

1 Larry J. Caldwell (SBN 88867)  
2 [larry.caldwell@caldwellfirm.net](mailto:larry.caldwell@caldwellfirm.net)  
3 CALDWELL LAW FIRM  
4 401 Wilshire Boulevard, 12<sup>th</sup> Floor  
5 Santa Monica, CA 90401  
6 Telephone: (310) 689-9769

7 J. Graham Matherne (*Admitted Pro Hac Vice*)  
8 [gmatherne@wyattfirm.com](mailto:gmatherne@wyattfirm.com)  
9 WYATT, TARRANT & COMBS, LLP  
10 333 Commerce Street, Suite 1050  
11 Nashville, TN 37201-1837  
12 Telephone: (615) 251-6708

13 Bynum E. Tudor III (*Admitted Pro Hac Vice*)  
14 [btudor@berrytudor.com](mailto:btudor@berrytudor.com)  
15 BERRY & TUDOR, P.C.  
16 5123 Virginia Way, Suite B-23  
17 Brentwood, Tennessee 37027  
18 Telephone: (615) 726-1000

19 Attorneys for Court-Appointed  
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 RECOMMENDED**  
**TREATMENT OF REMAINING**  
**OUTSTANDING AMOUNTS AND**  
**UNPAID CLAIMS RELATED TO**  
**VISITING NURSE ASSOCIATION**  
**OF INLAND COUNTIES ("VNA")**  
**AS UNCOLLECTIBLE;**  
**MEMORANDUM OF POINTS AND**  
**AUTHORITIES; DECLARATION**  
**OF J. GRAHAM MATHERNE;**  
**DECLARATION OF ROBERT E.**

1 **MOORE JR; AND PROPOSED**  
2 **ORDER.**

3 **HEARING DATE:**

4 **Date: March 13, 2023**

5 **Time: 10:00 a.m.**

6 **Location: First Street Courthouse**

7 **350 West First Street**

8 **Courtroom 5A**

9 **Los Angeles, CA 80012**

10 NOTICE OF SETTING OF MOTION

11 Please take notice that on Monday, March 13, 2023, at 10:00 a.m.,  
12 Receivership Management, Inc., the Court-Appointed Independent Fiduciary (“IF”),  
13 will move the Court for an order approving the IF’s recommended treatment of the  
14 remaining unpaid medical claims and outstanding pharmacy amounts related to  
15 Visiting Nurse Association of the Inland Counties (“VNA”) as being uncollectible  
16 (an amount of \$146,304.73). This Motion will be based upon this Motion, the  
17 attached Memorandum of Points and Authorities, Declarations, Exhibits, such  
18 additional legal argument and facts as the moving party may include in any Reply in  
19 Support of Motion and in oral argument on the Motion.  
20

21 COUNSEL’S LOCAL RULE 7-3 STATEMENT

22 Under Local Rule 7-3, prior to filing this Motion, counsel are to discuss the  
23 nature and potential resolution of the matters at issue in the potential motion. As set  
24 forth in the Declaration of J. Graham Matherne attached as Exhibit A (“Matherne  
25 Decl.”), VNA filed for Chapter 11 bankruptcy protection prior to the Court’s  
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1 appointment of the IF in this action. VNA ultimately confirmed a Plan of Liquidation  
2 in its Chapter 11 bankruptcy case, which provided for the transfer of bankruptcy  
3 estate assets into a Liquidating Trust, the appointment of a Liquidating Trustee to pay  
4 allowed claims of creditors to the extent of available Liquidating Trust property and  
5 in the priority mandated by bankruptcy law, and the dissolution of VNA. On March  
6 3, 2022, the bankruptcy court entered an order granting the Final Decree and closing  
7 the VNA bankruptcy case. On March 15, 2022, the Liquidating Trustee filed a Final  
8 Post Confirmation Report in the bankruptcy case reflecting the disposition of all  
9 property of the Liquidating Trust. Matherne Decl. at ¶s 2-3.

13 At issue in the Motion before the Court is the Independent Fiduciary’s request  
14 that the Court approve the treatment of all remaining outstanding amounts and unpaid  
15 medical claims related to the VNA Employee Benefit Plan as uncollectible

17 Undersigned counsel has communicated with the attorney for VNA during its  
18 bankruptcy case, who is also the attorney for the Liquidating Trustee appointed under  
19 the confirmed Plan of Liquidation, and he has advised that the Liquidating Trustee  
20 has no opposition to the relief sought in the IF’s Motion. Matherne Decl. at ¶5.

