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12 KRISTA L. FREITAG

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **SOUTHERN DIVISION**

16 Consumer Financial Protection Bureau
and Maria T. Vullo, Superintendent of
17 Financial Services of the State of
New York,

18 Plaintiffs,

19 v.

20 Pension Funding, LLC; Pension
21 Income, LLC; Steven Covey; Edwin
Lichtig; and Rex Hofelter,

22 Defendants.
23

Case No. 8:15-cv-1329

**RECEIVER'S ELEVENTH INTERIM
REPORT**

Ctrm.: 10A
Judge: Hon. Josephine L. Staton

1 Krista L. Freitag ("Receiver"), the Court- appointed permanent receiver for
2 Pension Funding, LLC, Pension Income, LLC, and their subsidiaries, affiliates, and
3 successors-in-interest, including PGR, LLC (collectively, "Receivership Entities"),
4 hereby submits this eleventh interim report. This report covers the Receiver's
5 activities from July 1, 2018, through September 30, 2018.

6 I. EXECUTIVE SUMMARY

7 This equity receivership arises from the Complaint for Violations of the
8 Consumer Financial Protection Act and New York Banking and Financial Services
9 Laws ("Complaint") (Dkt. No. 1) filed on August 20, 2015, by the Consumer
10 Financial Protection Bureau ("Bureau") and Superintendent of Financial Services of
11 the State of New York ("Superintendent").

12 On or about January 8, 2016, pursuant to the Court's Order Entering Stipulated
13 Preliminary Injunction, Appointment of a Receiver, and Related Matters
14 ("Appointment Order"), the Receiver took control of the Receivership Entities, their
15 books and records, bank accounts, and assets. The Receiver promptly assumed
16 responsibility of all servicing operations and collections pursuant to the Appointment
17 Order.

18 On October 19, 2016, the Receiver filed the Receiver's Forensic Accounting
19 Report and Recommendations (Dkt. No. 116), orders on which were entered on
20 December 14, 2016, and January 4, 2017. Pursuant to the Court's December 14,
21 2016 order, the Receiver and her staff worked to complete and by the end of
22 December 2016, sent all third-party investors a letter detailing their net loss
23 calculation, explaining the claims process, and providing them with 60 days to
24 respond with any comments, questions, or concerns thereto. With no disputes to the
25 net loss calculations, at the end of the 60-day period, the Receiver worked with
26 counsel to prepare the proposed allowed claims schedule, distribution plan, motion
27 for approval thereof, and performed the calculations of proposed interim distributions
28 to those with proposed allowed claims.

1 On April 25, 2017, the Receiver filed her Notice of Motion and Motion for,
2 (a) Approval of Proposed Allowed Claim Amounts, (b) Approval of Distribution
3 Plan, and (c) Authority to Make Interim Distributions ("Distribution Motion") (Dkt.
4 No. 139), which was approved on May 31, 2017 (Dkt. No. 147). Since that time, the
5 Receiver coordinated payment of the approved return of \$700,000 in pensioner
6 overpayments and \$3.3 million in interim distributions to investors with allowed
7 claims. All of the first and second interim distribution payments have been issued as
8 of the date of this report. One check totaling \$36,388 from the first round of interim
9 distributions and two checks from the second round of interim distributions totaling
10 \$4,491 remained outstanding as of September 30, 2018 (one of which cleared in
11 October 2018). The Receiver has made contact with the applicable investor whose
12 payments represent the outstanding amounts to follow up on the receipt/negotiation
13 of said checks; the first interim distribution check was voided and reissued pursuant
14 to such correspondence, but still remains outstanding.

15 The Receiver continues her efforts to preserve, protect, identify, collect and
16 maximize the value of receivership assets, including collection of pensioner
17 payments, as further discussed below.

18 II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

19 As noted above, on August 20, 2015, the Bureau and Superintendent filed their
20 Complaint against Defendants Pension Funding, LLC, Pension Income, LLC, Steven
21 Covey, Edwin Lichtig, and Rex Hofelter. The Complaint alleges that Defendants
22 violated the Consumer Financial Protection Act of 2010 and New York state law by
23 making "pension advances" to pensioners while (a) failing to disclose the
24 transactions were loans, (b) failing to disclose or misrepresenting the interest rate
25 associated with the loans, (c) making various other misrepresentations about the
26 terms and/or benefits of the loans to pensioners, (d) charging interest rates to
27 pensioners located in New York that exceeded the maximum rate allowed by
28

1 New York law, and (e) engaging in the business of money transmitting without a
2 money transmitter license.

3 On October 7, 2015, the Bureau and Superintendent moved for a preliminary
4 injunction, appointment of a receiver, and other equitable relief ("Receiver Motion").
5 With the exception of Steven Covey,¹ Defendants answered the Complaint on
6 October 23, 2015. Defendants then opposed the Receiver Motion on October 30,
7 2015. At the hearing on the Receiver Motion held on December 18, 2015, the parties
8 informed the Court that they had agreed upon a stipulation regarding preliminary
9 injunction. Dkt. No. 56. The Joint Stipulation Requesting Entry of Stipulated
10 Preliminary Injunction, Appointment of a Receiver, and Related Orders was filed on
11 December 21, 2015. Dkt. No. 57. On January 8, 2015, the Court entered the
12 Appointment Order. Dkt. No. 61.

