. (*Ibid.*) Until the estate obtains this Court's approval of
6 the executed federal release agreement, the Commissioner will not be able to make payments to
7 approved lower priority claims, such as those held by Merced's Class 7 general creditors and
8 Class 8 equity creditors. (Pearce Decl., ¶ 17.) The Executive Department continues to lead the
9 planning and preparation for the estate's final distribution and completion of all necessary tasks
10 required to properly close the estate and discharge the Commissioner as liquidator. (*Ibid.*)

11 **B. Claims Department**

12 The Claims Department is responsible for, among other things, administering all Proofs of
13 Claims (POCs) filed against an estate and making a determination on the approval of any "non
14 CIGA-covered" claims (or portions of non-covered claims). (Pearce Decl., ¶ 18.) The Claims
15 Department has concluded its comprehensive review and determination of all timely received
16 Proof of Claims (POCs) filed against the Merced estate during the Reporting Period, including
17 reviewing and closing CIGA's final claim against the estate. (*Ibid.*) The Claims Department also
18 assisted with preparing and providing creditor guidance for the early access and interim
19 distributions of Merced assets in 2021 and 2023. (*Ibid.*)

20 During the liquidation, the Claims Department received and reviewed a total of 457 POCs.
21 (Pearce Decl., ¶ 19.) The Claims Department has taken the following actions with respect to the
22 457 POCs: approved 40 Class 2 Merced policyholder claims; rejected 312 Class 2 Merced
23 policyholder claims; approved 6 Class 7 general creditor claims; rejected 25 Class 7 general
24 creditor claims; approved 62 Class 8 Certificate of Contribution (COC) claims; and rejected 12
25 Class 8 COC claims. (*Ibid.*) The approved 40 Class 2 Merced policyholder claims consist of the
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1 33 “over-cap” claims referenced above (including the Camp Fire-related claims), and seven
2 additional non “over-cap” claims, none of which relate to the Camp Fire. (*Ibid.*)⁵

3 As discussed above, the Claims Department also worked with estate counsel and the
4 Executive Department to submit proofs of liquidated payments to the PG&E Subrogation Trust to
5 recover a significant portion of the payments made by the estate on Camp Fire-related claims and
6 to process those reimbursements. (Pearce Decl., ¶ 20.) The Claims Department has continuously
7 worked to provide planning and guidance in support of the Commissioner’s prior and pending
8 disbursements of Merced assets to pay approved claims. (*Ibid.*)

9 **C. Information Technology Department**

10 After CLO transferred the Merced estate from Atwater to its offices in San Francisco in
11 September 2019, the Information Technology (IT) Department decommissioned all local Atwater
12 systems and infrastructure. (Pearce Decl., ¶ 21.) Over the Reporting Period, the IT Department
13 continued to manage and maintain all necessary data systems and infrastructure necessary to
14 support the comprehensive run off of the Merced liquidation estate. (Pearce Decl., ¶ 22.) This
15 work included supporting the estate’s data retention and managing the estate’s communication
16 and bulk notification requirements. (*Ibid.*) The IT Department also supported the estate’s POC
17 determination process by collecting, organizing, and reporting the loss and loss adjustment
18 expenses associated with CIGA’s claim-handling process as well as a myriad of internal claim-
19 handling requirements for non-covered claims. (*Ibid.*)

20 **D. Finance & Accounting Department**

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

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28 ⁵ The other POCs (those beyond the 40 Class 2 Merced policyholder claims) are discussed
in further detail in the Commissioner’s concurrently filed Final Status Report.

1 continued to manage both the periodic independent reviews of the estate’s financial statements by
 2 CLO’s independent auditors and the estate’s annual tax return preparation. (Pearce Decl., ¶ 24.)
 3 Finally, the Accounting Department has played a key role in the preparation, review, and release
 4 of all of the Commissioner’s distributions of Merced estate assets. (*Ibid.*)

5 **E. Reinsurance Department**

6 As explained in the Commissioner’s prior applications, the reinsurance program for the
 7 Merced estate is essentially exhausted with all properly submitted reinsurance billings collected.
 8 (Pearce Decl., ¶ 25.) The only reinsurance remaining is an excess of loss treaty covering
 9 individual policy claims that exceed \$1 million in losses. (*Ibid.*) During the Reporting Period, the
 10 Reinsurance Department continued to monitor the estate’s losses to ensure that any individual
 11 claim that exceeded \$1 million would be reported and billed. (*Ibid.*) After completing its
 12 determination and approval of all remaining POCs, the Merced estate does not anticipate any
 13 further claim development, including any relating to the reinsurance program. (*Ibid.*)

