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Filing ID 14595797 FAEGRE DRINKER BIDDLE & REATH LLP 1 1144 15th Street, Suite 3400 Denver, Colorado 80202 2 **Joel A. Glover** (State Bar No. 034018) 3 Direct Dial: 303.607.3648 Direct Fax: 303.607.3600 4 Email: Joel.Glover@Faegredrinker.com 5 Attorneys for Receiver 6 7 SUPERIOR COURT OF ARIZONA 8 COUNTY OF MARICOPA 9 10 STATE OF ARIZONA, ex rel. No. CV2016-011872 EVAN G. DANIELS, Director 11 of Insurance. PETITION NO. 53 12 Plaintiff, PETITION TO ACCEPT TWENTY-13 THIRD STATUS REPORT FOR THE COMPASS COOPERATIVE MUTUAL PERIOD ENDING JUNE 30, 2022 14 HEALTH NETWORK, INC., dba MERITUS MUTUAL HEALTH PARTNERS, an (Assigned to The Honorable 15 Daniel Martin) Arizona corporation; and COMPASS COOPERATIVE HEALTH 16 PLAN, INC., dba MERITUS HEALTH PARTNERS, an Arizona corporation, 17 Defendants. 18 19 Darren Ellingson, in his capacity as the Special Deputy Receiver of Compass 20 Cooperative Mutual Health Network, Inc. doing business as Meritus Mutual Health 21 Partners ("Meritus Mutual") and Compass Cooperative Health Plan, Inc. dba Meritus 22 Health Partners ("MHP") (collectively referred to as the "Meritus Companies"), appointed 23 pursuant to A.R.S. § 20-611, et seq., hereby petitions the Court for entry of the Order re 24 Petition No. 53 to Accept Twenty-Third Status Report for the Period Ending June 30, 2022 25 for the reasons set forth herein. 26 In an Order dated August 10, 2016, this Court placed Meritus Mutual and 1. 27 MHP into receivership under orders of liquidation. 28

- 2. On August 24, 2016, this Court entered Order Re Petition No. 1 Petition for Entry of Order Approving Compensation for Special Deputy Receiver and for Legal Counsel.
- a. Pursuant to Paragraph 3(c) of that Order, the Receiver is required to make periodic filings, initially quarterly, of a Petition to Accept Status Report, which filing is required to include amounts paid to the Special Deputy Receiver and to legal counsel during the period along with a brief summary of services and/or tasks performed during the period and other matters as requested by the Court.
- b. In order to provide such report for the prior period, consistent with Paragraph 3(c), the Special Deputy Receiver is submitting this Petition to Accept Twenty-Third Status Report for the Period Ending June 30, 2022 ("Petition") after the quarter end of the prior period ending June 30, 2022. Unless the Court otherwise orders, the Special Deputy Receiver anticipates filing these reports effective each calendar quarter end.
- 3. This Petition along with the Status Report included herein is submitted in accordance with those requirements.

Summary of Services/Tasks

- 4. The services and tasks performed during the reporting period (First Quarter of 2022) include the following:
- a. Meritus ACA Suits and Settlement. As described below, the two lawsuits and related disputes involving the Affordable Care Act have been resolved via settlement, though the Receiver continues to wait to receive the required payments.
- i. Two lawsuits brought by or on behalf of the Receiver were being prosecuted in the United States Court of Federal Claims, including one action being prosecuted as part of a class action based the Affordable Care Act ("ACA") Risk Corridor Program, Case No. 1:16-cv-00259-MMS (the "Risk Corridor Action") and a second one brought directly by the Receiver based on the ACA Reinsurance Program, Case No. 1:19-cv-01499-MMS (the "Reinsurance Action") (collectively the "Meritus ACA Suits").

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ii. After the Meritus ACA Suits were filed, the United States Supreme Court entered its decision in Maine Cmty. Health Options v. United States, (2019) (No. 18-1028) on April 27, 2020, ruling that: the insurance carriers have a right to payment under the "Risk Corridors" program of the Affordable Care Act; Congress did not repeal the obligation of the federal government to pay the carriers; and the carriers can sue for payment under the Tucker Act in the Court of Federal Claims.

iii. More recently, the United States Court of Appeals for the Federal Circuit issued two opinions relating to ACA disputes between co-ops like Meritus and the United States. In Conway v. United States, No. 2020-1292, the Federal Circuit found that "neither the ACA nor HHS' regulations implementing the ACA evidence" a "clear and manifest intent to preempt Colorado law that fixes creditors' rights during insolvency." Accordingly, the court held that "the federal scheme does not preempt Colorado's creditor priority framework." Subsequently, the issue of setoffs was considered in the context of the ACA and insurance liquidations in *Richardson v. United States*, No. 18-1731C. In Richardson, the Court relied on Conway, concluding that the case "greatly illuminates the way forward." Richardson, No. 18-1731C, at 13. Among other things, the Richardson decision further confirmed that the state liquidation proceedings govern:

> These cases, along with *Conway*, all counsel in favor of this Court's holding that the government is bound by the Nevada state liquidation proceedings, like any other creditor, and cannot collaterally attack the results of those proceedings by asserting an administrative offset.

