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

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

12 INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,
13
14 Petitioner,
15
16 v.
17 SEECHANGE HEALTH INSURANCE
COMPANY,
18
19 Respondent.

Case No. BS152302
Assigned to Hon. Lisa Hart Cole

**STIPULATION TO RESOLVE
INSURANCE COMMISSIONER'S
MOTION TO SET ORDER TO SHOW
CAUSE FOR HEARING; [PROPOSED]
ORDER**

Hearing
Date: November 28, 2016
Time: 11:00 a.m.
Place: Department 307
600 S. Commonwealth Ave.
Los Angeles, CA 90005

20
21 This stipulation is entered into by and between the Insurance Commissioner of the State of
22 California (the "**Commissioner**"), in his capacity as the liquidator of SeeChange Health
23 Insurance Company, ("**SeeChange**"), the United States (including, without limitation, the
24 Department of Health and Human Services, Centers for Medicare & Medicaid Services
25 ("**CMS**")) by and through their respective undersigned counsel, based on the following facts.

26 **RECITALS**

27 A. On January 28, 2015, the Court entered the *Liquidation Order* in the above-
28 referenced action. In the *Liquidation Order*, the Court, among other things, directed the

1 Commissioner, as liquidator (the “**Liquidator**”), “to liquidate and wind up the business of
2 SeeChange and to act in all ways and exercise all powers necessary for the purpose of carrying
3 out this Order and the liquidation provisions of the Insurance Code”

4 B. On or about December 22, 2015, CMS submitted to the Liquidator a proof of
5 claim for \$5,206,759.13 allegedly owed by SeeChange. This proof of claim was comprised of
6 (i) \$3,211,536.27 in fees allegedly owed under the Permanent Risk Adjustment Program (42
7 U.S.C. § 18063) of the Patient Protection and Affordable Care Act (the “**ACA**”); (ii) \$1,988,154
8 in fees allegedly owed under the Transitional Reinsurance Program of the ACA (42 U.S.C. §
9 18061); and (iii) \$6,068.86 allegedly owed under the Medicare Secondary Payer Act (42 U.S.C.
10 § 1395y(b)(2)(B)). In its proof of claim, CMS indicates that the claims asserted “are entitled to
11 first priority treatment pursuant to 31 U.S.C. § 3713.” In their prior correspondence, counsel to
12 the United States further argued that 31 U.S.C. § 3713 (the “**Priority Statute**”) requires that the
13 Liquidator pay first CMS’s claims related to the ACA.

14 C. On July 19, 2016, after analyzing CMS’s proof of claim, the Liquidator sent his
15 claims determination. In the claims determination, the Liquidator (i) segregates the amounts
16 alleged to be owed under the Medicare Secondary Payer Act to be dealt with in a later date;
17 (ii) allows \$1,988,154 in fees owed under the Transitional Reinsurance Program of the ACA and
18 \$3,211,512.61 in fees under the Permanent Risk Adjustment Program of the ACA (collectively,
19 the “**ACA-Related Claims**”); (iii) classifies the allowed claims as Class 3 claims; and (iv)
20 disallows all other claims of the United States.

21 D. On or about August 26, 2016, the United States Department of Justice filed an
22 Application for an Order to Show Cause regarding POC 500206 pursuant to California Insurance
23 Code § 1032 (“**The Order to Show Cause Proceeding**”). This Application requested that the
24 Court and the Liquidator “postpone further action on the Claims Determination and the United
25 States’ Application until DOJ receives information from the Liquidator necessary for DOJ to
26 search for claims against SeeChange.” On August, 26, 2016, prior to any hearing on the
27 application, this Court entered on August 26, 2016 its *Order Deferring the United States*
28

1 *Department of Justice's Application for an Order to Show Cause Regarding POC Number*
2 *500206.*

3 E. On or about October 6, 2016, the Liquidator filed and served *Insurance*
4 *Commissioner's Notice of Motion and Motion to Vacate Order Issued Staying Proceedings and to*
5 *Set Order to Show Cause for Hearing* (the "**Motion**"). Among other things, the Motion requested
6 that the Court set a hearing to determine the priority of the ACA-Related Claims. The Motion is
7 currently scheduled for November 28, 2016 at 11:00 a.m.

