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20 Independent Fiduciary Receivership Management, Inc.

21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA**

23 **MARTIN J. WALSH, Secretary of**
24 **Labor, United States Department of**
25 **Labor**

26 **Plaintiff,**

27 **v.**

28 **RIVERSTONE CAPITAL, LLC, a**
California limited liability
corporation; et al.,

Defendants.

CASE NO. 19-CV-778-MWF (MAAx)
Honorable Michael W. Fitzgerald

INDEPENDENT FIDUCIARY'S
MOTION FOR COURT TO
APPROVE INDEPENDENT
FIDUCIARY'S
RECOMMENDATION TO PAY
APPROVED AMOUNTS OF
MEMBER PROOFS OF CLAIM;
MEMORANDUM OF POINTS AND
AUTHORITIES AND
DECLARATION OF ROBERT E.
MOORE, JR.

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HEARING DATE:
Date: June 26, 2023
Time: 10:00 a.m.
Location: First Street
Courthouse 350 West First Street
Courtroom SA
Los Angeles, CA 80012

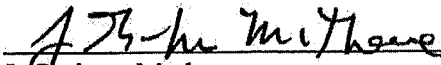
1 **NOTICE OF MOTION**

2
3 Please take notice that on June 19, 2023, at 10:00 a.m., Receivership Management, Inc., the
4 Court-Appointed Independent Fiduciary, will move the Court for an order approving the
5 Independent Fiduciary's recommendation that it pay all approved Member Proofs of Claim in an
6 amount totaling \$41,420.89. This Motion will be based upon this Motion, the attached
7 Memorandum of Points and Authorities, Declarations, Exhibits, and such additional legal argument
8 and facts as the Independent Fiduciary ("IF") may include in any further filing with the Court and
9 in oral argument on the Motion.
10

11 **LOCAL RULE 7-3 STATEMENT**

12 As evidenced by signature of undersigned counsel for the IF, the nature of this Motion does
13 not have a specific adversary or opponent with which to confer under Local Rule 7-3. Rather, the
14 nature of this Motion is to request Court approval of the payment of approved Member Proof of
15 Claim claims from the Riverstone MEWA Liquidation Estate that have been reviewed, finalized
16 and approved by the IF through the Court-approved Proof of Claim process. Accordingly, there is
17 no adversary or opponent in relation to this Motion with whom/with which to confer – i.e. the
18 Member Proof of Claim claimant, who has had his/her claim reviewed, finalized and approved
19 through the Proof of Claim process, would not be adverse to, or object to, the 100% approved
20 payment to him/her as recommended by the IF to the Court through this Motion. The IF will post a
21 copy of this Motion and attached filings on the website dedicated to this matter –
22 www.receivermgmt.com/riverstone-nexgenhealthplan.
23

24 Dated: May 16, 2023


J. Graham Matherne

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **i.) Background Facts**

3 On May 9, 2019, the Court approved the IF's Revised Liquidation Plan, DE #s 96 and 97.

4 On May 9, 2019, the IF filed its Revised Liquidation Plan (D.E. #98-1). The Revised Liquidation
5 Plan set forth, amongst other matters, that the IF would establish a Proof of Claim ("POC")
6 procedure by which any person or entity with a legitimate claim could submit said claim against
7 the assets held by the IF regarding the Riverstone MEWA Liquidation Estate. Id. at p. 10, lines 20-

8
9 24. The Revised Liquidation Plan further stated that, on or before November 1, 2019, the IF would
10 post on the website dedicated to the Riverstone MEWA proceedings

11 (www.receivermgmt.com/riverstone-nexgenhelathplan) ("Riverstone MEWA Website") the POC
12 Form and Instructions. Id. at pp 10-11. The Revised Plan of Liquidation set forth a deadline of
13 January 31, 2020 by which the POC submissions were due. Id. at pp. 10-11. In the Court-approved
14 Revised Liquidation Plan, the IF stated, that while it reserved the ability to further refine priority of
15 POC payments, the expected priority of POC claims, after the payment of administrative expenses,
16 would be:

- 17
18 1) Payment, first, of timely-filed approved and finalized participating employee POC
19 Claims for reimbursement of payments he/she made of Sponsoring Employer responsibility
20 amounts owed under the applicable Plan Document [i.e. Plan Responsibility Amounts]
which have not been reimbursed to the participating employee by the Sponsoring Employer.

