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9 *Commissioner of Insurance,*
10 *as the Permanent Receiver for*
Nevada Health CO-OP

11 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 STATE OF NEVADA, EX REL. COMMISSIONER
14 OF INSURANCE, IN HER OFFICIAL CAPACITY
15 AS STATUTORY RECEIVER FOR DELINQUENT
DOMESTIC INSURER,

16 Plaintiff,

17 vs.

18 NEVADA HEALTH CO-OP,

19 Defendant.
20

Case No. A-15-725244-C

Dept. No. 1

21
22 **SIXTEENTH STATUS REPORT**

23 COME NOW, Commissioner of Insurance Barbara D. Richardson in her capacity as Receiver of
24 Nevada Health CO-OP (“NHC,” or the “CO-OP”), and CANTILO & BENNETT, L.L.P., Special Deputy
25 Receiver (“SDR” - SDR and the Commissioner as Receiver are referred to collectively herein as
26 “Receiver”) and file this Sixteenth Status Report in the above-captioned receivership.
27

1 **I. INTRODUCTION AND HISTORICAL BACKGROUND**

2 The CO-OP is a state-licensed health insurer, formed in 2012 as a Health Maintenance
3 Organization, with a Certificate of Authority granted by the State of Nevada Division of Insurance
4 effective January 2, 2013. NHC was an Internal Revenue Code 501(c)(29) Qualified Non-Profit Health
5 Insurance Issuer, entitled to tax exemption by the Internal Revenue Service. NHC was formed under a
6 provision of the Patient Protection and Affordable Care Act (“ACA”) providing for the formation of
7 Consumer Operated and Oriented Plans. Having received from the Centers for Medicare and Medicaid
8 Services (“CMS”) of the United States Department of Health and Human Services (“HHS”) a start-up
9 loan of \$17,080,047, and a “solvency” loan of \$48,820,349, NHC was required to operate as a non-
10 profit, consumer-driven health insurance issuer for the benefit of the public. The CO-OP’s primary
11 business was to provide ACA-compliant health coverage to residents of Nevada, and it operated its
12 business for the benefit of Nevadans within the state, save for certain arrangements to provide nationwide
13 health coverage to Nevadans traveling outside the state in certain circumstances. NHC began selling
14 products on and off the Silver State Health Insurance Exchange on January 1, 2014. Its products included
15 individual, small group, and large group managed care coverages.

16 On October 1, 2015, this Court issued its Order Appointing the Acting Insurance Commissioner,
17 Amy L. Parks as Temporary Receiver of NHC Pending Further Orders of the Court and Granting
18 Temporary Injunctive Relief Pursuant to NRS 696B.270. Further, on October 14, 2015, the Receivership
19 Court entered its Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of
20 Nevada Health CO-OP, appointing the law firm of CANTILO & BENNETT, L.L.P. as SDR of NHC, in
21 accordance with Chapter 696B of the Nevada Revised Statutes.

22 Via a Notice of Substitution of Receiver dated April 6, 2016, Ms. Joanna N. Grigoriev informed
23 interested parties of the substitution of Commissioner Barbara D. Richardson, in place and stead of
24 former Acting Commissioner Amy L. Parks, as the Receiver of NHC. This substitution of Receiver was
25 subsequent to Commissioner Richardson’s appointment as Commissioner of Insurance for the State of
26 Nevada.

1 This Court, through its Final Order Finding and Declaring Nevada Health CO-OP to be
2 Insolvent and Placing Nevada Health CO-OP into Liquidation (the “Final Order”) dated September 20,
3 2016, adjudged NHC to be insolvent on grounds that it was unable to meet obligations as they mature.
4 The Final Order also authorized the Receiver to liquidate the business of NHC and wind up its ceased
5 operations pursuant to applicable Nevada law. The Receiver has since transitioned the receivership
6 estate from rehabilitation to liquidation.

