CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION
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Assistant Chief Counsel
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Attorneys for
CALIFORNIA DEPARTMENT OF INSURANCE

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of: NEXGEN INSURANCE SERVICES, INC., RIVERSTONE CAPITAL, LLC, dba RIVERSTONE CAPITAL INSURANCE SERVICES, LLC, JAMES KELLY, ROBERT CLARKE, and TRAVIS BUGLI, Respondents.	File No. VA201700207 **ORDER TO CEASE AND DESIST and NOTICE OF RIGHT TO HEARING** (Insurance Code § 12921.8)

TO: NEXGEN INSURANCE SERVICES, INC., RIVERSTONE CAPITAL, LLC, dba RIVERSTONE CAPITAL INSURANCE SERVICES, LLC, JAMES KELLY, ROBERT CLARKE, and TRAVIS BUGLI

JURISDICTION AND PARTIES

1. The California Department of Insurance, (hereafter "Department"), brings this matter against NEXGEN INSURANCE SERVICES, INC., RIVERSTONE CAPITAL, LLC, dba RIVERSTONE CAPITAL INSURANCE SERVICES, LLC, JAMES KELLY, ROBERT CLARKE, and TRAVIS BUGLI, before the Insurance Commissioner of the State of California, (hereafter "Insurance Commissioner").

2. NEXGEN INSURANCE SERVICES, INC. (hereafter "Respondent NexGen") is a corporation registered with the State of California on January 6, 2016 under Corporate No. C3860838 to conduct "Insurance Services." business.

3. Respondent NexGen submitted an application with the Department to obtain a Life Only and Accident and Health Agent license on May 26, 2017. To date, that application is still pending and no licenses have been issued to Respondent NexGen to transact insurance in any capacity in the State of California.

4. The name "Riverstone Insurance Services" has been set aside by the Department as a dba for Respondent NexGen.

5. Although the U.S. Department of Labor has determined Respondent NexGen is a Multiple Employer Welfare Arrangement ("MEWA"), Respondent NexGen is not registered as a MEWA with the Department, pursuant to California Insurance Code section 742.20 *et seq*, including, but not limited to 742.23.

6. RIVERSTONE CAPITAL, LLC (hereafter "Respondent Riverstone") is a Limited Liability Company registered in the State of California on January 28, 2014, under ID No. 201403110031 to conduct "Insurance Services" business. Riverstone Capital Insurance Services, LLC, is listed as dba for Respondent Riverstone.

7. From May 5, 2015 to the present, Respondent Riverstone has been licensed by the Insurance Commissioner to act as a Property Broker-Agent and a Casualty Broker-Agent. (Lic. No. 0K22392)

8. From October 1, 2015 to the present, Respondent Riverstone has been licensed by

the Insurance Commissioner to act as an Accident and Health agent.

9. Respondent Riverstone is not registered as a MEWA with the Department, pursuant to California Insurance Code section 742.20 *et seq*, including, but not limited to 742.23.

10. JAMES KELLY (hereafter "Respondent Kelly"), is listed with the Secretary of State as the Chief Executive Office of Respondent NexGen.

11. Respondent Kelly is listed with the Secretary of State as the Chief Executive Officer of Respondent Riverstone.

12. From November 21, 1995 to May 4, 2018, when the license was voluntarily cancelled, Respondent Kelly had been licensed by the Insurance Commissioner to act as a Property Broker Agent and a Casualty Broker agent. (Lic. No. 0B44862)

13. ROBERT CLARKE (hereafter "Respondent Clarke"), is listed with the Secretary of State as a Manager of Respondent Riverstone.

14. From December 4, 1996 to present, Respondent Clarke has been licensed by the Insurance Commissioner to act as a Property Broker Agent and a Casualty Broker agent. (Lic. No. 0B94563)

15. From March 21, 2000 to the present, Respondent Clarke has been licensed by the Insurance Commissioner to act as a Life-Only Agent and an Accident and Health Agent.

