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*Attorneys for Insurance Commissioner of the State of California
as Liquidator of SeeChange Health Insurance Company*

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

INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,

Petitioner,

v.

SEECCHANGE HEALTH INSURANCE
COMPANY,

Respondent.

Case No. BS152302
Assigned to Hon. Maren Nelson

**NOTICE OF MOTION AND MOTION
TO APPROVE AGREEMENT WITH
THE UNITED STATES;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
JOSEPH HOLLOWAY**

Hearing
Date: March 9, 2018
Time: 1:45 p.m.
Place: Central Civil West Courthouse
Department 307
600 S. Commonwealth Ave.
Los Angeles, CA 90005

Action Filed: November 18, 2014

PLEASE TAKE NOTICE that on March 9, 2018 at 1:45 p.m., or as soon thereafter as the matter may be heard, the Insurance Commissioner of the State of California (the “**Commissioner**”), in his capacity as the liquidator of SeeChange Health Insurance Company, (“**SeeChange**”), will appear and present this, his motion to approve the Release Agreement among and between the Commissioner, the United States, and the California Life and Health

1 Insurance Guarantee Association, which is attached hereto as Exhibit "1". If the Court approves
2 the motion, the Release Agreement would grant the Liquidator, the SeeChange estate and others
3 a release, subject to certain specified exceptions, from super-priority claims that might otherwise
4 be asserted by the United States under 31 U.S.C. 3713(b).

5 In connection with this motion, the Commissioner shall show that the United States
6 Department of Health and Human Services filed a proof of claim that asserted a claim of
7 \$5,200,690.27 against SeeChange arising from the Affordable Care Act ("ACA") and a claim of
8 \$6068.86 arising from the Medicare Secondary Payer Act ("MSP"). The Release Agreement
9 resolves these claims. Under the agreement, the California Life and Health Insurance Guaranty
10 Association will pay \$5,000 to resolve the MSP claim, and the claim of the United States under
11 the ACA is approved as a Class 3 priority claim in the amount of \$5,119,666.61.

12 The motion is supported by the pleadings and papers on file, the attached Memorandum
13 of Points and Authorities, and the attached Declaration of Joseph Holloway.

14 Wherefore, premises considered, the Insurance Commissioner requests:

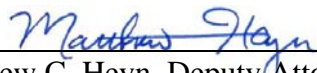
15 A. That this Court approve the Release Agreement;

16 B. That this Court authorize the Insurance Commissioner as Liquidator to take any steps
17 he deems appropriate to implement the Release; and

18 C. All other just and equitable relief.

19 Dated: December 22, 2017

XAVIER BECERRA
Attorney General of California
LISA W. CHAO
Supervising Deputy Attorney General

21 By: 
22 Matthew C. Heyn, Deputy Attorney General
23 *Attorneys for Insurance Commissioner of the*
State of California

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 By the motion, the Commissioner seeks an order approving the Release Agreement
4 attached hereto as Exhibit “1”, to settle the obligations and liabilities between SeeChange and the
5 United States. The Release Agreement requires this Court’s approval to be effective. Under the
6 Release Agreement, the SeeChange estate and others would receive a release, subject to certain
7 specified exceptions, from super-priority claims that might otherwise be asserted by the United
8 States under 31 U.S.C. § 3713(b).¹ In addition, the Release Agreement would resolve a proof of
9 claim by the United States Department of Health and Human Services (“HHS”), which asserted
10 against SeeChange a claim of \$5,200,690.27 arising from the Affordable Care Act (“ACA”) and
11 a claim of \$6068.86 arising from the Medicare Secondary Payer Act (“MSP”). Under the Release
12 Agreement, the California Life and Health Insurance Guaranty Association will pay \$5,000 to
13 resolve the MSP claim and the claims of the United States under the ACA would be approved as
14 a Class 3 priority claim in the amount of \$5,119,666.61. The Release Agreement is manifestly in
15 the best interests of the SeeChange estate and the Court should approve it.

16 **II. BACKGROUND**

17 This case was initiated by the Commissioner’s *Petition and Application for Appointment*
18 *of a Conservator*, which he filed on November 18, 2014. On November 19, 2014, the Court
19 entered its *Stipulated Order Appointing Conservator and Restraining Order*, which appointed
20 the Commissioner as Conservator of SeeChange. On January 28, 2015, the Court entered the
21 *Liquidation Order*, which found that SeeChange was insolvent and appointed the Commissioner
22

23 ¹ 31 U.S.C § 3713(b) provides, “A representative of a person or an estate (except a trustee
24 acting under title 11) paying any part of a debt of the person or estate before paying a claim of
the Government is liable to the extent of the payment for unpaid claims of the Government.”