7 The Receiver continues to file quarterly status reports as ordered by this Court.

8 II. RECEIVERSHIP ADMINISTRATION

9 Receivership Administrative Services and Oversight

10 CANTILO & BENNETT, L.L.P., as SDR of NHC, manages the receivership estate and conducts its
11 affairs. PALOMAR FINANCIAL, LC, an affiliate of the SDR, performs administration, information
12 technology, and other related services for the Receiver under the supervision of the SDR. The Receiver
13 has included an informational copy, as Exhibit 1 to this Sixteenth Status Report, of the invoices either
14 deferred or paid to the SDR and other receivership consultants since the last status report to this Court.¹

15 _____
16 ¹ The *in camera* materials are being submitted in a separate envelope that reflect paid or deferred invoices. The
17 Receiver has elected to defer certain administrative expenses until a later date when further assets become available to the
Receiver. The Receiver has included copies of all invoices that have been approved but deferred as to the payment of fee
amounts only.

18 Certain billings submitted to the Court are appropriate for *in camera* review (as opposed to being made part of a
19 public filing). More particularly, and as discussed in further detail below, certain consultants in this matter are providing
expert witness related services. As such, the billing entries relating thereto should be considered confidential and/or otherwise
not subject to discovery.

20 In this regard, courts have held that the bills of legal counsel and experts may be withheld from legal discovery and
21 are not subject to legal disclosure, as this information may provide indications or context concerning potential litigation
strategy and the nature of the expert services being provided. *See, e.g., Avnet, Inc. v. Avana Technologies Inc.*, No. 2:13-cv-
22 00929- GMN-PAL, 2014 WL 6882345, at *1 (D. Nev. Dec. 4, 2014) (finding that billing entries were privileged because
they reveal a party’s strategy and the nature of services provided); *Fed. Sav. & Loan Ins. Corp. v. Ferm*, 909 F.2d 372, 374-
23 75 (9th Cir. 1990) (considering whether or not fee information revealed counsel’s mental impressions concerning litigation
strategy). Other courts that have addressed this issue have recognized that the “attorney-client privilege embraces attorney
24 time, records and statements to the extent that they reveal litigation strategy and the nature of the services provided.” *Real v.*
Cont’l Grp., Inc., 116 F.R.D. 211, 213 (N.D. Cal. 1986).

25 The *in-camera* review should apply not only to documentation concerning attorneys’ fees, but it also extends to
26 “details of work revealed in [an] expert’s work description [which] would relate to tasks for which she [or he] was
compensated[.]” a situation which is “analogous to protecting attorney-client privileged information contained in counsel’s
27 bills describing work performed.” *See DaVita Healthcare Partners, Inc. v. United States*, 128 Fed. Cl. 584, 592-93 (2016);
see also Chaudhry v. Gallerizzo, 174 F.3d 394, 402 (4th Cir. 1999) (recognizing that “correspondence, bills, ledgers,

1 **Resolution of Outstanding Receivership Matters**

2 ***Claims Adjudications***

3 As the SDR reported in its Fifteenth Status Report to this Court, Notices of Claim Determination
4 (“NCDs”) have been finalized and mailed for healthcare claims previously submitted by providers to
5 NHC’s Javelina Claims Processing Database. The total allowed amount of these approved claims is
6 approximately \$33.7 million.

7 The SDR has also mailed the majority of the NCDs for those proofs of claim submitted to the
8 SDR relating to Policy Claims (*i.e.*, Class B claims pursuant to NRS 696B.420(1)(b)). As of the prior
9 status report, the total allowed amount for these claims was approximately \$20,836.91. However, this
10 amount is subject to a potential small change as NCDs have not yet been sent for four (4) of these claims,
11 and twenty (20) of the NCDs that have been mailed are still subject to potential appeal. The SDR will
12 keep the Court apprised of the resolution of these matters, and a resolution of these remaining claims is
13 expected very soon. The Receiver has included as Exhibit 2 to this Sixteenth Status Report, an updated
14 report showing the determinations of the Receiver on each claim approved in whole or in part to date.²

15 The SDR is continuing to evaluate outstanding appeals and anticipates that such appeals will be
16 resolved soon. Once all appeal deadlines have run, and all appeals have been reviewed by the SDR, the
17 SDR will inform the Receivership Court of any unresolved appeals so that a hearing or hearings may be
18 set.

19 There are approximately \$3.36M in outstanding proofs of claim which have been assigned to a
20 priority Class ‘C’ (*i.e.*, NRS 696B.420(1)(c)) or lower.³ The SDR has not reached the merits of these
21

22 statements, and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the
23 specific nature of the services provided, such as researching particular areas of law,” are protected from disclosure) (quoting
Clarke v. Am. Commerce Nat’l Bank, 974 F.2d 127, 129 (9th Cir. 1992)).