14 **II. DIRECT ESTATE FEES AND EXPENSES**

15 In addition to CLO’s allocated expenses, the Merced estate also incurred operating costs
 16 that were paid directly out of estate assets. (Pearce Decl., ¶ 26.) For the Reporting Period, these
 17 fees and expenses totaled \$96,967 and comprised of three types:

Types of Fees and Expenses	Fees & Expenses
Legal Fees and Expenses	\$ 23,885
Consultants and Contractors	\$ 70,817
Office Expenses	\$ 2,264
Total	\$96,967

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 24 (Pearce Decl., ¶ 26; Index, Ex. A.)

25 **A. Legal Fees and Expenses**

26 During the Reporting Period, the Merced estate required the assistance and advice of legal
 27 counsel. (Pearce Decl., ¶ 27.) The Attorney General’s Office represents the Commissioner in this
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1 proceeding and provides litigation services as needed, including the drafting of all litigation-
2 related pleadings and representation before the court. (*Ibid.*) The Commissioner also required
3 specialized legal services from the Wisner Nunnally law firm for advice on specific policy
4 coverage terms and to help request and secure a super-priority release and waiver agreement with
5 the federal government's Department of Justice. (Pearce Decl., ¶ 28.)

6 **B. Consultants and Contractors**

7 The Merced estate incurred professional fees in connection with the preparation and filing
8 of the estate's tax returns and in obtaining assistance with the annual audit requirements. (Pearce
9 Decl., ¶ 29.)

10 **C. Office Expenses**

11 For the majority of the Reporting Period, the Merced estate incurred basic office expenses.
12 These include postage and delivery charges for the delivery of distribution payments via courier
13 as well as banking fees and a small tax assessment. (Pearce Decl., ¶ 30.)

14 **PROPOSED FINAL DISBURSEMENT OF MERCED ASSETS**

15 The Merced estate has total cash (or cash equivalent) assets of \$8,486,900 as of September
16 30, 2024. (Pearce Decl., ¶ 31; Index, Ex. D [Merced Property & Casualty Statement of Assets and
17 Liabilities as of September 30, 2024].) The Commissioner seeks this Court's approval of the
18 executed federal release and waiver agreement to resolve the federal Class 3 claim. (*Ibid.*) The
19 Commissioner also seeks authority for a final disbursement of \$370,203 from the total Merced
20 cash (or cash equivalent) assets for payment to six Class 7 general creditors and 62 Class 8 equity
21 creditors for approved claims; this final disbursement will occur after the federal release and
22 waiver agreement is approved. (Pearce Decl., ¶ 32; Index, Ex. E [Merced Property & Casualty
23 Detailed Spreadsheet: Merced Final Distribution Calculation].) The Commissioner then seeks
24 authority to escheat unclaimed funds to the California State Treasurer's Office, to retain a final
25 reserve to complete all necessary tasks required to close the estate, and then to finally return all
26 residual assets to the Class 9 claimant, Merced's parent and owner, United Heritage Financial
27 Group. (Pearce Decl., ¶ 33.)

1 Pursuant to the present Application, its concurrently filed Final Status Report, and all
2 supporting documents, the estate proposes the following final disbursement of Merced assets:

3 Merced's Cash (or Cash Equivalent) Assets:	\$ 8,486,900
4 Class 7 (General Creditor claims):	<\$ 172,917>
5 Class 8 (Equity Creditor claims):	<\$ 197,286>
6 Escheatment of Unclaimed Funds:	<\$ 213,611>
7 <u>Closing Reserve:</u>	<u><\$ 350,000.00></u>
8 Class 9 (Residual assets remitted to parent entity)	\$ 7,553,086 (estimated)

9 Each component of the Commissioner's proposed final disbursement of Merced's assets is
10 addressed below.

11 **I. APPROVING THE EXECUTED FEDERAL RELEASE WAIVER**

12 After the Court authorized the previous two early access/interim disbursements of Merced
13 assets, all 40 of the Class 2 Merced policyholder claims approved by the Claim Department have
14 been paid in full. (Pearce Decl., ¶ 34.) CIGA's Class 2 claim against the estate has also been fully
15 accounted for and paid in full. (*Ibid.*) There is no claim payment associated with the
16 aforementioned federal release and waiver agreement concerning the federal government's Class
17 3 claim. (Pearce Decl., ¶ 35.) The CLO's Claims Department has diligently worked to secure a
18 mutually acceptable federal release and waiver. (*Ibid.*) The Commissioner seeks authority from
19 this Court to approve the attached federal release and waiver agreement with the United States
20 government so that it can proceed with making the estate's final disbursement for all remaining
21 approved claims. (Pearce Decl., ¶ 36; Ex. F.) The only remaining approved claims that have yet
22 to be paid are six Class 7 general creditor claims and 62 Class 8 equity creditor claims, and the
23 payment of these claims can only occur after the federal release and waive agreement has been
24 approved and is in effect. (*Ibid.*)