16. TRAVIS BUGLI (hereafter "Respondent Bugli"), is listed with the Secretary of State as the Secretary for Respondent NexGen.

17. Respondent Bugli is listed with the Secretary of State as a Manager of Respondent Riverstone.

18. From October 8, 1997 to October 31, 1999, when he failed to renew, Respondent Bugli was licensed by the Insurance Commissioner to act as a Property Broker Agent and a Casualty Broker agent. (Lic. No. 0C14569)

19. From May 12, 2000 to present, Respondent Bugli has been licensed by the Insurance Commissioner to act as an Accident and Health Agent and a Life-Only Agent.

20. Hereafter these Respondents shall be known collectively as "Respondents."

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FINDINGS & AUTHORITY

21. Insurance Code § 12921.8(a) authorizes the Insurance Commissioner to issue a Cease and Desist Order to a person who has acted in a capacity for which a license, registration, permit, or Certificate of Authority from the Insurance Commissioner was required but not possessed.

22. Insurance Code § 12921.8 does not require the Insurance Commissioner to hold a hearing prior to issuing a Cease and Desist Order.

23. Insurance Code section 742.21 states that a "Multiple employer welfare arrangement" as used within the Insurance Code has the same meaning as that contained in Section 1002(40)(A) of Title 29 of the United States Code.

24. Insurance Code section 742.23 provides as follows:

a) After December 31, 1995, a self-funded or partially self-funded multiple employer welfare arrangement shall not provide any benefits for any resident of this state without first obtaining a certificate of compliance pursuant to this article, provided, however, that if the commissioner has not issued or denied an application for a certificate of compliance within 180 calendar days of the date of the filing of the completed application, the commissioner shall not take any action against the applicant solely on the basis that the department has not granted the certificate of compliance.

b) The department may take regulatory action against a MEWA pursuant to all applicable provisions of this code during the period beginning on the effective date of this act and ending on the date on which the MEWA is certified under this article, at which time the provisions of this article shall apply.

25. Insurance Code section 700 provides as follows:

a) A person shall not transact any class of insurance business in this state without first being admitted for that class. Except for the State Compensation Insurance Fund as authorized by Sections 11770 and 11778 to 11780.5, inclusive, admission is secured by procuring a certificate of authority from the commissioner. The certificate shall not be granted until the applicant conforms to the requirements of this code and of the laws of this state prerequisite to its issue.

b) The unlawful transaction of insurance business in this state in willful violation of the requirement for a certificate of authority is a public offense punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by fine not exceeding one hundred thousand dollars ($100,000), or by both that fine and imprisonment, and shall be enjoined by a court of competent jurisdiction on petition of the commissioner.

26. Insurance Code section 1631 provides that "[u]nless exempt by the provisions of this article, a person shall not solicit, negotiate, or effect contracts of insurance, or act in any of the capacities defined in Article 1 (commencing with Section 1621) unless the person holds a valid license from the commissioner authorizing the person to act in that capacity. The issuance of a certificate of authority to an insurer does not exempt an insurer from complying with this article."

27. From at least February, 2016, Respondents have improperly solicited, marketed, sold, and/or issued what they have represented to be benefits as a MEWA to employers and agents in California.

a. Respondent NexGen solicited and sold the following lines of insurance: liability, property and casualty, workers compensation, surety, ERISA bonds, and errors and omissions insurance and private exchange health insurance coverage to individuals and employers through a community based membership program.

b. Using the name Riverstone Capital Insurance Services, LLC, Respondents have been and continue to solicit health benefit plans to employers under the business name "Riverstone Capital Insurance Services, LLC.

c. As Officers, Directors, and/or Managers of Respondent NexGen and Respondent Riverstone, Respondent Kelly, Respondent Clarke, and Respondent Bugli are controlling persons pursuant to Insurance Code Section 1668.5(b) and directed or caused the direction of the management, operations, and policies of Respondent NexGen and Respondent Riverstone.

28. On or about January 18, 2019, the United States Department of Labor determined that Respondent NexGen has been operating as a MEWA, as defined by Section 1002(40)(A) of Title 29 of the United States Code.