24 ² The *in camera* Exhibit 2 claim report is being submitted in a separate envelope. The Receiver has elected, out of
25 an abundance of caution, to keep confidential the names of the individual claimants (including NHC plan members) and the
amounts that have been approved for their claims.

26 ³ This does not include a claim by the U.S. Department of Health and Human Services, which the SDR has previously
27 reported to this Court. That claim was denied in full by the SDR, and the government did not file an appeal of the SDR’s
determination. This determination is now final and non-appealable.

1 claims, and may not do so until it appears that there may be assets available for distribution to these
2 classes of claims, per NRS 696B.330(4).

3 ***CMS Receivables***

4 As explained in prior status reports, and throughout the pendency of the receivership, the
5 Receiver is working to resolve certain outstanding matters relating to the collection of amounts due under
6 the various federal receivables programs, of which the CO-OP was a participant, and which are
7 administered primarily by CMS. Considering the size of these federal receivables in relation to the CO-
8 OP's potential total liabilities, the receipt of these funds by the receivership estate represents a key
9 component of the largest expected portion of future claim payments by NHC – as is the legal
10 determination of the government's asserted right to be paid ahead of all other creditors in the estate
11 (including providers and members). CMS has maintained the position that any monies deemed owed to
12 NHC (and thus the receivership estate) are to be offset against the amounts CMS asserts it is owed under
13 the start-up loan awarded to NHC. To date, CMS has offset approximately \$12.9 million against the
14 start-up loan that, the Receiver maintains, should have instead been paid to NHC. When the full amount
15 of 2014 - 2015 Risk Corridors payments (*i.e.*, not just the prorated amount⁴) are included in the total,
16 NHC is owed over \$55 million by CMS.

17 As of the date of filing of this Sixteenth Status Report, the Receiver asserts that the CO-OP,
18 according to the various formulae applicable to Qualified Health Plans under the ACA, and
19 notwithstanding prior attempts by CMS to offset these receivables against start-up loan funds in
20 contravention of Nevada's laws relating to the regulation of insurer solvency, is owed over \$12.9M more
21 in promised payments under various other CMS programs. The Receiver reserves the right to revise,
22

23 ⁴ Due to a shortfall in risk corridor collections, CMS asserts it can only pay a prorated percentage of issuers' 2014
24 Risk Corridors payments and it will use all collections in subsequent years towards the 2014 payments (*i.e.*, they are unable
25 to make payments for the subsequent years at all). DEP'T OF HEALTH & HUMAN SERVICES & CENTERS FOR
26 MEDICARE & MEDICAID SERVICES ("CMS"), CCIIO MEMORANDUM, RISK CORRIDORS PAYMENT AND
27 CHARGE AMOUNTS FOR THE 2015 BENEFIT YEAR (November 18, 2016) (available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2015-RC-Issuer-level-Report-11-18-16-FINAL-v2.pdf>); CMS, CCIIO MEMORANDUM, RISK CORRIDORS PAYMENT AND CHARGE AMOUNTS FOR THE
28 2016 BENEFIT YEAR (November 15, 2017) (available at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Risk-Corridors-Amounts-2016.pdf>).

1 adjust, or otherwise restate her basis for the CMS receivables claims as new information is received and
2 litigation progresses with CMS.

3 **Use of Third-Party Contractors as Part of Business Operations**

4 The Receiver utilized the services of several third-party contractors that had been engaged before
5 commencement of the receivership, and some that were engaged after the receivership commenced to
6 assist in management of NHC's affairs. As part of its efforts to wind-down the operations of the company
7 and reduce administrative expenses of the estate, the Receiver has now terminated the services of all
8 remaining third-party vendors.

9 **Internal Administrative Matters Related to Wind Down**

10 Based on the current needs of the receivership, the Receiver has trimmed existing staff to one
11 part-time staff member who now works on a contract basis. The Receiver may contract to use the
12 services of certain former employees for specific, limited-term receivership projects. The Receiver
13 completed the wind down and closure of NHC's administrative office this spring. The Receiver has
14 reduced the Information Technology needs of the CO-OP to reduce estate expenses, and will continue
15 to do so as ongoing receivership responsibilities permit.