21 Id. at p. 12 (brackets added for clarity). Finally, in the Court-approved Revised Liquidation Plan,
22 the IF stated that if there was a possibility of an interim distribution, the IF would bring such to the
23 Court's attention. Id. at p. 13.
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1 On or about November 1, 2019, the IF posted on the Riverstone MEWA Website its Proof
2 of Claim Form and Process. That posting had the POC Form and POC Definitions and Instructions
3 attached and clearly stated the January 31, 2020 deadline for submissions of POCs. Declaration of
4 Robert E. Moore, Jr. (attached as Exhibit A) at ¶ 3 (“Moore Decl.”).
5

6 Moreover, the POC Definitions and Instructions made it clear that a Member Claim for
7 reimbursement of Plan Responsibility Amounts paid to a Medical Provider (and which had not been
8 reimbursed to the Member by the Plan Sponsor) would be prioritized in payment second only to the
9 costs and expenses of the IF. Id. at ¶ 4.

10 One hundred forty (140) Member POCs were submitted to the IF. Moore Decl. at ¶ 5. Under
11 the Court-approved Revised Liquidation Plan:
12

13 The Independent Fiduciary will review all materials submitted in conjunction with each
14 POC Claim and reserves the right to demand further information from the POC Claimant,
15 which if not provided, would result in the POC Claim being denied. The Independent
16 Fiduciary will review and adjudicate each POC Claim and issue a Notice of Determination
17 (“NOD”). If the POC Claimant objects to the Independent Fiduciary’s NOD, he/she/it can
18 request, within thirty (30) days of the issuance of the NOD, reconsideration by the
19 Independent Fiduciary of the NOD. A failure to request reconsideration within that thirty
20 (30) day period will result in the NOD being final. The Independent Fiduciary will then
21 consider the timely submitted reconsideration and its decision as to the reconsideration
22 will be final. See Redacted Consent Judgment Order (DE #41 at pp. 3-4 – the
23 Independent Judiciary shall have “plenary authority to administer [the Plan] which
24 includes, but is not limited to:....g. Authority to adjudicate and pay or deny any and all
25 claims submitted to the Rivertone MEWA and Participating Plan” [sic]).
26

27 Revised Liquidation Plan (D.E. # 98-1 at p. 11, line 15 through p. 12, line 1).

28 The IF reviewed all of the Member POCs. Moore Decl. at ¶ 6. The result of the IF’s review
of the Member POCs was that it issued Notices of Determination (“NODs”) as to all of the 140
Member POCs. Ninety-one (91) of the Member POCs were denied for reasons such as failing to
respond to requests for additional information, improperly requesting reimbursement for Member

1 Responsibility Amounts (as opposed to Plan Responsibility Amounts) and failing to show proof of
2 payment of claimed Plan Responsibility Amounts. Moore Declaration at ¶6. Forty-nine (49) of the
3 Member POCs were allowed. Id.

4
5 The NODs issued by the IF that were not objected to became final pursuant to the Court-
6 approved Revised Liquidation Plan (D.E. #98-1 at p. 11, lines 22-23). There were three (3)
7 objections/requests for reconsideration lodged by Members to the IF's NODs. Those
8 objections/requests for reconsideration were reviewed and determined and further communication
9 was sent, in writing, to the objecting claimant regarding the IF's further review and determination,
10 said review and determination – pursuant to the Court-approved Revised Plan of Liquidation –
11 being final (see D.E. #98-1, p. 11, lines 23-25); Moore Decl. at ¶ 6.

12
13 The result of the IF's efforts a) to review and determine the Member POCs, b) to review
14 and determine objections/reconsideration requests (where applicable) and c) to finalize the Member
15 POCs is that 49 of the Member POCs have been approved and finalized as to the amounts set forth
16 in Exhibit 1 to the Moore Declaration – an amount totaling \$41,420.89. Moore Decl. at ¶ 7 and
17 Exhibit 1 thereto.

18 **ii.) Availability of Assets to Pay Approved Member POCs as Interim Distribution**

19
20 As referenced earlier, the Court-approved Revised Plan of Liquidation set forth that the IF
21 would notify the Court if an interim distribution of Riverstone MEWA Liquidation Estate assets
22 could be made. D.E. #98-1 at p. 13, lines 7-8. The IF maintains that the assets in the Riverstone
23 MEWA Liquidation Estate – approximately \$2.5 million – allow for payment of the \$41,420.89 in
24 approved Member POC claims while also reserving amounts that might be needed regarding
25 administrative expenses in pursuit of other and remaining matters regarding the Riverstone MEWA
26

1 Liquidation Estate, as well for later distribution, pro rata or otherwise, to other claimants of lesser
2 priority than the POC Member claimants. Id. at ¶ 8.