25 **II. DISBURSEMENT TO MERCED CLASS 7 AND CLASS 8 CLAIMANTS**

26 The Commissioner also seeks approval from this Court to make a final disbursement of
27 \$370,203 in Merced assets to the remaining approved, but unpaid, claims, specifically the six
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1 Class 7 general creditor claims in the amount of \$172,917 and the 62 Class 8 equity creditors
2 claims in the amount of \$197,286. (Pearce Decl., ¶ 37; Index, Ex. E.) This final disbursement will
3 provide all approved Class 7 and Class 8 creditors with 100 percent recovery on their approved
4 POCs. (*Ibid.*)

5 Upon the Commissioner's filing of this application, a copy of this application will be sent
6 by mail or e-mail to all creditors who have an approved claim and would receive a disbursement
7 upon the court's entry of an order approving the Commissioner's proposed final disbursement.
8 (Pearce Decl., ¶ 38.) The present application will also be made available for review at CLO's
9 website, www.caclo.org, and the aforementioned creditors may also contact CLO and request a
10 copy of the application and proposed order. (*Ibid.*)

11 **III. ESCHEATMENT OF UNCLAIMED FUNDS**

12 The estate reports approximately \$213,600 in unclaimed funds. If the estate cannot locate
13 the claimants prior to closure of the estate, these funds will be escheated to the California State
14 Treasurer. (Pearce Decl., ¶ 39.) The Commissioner seeks authority to escheat up to \$213,600 of
15 unclaimed funds from the remaining Merced assets to the California State Treasurer's Office.
16 (*Ibid.*)

17 **IV. RETENTION OF CLOSING RESERVE**

18 Finally, pursuant to Insurance Code section 1035.5, subdivision (b)(1), the Commissioner
19 seeks authority to retain \$350,000 in Merced assets as an administrative closing reserve to comply
20 with his legal obligations to pay for administrative expenses necessary to complete the work
21 associated with the final distribution and closing the estate, including dismissal of the proceeding
22 and discharge of the Commissioner as liquidator. (Pearce Decl., ¶ 40.)

23 **V. REMITTING REMAINING ASSETS TO CLASS 9 CLAIMANT, MERCED'S PARENT AND** 24 **OWNER**

25 Upon completion of the proposed final distribution, the Commissioner will have paid in
26 full all approved POCs timely received by the Merced estate. (Pearce Decl., ¶ 41; *Commercial*
27 *Nat. Bank v. Superior Court* (1993) 14 Cal.App.4th 393, 398 [claimants within the same class are
28 entitled to share pro rata in the distribution to that class].) Disbursement of the assets is within the

1 Commissioner's general authority as Liquidator of the Merced estate and necessary to the overall
2 plan to timely and efficiently liquidate the estate.

3 After the Merced estate's payment of the expenses of administration, all court-approved
4 open claims, escheatment, and reserves, the Commissioner intends to remit payment of all
5 remaining net assets totaling \$7,553,086 to the parent entity and owner of Merced, United
6 Heritage Financial Group. (Pearce Decl., ¶ 41.) Pursuant to section 1033, subdivision (a)(9), the
7 Merced estate will have sufficient assets to make a distribution to Class 9 "shareholder or other
8 owners in any residual value in the estate." The Commissioner has put in place all the necessary
9 and appropriate safeguards relating to this remittance, and the disbursements to Merced's owner
10 and parent entity should be authorized. (Pearce Decl., ¶ 41.)