16 **Continuation of Action Against Various Professionals and Other Firms Who Performed Services 17 for and on Behalf of NHC**

18 On August 25, 2017, Counsel for the Receiver filed in Clark County District Court a complaint
19 (Case No. A-17-760558-C in Department No. 18) against various persons, third-party vendors, and
20 professional service firms which are alleged to have contributed to NHC's losses by, among other things,
21 failing to adhere to applicable standards of professional care and requirements imposed by law,
22 misrepresentation concerning quality and standard of care for services performed, and breaches of
23 contract, duty, and implied covenants of good faith and fair dealing. The complaint names, among
24 others, NHC's former actuaries, accountants, auditors, and providers of certain business operations and
25 utilization review services, as well as those individuals who specifically performed, or who were in the
26 role of supervising the performance of, those services. The complaint also names several NHC former
27 directors and executive management.

1 Via Plaintiff's Motion to Amend Complaint, filed on July 17, 2018, the Receiver sought an order
2 granting leave to amend the August 25, 2017, complaint against certain of NHC's various directors,
3 officers, and third-party contractors, citing the discovery of additional facts in support of assertions made
4 in the first complaint, as well as the need to add a new defendant to the existing proceedings. This
5 Motion to Amend Complaint was filed in judicial department number 16, in line with the terms of
6 contemporaneous Notice of Department Reassignment assigning the proceedings to Judge Timothy C.
7 Williams. The Motion to Amend Complaint was approved via an order entered on September 18, 2018.

8 Milliman filed its Motion to Compel Arbitration on November 6, 2017, a motion which was
9 challenged by the December 11, 2017, filing of Plaintiff's Opposition to Milliman's Motion to Compel
10 Arbitration. The hearing to address this issue was scheduled for December 12, 2017, but had been reset
11 for a hearing on January 9, 2018. Milliman would again state its bases to compel arbitration of those
12 matters raised in the instant litigation via a reply dated January 3, 2018. This motion and related briefing
13 were heard by Judge Kathleen Delaney on January 9, 2018. The related Order Granting Milliman's
14 Motion to Compel Arbitration, dated March 12, 2018, held that a requirement to arbitrate the pre-
15 receivership agreements between NHC and Milliman did apply to the Receiver's claims against
16 Milliman. The Receiver filed a Motion for Reconsideration of the Milliman arbitration ruling, dated
17 March 29, 2018. The Motion for Reconsideration sought review of the prior judgment compelling
18 arbitration on various grounds.

19 Via an Opposition to Plaintiff's Motion for Reconsideration filed April 16, 2018, Milliman
20 sought to challenge the Receiver's effort to avoid compelled arbitration, largely restating the grounds set
21 forth in Milliman's original November 6, 2017, Motion to Compel Arbitration. The Receiver filed her
22 Reply in Support of Motion for Reconsideration on April 24, 2018. On May 1, 2018, argument on the
23 Motion for Reconsideration was heard by Judge Delaney, who subsequently ordered the proceedings
24 continued to May 29, 2018, and requested more briefing from the parties on the most relevant legal
25 questions underlying the Motion for Reconsideration. The Receiver filed her Sur-Reply in Support of
26 Motion for Reconsideration on June 29, 2018, elaborating on the relevant choice-of-law and forum
27 selection questions at issue in the dispute. Hearing was held on the Motion for Reconsideration before
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1 Judge Delaney on July 24, 2018. Through an order dated August 7, 2018, Judge Delaney denied
2 Plaintiff’s Motion for Reconsideration of that Court’s March 12, 2018, order granting Milliman’s Motion
3 to Compel Arbitration.

4 The Receiver then determined it was necessary to file, and did file on December 17, 2018, a
5 Petition under Nevada Rule of Appellate Procedure 21 for Writ of Mandamus in the Supreme Court of
6 the State of Nevada (the “Petition for Writ”). The Petition for Writ requests that the Supreme Court of
7 Nevada “issue a writ of mandamus directing the District Court to exercise subject matter jurisdiction
8 over the claims raised by Petitioner against Real Parties in Interest.” In response, and on March 20,
9 2019, Milliman filed its Response of Real Parties in Interest to Petition for Writ of Mandamus, asserting
10 *inter alia* its rights to compel arbitration in this action. The Receiver filed her Reply in Support of
11 Petition for Writ of Mandamus on May 1, 2019, after having received an earlier extension of filing
12 deadlines. The Petition for Writ remains pending.