3
4 **iii. Discussion**

5 The “Members” are the participants in the various employee benefit plans under the control
6 of the IF. They are the covered employees (or covered dependents of employees) of the self-funded
7 employee benefit plans set up by the Sponsoring Employers at issue in the insolvent Riverstone
8 MEWA. The approved and finalized amounts of Member POCs, as set forth in Exhibit 1 to the
9 Moore Declaration, are amounts paid out-of-pocket by the Members which are Plan Responsibility
10 Amounts that should have been paid by the Sponsoring Employer’s self-funded employee benefit
11 plan/the Sponsoring Employer. Through the POC process, the IF confirmed that the approved
12 amounts for the Member POC claims had not been reimbursed to the Member from the particular
13 Sponsoring Employer. Id. at ¶ 9.

14
15 Accordingly, the Members – i.e. the employees/plan participants who paid out-of-pocket
16 Plan Responsibility Amounts and seek reimbursement of these approved amounts -- are individuals
17 who had paid for health benefit coverage through employee deductions, but also paid amounts that
18 the employee benefit plan/Plan Sponsor was supposed to have paid. Those individuals – the
19 employees -- are likely, if not certainly, the least able to have the ability to address the hardship of
20 paying out-of-pocket amounts that should have been paid by the Sponsoring Employer’s employee
21 benefit plan/the Sponsoring Employers. That is why the Member Claims, as approved through the
22 POC process, are prioritized for payment, second only to the administrative expenses of the IF.
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1 With funds available to pay the \$41,420.89 of approved and finalized Member POCs, the
2 IF asserts there is no reason not to pay such amounts – now – from the Riverstone MEWA
3 Liquidation Estate. The IF, through this filing, so recommends.

4 **iv. Conclusion**

5
6 For the reasons set forth, the IF requests an ORDER from the Court approving the IF's
7 recommendation that the approved and finalized Member POCs, as set forth in Exhibit 1 to the
8 Moore Declaration (in the total amount of \$41,420.89), be distributed to the relevant Members.

9
10
11 Respectfully submitted,

12 Dated: May 16, 2023

CALDWELL LAW FIRM

13
14 By: s/ Larry J. Caldwell
Larry J. Caldwell, Esq.

15 Dated: May 16, 2023

WYATT, TARRANT & COMBS, LLP

16
17 By: s/ J. Graham Matherne
J. Graham Matherne, Esq.

18
19 Dated: May 16, 2023

BERRY AND TUDOR, PC

20 By: s/ Bynum E. Tudor III
Bynum E. Tudor III, Esq.
21 *Attorneys for Court-Appointed Independent*
22 *Fiduciary Receivership Management, Inc.*

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid county, State of California. I am over the age of 18 years and not a party to the within action. My business address is Caldwell Law Firm, 401 Wilshire Boulevard, 12th floor, Santa Monica, CA 90401.

On the date set forth below, I caused the foregoing document described as:

INDEPENDENT FIDUCIARY’S MOTION FOR COURT TO APPROVE INDEPENDENT FIDUCIARY’S RECOMMENDATION TO PAY APPROVED AMOUNTS OF MEMBER PROOFS OF CLAIM; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF ROBERT E. MOORE, JR.

to be serve on all other parties and/or their attorney(s) of record to this action as follows:

SEE ATTACHED SERVICE LIST

- BY CM/ECF SYSTEM** In accordance with the electronic filing procedures of this Court, I certify that I caused a copy of the above document to be served upon the following counsel of record, who are registered participants of this Court’s CM/ECF system, via the court’s CM/ECF System on May 16, 2023.
- BY ELECTRONIC MAIL** I served the above document to the e-mail address(es) listed in the attached Service List on May 16, 2023. A true and correct copy of said transmittal will be produced if requested by any party or the court.
- BY MAIL** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelope was placed for deposit in the United States Postal Service on May 16, 2023. The envelope was sealed and placed for collection and mailing with first-class prepaid postage on this date following ordinary business practices.

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1 X (FEDERAL) I declare under penalty of perjury that the foregoing is true and
2 correct, and that I am employed at the office of a member of the bar of this
3 Court at whose direction the service was made.

4 Executed on May 16, 2023, at Santa Monica, California.

5 s/ Larry J. Caldwell
6 LARRY J. CALDWELL

7 **SERVICE LIST**

8 **WALSH v. RIVERSTONE CAPITAL, et al.**
9 **USDC Case No. 19-CV-778-MWF (MAAx)**

10 **Registered Attorneys Listed as Counsel of Record via CM/ECF**

11 Service via CM/ECF as to all Attorneys listed as counsel of record who are
12 registered participants of this Court's CM/ECF system.

13 **Defendants, In Pro Per, via Electronic Mail and First Class Mail**

14 Riverstone Capital, LLC

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26 INDEPENDENT FIDUCIARY'S MOTION FOR COURT TO APPROVE INDEPENDENT FIDUCIARY'S
27 RECOMMENDATION TO PAY APPROVED AMOUNTS OF MEMBER PROOFS OF CLAIM;
28 MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF ROBERT E. MOORE, JR.,
19-CV-778 (MWF)