8 F. On or about October 24, 2016, counsel for the United States informed the
9 Liquidator that CMS and the United States did not file an Application for an Order to Show
10 Cause regarding the determination of the ACA-Related Claims, that they have determined not to
11 challenge the Liquidator's classification of the ACA-Related Claims, and that they will not assert
12 any liability under the Priority Statute if the Liquidator pays administrative costs and policyholder
13 level claims in this liquidation before the ACA-Related Claims.

14 **STIPULATION**

15 Based on the foregoing recitals, the United States and the Liquidator agree as follows:

16 1. The United States filed an Application for an Order to Show Cause pertaining to
17 rejected proof of claim Number 500206 [**"this Order to Show Cause Proceeding"**]. The proof
18 of claim filed by the Department of Justice Number 500206 seeking to assert "unknown" claims
19 shall be reinstated to the status of neither approved nor rejected. That proof of claim may be the
20 subject of a future claims determination, to which California Insurance Code § 1032 would apply.
21 This stipulation thus obviates this Order to Show Cause Proceeding as moot. The Motion
22 pertaining to this Application is accordingly withdrawn. The proof of claim filed by CMS, POC
23 Number 500201, shall be deemed resolved as set forth in Paragraph 2.


24 2. The proof of claim filed by CMS, POC Number 500201, is resolved by the
25 approval letter issued by the Liquidator and by this stipulation. The United States and CMS are
26 not challenging and will not challenge the Liquidator's determination to classify the ACA-
27 Related Claims, as approved in substantial part, as Class 3 under California Insurance Code
28 section 1033 and they will not assert liability under the Priority Statute if the Liquidator pays

1 Class 1 and Class 2 claims (i.e., administrative costs and policyholder level claims) before the
2 ACA-Related Claims are paid.

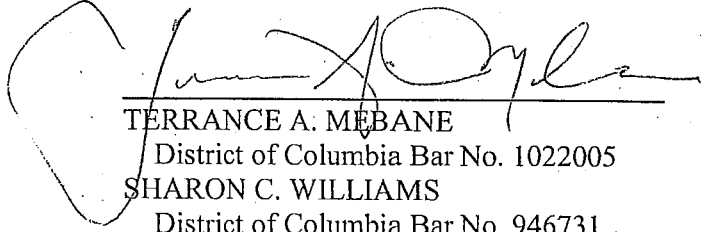
3 3. This stipulation and the accompanying order are without prejudice to the other
4 claims of the United States and CMS. The Liquidator, the United States, and CMS expressly
5 reserve their rights to litigate the validity and priority of those claims, if necessary.

6 Dated: November 1, 2016

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Senior Assistant Attorney General

9 By: 
10 Matthew C. Heyn, Deputy Attorney General
11 *Attorneys for Insurance Commissioner of the State
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12 Dated: November 1, 2016


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~~HERETO~~ ORDER

The Court has read and considered the foregoing stipulation. Based on the parties' agreement and good cause appearing, IT IS HEREBY ORDERED:

1. This Order to Show Cause Proceeding is rendered moot, because Proof of Claim Number 500206 filed by the United States Department of Justice as to "unknown claims" is hereby restored to the status of "neither approved nor rejected." Any further action on this proof of claim will require a further approval or rejection by the Liquidator, as to which the provisions of California Insurance Code § 1032 would apply. The hearing on the Motion, which is currently set for November 28, 2016 at 11:00 a.m., is hereby vacated.

2. The ACA-Related Claims asserted by the Department of Health and Human Services, Centers for Medicare & Medicaid Services, to the extent approved, are classified as Class 3 under California Insurance Code section 1033, in accordance with the partial approval of Proof of Claim Number 5002016.

NOV 04 2016
Dated: _____



JUDGE OF THE SUPERIOR COURT
Kenneth R. Freeman

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.

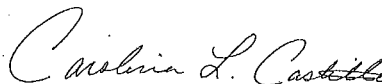
On November 1, 2016, I served the forgoing **STIPULATION TO RESOLVE INSURANCE COMMISSIONER'S MOTION TO SET ORDER TO SHOW CAUSE FOR HEARING; [PROPOSED] ORDER** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

SEE ATTACHED SERVICE 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 November 1, 2016, at Los Angeles, California.

Carolina Castillo

Declarant



Signature

SERVICE BY E-MAIL

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SERVICE LIST BY U.S. MAIL

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

Case No.: BS152302

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