13 The Receiver’s claims are ongoing against Milliman, Inc. (and individually named Milliman
14 defendants), NHC’s former directors and officers, InsureMonkey and Alex Rivlin, Larson & Company
15 (and individually named Larson defendants), Nevada Health Solutions, LLC, and Unite Here Health.
16 Discovery is underway, and the following deadlines have been set by Judge Timothy C. Williams, per
17 the May 1, 2019, 2nd Amended Order Setting Civil Jury Trial, Pre-Trial, Calendar Call, and Deadlines
18 Motions; Amended Discovery Scheduling Order:

- 19 1. **July 30, 2019:** Motions to Amend Pleadings or add parties; and Designation of Experts
20 Pursuant to NRCP 16.1(a)(2)
- 21 2. **August 29, 2019:** Designation of Rebuttal Experts Pursuant to NRCP 16.1(a)(2) is due
- 22 3. **October 28, 2019:** Discovery Cut-Off
- 23 4. **November 27, 2019:** Motions in Limine or other Dispositive Motions
- 24 5. **January 8, 2019:** Pre-Trial Memorandum filing deadline
- 25 6. **January 9, 2020:** Pre-trial conference/calendar call
- 26 7. **January 27, 2020:** Case is set to be tried to a jury on a five-week stack

1 As of the date of filing of this Status Report, no new scheduling orders have been issued
2 extending these deadlines, although such an extension may yet be formally granted by the court in this
3 matter in line with the court’s decision made in the related August 27, 2019, hearing to extend certain
4 expert designation deadlines to December 2, 2019, which will likely be moved to December 5, 2019, by
5 agreement of the parties.

6 Through the filing on July 18, 2019, of a Stipulation and Order Regarding Expert Disclosure
7 Deadlines, the counsel for the Receiver, the NHC former directors and officers, Larson, Unite Here
8 Health, and Nevada Health Solutions sought to extend the deadline for Defendants’ designation of initial
9 witnesses from July 30, 2019, to August 29, 2019, and Plaintiff’s designation of rebuttal witnesses from
10 August 29, 2019, to September 30, 2019. This Stipulation was approved via entry of an order the
11 following Monday.

12 The Receiver has settled its claims against Millennium, and the settlement agreement was
13 approved by the Court. Millennium has made two of the required settlement progress payments, and all
14 payments to date were timely made.

15 Defendants Unite Here Health and Nevada Health Solutions filed, on August 21, 2019, their
16 Motion to Stay on Order Shortening Time (the “Motion to Stay”), requesting that the court in Case No.
17 A-17-760558-C stay all pending proceedings on the basis, as described below, of the decision of the
18 Supreme Court of the United States to grant certiorari to review decisions rendered by the United States
19 Court of Federal Claims (“CFC”) in *Moda Health Plan, Inc. v. United States*, *Land of Lincoln Mutual*
20 *Insurance Company v. United States*, and *Maine Community Health Options v. United States*
21 (collectively, “Supreme Court Appeal Cases”). The Supreme Court Appeal Cases all concern lawsuits
22 against the federal government for amounts owed to ACA-compliant CO-OPs under the “Risk Corridor”
23 federal receivables program, of which this Court has been noticed throughout the term of this
24 receivership.

25 The Motion to Stay’s primary argument is that the damages model articulated in the Receiver’s
26 instant suit against NHC’s former directors, officers, vendors, and others depends in part upon
27 establishing that the United States was required to make full “Risk Corridors” payments, and therefore
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1 the decision in the Supreme Court Appeal Cases would therefore substantially affect the Defendants’
2 overall extent of liability by tens of millions of dollars. As Defendants’ arguments in the Motion to Stay
3 assert, if the United States were not liable to NHC, for one reason or another, to make Risk Corridors
4 payments, then Defendants cannot be liable for damaging NHC’s right to collect such amounts.