22 Undersigned counsel is unaware of counsel representing the holders of the remaining  
23 unpaid claims and outstanding amounts of record and thus has been unable to meet  
24 and confer as to the relief sought in the Motion regarding the outstanding amounts of  
25

1 record and unpaid claims. However, as set forth herein, notice and opportunity to  
2 respond to this Motion is being given to the holders of the remaining outstanding  
3 amounts and unpaid medical claims of the VNA Employee Benefit Plan. Id. at ¶ 6.

6 Dated: 1/30/23

J. Graham Matherne  
7 J. Graham Matherne

8 MEMORANDUM OF POINTS AND AUTHORITIES

9  
10 i) Background

11 At the time of the institution of this action and the appointment of the IF, VNA  
12 was a Debtor in Possession (DIP) under Chapter 11, its bankruptcy petition having  
13 been filed on August 15, 2018: In re: Visiting Nurse Association of Inland Counties,  
14 #6:18-16908 (U.S. Bankr C.D. Cal) (the “Bankruptcy Case”). VNA was the  
15 Employer Sponsor, Plan Administrator and Named Fiduciary of the VNA Employee  
16 Benefit Plan over which the IF was granted control pursuant to its Court-appointment  
17 in this case. Declaration of Robert E. Moore Jr. at ¶ 3 attached hereto as Exhibit B  
18 (“Moore Decl”).

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22 At the time of the IF’s Court appointment, the plan responsibility amount of  
23 unpaid claims and outstanding amounts of record in the Riverstone MEWA  
24 Liquidated Estate regarding the VNA Employee Benefit Plan totaled \$282,479.88.  
25 Moore Decl. at ¶ 4. That amount consisted of \$128,189.03 in pre-VNA bankruptcy

1 petition unpaid medical claims, \$18,115.70 in outstanding pharmacy amounts and  
2 \$136,175.15 post-VNA bankruptcy petition unpaid medical claims. Id.  
3

4 The IF timely filed, in the VNA bankruptcy action, a Proof of Claim in the  
5 amount of \$128,189.03 representing the pre-petition unpaid medical claims relating  
6 to the VNA Employee Benefit Plan. That claim was properly characterized as a  
7 general unsecured creditor claim entitled to payment in the priority and amount  
8 provided in any confirmed Chapter 11 Plan. Id. at ¶ 5. Additionally, the IF filed a  
9 separate Application for Allowance and Payment of Administrative Claim in the  
10 amount of \$136,175.15, representing post-petition unpaid medical claims relating to  
11 the VNA Employee Benefit Plan, which Application was ultimately approved by the  
12 bankruptcy court. Id. at ¶ 6<sup>1</sup>.  
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16 VNA filed its First Amended Chapter 11 Liquidating Plan dated September  
17 14, 2020 (the “Bankruptcy Plan”). The Bankruptcy Plan provided for the creation of  
18 a Liquidating Trust for the benefit of the creditor beneficiaries, and the appointment  
19 of a Liquidating Trustee, to take possession of the assets of the bankruptcy estate and  
20 to distribute the proceeds of those assets to the creditor beneficiaries in accordance  
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22

23 <sup>1</sup> The holder of the \$18,115.70 outstanding pharmacy amount is the third party administrator involved with the VNA  
24 Employee Benefit Plans, Hawaii Mainland Administrations (“HMA”), which had advanced that amount to the relevant  
25 pharmacy providers. The filings made by the IF in the VNA bankruptcy did not include the pharmacy amounts, payment  
26 of which had already been advanced by HMA to the pharmacy provider. While the pharmacy providers have been paid  
by HMA, VNA never reimbursed HMA, so the IF considers the pharmacy amount as outstanding. The \$18,115.70  
pharmacy amount remains, in the records of the IF relating to the VNA Employee Benefit Plan as outstanding and thus  
the IF requests treatment of that outstanding amount as uncollectible by the VNA Employee Benefit Plan/Riverstone  
MEWA Liquidation Estate. Moore Decl. ¶ 4 and ¶s 14-15.