1 as Liquidator of SeeChange. The Liquidation Order directed the Commissioner “to liquidate
2 and wind up the business of SeeChange and to act in all ways and exercise all powers necessary
3 for the purpose of carrying out this Order and the liquidation provisions of the Insurance Code,
4 Insurance Code sections 1010 *et seq.*” Pursuant to California Insurance Code section 1037,
5 subdivision (c), the Commissioner “(c) Shall have authority to compound, compromise or in
6 any other manner negotiate settlements of claims against [the insurer] upon such terms and
7 conditions as the commissioner shall deem to be most advantageous to the estate of the person
8 being administered or liquidated or otherwise dealt with under this article.”

9 In exercising his discretion as a Liquidator, the Commissioner is vested with broad
10 discretion, subject to certain statutory limitations and “the requirement that exercise of
11 discretion be neither arbitrary nor improperly discriminatory”. (*In re Executive Life Ins. Co.*
12 (1995) 32 Cal. App. 4th 344, 356, 38 Cal. Rptr. 453; *Garamendi v. Golden Eagle Ins. Co.* (2005)
13 128 Cal. App. 4th 452, 27 Cal. Rptr. 3d 239.)

14 “[T]he actions of the Commissioner are subject to judicial review.” *In re Executive Life*
15 *Ins. Co., supra*, 32 Cal. App. 4th at 358.) When reviewing the Commissioner’s approval of a
16 settlement, “[t]he trial court reviews the Commissioner’s actions under the abuse of discretion
17 standard....” (*Id.* at 358.) In exercising that standard, this Court must answer the following
18 question: “[W]as the action arbitrary, i.e., unsupported by a rational basis, or is it contrary to a
19 specific statute, a breach of the fiduciary duty of the conservator as trustee, or improperly
20 discriminatory?” (*Ibid.*)

21 In this liquidation, the United States asserted large claims against SeeChange. On
22 November 4, 2016, this Court entered an order approving certain claims of the United States
23 asserted pursuant to the Affordable Care Act as Class 3 claims under California Insurance Code

1 Section 1033. The Commissioner, the California Life and Health Insurance Guarantee
2 Association and the United States worked together to reach agreement on a proposed
3 comprehensive Release Agreement which is now before the Court as Exhibit “1” hereto.
4 Pursuant to this Release Agreement, the United States shall receive an approved California
5 Insurance Code Section 1033, Class 3 approved proof of claim in the amount of \$5,119,666.61.
6 Further, the United States asserted certain Medicare Secondary Payer Act claims. The
7 California Life and Health Insurance Guarantee Association agrees to resolve these claims
8 through a payment in the amount of \$5,000. In return, the United States shall issue a release
9 from most super-priority claims. Subject to limited exceptions, the United States agrees to
10 release and discharge the Commissioner, the California Conservation Office, the California Life
11 and Health Insurance Guarantee Association and the SeeChange estate from any and all liability
12 under the federal super-priority statute (31 U.S.C. § 3713) in connection with the SeeChange
13 liquidation.

14 As described in the Declaration of Joseph Holloway, the Settlement Agreement with the
15 United States is standard procedure in insurance liquidations and is manifestly in the best
16 interest of this liquidation. The Release Agreement secures a release of super-priority claims
17 (subject to certain enumerated exceptions, such as criminal matters), resolves the amount of
18 Class 3 approval for the Affordable Care Act claim, and resolves the Medicare Secondary Payer
19 Act claim in this case.

1 For the forgoing reasons, the Court should approve the Release Agreement, which will
2 resolve one of the last claims issues faced by the SeeChange estate.

3 Respectfully submitted,

4 Dated: December 22, 2017

XAVIER BECERRA
Attorney General of California
LISA W. CHAO
Supervising Deputy Attorney General

6 By: Matthew Heyn
7 Matthew C. Heyn, Deputy Attorney General
8 *Attorneys for Insurance Commissioner of the*
9 *State of California*
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1. I am over the age of eighteen years. I am competent to be a witness. I have personal knowledge of the facts set forth below. I acquired my personal knowledge through my involvement in the matters to which I attest. If called upon to testify about the facts set forth below, I could and would do so.

3. This Court has previously entered an order approving a stipulation between the Liquidator and the United States regarding certain claims asserted by the United States. The Liquidator and SeeChange subsequently engaged in a process by which the Liquidator sought from the United States a release from super-priority claims arising from or related to SeeChange. The Conservation and Liquidation Office, assisted by counsel, adjusted the claims of the United States at issue after gathering information on the claims. This resulted in the proposed settlement agreement.