29. Respondents have never been registered or authorized by the Insurance Commissioner to act as a MEWA in California, and during relevant periods herein.

30. Respondent NexGen did not hold any license, Certificate of Authority, or permit, issued by the Insurance Commissioner, to act in any capacity regarding the transaction of insurance business in California.

31. From at least February, 2016, Respondents have improperly solicited, marketed, sold, and/or issued what they have represented to be benefits as a MEWA to employers and agents in California.

32. Respondents, during the relevant period herein, did not have an insurance license, permit, certificate, registration, or authorization to transact as a MEWA in the State of California for the aforementioned policies, which is in direct contravention of California Insurance Code Sections 700, 742.23 and 1631.

33. The facts stated in paragraphs 21-32 show Respondents are acting in a capacity for which a license, registration, or certificate of authority from the commissioner is required but not possessed.

34. As a result of Respondents acting as a MEWA without authorization, as of December 2018, more than $20 million in claims on policies issued by or on behalf of Respondents remain unpaid.

ORDER TO CEASE AND DESIST

35. NOW THEREFORE, RESPONDENTS ARE HEREBY ORDERED to immediately CEASE AND DESIST from operating any MEWA directly or indirectly or acting as an insurance agent, producer, insurer, or any other capacity in the State of California for which they do not hold a valid license, permit, or Certificate of Authority to do so, including but not limited to

a) Transacting as a MEWA, advertising, or participating in advertising, by newspaper, telephone book or listing, mail, handout, business card, or by any other written or printed presentation, or by telephone, radio, television, Internet, public outcry or proclamation, or in any other manner or means whatsoever, whether personally or through others, that implies that they are licensed, permitted, or authorized, or are engaged in the business of soliciting, negotiating, executing, delivering, or furnishing insurance in the State of California on behalf of any Respondent operating as, for, or on behalf of any associated MEWA.

b) Receiving any money, commission, fee, rebate, payment, remuneration, or any other valuable consideration whatsoever, directly or indirectly, in connection with any MEWA transactions.

36. This Order does not apply to any actions initiated by or on behalf of the Independent Fiduciary appointed by the United States District Court, Central District of California, in Case No. 19-cv-778-MWF (MAAx) performed in accordance with the Orders issued in that matter, attached hereto as Exhibit A.

NOTICE OF FINE

PLEASE TAKE NOTICE that the Insurance Commissioner may, pursuant to Insurance Code § 12921.8(a)(3)(B), impose a fine of up to five thousand dollars ($5,000) for each day this Order is violated.

NOTICE OF RIGHT TO HEARING

Insurance Code § 12921.8(c), provides in part, as follows:

> "A person to whom a cease and desist order…has been issued, may, within seven days after service of the order…request a hearing by filing a request for the hearing with the commissioner."

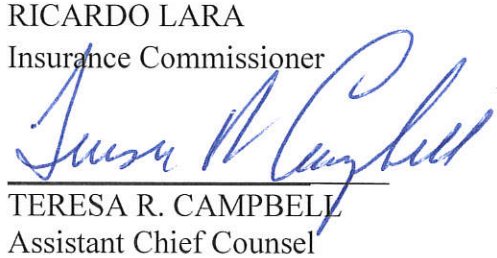
If you desire a hearing in this matter, your written request for a hearing must be received within seven days after you are served with this Order. The seven day period begins on the day

after you are served with this Order, and if the seventh day falls on a weekend or holiday, the deadline is extended to the next business day. Your written request for a hearing must be directed to:

Teresa R. Campbell
Assistant Chief Counsel
California Department of Insurance,
45 Fremont Street, 21st Floor
San Francisco, California 94105

IN WITNESS THEREOF this 14th day of February, 2019.