1 with the Plan (the “Liquidating Trust Property”). On December 10, 2020, the  
2 bankruptcy court entered an order confirming the Bankruptcy Plan.  
3

4 Pursuant to the confirmed Bankruptcy Plan, the IF received payment in full on  
5 account of its administrative claim in the amount of \$136,175.15. Id. at ¶ 7. Since its  
6 receipt of the \$136,175.15, the IF has issued payments, along with Explanation of  
7 Benefit statements (“EOBs”), to the medical providers for the medical claims that  
8 comprised the post-petition \$136,175.15 amount. Id. at ¶ 8.  
9

10 The payment by the Liquidating Trustee of all claims legally entitled to  
11 payment ahead of general unsecured creditor claims, exhausted substantially all funds  
12 constituting property of the Liquidating Trust. On January 5, 2022, the Liquidating  
13 Trustee filed a Post-Confirmation Status Report reflecting that \$9,052,595.67 had  
14 been distributed to Secured Creditors, \$1,476,384.30 had been distributed to  
15 Administrative Creditors (including the IF on account of its \$136,175.15 claim),  
16 \$74,820.33 had been distributed to Priority Unsecured Creditors, and remaining  
17 funds in the amount of \$68,579.16 had been distributed to general unsecured  
18 creditors. Id. at ¶ 9. The Liquidating Trustee’s January 5, 2022 Status Report  
19 included a list of general unsecured creditors who received a distribution on account  
20 of their claims from the total amount of \$68,579.16 distributed, and the amount  
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1 distributed to each. This list DID NOT include the IF's general unsecured creditor  
2 claims of \$128,189.03. Id. at ¶ 10.  
3

4 On February 7, 2022, the Liquidating Trustee moved to close the Chapter 11  
5 case on grounds that the case had been fully administered, meaning that substantially  
6 all property in the Liquidating Trust had been distributed, including funds available  
7 to general unsecured creditors. The IF believed it had been entitled to receive, on  
8 account of its general unsecured claim, a pro rata portion of the amount which had  
9 been distributed to general unsecured creditors. However, the IF's pro rata portion  
10 of the funds distributable to general unsecured creditors would have resulted in  
11 payment to the IF of less than \$1,000. The cost to the IF of filing an objection to the  
12 Liquidating Trustee's motion to close the VNA bankruptcy case would have  
13 exceeded that amount. The IF did not file the objection. Id. at ¶s 11-12.  
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16  
17 The Liquidating Trustee's Motion was granted, and the Bankruptcy Court  
18 entered an Order granting the final decree and closing the VNA bankruptcy case on  
19 March 3, 2022. No further distributions will be made regarding the VNA bankruptcy  
20 on account of any claims against VNA, whether pre-petition or post-petition. Id. at ¶  
21 13.  
22  
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24 ii) Discussion  
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1 While the efforts of the IF have resulted in the post-VNA bankruptcy unpaid  
2 medical claims being fully funded and paid (i.e. the \$136,175.15), the outstanding  
3 pharmacy amount and the pre-VNA bankruptcy unpaid medical claims remain.  
4 Under the Plan Documents of the VNA Employee Benefit Plan, VNA was  
5 responsible for the payment/funding of these remaining amounts. *Id.* at ¶s 3 and 14.  
6  
7 The VNA bankruptcy is closed and therefore no amounts exist to fund these  
8 remaining unpaid claims and outstanding amounts. Accordingly, the IF recommends  
9 that the remaining \$146,304.73 of claims relating the VNA Employee Benefit Plan  
10 (i.e. the outstanding pharmacy amount shown of record and the unpaid pre-petition  
11 medical claims) be treated as uncollectible. *Id.* at ¶ 15. Through this Motion, the IF  
12 requests an Order of Court approving the recommended treatment of these remaining  
13 claims. Upon entry of an Order approving the IF’s recommendation, the IF will notify  
14 HMA of said Order and will issue EOB documents to the holders of the remaining  
15 unpaid medical claims that would be sent to the addresses of record for those unpaid  
16 medical claim, holders setting forth a “0.00” amount of payment due to the  
17 uncollectible nature of the amounts against VNA. Upon sending of the notice to HMA  
18 and the sending of the EOBs to the medical providers, the IF will reduce the  
19 outstanding claims in the Riverstone MEWA Liquidation by the above-referenced  
20 \$146,304.73 amount. *Id.* at ¶ 16.  
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1                    iii) Notice to VNA Employee Benefit Plan Unpaid Claim Holders

2                    Upon the filing of this Motion, it will be posted upon the website dedicated to  
3  
4 the Riverstone MEWA Liquidation – [www.receivermgmt.com/riverstone-](http://www.receivermgmt.com/riverstone-nexgenhealthplan)  
5 [nexgenhealthplan](http://www.receivermgmt.com/riverstone-nexgenhealthplan) (“Riverstone Website”). Post cards in the form attached as Exhibit  
6  
7 1 to the Moore Decl. will be mailed to each claim holder of an unpaid medical claim  
8 and to HMA (as to the outstanding pharmacy amount) notifying the claim holder of  
9 the filing of this Motion, the substance of the relief requested, deadline for filing  
10 opposition to the Motion and a reference to the Riverstone Website where a copy of  
11 the Motion can be obtained. Id. at ¶ 17.