The Federal Circuit Court of Appeals confirmed that "the government cannot use an administrative offset to make an end-run around the state liquidation process, particularly not where the government elected to participate in that process and had its claim decided." Richardson, No. 18-1731C, at 40.

iv. The Receiver has negotiated and entered into a settlement agreement with the United States Department of Justice resolving the Meritus ACA Suits, as approved by this Court in its Order approving Petition 50 dated March 18, 2022 and subject to approval of the United States Court of Federal Claims (the petition for approval is filed and pending). As provided for in this Court's Order approving Petition 50, it is

anticipated the settlement will result in payment to MHP in the amount of \$16,186,807
(comprised of \$9,474,723 allocated to the Risk Corridor Action and \$6,712,084 allocated
to the Reinsurance Action) and will result in payment to Meritus Mutual of \$6,000,000
(comprised of \$4,240,000 allocated to the Risk Corridor Action and \$1,760,000 allocated
to the Reinsurance Action. The combined payment amount is anticipated to total
\$22,186,807. Consistent with the Court's March 18, 2022 Order approving Petition 50,
immediately upon collection and receipt, the settlement proceeds will be used to pay
contingency fees to Risk Corridor Counsel totaling \$685,736 and to Reinsurance Counse
totaling \$847,208, resulting in anticipated net collection of \$20,653,863 for Meritus.

- b. Proof of Claim ("POC") Process and Provider Payment Process. The Receiver continued to implement the POC process, including considering claim amounts, provider payments, priority levels and potential offsets, and related matters and issues depending on the circumstances.
- c. Liquidation Balance Sheet. The Receiver prepared and submitted the Liquidation Balance Sheet as of December 31, 2021.
- d. Accounting Services and General Accounting and Administrative.

 The Receiver continued additional work on the accounting for the Meritus Companies in liquidation, including identifying assets, claims and liabilities on a liquidation basis. As part of the accounting work, the Receiver continued to implement and account for the Receivership Liquidation, the Setoff involving CMS, and the Return of Excess Premiums, among other things.

Summary of Payments

5. Legal Counsel. During the reporting period, the total amounts (fees and expenses) that have been paid to Faegre Drinker Biddle & Reath LLP as legal counsel are \$6,505.70 for Meritus Mutual and \$6,505.70 for MHP for a combined amount of \$13,011.40. Work was performed and invoices were submitted for additional services and amounts during the reporting period but not paid until after June 30, 2022. Because of the timing, those payments will be referenced in the next status report.

6.	Special Deputy Receiver. During the reporting period, the total amounts
(fees and ex	kpenses) that have been paid to the Special Deputy Receiver are \$2,425.00 for
Meritus Mu	atual and \$2,625.00 for MHP for a combined amount of \$5,050. Work was
performed a	and invoices were submitted for additional services and amounts during the
reporting pe	eriod but not paid until after June 30, 2022. Because of the timing, those
payments w	vill be referenced in the next status report.

7. Regulatory Services Group. During the reporting period, no payments were made to the Regulatory Services Group. Work may have been performed and invoices submitted for additional services and amounts during the reporting period but not paid until after June 30, 2022. Because of the timing, those payments, if any, would be referenced in the next status report.

WHEREFORE, the Receiver requests that the Court enter the Order re Petition No. 53 Accepting Twenty-Third Status Report for the Period Ending June 30, 2022 in the form lodged concurrently with this Petition after expiration of the objection period.

Dated this 22nd day of July, 2022.

FAEGRE DRINKER BIDDLE & REATH LLP

By: /s/ Joel Glover (#034018)
Joel A. Glover
Attorneys for Receiver

COPY of the foregoing mailed this

22nd day of July, 2022 to the attached Master Service List

/s/ Michelle Cline
Michelle Cline

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SUPERIOR COURT OF ARIZONA 1 COUNTY OF MARICOPA 2 3 No. CV2016-011872 (Assigned to The Honorable Daniel Martin) 4 MASTER SERVICE LIST 5 6 Director Evan G. Daniels, Receiver The Arizona Department of Insurance 7 and Financial Institutions 100 North 15th Avenue, #102 8 Phoenix, Arizona 85007 (Per request, distribution by email only to Liane.Kido@difi.az.gov.) 9 10 Liane Kido, Deputy Receiver Arizona Department of Insurance 11 100 North 15th Avenue, #102 Phoenix, Arizona 85007 12 (Per request, distribution by email only to Liane.Kido@difi.az.gov.) 13 Lynette Evans Public Law Section 14 Office of the Attorney General 15 2005 N. Central Avenue Phoenix, AZ 85004 16 Attorneys for Arizona Department of Insurance 17 Richard G. Erickson 18 Robert F. Kethcart Snell & Wilmer L.L.P. 19 One Arizona Center 400 East Van Buren 20 Phoenix, Arizona 85004 Attorneys for Defendants 21 22 Larry Aldrich, Executive Chairman Employers Health Alliance of Arizona 23 7520 East McLellan Lane Scottsdale, Arizona 85250 24 25 26 27

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