

Exhibit B

to

IF's Motion for Court to Approve
Treatment of Remaining Outstanding Amounts
and Unpaid Claims Related to VNA

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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

**DECLARATION OF ROBERT E.
MOORE, JR. IN SUPPORT OF
INDEPENDENT FIDUCIARY'S
MOTION FOR COURT TO
APPROVE RECOMMENDED
TREATMENT OF REMAINING
OUTSTANDING AMOUNTS AND
UNPAID CLAIMS RELATED TO
VISITING NURSE ASSOCIATION
OF INLAND COUNTIES ("VNA")
AS UNCOLLECTIBLE.**

1 I, Robert E. Moore, Jr., pursuant to 28 U.S.C. §1746, declare as follows:

2 1. I am of majority age and have a personal knowledge of the facts stated
3
4 in this Declaration or am knowledgeable of documents that set forth the facts stated
5 in this Declaration.

6 2. I am President of Receivership Management, Inc., which is the Court-
7
8 appointed Independent Fiduciary over the Riverstone MEWA and Participating
9 Plans.

10 3. At the time of the institution of this action and the appointment of the
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12 Independent Fiduciary (“IF”), Visiting Nurse Association of Inland Counties
13 (“VNA”) had already filed for Chapter 11 bankruptcy protection - - said bankruptcy
14 petition having been filed on August 15, 2018 (“Petition Date”) (In re: Visiting
15 Nurse Association of Inland Counties #6:18-16908 (U.S. Bankr. C.D. Cal.)). VNA
16 was the Employer Sponsor, Plan Administrator and a Named Fiduciary of the VNA
17 Employee Benefit Plan over which the IF was granted control pursuant to its Court-
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19 appointment in this case.

20 4. At the time of the IF’s Court appointment, the unpaid medical claims
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22 and outstanding amounts of record in the Riverstone MEWA Liquidated Estate
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24 regarding the VNA Employee Benefit Plan totaled \$282,479.88. That amount

1 consisted of \$128,189.03 in pre-Petition Date unpaid medical claims, \$18,115.70 in
2 outstanding pharmacy amounts and \$136,175.15 post-Petition Date unpaid medical
3 claims. The holder of that \$18,115.70 outstanding pharmacy amount is Hawaii
4 Mainland Administrators (“HMA”), the third party administrator for the VNA
5 Employee Benefit Plan, which had advanced that amount to the pharmacy providers.
6
7 While the pharmacy providers have been paid by HMA, VNA never reimbursed
8 HMA for same, so, the \$18,115.70 pharmacy claim is still of record regarding the
9 VNA Employee Benefit Plan and the IF considers the pharmacy claim amount as
10 “outstanding” as to the VNA Employee Benefit Plan. The filings by the IF in the
11 VNA bankruptcy described in ¶ 5 and ¶ 6 below did not include the outstanding
12 pharmacy amount, which, again, had been paid by HMA to the pharmacy providers.
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16 5. The IF timely filed in the VNA bankruptcy action a Proof of Claim in
17 the amount of \$128,189.03 representing the pre-petition unpaid medical claims
18 relating to the VNA Employee Benefit Plan. This claim was properly characterized
19 as a general unsecured creditor claim entitled to payment in the priority and amount
20 provided in any confirmed Chapter 11 Plan.
21

22 6. Additionally, the IF filed a separate Application for Allowance and
23 Payment of Administrative Claim in the amount of \$136,175.15 representing post
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1 petition unpaid medical claims relating the VNA Employee Benefit Plan. VNA as
2 Debtor-in-Possession (“DIP”) and the IF entered into a Stipulation, upon which
3
4 basis the VNA bankruptcy court entered an order on October 2, 2019, allowing the
5 claim in the amount of \$136,175.15 as an administrative claim under 11 U.S.C.
6
7 503(b).

8 7. VNA filed its First Amended Chapter 11 Liquidating Plan dated
9 September 14, 2020 (the “Bankruptcy Plan”). The Bankruptcy Plan provided for the
10 creation of a Liquidating Trust for the benefit of the creditor beneficiaries, and the
11 appointment of a Liquidating Trustee, to take possession of the assets of the
12 bankruptcy estate and to distribute the proceeds of those assets to the creditor
13 beneficiaries in accordance with the Bankruptcy Plan (the “Liquidating Trust
14 Property”). On December 10, 2020, the VNA bankruptcy court entered an order
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16 confirming the Bankruptcy Plan in the VNA bankruptcy which provided for
17 payment of the \$136,175.15 administrative claim. In June 2021, the IF was paid
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19 \$136,175.15 on account of the administrative claim.
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21 8. Since its receipt of the \$136,175.15, the IF has issued payments, along
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23 with Explanation of Benefit statements (“EOBs”), to the medical providers for the
24 medical claims that comprised the \$136,175.15 amount.