13                    iv) [Proposed] Order Granting Motion to Approve Recommended Treatment of  
14 Remaining Outstanding Amounts and Unpaid Claims Related to VNA Employee  
15 Benefit Plan

16                    Attached hereto as Exhibit C is a [Proposed] Order for the Court’s  
17 consideration which grants the relief requested in the Motion.

18  
19 Respectfully submitted,

20 Dated: January 30, 2023

CALDWELL LAW FIRM

21                    By: s/ Larry J. Caldwell  
22                    Larry J. Caldwell, Esq.

23 Dated: January 30, 2023

WYATT, TARRANT & COMBS, LLP

24                    By: s/ J. Graham Matherne  
25                    J. Graham Matherne, Esq.

1 Dated: January 30, 2023

BERRY AND TUDOR, PC

2  
3 By: s/ Bynum E. Tudor III  
4 Bynum E. Tudor III, Esq.  
5 *Attorneys for Court-Appointed Independent  
Fiduciary Receivership Management, Inc.*

6 **PROOF OF SERVICE**

7 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

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

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

12 **INDEPENDENT FIDUCIARY'S MOTION FOR COURT**  
13 **TO APPROVE RECOMMENDED TREATMENT OF**  
14 **REMAINING OUTSTANDING AMOUNTS AND UNPAID**  
15 **CLAIMS RELATED TO VISITING NURSE**  
16 **ASSOCIATION OF INLAND COUNTIES ("VNA") AS**  
17 **UNCOLLECTIBLE; MEMORANDUM OF POINTS AND**  
18 **AUTHORITIES; DECLARATION OF J. GRAHAM**  
**MATHERNE; DECLARATION OF ROBERT E. MOORE**  
**JR; AND PROPOSED ORDER.**

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

21 **SEE ATTACHED SERVICE LIST**

22 X **BY CM/ECF SYSTEM** In accordance with the electronic filing procedures  
23 of this Court, I certify that I caused a copy of the above document to be  
24 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 January  
30, 2023.

25 X **BY ELECTRONIC MAIL** I served the above document to the e-mail  
26 address(es) listed in the attached Service List on January 30, 2023. A true and

1 correct copy of said transmittal will be produced if requested by any party or  
2 the court.

3 X **BY MAIL** I am readily familiar with the business practice for collection and  
4 processing of correspondence for mailing with the United States Postal  
5 Service. The envelope was placed for deposit in the United States Postal  
6 Service on January 30, 2023. The envelope was sealed and placed for  
7 collection and mailing with first-class prepaid postage on this date following  
8 ordinary business practices.

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

12 Executed on January 30, 2023, at Santa Monica, California.

13 *s/ Larry J. Caldwell* \_\_\_\_\_

14 LARRY J. CALDWELL

15 ***SERVICE LIST***

16 ***WALSH v. RIVERSTONE CAPITAL, et al.***

17 ***USDC Case No. 19-CV-778-MWF (MAAx)***

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

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

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

22 Riverstone Capital, LLC

23 c/o Travis O. Bugli

24 12355 High Glen Way

25 Northridge, CA 91326

26 [buglittravis@gmail.com](mailto:buglittravis@gmail.com)

27 NexGen Insurance Services, Inc.

28 c/o Travis O. Bugli

12355 High Glen Way

Northridge, CA 91326

[buglittravis@gmail.com](mailto:buglittravis@gmail.com)

NGI Brokerage Services, Inc.

c/o Travis O. Bugli

12355 High Glen Way

1 Northridge, CA 91326  
2 buglitravis@gmail.com  
3 James C. Kelly  
4 James\_C\_Kelly@yahoo.com  
5 Travis D. Bugli  
6 12355 High Glen Way  
7 Northridge, CA 91326  
8 buglitravis@gmail.com  
9 Robert Clarke  
10 RMC90292@yahoo.com

8

9

10 101051230.1

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