

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**R. ALEXANDER ACOSTA**, Secretary of  
Labor, United States Department of Labor,

Plaintiff,

v.

**RIVERSTONE CAPITAL LLC, a  
California limited liability corporation;  
NEXGEN INSURANCE SERVICES  
INCORPORATED, a California  
corporation; NGI BROKERAGE  
SERVICES, INC., a California  
corporation; JAMES C. KELLY, an  
individual; TRAVIS O. BUGLI, an  
individual; ROBERT CLARKE, an  
individual; ERIK MANQUEROS, an  
individual.**

Defendants

Case No.: 19-cv-778-MWF (MAAx)

**REDACTED**  
**AMENDED TEMPORARY  
RESTRAINING ORDER AND  
ORDER LIFTING SEAL**

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1 On February 1, 2019, this Court granted in part Plaintiff Secretary of Labor's *Ex*  
2 *Parte* Application for a Temporary Restraining Order and granted the Secretary's  
3 application to seal. On February 7, 2019, Plaintiff and Individual Defendants filed a  
4 Stipulation and (Proposed) Amended Temporary Restraining Order. Good cause having  
5 been shown, the Court hereby GRANTS the (Proposed) Amended Temporary  
6 Restraining Order and hereby ORDERS:

- 7 1. Defendants, their officers, agents, employees, assigns, subsidiaries, affiliates,  
8 service providers, accountants, attorneys, and any other party acting in concert  
9 with them or at their direction, are RESTRAINED and ENJOINED from  
10 exercising any authority or control with respect to the management of the  
11 Riverstone MEWA, the Participating Plans, and the assets of the Participating  
12 Plans, including but not limited to the transfer of any funds from any bank  
13 accounts into which these assets have been deposited, and are ENJOINED from  
14 any activity relating to the further promotion, sale, or marketing of the services  
15 provided by the Riverstone MEWA.
- 16 2. Receivership Management, Inc. ("Independent Fiduciary") is temporarily  
17 appointed as the independent fiduciary, successor Trustee and Plan Administrator  
18 to the Riverstone MEWA and Participating Plans, with full and exclusive  
19 fiduciary authority over their administration and management, and full and  
20 exclusive control over the Riverstone MEWA and Participating Plans' assets,  
21 including the assets in the accounts listed in **Amended Appendix A** to this Order  
22 and any other accounts where the assets of the Participating Plans were  
23 transferred.
- 24 3. The Independent Fiduciary is charged with taking all reasonable steps necessary  
25 to marshal the existing plan assets and place them in trust, perform an accounting,  
26 pay urgent claims, communicate with impacted entities and persons, and design  
27 and implement a fair process for paying out covered-claims to the extent feasible.
- 28 4. The authority of the Independent Fiduciary includes, but is not limited to:

- 1 a. Authority to exercise all fiduciary responsibilities relating to the Riverstone  
2 MEWA and Participating Plans, including authority to: create a trust and  
3 move all plan assets into said trust; conduct an accounting of all plan assets;  
4 pay medical claims; negotiate with medical providers, Plan service  
5 providers and other entities; identify and pursue claims on behalf of the  
6 Riverstone MEWA and Participating Plans; design and implement a fair  
7 process for paying out covered-claims to the extent feasible; file any  
8 necessary reporting requirements; communicate with participants,  
9 beneficiaries and any other person necessary to administer the Riverstone  
10 MEWA; and share any information requested by the Secretary.
- 11 b. Authority to pay pre-existing or pre-set expenses of the Riverstone Plan,  
12 such as, but not limited to, reasonable amounts due to third party  
13 administrators that perform necessary services, insurance premiums  
14 necessary to protect the Plan participants or beneficiaries, or compensation  
15 due to non-exempt Riverstone Plan employees for work undertaken on  
16 behalf of the Plan to the extent required by law;
- 17 c. Authority to pay itself reasonable and necessary fees from the Riverstone  
18 MEWA and Participating Plans' assets and pay the reasonable and  
19 necessary fees of service providers. Before causing plan assets to be used  
20 to pay compensation, fees or expenses, the Independent Fiduciary shall  
21 provide written notice by filing with this Court a Fee Notice supported by  
22 an itemized statement of work and by serving a copy to the Secretary. If no  
23 objection to the Fee Notice is filed within ten (10) calendar days, such  
24 compensation, fees, and expenses shall be deemed reasonable expenses.
- 25 5. Within two (2) business days of entry of this Order, Defendants and anyone acting  
26 on their behalf including their principals, officers, directors, owners, agents,  
27 assigns or subsidiaries, shall notify the Independent Fiduciary of all funds located  
28 in bank accounts or elsewhere that contain premiums (also known as premium