5 The Receiver filed her Plaintiff’s Opposition to the Motion to Stay on August 26, 2019, on the
6 basis that delay of the proceedings in the instant litigation sought by the Defendants represented an
7 unwarranted attempt to forestall other aspects of the litigation not directly tied to the legal questions
8 being considered on appeal. The Opposition to the Motion to Stay asserts that none of the Receiver’s
9 claims and state-law causes of action against the Defendants in the instant litigation are bound up in the
10 United States Supreme Court’s review of the decision in the Supreme Court Appeal Cases, and that the
11 outcome of these cases will not seriously affect how the parties in the instant litigation will prepare for
12 trial.

13 The Motion to Stay and the Opposition to same were heard by Judge Timothy C. Williams on
14 August 27, 2019, and were continued on that date to permit for additional supplemental briefing on
15 essential questions of law. On September 10, 2019, Defendants Unite Here Health and Nevada Health
16 Solutions filed their Supplemental Brief in support of their Motion to Stay, providing additional legal
17 authorities. The Receiver responded with her own Supplemental Brief in Response to the Motion to
18 Stay on September 24, 2019. The matter was heard again before Judge Williams on October 1, 2019,
19 and the matter has been continued for another hearing until November 6, 2019.

20 Defendants Unite Here Health and Nevada Health Solutions also filed, on August 21, 2019, a
21 Motion to Extend Expert Disclosure Deadlines on Order Shortening Time (the “Motion to Extend”),
22 seeking to extend the (August 29, 2019) deadlines for designating initial and rebuttal expert reports. The
23 Motion to Extend asserts that Defendants Unite Here Health and Nevada Health Solutions, joined by
24 other defendants in the instant litigation, required more time to provide a competent rebuttal to the
25 conclusions reached by the Receiver’s four designated expert reports, as well as the SDR’s report
26 concerning NHC’s causation and damages theories. The Motion to Extend asserts both that the existing
27 volume of records produced requires more time than would be available by the deadline, and that the
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1 Receiver should be made to provide an even more extensive production of potentially relevant
2 documents in order to allow Defendants to provide a more complete rebuttal. The Receiver filed her
3 Opposition to the Motion to Extend on August 26, 2019, asserting that such Motion to Extend incorrectly
4 alleged that relied-upon documents were not produced, that the reports alleged by Defendants as
5 “improperly disclosed” were not in fact expert reports, and that the additional documents alleged by the
6 Motion to Extend as being essential to Defendants’ provision of a complete defense were documents to
7 which Defendants’ were not entitled. The discovery deadlines have been extended by the Court until
8 December 2, 2019, and the parties have agreed by stipulation to extend the Defendants’ expert report
9 deadline date until December 5, 2019.

10 **Pending Action Against the United States in the Court of Federal Claims**

11 On November 8, 2018, the Receiver filed a Complaint in the United States Court of Federal
12 Claims (“CFC Complaint”) against the United States for monetary amounts owed to NHC under the
13 Consumer Operated and Oriented Plan program organized pursuant to the ACA. The Receiver
14 determined that such litigation was necessary in order to advance the interests of the receivership estate’s
15 various creditors, and to protect and conserve assets that rightfully belong to the estate.

16 In Counts I through IV, the CFC Complaint prays for relief in the form of an award of damages
17 and monetary relief equal to the difference between the amount NHC actually received in payments
18 under Sections 1342, 1341, 1343, and 1401 of the ACA – the statutes which describe and enact the Risk
19 Corridors, transitional reinsurance, risk adjustment, and cost sharing reduction programs respectively –
20 and the amount NHC should have received under those laws. Count IV also seeks an award of damages
21 and monetary relief equal to the difference between what NHC actually received in premium tax credits
22 for 2015 under Section 1401 and the amount it should have received (however, subsequent
23 communications with CMS have resulted in the Receiver determining that no premium tax credits are
24 still owed, such that the Receiver will no longer pursue that particular claim).

25 The CFC Complaint’s Count V (breach of contract by offset) and Count VI (illegal exaction)
26 plead alternate theories for recovery of money damages resulting from the United States, through its
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1 agents at HHS and CMS, offsetting payments that CMS owed to NHC against funds NHC allegedly
2 owed to the government pursuant to the terms of the CO-OP start-up loan.