RICARDO LARA
Insurance Commissioner

By: 

TERESA R. CAMPBELL
Assistant Chief Counsel

EXHIBIT A

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**

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

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

a. Authority to exercise all fiduciary responsibilities relating to the Riverstone MEWA and Participating Plans, including authority to: create a trust and move all plan assets into said trust; conduct an accounting of all plan assets; pay medical claims; negotiate with medical providers, Plan service providers and other entities; identify and pursue claims on behalf of the Riverstone MEWA and Participating Plans; design and implement a fair process for paying out covered-claims to the extent feasible; file any necessary reporting requirements; communicate with participants, beneficiaries and any other person necessary to administer the Riverstone MEWA; and share any information requested by the Secretary.

b. Authority to pay pre-existing or pre-set expenses of the Riverstone Plan, such as, but not limited to, reasonable amounts due to third party administrators that perform necessary services, insurance premiums necessary to protect the Plan participants or beneficiaries, or compensation due to non-exempt Riverstone Plan employees for work undertaken on behalf of the Plan to the extent required by law;

c. Authority to pay itself reasonable and necessary fees from the Riverstone MEWA and Participating Plans' assets and pay the reasonable and necessary fees of service providers. Before causing plan assets to be used to pay compensation, fees or expenses, the Independent Fiduciary shall provide written notice by filing with this Court a Fee Notice supported by an itemized statement of work and by serving a copy to the Secretary. If no objection to the Fee Notice is filed within ten (10) calendar days, such compensation, fees, and expenses shall be deemed reasonable expenses.

5. Within two (2) business days of entry of this Order, Defendants and anyone acting on their behalf including their principals, officers, directors, owners, agents, assigns or subsidiaries, shall notify the Independent Fiduciary of all funds located in bank accounts or elsewhere that contain premiums (also known as premium

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

6. Within two (2) business days of entry of this Order, Defendants shall provide the Independent Fiduciary contact information for the Plan Sponsor of each Participating Plan and contact information for each participant and beneficiary enrolled in the Participating Plan. Defendants shall furnish any other information requested by the Independent Fiduciary as soon as reasonably feasible, including but not limited to the information necessary to complete an M-1 report. Defendants shall fully cooperate with the Independent Fiduciary efforts to marshal plan assets, including executing necessary documents to effectuate transfers to ensure such assets are placed in trust.

7. Within two (2) business days of entry of this Order, the Independent Fiduciary shall provide notice to all Participating Plans that includes a copy of this Order ("Notice"). The Notice shall further advise that the Riverstone accounts are frozen and that an Independent Fiduciary has been temporarily appointed to administer the Plan. The Notice shall further instruct Plan Sponsors of the Participating Plans to relay this information to their participants and beneficiaries as soon as possible, and to advise them of the All Writs Act relief provided to them. Finally, the Notice shall instruct Plan Sponsors of the Participating Plans that they may be fiduciaries to ERISA-covered plans, and nothing in the Stipulation or this Order relieves any fiduciary of their responsibilities under ERISA.

8. Pursuant to the All Writs Act, 28 U.S.C. § 1651, all persons or entities are stayed, enjoined and/or prohibited from claiming as against the assets of the Plans outside of the procedures and processes to be set forth by the Independent Fiduciary and

such protections shall be maintained until closure of the liquidation process or until further order by this Court;

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

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

    a. the REDACTED Temporary Restraining Order dated February 1, 2019 (Docket No. 11) shall be available on the public docket;

    b. the **UNREDACTED Temporary Restraining Order** dated February 1, 2019 (**Docket No. 12**) **shall remain sealed**.

    c. The Stipulation Re (Proposed) Amended Temporary Restraining Order, filed February 7, 2019, **shall remain sealed**.

    d. Amended Appendix A to this Order has been redacted such that only the last four digits of account numbers and EINs are visible; this REDACTED Order shall be filed publicly.

    e. This **Sealed Order** and the **UNREDACTED** Amended Appendix A shall be **filed and remain sealed**.

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

IT IS SO ORDERED.