1 Association and the United States. This agreement provides for the treatment of the United
2 States' claims, and contains a super-priority release.

3 5. I recommend that the Court approve the agreement attached as Exhibit 1. The
4 approval of this agreement will enable the Liquidator to continue to move forward toward
5 completion of this liquidation. The agreement is manifestly in the best interest of SeeChange. It
6 settles the United States's claim under the Affordable Care Act ("ACA") as a Class 3 priority
7 claim. I do not anticipate there will be distributions to Class 3 claimants. Most importantly, the
8 estate and the Liquidator will receive a release from any super-priority claims of the United
9 States, subject only to some exceptions. This is a standard procedure in insurance liquidations,
10 which provides necessary protection from any unforeseen liabilities of SeeChange to the United
11 States or its agencies.

12 I hereby declare the foregoing facts to be true and correct under the penalty of perjury of
13 the laws of the State of California.

14
15 Dated: 12/20/17


Joseph Holloway

EXHIBIT "1"

RELEASE AGREEMENT

This Release Agreement is being entered into by the United States, the California Life and Health Insurance Guarantee Association (CLIHGA) and David E. Wilson, Chief Executive Officer and Special Deputy Insurance Commissioner of the Conservation and Liquidation Office of the California Department of Insurance, acting on behalf of Dave Jones, California Insurance Commissioner as Liquidator of SeeChange Health Insurance Company ("Special Deputy").

I. PARTIES

The parties to this Release Agreement are the United States, CLIHGA and the Special Deputy (collectively, the "Parties"). The Special Deputy makes this agreement on behalf of the California Insurance Commissioner as Liquidator of SeeChange Health Insurance Company and further on behalf of the California Conservation and Liquidation Office. .

II. RECITALS

1. On December 22, 2015, the United States Department of Health and Human Services ("HHS") filed a proof of claim that asserted a \$5,200,690.27 claim [Claim number 500203] against SeeChange Health Insurance Company ("SeeChange") pursuant to the Patient Protection and Affordable Care Act ("Act"), 42 U.S.C. §§ 18061 and 18063 ("ACA Claim") and a \$6,068.86 claim [Claim number 500206] against SeeChange pursuant to the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b)(2)(B) ("MSP Claim").

2. The Parties have agreed to compromise the MSP Claim and this Release Agreement is contingent upon payment by California Life and Health Insurance Guarantee Association of \$5,000.00 ("Compromised MSP Claim") to the United States in satisfaction of the MSP Claim. The Release Agreement will be effective only after the payment has been made. Once payment has been made, this Agreement constitutes a release of the Compromised MSP

Claims asserted by the United States against SeeChange, the California Insurance Commissioner as Liquidator and all Special Deputy Insurance Commissioners, the California Conservation and Liquidation Office, and the California Life and Health Insurance Guarantee Association.

3. The Parties agree that the ACA Claim is approved as a Class 3 proof of claim in the amount of \$ 5,119,666.61 under Cal. Ins. Code, § 1033, subd. (a)(3) (claims having preference under federal law) (1935)), and is otherwise rejected.

4. The Parties do not intend this Release Agreement to release any possible claims the United States may have or may acquire against anyone for tax, fraud (including, but not limited to, securities and pension benefit fraud), criminal liabilities, or reimbursement liabilities and penalties arising under 42 U.S.C. § 1395y(b), or any liability under 31 U.S.C. § 3713(b) arising from such claims.

5. Except for the express terms of this Release Agreement, the Parties do not intend to create, enhance, diminish, defeat or otherwise affect such claims, if any, as the United States may have against the Special Deputy or the SeeChange estate.

6. The Parties understand that this Release Agreement is subject to the approval of the Superior Court of the State of California, County of Los Angeles ("Court"), which is supervising the liquidation of SeeChange.

7. The United States enters into this Release Agreement in reliance upon the information contained in the Special Deputy's affidavit dated November 29, 2016, attached as Exhibit A to this Release Agreement ("Affidavit").

III. AGREEMENT

1. This Release Agreement becomes effective upon the United States' receipt of payment of the Compromised MSP Claim and approval by the Receivership Court.

2. The Parties agree that the ACA Claim is approved as a proof of claim entitled to Class 3 claim priority (Cal. Ins. Code, § 1033, subd. (a)(3) [claims having preference under federal law] (1935)). SeeChange will pay the ACA Claim to the extent, and only to the extent, that funds are available to pay Class 3 claims.