3 On March 7, 2019, the United States filed a motion to dismiss the CFC Complaint’s (“Motion
4 to Dismiss”) argument that none of Counts I through VI state claims upon which relief can be granted.
5 NHC’s deadline for responding to the Motion to Dismiss was July 9, 2019. However, on June 24, 2019,
6 the United States Supreme Court granted certiorari in three Risk Corridors appeals, *i.e.*, the Supreme
7 Court Appeal Cases.

8 Subsequent to a Motion for Enlargement of Time to Respond to Government’s Motion to
9 Dismiss, filed on June 28, 2019, the Receiver filed her Opposition to Motion to Dismiss, and Cross-
10 Motion for Final Partial Summary Judgment on July 31, 2019, which sought from the CFC, *inter alia*,
11 an adjudication in favor of the Receiver regarding that Counts II through IV of the CFC Complaint, the
12 counts not taken up by the United States Supreme Court for review. The Cross-Motion for Partial
13 Summary Judgment predicated its arguments on the basis that the United States had already admitted
14 prior liability and damages concerning the amounts sought by the CFC Complaints under counts II-IV
15 (*i.e.*, the Federal Transitional Reinsurance program, the Risk Adjustment program, and the Cost-Sharing
16 Reduction programs provided for explicitly by ACA statutes), save for their affirmative defense of offset,
17 and that the affirmative defense of offset must fail as a matter of law as the circumstances provided for
18 in applicable federal law and regulation permitting an offset of amounts owed under the ACA receivables
19 programs were not satisfied in this case.

20 On August 7, 2019, the United States filed with the CFC its Motion to Stay, or in the Alternative,
21 for an Enlargement of Time, asserting that the interrelated issues of fact and law at the center of the CFC
22 litigation, alongside countervailing concerns of judicial economy, justified a general suspension of
23 proceedings during the pendency of the United States Supreme Court’s review of the legal and
24 constitutional questions in the Supreme Court Appeal Cases, notwithstanding the theoretical separability
25 of the various federal receivables programs under which NHC presented its claims. The CFC granted
26 the United States’ Motion to Stay on August 12, 2019.

1 **Prospective Sale of Risk Corridors Receivable**

2 On September 16, 2019, the Receiver filed with the Receivership Court her Motion for
3 Determination of Good Faith Sale of Interest in Receivables by Plaintiff, Order Approving Sale and
4 Permitting Distribution of Certain Funds (the “Motion for Sale and Disbursement”) in connection with
5 a contemplated sale transaction between NHC and CM Squared RC IV, LLC, a prospective purchaser
6 of NHC’s interest in the aforementioned Risk Corridors receivable at issue in the litigation between the
7 Receiver and the United States. The Motion for Sale and Disbursement, among other things, seeks
8 judicial approval for NHC to sell most of its interest in any recoveries made against the United States in
9 connection with the Risk Corridors receivable to the prospective purchaser in exchange for an initial
10 payment of \$10,000,000, and certain subsequent funds retained as part of NHC retaining a minority
11 interest in litigation recoveries as received. The exact nature of the transaction is more completely
12 described in the proposed agreement documents attached as exhibits to that Motion. The Motion for
13 Sale and Disbursement also seeks judicial authorization to disburse as much as \$5 million from the funds
14 obtained from this sale to estate claimants in the order provided by law. On September 25, 2019, Unite
15 Here Health filed an Opposition with the Receivership Court seeking to block the sale on the basis of
16 insufficient evidence of due diligence by the Receiver, potential conflict of interest concerns, and the
17 difference between the contemplated initial payment and the ultimate value of the receivable.

18 **Current Receivership Assets**

19 The Receiver’s evaluation of the assets and liabilities of the CO-OP is ongoing, and adjusted
20 periodically to accommodate new authorized payments, receipts, and transfers. Below is an overview
21 of some key asset matters thus far identified by the Receiver (other than those already mentioned herein):

22 1. The unrestricted cash assets of the CO-OP have fluctuated with post-receivership
23 expenses and claim payments, as well as with the Receiver’s receipt of member premiums. The currently
24 available, unrestricted cash assets of the CO-OP as of August 21, 2019, were approximately \$322,530.
25 The majority of NHC’s currently available and liquid assets have been invested in a bond mutual fund,
26 with the remainder of such assets held in bank deposits.