Dated: February 7, 2019

Michael W. Fitzgerald
United States District Judge

Amended Appendix A

Account Number	Account Holder	EIN
****_****_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

FILED
CLERK, U.S. DISTRICT COURT

February 1, 2019

CENTRAL DISTRICT OF CALIFORNIA
BY: rs DEPUTY

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.: CV 19-778-MWF(MAAx)

ORDER GRANTING IN PART SECRETARY'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER FOR DEFENDANTS TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

I hereby attest and certify on 2/01/19 that the foregoing document is full, true and correct copy of the original on file in my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEPUTY CLERK

This Court is in receipt of the Secretary of Labor's *ex parte* application for a temporary restraining order (TRO) and issuance of an order to show cause why a preliminary injunction should not issue. The Court held an *ex parte* hearing on February 1, 2019, at approximately 2:15 p.m., at the United States Courthouse at Los Angeles, California.

The Court finds good cause for the lack of notice. Fed. R. Civ. P. 65(b)(1)(A). The basis for the ack of notice is the risk of dissipation of assets. The Secretary's declarations present the Riverstone MEWA as functioning like a Ponzi scheme, although the Court makes no finding as to the criminal intent of any Defendant. More importantly, the Secretary has described an account in the Cayman Islands and a transfer of $200,000 to the Cayman Islands.

The Court further finds good cause for the issuance of a TRO.

Now, therefore, the Court hereby **GRANTS IN PART** the Secretary's application for a temporary restraining order, and hereby:

1. RESTRAINS AND ENJOINS Defendants, their officers, agents, servants, employees, attorneys, successor companies, and all persons in active concert or participation with them who have actual knowledge of this Temporary Restraining Order by personal service or otherwise, from exercising any authority or control with respect to the management of the Riverstone MEWA, the Participating Plans, and the assets of the Participating Plans, including but not limited to the transfer of any funds from any bank accounts into which these assets have been deposited;
2. ORDERS a temporary freeze on specific bank accounts (as specified in the attached Appendix A) where the assets of the Participating Plans are believed to exist, in order to preserve these assets from being improperly dissipated;
3. APPOINTS temporarily an independent fiduciary to assume control of the management and administration of the Riverstone MEWA and Participating Plans and who shall be provided by Defendants and their agents and employees all information necessary to manage and administer the Riverstone MEWA and

Participating Plans;

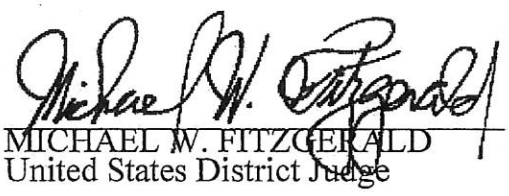
4. Pursuant to the All Writs Act, STAYS, ENJOINS, and/or PROHIBITS any person or entity from claiming as against the assets of the Participating Plans outside of the procedures and processes to be set forth by the independent fiduciary and for such protections to be maintained until closure of the liquidation process or until further order by this Court; and
5. ORDERS Defendants to show cause why a preliminary injunction should not issue that would include (a) all of the equitable relief contained in this Temporary Restraining Order; (b) removing Defendants from any position in regard to Riverstone MEWA; (c) enjoining and restraining Defendants from violating Sections 403, 404, and 406 of ERISA; and (d) requiring Defendants to send notice to all employers and employee participants notifying them that their plans are underfunded and may not be able to pay past or future benefits so that they may make fully informed decisions regarding their health care.

In response to the Order to Show Cause, Defendants shall submit a written response on or before **February 7, 2019**. The hearing shall be held on **February 11, 2019, at 3:00 p.m.**

Defendants are notified that they have the right to move to dissolve or modify this Temporary Restraining Order, and shall be granted a hearing on that motion with one day's notice to the Secretary. Fed. R. Civ. P. 65(b)(4).

IT IS SO ORDERED.

Dated: February 1, 2019.



MICHAEL W. FITZGERALD
United States District Judge

Appendix A

Account Number	Account Holder	EIN
****_****_2604	Riverstone Capital LLC	**-***7994
****_****_4787	Riverstone Capital LLC	**-***7994
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****_****_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