3. The Parties agree that until the SeeChange insurance insolvency proceeding, *Insurance Commissioner of the State of California v. SeeCHange Health Insurance Company*, Case No. BS 152302, is closed the United States has the right to offset any amounts owed by the United States to SeeChange against the ACA Claim pursuant to 45 C.F.R. § 156.1215.

4. Subject to satisfaction of the conditions in paragraphs III. 1-3, and the exclusions in the immediately following paragraph, the United States hereby releases and discharges the Special Deputy, the California Life and Health Insurance Guarantee Association, the California Insurance Commissioner as Liquidator, the California Conservation and Liquidation Office, and the SeeChange estate from any and all liability under 31 U.S.C. § 3713(b) in connection with the SeeChange liquidation.

5. Notwithstanding any other provision to this Release Agreement, the United States does not release the Special Deputy and the SeeChange estate for:

(a) any claim arising under any criminal law or any liability under 31 U.S.C. § 3713(b) arising from such claim;

(b) any criminal, civil, or administrative claim, right or defense arising under Title 26, U.S. Code (Internal Revenue Code) or any liability under 31 U.S.C. § 3713(b) arising from such claim;

(c) any claim or action arising under 31 U.S.C. § 3729 *et seq.* (False Claims Act), 31 U.S.C. § 3801 *et seq.* (Program Frauds Civil Remedies Act), 42 U.S.C. § 1320a-7a (Civil Monetary Penalties statute), 29 U.S.C. Ch. 18 (Employee Retirement Income Security Program), or 42 U.S.C. § 1395y(b) (Medicare as Secondary Payer) or any liability under 31 U.S.C. § 3713(b) arising from such claim;

(d) any claim arising under any other statute or common law principle governing pension benefit, fraudulent conveyance or any other form of fraud or any liability under 31 U.S.C. § 3713(b) arising from such claim;

(e) any obligation created by or reflected in this Release Agreement.

6. Under the terms of this Release Agreement, the United States or its duly authorized representative shall have the right, prior to the destruction of SeeChange's records in accordance with the orders of the Court, during normal business hours, on a date and at a location agreed upon by the Parties, to inspect, and if it wishes, to copy at its own expense, such documents, books, and records of the estate and of the Special Deputy, as shall be reasonably necessary to determine the existence and amount of claims the United States may have against the SeeChange estate, or to determine SeeChange's compliance with the terms of this Release Agreement. No documents, books, or records of the estate or the Special Deputy may be destroyed unless notice is given to the United States of any motion filed with the Court requesting approval of additional destruction. If the Special Deputy does not request approval

from the Court, he or she must obtain prior written authorization from the United States before destruction of any documents, books, or records of the estate or the Special Deputy.

7. Except for the express undertakings of the Special Deputy and the United States in this Release Agreement, nothing in this Release Agreement shall be construed:

(a) to establish or perfect any claims, substantive rights, or procedural rights of the United States;

(b) to limit, restrict, diminish, or defeat any claims, substantive rights, or procedural rights of the United States;

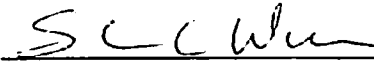
(c) to establish or perfect any objections or defenses, substantive rights, or procedural rights of the Special Deputy; or

(d) to limit, restrict, diminish, or defeat any defenses, substantive rights, or procedural rights of the Special Deputy.

8. The Parties agree that this Release Agreement shall not be effective unless and until it is approved by the Court, if approval is required, and the time for appeals of any such approval has expired. The Parties further agree to cooperate with each other in seeking prompt approval of this Release Agreement from the Court, including, but not limited to, making the necessary witnesses available for testimony considered necessary or appropriate to provide the Court with an adequate record upon which to approve this Release Agreement.

For the United States:

Dated: 11/21/17


By: Sharon C. Williams
Trial Attorney
Civil Division
Department of Justice
Attorney for the United States

For the Special Deputy:

Dated: 12/1/2017

David E. Wilson
By: David E. Wilson
Chief Executive Officer and Special
Deputy Insurance Commissioner of
the Conservation and Liquidation
Office of the California Department
of Insurance, on behalf of the
California Insurance Commissioner
as Liquidator of SeeChange Health
Insurance Company and not
individually

For CLIHGA:

Dated: 12/12/17

Todd Thakar
By: Todd Thakar
Executive Director
California Life and Health Insurance
Guarantee Association
and not individually

EXHIBIT A

KAMALA D. HARRIS
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No Fee Pursuant to Gov't Code, § 6103

*Attorneys for Insurance Commissioner of the
State of California*

Superior Court of the State of California

COUNTY OF LOS ANGELES

Central Civil WEST Courthouse

INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,

Petitioner,

v.