11 VI. RECORDS

12 Pursuant to the liquidation orders, the Commissioner took custody and control of
13 Merced's business records and closed claims files. (Pearce Decl., ¶ 42.) In July 2019, CLO's
14 Financial & Accounting Department oversaw the successful transfer of Merced's financial
15 records onto the CLO system. (*Ibid*; Second Application for Approval of Payment of Fees and
16 First Interim Disbursement of Merced Assets, filed on September 14, 2021, p. 10.) The
17 Commissioner does not foresee the need for accessing Merced's few physical records still
18 retained by the estate. (Pearce Decl., ¶ 43.) It has been the practice of the Commissioner to obtain
19 court approval to retain an insolvent insurer's records for a period of three years following entry
20 of an order terminating the liquidation proceeding. (*Ibid*.) In this case, however, the Liquidator
21 has determined that the cost of storing and maintaining any hardcopy records is not warranted
22 given how most essential hard-copy records have been successfully transferred onto the CLO's
23 electronic system. (Pearce Decl., ¶ 44.) Thus, the Liquidator requests that he be permitted to
24 forego further unnecessary storage expenses and be authorized to destroy Merced's records
25 following the entry of the order sought pursuant to this application and after giving notice and
26 opportunity to allow Merced and CIGA to take custody and control of any corporate or claim files
27 in the Commissioner's possession. (*Ibid*.)

1 WHEREFORE, the Commissioner respectfully requests that the Court enter an order as
2 follows:

3 1. Approving the Commissioner’s payment of administrative and professional fees and
4 expenses in the total amount of \$692,196 for the period of November 1, 2022, through September
5 30, 2024;

6 2. Approving the executed federal release and waiver agreement the Commissioner
7 entered into with the United States Department of Justice concerning the federal government’s
8 Class 3 claim;

9 3. Authorizing the Commissioner to disburse and pay a total of \$172,917.22 from the
10 assets of the Merced estate to the six approved Class 7 general creditors after the federal release
11 and waiver agreement becomes effective;

12 4. Authorizing the Commissioner to disburse and pay a total of \$197,286.49 from the
13 assets of the Merced estate to the 62 approved Class 8 equity creditors after the federal release
14 and waiver agreement becomes effective;

15 5. Authorizing the Commissioner to escheat up to a total of \$213,600 from the
16 remaining assets of the Merced estate to the proper state agency as unclaimed funds;

17 6. Authorizing the Commissioner to retain \$350,000 in Merced assets as a closing
18 reserve for the payment of projected future administrative expenses incurred during the release of
19 the estate’s final distribution and for any remaining tasks required to properly close the
20 liquidation, including dismissal of the legal proceeding and discharge of the Commissioner;

21 7. Authorizing the Commissioner to dispose of all legacy records of the Merced estate;

22 8. Authorizing the Commissioner, upon completion of paying all remaining Classes 7
23 and 8 distributions, escheating all unclaimed funds, and reserving a closing budget, to release all
24 residual estate assets in the estimated amount of 7,553,086 to the estate’s parent and owner,
25 United Heritage Financial Group;

26 9. Authorizing the Commissioner to take any and all actions necessary to accomplish the
27 purposes of the order prayed for herein; and

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10. Closing the Merced liquidation estate and discharging the Commissioner as Liquidator upon the filing of a declaration of compliance that the Commissioner has distributed the assets in accordance with the Court's order.

Dated: February 20, 2025

Respectfully submitted,

ROB BONTA
Attorney General of California
LISA W. CHAO
Supervising Deputy Attorney General

CAROLINE C. LAM
Deputy Attorney General
Attorneys for Applicant Insurance
Commissioner of the State of California

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MEMORANDUM OF POINTS AND AUTHORITIES

**THE ESTATE IN LIQUIDATION MAY BE CLOSED
WHEN THERE IS NO FURTHER NEED TO ADMINISTER
THE AFFAIRS OF THE FAILED INSURANCE COMPANY**

Insurance Code section 1057 provides that the Commissioner shall be deemed to be a trustee for all creditors in the administration of insolvent insurers. “It was his duty to collect the assets [Ins. Code, § 1037] and distribute them ratably among the creditors [Ins. Code, § 1025] subject to certain priorities (Ins. Code, § 1033)” (*Jones & Son v. Independence Indemnity Co.* (1942) 52 Cal.App.2d 374, 378-379.) The Commissioner is vested with substantial discretion to conduct the liquidation of an insolvent insurer subject to the limitation “that the exercise of discretion be neither arbitrary nor improperly discriminatory.” (See *In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 356.) The Commissioner’s decisions as to matters concerning an insolvent insurer are reviewed by the court under an abuse of discretion standard. (*Id.* at 358.)

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

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

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

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

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

4 The Commissioner continues to conduct a diligent and efficient liquidation of Merced.
5 This application, combined with the accompanying declaration of Liquidation Manager Scott
6 Pearce and the Final Status Report of the Commissioner, explain that the Commissioner’s
7 decisions with respect to the payment of the administrative and operating fees and expenses have
8 been made with the best interest of policyholders and creditors in mind and are neither arbitrary
9 nor improperly discriminatory. The Commissioner properly exercised his discretion as Liquidator
10 of the Merced estate in paying the administrative and operating fees and expenses for the
11 Reporting Period. The Court should approve them.