1           equivalents or contributions) from participating employers in the Riverstone  
2           MEWA and Participating Plans so that the Independent Fiduciary may  
3           immediately transfer those assets into a trust for the exclusive benefit of plan  
4           participants;

- 5           6. Within two (2) business days of entry of this Order, Defendants shall provide the  
6           Independent Fiduciary contact information for the Plan Sponsor of each  
7           Participating Plan and contact information for each participant and beneficiary  
8           enrolled in the Participating Plan. Defendants shall furnish any other information  
9           requested by the Independent Fiduciary as soon as reasonably feasible, including  
10          but not limited to the information necessary to complete an M-1 report.  
11          Defendants shall fully cooperate with the Independent Fiduciary efforts to marshal  
12          plan assets, including executing necessary documents to effectuate transfers to  
13          ensure such assets are placed in trust.
- 14          7. Within two (2) business days of entry of this Order, the Independent Fiduciary  
15          shall provide notice to all Participating Plans that includes a copy of this Order  
16          ("Notice"). The Notice shall further advise that the Riverstone accounts are  
17          frozen and that an Independent Fiduciary has been temporarily appointed to  
18          administer the Plan. The Notice shall further instruct Plan Sponsors of the  
19          Participating Plans to relay this information to their participants and beneficiaries  
20          as soon as possible, and to advise them of the All Writs Act relief provided to  
21          them. Finally, the Notice shall instruct Plan Sponsors of the Participating Plans  
22          that they may be fiduciaries to ERISA-covered plans, and nothing in the  
23          Stipulation or this Order relieves any fiduciary of their responsibilities under  
24          ERISA.
- 25          8. Pursuant to the All Writs Act, 28 U.S.C. § 1651, all persons or entities are stayed,  
26          enjoined and/or prohibited from claiming as against the assets of the Plans outside  
27          of the procedures and processes to be set forth by the Independent Fiduciary and  
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1 such protections shall be maintained until closure of the liquidation process or  
2 until further order by this Court;

3 9. Nothing in the Stipulation or this Order shall be construed to relieve any fiduciary  
4 with respect to the Participating Plans or the Riverstone MEWA of any duty,  
5 responsibility, or liability under ERISA.

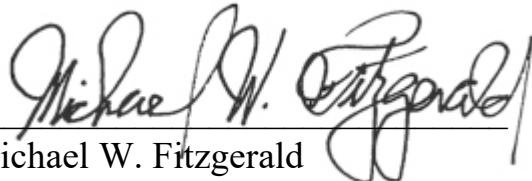
6 10. The case is **UNSEALED**. However, the documents noted below are to remain  
7 sealed:

- 8 a. the REDACTED Temporary Restraining Order dated February 1, 2019  
9 (Docket No. 11) shall be available on the public docket;
- 10 b. the **UNREDACTED Temporary Restraining Order** dated February 1,  
11 2019 (**Docket No. 12**) shall remain sealed.
- 12 c. The Stipulation Re (Proposed) Amended Temporary Restraining Order,  
13 filed February 7, 2019, **shall remain sealed**.
- 14 d. Amended Appendix A to this Order has been redacted such that only the  
15 last four digits of account numbers and EINs are visible; this REDACTED  
16 Order shall be filed publicly.
- 17 e. This **Sealed Order** and the **UNREDACTED** Amended Appendix A shall  
18 be **filed and remain sealed**.

19 11. Defendants are ordered to show cause why a preliminary injunction should not  
20 issue with all the relief specified in the Secretary's Application for a Temporary  
21 Restraining Order and supporting Memorandum dated February 1, 2019, by  
22 **March 7, 2019**, with a preliminary injunction hearing on **March 11, 2019 at 3:00**  
23 **p.m.**

24 IT IS SO ORDERED.

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26 Dated: February 7, 2019

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28 Michael W. Fitzgerald  
United States District Judge

AMENDED TRO AND ORDER LIFTING SEAL

**Amended Appendix A**

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<u>Account Number</u>	<u>Account Holder</u>	<u>EIN</u>
****_****_2604	Riverstone Capital LLC	**_***7994
****_****_4787	Riverstone Capital LLC	**_***7994
****_****_5029	Riverstone Capital LLC	**_***7994
****_****_5003	Riverstone Capital LLC	**_***7994
****_****_5016	Riverstone Capital LLC	**_***7994
****_****_1794	Riverstone Capital LLC	**_***7994
****_****_1781	Riverstone Capital LLC	**_***7994
****_****_2120	Riverstone Capital LLC	**_***7994
****_****_2117	Riverstone Capital LLC	**_***7994
****_****_1820	Riverstone Capital LLC	**_***7994
****_****_1833	Riverstone Capital LLC	**_***7994
****_****_1846	Riverstone Capital LLC	**_***7994