SEECCHANGE HEALTH INSURANCE
COMPANY,

Respondent.

Case No. BS152302
Assigned to Hon. Lisa Hart Cole

**DECLARATION OF SPECIAL DEPUTY
INSURANCE COMMISSIONER DAVID
W. WILSON**

Affidavit of David E. Wilson

Came before me David Wilson, who, being duly sworn, did upon his oath attest:

1. I am David Wilson. I am over the age of eighteen years. I am competent to be a witness. I have personal knowledge of the facts to which I attest. I am the Chief Executive Officer and Special Deputy Insurance Commissioner of the Conservation and Liquidation Office ("CLO") of the California

Department of Insurance, and have held this position since 2005, when I was appointed as CEO of the CLO by the California Insurance Commissioner and confirmed by the California State Senate. I make this Declaration supporting the request for a federal release as to SeeChange Health Insurance Company ("SeeChange"). The following facts are within my personal knowledge and are known by me to be true and correct, except those to which I express on the basis of information and belief. Those statements I make as to SeeChange Health Insurance are based upon information and belief which I derived from the CLO staff. If called upon to testify to those facts, I could and would competently do so.

2. The United States filed claims against SeeChange Health Insurance Company. Those claims arising from the Affordable Care Act have been approved in part and rejected in part at Class 3 priority, and those rejections are now final. The United States filed a proof of claim asserting claims under the Medicare Secondary Payer Act. Those claims have been referred to the pertinent guaranty association. The United States also filed a claim seeking to preserve unknown claims. I am not aware of any other claims at this time.
3. SeeChange, a health insurer, did not issue surety bonds.
4. SeeChange only underwrote health insurance policies, so that no table of all claims sent is attached. A complete table of those claims other than policy claims is provided on the accompanying disk.

5. SeeChange did not underwrite tort liability insurance to the best of my knowledge, based upon its status as a health insurer.
6. SeeChange was a health insurer, and thus did provide coverage for medical expenses.
7. In my role as CEO of the CLO, I am informed and believe that the Liquidator through CLO has fully complied with all reporting requirements of 42 U.S.C. § 1395y(b)(7) and (8) and all program instructions issued thereunder. Under 42 U.S.C. § 1395y(b)(2)(B), the Liquidator is not aware of any reimbursement for Medicare payments on behalf of Medicare beneficiaries, other than the fact that CMS has filed a proof of claim asserting a claim for Medicare Secondary Payer reimbursements.
8. To the best of my knowledge, the information provided by the CLO in the letter accompanying this affidavit is accurate.

David E. Wilson
David E. Wilson

Subscribed and sworn to before me, a notary public, on this 29 day of
November, 2016

Notary Public

SEE ATTACHED

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- ☒ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)

1. _____
 2. _____
 3. _____
 4. _____
 5. _____
 6. _____

Signature of Document Signer No. 1 Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

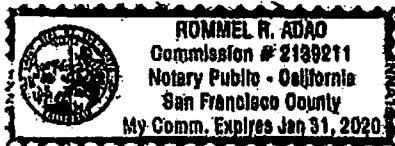
State of California
 County of SAN FRANCISCO

Subscribed and sworn to (or affirmed) before me
 on this 29TH day of NOVEMBER, 2016
 by _____
 (1) DAVID E. WILSON

(and (2) _____),
 Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence
 to be the person(s) who appeared before me.

Signature Rommel R. Adao
 Signature of Notary Public



Seal
 Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: AFFIDAVIT OF DAVID E. WILSON Document Date: 11/29/16
 Number of Pages: 3 Signer(s) Other Than Named Above: N/A

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 December 22, 2017, I served the foregoing **NOTICE OF MOTION AND MOTION TO APPROVE AGREEMENT WITH THE UNITED STATES; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JOSEPH HOLLOWAY** by transmitting a true copy via electronic mail. 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, addressed as follows:

PLEASE SEE ATTACHED SERVICE LISTS

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 December 22, 2017, 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

SERVICE LIST BY E-MAIL

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

Case No.: BS152302

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

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Sharon C. Williams, Esq., Counsel to the United States - Sharon.Williams@usdoj.gov

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Counsel to several parties filing proofs of claim

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Santa Clara, CA 95050-2501

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Sharon C. Williams, Esq.
1100 L Street, N.W.
Washington, D.C. 20005

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Michael Rosenfield, Esq.
Sidley Austin LLP
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Los Angeles, CA 90014

Counsel to National Organization of Life & Health Guaranty Associations

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Claimant

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c/o Specialized Healthcare
220 Congress Park Drive, Suite 21
Delray Beach, FL 33445