12 **II. THE COMMISSIONER APPROPRIATELY DETERMINED AND PAID THE LEGAL FEES**
13 **AND EXPENSES OF THE MERCED ESTATE**

14 Insurance Code section 1036 authorizes the Commissioner to employ legal counsel,
15 including legal counsel outside of state service, to represent him as a liquidator in conservation
16 proceedings and to determine fees with the court’s approval.

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

26 The standards for approval of legal fees are met in this case. The Wisener Nunnally law
27 firm provided the Commissioner with legal bills that describe in detail the tasks performed, the
28 person who performed the work, and the time expended on each task. The invoices were reviewed

1 by the Commissioner's Liquidation Manager who is familiar with the work performed, and he
2 approved the invoices for payment only to the extent they complied with the California
3 Department of Insurance's guidelines and were reasonable, necessary, accurate and appropriate.
4 (Pearce Decl., ¶ 28.)

5 The Commissioner properly exercised his discretion as Liquidator of the Merced estate in
6 paying the legal fees and expenses of the estate. The Court should approve them as well.

7 **III. THE COMMISSIONER HAS AUTHORITY TO MAKE A FINAL DISBURSEMENT TO**
8 **APPROVED ESTATE CREDITORS**

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

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

18 (Ins. Code, § 1037.)

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

23 All approved Class 2 claims have been fully paid. The Commissioner seeks this Court's
24 approval of the executed federal release and waiver agreement with the United States Department
25 of Justice in order to obtain a release from the federal government's Class 3 claim. Once the
26 federal release has been approved, the Commissioner will be able to make a final disbursement of
27 Merced assets to six approved Class 7 general creditors and 62 approved Class 8 equity creditors.
28 (Pearce Decl., ¶¶ 31-32.) The Commissioner is seeking court approval to make a final
disbursement that will provide payment to the approved Class 7 and Class 8 creditors, escheat all
remaining unclaimed funds to the property state agency, and reserve sufficient assets for a closing

1 fund that will pay for the administrative expenses necessary to close the liquidation and estate.
2 Among those tasks include the disposing of Merced's legacy records, which the Commissioner
3 also seeks authority from this Court to do.

4 Following the completion of the above payments and with the Court's approval, the
5 Commissioner intends to remit all residual assets of the estate to Merced's parent entity and
6 owner, United Heritage Financial Group.

7 **CONCLUSION**

8 The Commissioner respectfully requests that the court approve the payment of the
9 administrative and professional fees and expenses sought herein, approve the estate's executed
10 federal release and waiver, release the final disbursement of estate assets, escheat unclaimed
11 funds to the state, authorize a closing reserve fund, provide authority for the disposing of legacy
12 records, and close the estate upon completion of the tasks necessary to wind up the liquidation
13 proceeding.

14
15 Dated: February 20, 2025

16 Respectfully submitted,

17 ROB BONTA
18 Attorney General of California
19 LISA W. CHAO
20 Supervising Deputy Attorney General



21 CAROLINE C. LAM
22 Deputy Attorney General
23 *Attorneys for Applicant Insurance*
24 *Commissioner of the State of California*

25 SA2018303475

DECLARATION OF SERVICE BY ELECTRONIC MAIL

Case Name: **Insurance Commissioner of the State of California v. Merced Property & Casualty Co.**
Case No.: **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 February 21, 2025, I served the attached **NOTICE OF APPLICATION AND APPLICATION FOR ORDER TO APPROVE LIQUIDATOR'S 1) PAYMENT OF ADMINISTRATIVE AND PROFESSIONAL FEES AND EXPENSES FOR THE PERIOD OF NOVEMBER 1, 2022 TO SEPTEMBER 30, 2024; 2) APPROVE EXECUTED RELEASE AGREEMENT WITH THE FEDERAL GOVERNMENT; 3) AUTHORIZE FINAL DISBURSEMENT OF MERCED ASSETS; 4) ESCHEAT UNCLAIMED FUNDS TO STATE; 5) RETAIN CLOSING RESERVE; 6) AUTHORIZE DISPOSAL OF LEGACY RECORDS; 7) REMIT RESIDUAL ESTATE ASSETS TO PARENT ENTITY; AND 8) CLOSE ESTATE; 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 February 21, 2025, at Los Angeles, California.

Gail Agcaoili
Declarant

/s/ Gail Agcaoili
Signature