1 9. The payment of all claims entitled to payment ahead of general
2 unsecured creditor claims, including the IF's \$136,175.15 administrative claim,
3 exhausted substantially all funds in the VNA bankruptcy estate. The confirmed
4 Bankruptcy Plan provided for appointment of a Liquidating Trustee in the VNA
5 bankruptcy. On January 5, 2022, the Liquidating Trustee filed a Post-Confirmation
6 Status Report reflecting that \$9,052,595.67 had been distributed to Secured
7 Creditors, \$1,476,384.30 had been distributed to Administrative Creditors
8 (including the IF on account of its \$136,175.15 claim), \$74,820.33 had been
9 distributed to Priority Unsecured Creditors, and remaining funds in the amount of
10 \$68,579.16 had been distributed to General Unsecured Creditors.
11

12 10. The Liquidating Trustee's January 5, 2022 Status Report included a list
13 of General Unsecured Creditors who received a distribution on account of their
14 claims from the total amount of \$68,579.16 distributed, and the amount distributed
15 to each. This list DID NOT include the IF's general unsecured creditor claim of
16 \$128,189.03.
17

18 11. On February 7, 2022, the Liquidating Trustee moved to close the VNA
19 bankruptcy case on grounds that the case had been fully administered, including
20 payment of all general unsecured claims entitled to payment.
21

1 12. The IF was entitled to a distribution on account of its general unsecured
2 creditor claim in an amount equal to its pro rata share of the amount distributed to
3 the general unsecured creditors but it did not receive such distribution. However, the
4 IF's pro rata portion of the funds distributed to the general unsecured creditors
5 would have resulted in payment to the IF of less than \$1,000. The cost of filing an
6 objection to the Liquidating Trustee's motion to close the VNA bankruptcy case
7 would have exceeded that amount, and no such objection was filed.

10 13. The Liquidating Trustee's motion to close the VNA bankruptcy case
11 was granted on March 3, 2022, and the VNA bankruptcy case has been closed. No
12 further distributions will be made on account of any claims against VNA, whether
13 pre-petition or post-petition.

16 14. Under the Plan Documents of the VNA Employee Benefit Plan, VNA
17 was responsible for the payment/funding of the unpaid medical claims and the
18 outstanding pharmacy amount which, through paid by HMA remains as outstanding
19 in the IF records related to the VNA Employee Benefit Plan.

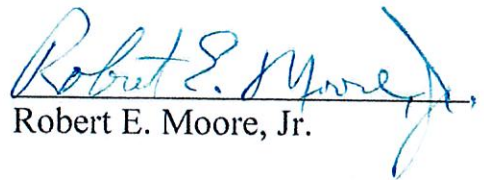
21 15. The VNA bankruptcy is closed and therefore no amounts exist to
22 address these remaining amounts. Accordingly, the Independent Fiduciary
23 recommends that the remaining \$146,304.73 of outstanding claims relating to the
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1 VNA Employee Benefit Plan (i.e. outstanding pharmacy amounts and unpaid pre-
2 petition medical claims) be treated as uncollectible.
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4 16. If the Court grants this Motion and approves the IF's recommendation,
5 the IF will notify HMA of the Court's order and will issue EOB documents to the
6 holders of the remaining unpaid medical claims setting forth a "\$0.00" amount of
7 payment due to the uncollectible nature of the amounts against VNA. Upon sending
8 of the EOBs, the Independent Fiduciary will reduce the outstanding/unpaid claims
9 in the Riverstone MEWA Liquidation by the above-referenced \$146,304.73
10 amount.
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13 17. Upon the filing of this Motion, it will be posted on the website
14 dedicated to the Riverstone MEWA Liquidation –
15 www.receivermgmt.com/riverstone-nexgenhealthplan ("Riverstone Website").
16 Post cards in the form attached as Exhibit 1 to this Declaration will be mailed to
17 HMA, as holder of the outstanding pharmacy claim, and to the medical providers
18 which hold the unpaid medical claims of the VNA Employee Benefit Plan notifying
19 the claim holder of the filing of this Motion, the substance of the relief requested,
20 deadline for filing opposition to the Motion and a reference to the Riverstone
21 Website where a copy of the Motion can be obtained.
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1 I declare under penalty of perjury, under the laws of the United States of America,
2 that the foregoing is true and correct and that I executed this Declaration on
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4 January 30th, 2023 in Nashville, Tennessee.
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8 Robert E. Moore, Jr.
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Riverstone/NexGen MEWA Liquidation

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Notice From Independent Fiduciary ("IF") Re: Recommended Treatment of Remaining Unpaid/Outstanding Claims Regarding Visiting Nurse Association Employee Benefit Plan ("VNA Plan")

ACCORDING TO IF RECORDS YOU ARE A HOLDER OF AN UNPAID OR OUTSTANDING MEDICAL OR PHARMACY CLAIM RELATING TO THE VNA PLAN

This matter is pending in the case of Walsh v. Riverstone Capital, LLC et al (#19-CV-778-MWF) (C.D. Cal) ("Court"). On **January 30, 2023**, the Independent Fiduciary filed a Motion for the Court to approve treatment of all remaining outstanding amounts of record and unpaid Plan Responsibility Amounts relating to the VNA Plan as uncollectible ("Motion"), due to the closure of the VNA bankruptcy proceedings (In re: VNA #6-18-16908 (U.S. Bankr. C.D. CA). The Motion will be heard at 10:00 (Pacific) on **March 13, 2023**. Objections to the Motion are to be filed with the Court on or before **February 20, 2023**. A copy of the Motion can reviewed at www.receivermgmt.com/riverstone-nexgenhealthplan.

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Riverstone/NexGen Benefit Plan

510 Hospital Drive
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POSTMASTER: ADDRESS CORRECTION REQUESTED
PLEASE FORWARD

Recipient Name
Street Address
Address 2
City, ST ZIP Code

FRONT OF POSTCARD

BACK OF POSTCARD

101034108.1

**EXHIBIT 1 TO MOORE DECLARATION IN SUPPORT OF IF
MOTION RE: TREATMENT OF VNA OUTSTANDING/UNPAID CLAIMS**