13 In accordance with the Appointment Order and the law governing federal
14 equity receiverships, upon her appointment, the Receiver promptly took steps to
15 implement the terms and provisions of the Appointment Order, including (a) taking
16 control of all accounts of the Receivership Entities, (b) imaging and preserving all
17 electronic data of the Receivership Entities, (c) securing and taking possession of all
18 hard copy records and documents of the Receivership Entities, and (d) investigating,
19 issuing subpoenas, and gathering records as to the assets and potential claims of the
20 Receivership Entities.

21 On January 22, 2016, the Court entered the Stipulated Judgment. On March 1,
22 2016, the Receiver filed a Motion for Order in Aid of Receivership (Dkt. No. 71),
23 seeking authority to engage Allen Matkins Leck Gamble Mallory & Natsis LLP
24 ("Allen Matkins") as her general counsel, for relief from Local Rule 66-5 and 66-7
25 and to file interim reports and interim fee applications on a quarterly basis. The
26

27 ¹ Mr. Covey has not answered the Complaint or otherwise appeared in the action.
28 A default judgment was entered against him on July 11, 2016. Dkt. No. 97.
Accordingly, all references to actions taken by "Defendants" are to Pension
Funding, LLC, Pension Income, LLC, Edwin Lichtig, and Rex Hofelter.

1 Court held a hearing on April 13, 2016, at which time it stated it would grant the
2 Receiver authority to engage Allen Matkins, grant relief from the requirement to
3 serve notices by mail under Local Rule 66-7, extend the deadline under Local
4 Rule 66-5 to file a schedule of known creditors to July 2016, and allow the schedule
5 of known creditors to be filed under seal. The Receiver's application to file the
6 schedule of known creditors under seal was filed concurrently with the Receiver's
7 Second Interim Report (Dkt. No. 100).

8 On March 25, 2016, Defendant Rex Hofelter made the \$40,000 payment
9 required under the Stipulated Judgment. Defendant Edwin Lichtig filed bankruptcy
10 in the Northern District of California, then voluntarily dismissed his bankruptcy and
11 paid the full \$282,000 with interest to the Receiver on April 26, 2016.

12 On October 19, 2016, the Receiver's Forensic Accounting Report and
13 Recommendations was filed (Dkt. No. 116) and heard on December 9, 2016. On
14 December 14, 2016, the Court issued its Order Approving in Part the Receiver's
15 Report and Recommendations (Dkt. No. 125). On December 21, 2016, the Receiver
16 filed her Ex Parte Application for Approval of Recommended ADR Procedure for
17 Investor Claim Disputes (Dkt. No. 126). On January 4, 2017, the Court issued its
18 Order Denying the Receiver's Ex Parte Application and Adopting a Revised Investor
19 Dispute Resolution Process (Dkt. No. 128).

20 On April 25, 2017, the Receiver filed her Notice of Motion and Motion for,
21 (a) Approval of Proposed Allowed Claim Amounts, (b) Approval of Distribution
22 Plan, and (c) Authority to Make Interim Distributions ("Distribution Motion") (Dkt.
23 No. 139), which was approved by the Court on May 31, 2017 (Dkt. No. 147).

24 **III. SUMMARY OF RECEIVER'S ACTIVITIES**

25 **A. Cash Recoveries**

26 As discussed in the Receiver's prior interim reports, the balance in the
27 Receivership Entities' accounts as of her appointment on January 8, 2016, was
28 \$526,664. The balance increased steadily to \$2,787,495 as of December 31, 2016 (a

1 balance that does not reflect the Lynk Capital proceeds received in the second quarter
2 of 2017 from the sale of the loan participation interest), and then dropped to
3 \$252,820 as of September 30, 2018, due to the return of nearly \$700,000 in
4 pensioner overpayments and the distribution of a total of \$3,344,091 to investors
5 with allowed claims.

6 Between July 1, 2018, and September 30, 2018, the Receiver recovered and
7 took possession of a total of \$55,586 of additional funds, which primarily resulted
8 from the following:

- 9 • \$55,351 from Pensioner payments (payments net of rejections/
10 insufficient fund payments); and
- 11 • \$235 of miscellaneous and interest income.

12 **B. Pensioner Communications and Collections**

13 As a result of the Court's orders, the Receiver proceeded to communicate via
14 email and physical mail with Pensioners to ensure they understood their Court-
15 ordered Lump Sum payment responsibility. This communication prompted several
16 defaulted Pensioners to resume payment and/or prompted Pensioners to pay off their
17 remaining Lump Sum owing in full. The Receiver also prepared and, during the first
18 quarter of 2017, issued the return of all overpayment amounts to Pensioners who
19 made payments in excess of their Lump Sums.

20 She has also commenced her defaulted Pensioner collection efforts by
21 gathering information, working to first determine the likely costs and benefits of such
22 efforts, and sending collection letters. Initial collection letters were sent to
23 pensioners in April 2017, with Final Notice letters sent in July 2017. The Receiver
24 filed complaints against four pensioners, two of whom defaulted. The other two filed
25 answers to the complaints – the Receiver was then able to settle both cases and both
26 pensioners are now making payments pursuant to payment plans. The Receiver also
27 continues to cost-effectively pursue Pensioners who previously defaulted with small
28 balances owing.

1 **C. Investor Claims Process and Interim Distributions**

2 Pursuant to the Court's December 14, 2016 Order, the Receiver completed the
 3 Investor claims process. As previously mentioned, the Distribution Motion was filed
 4 on April 25, 2017, and approved on May 31, 2017. Accordingly, the Receiver
 5 worked to coordinate the first interim distribution payments in the total amount of
 6 \$2,904,158.

7 As noted in the Receiver's Eighth Interim Report, pursuant to the Distribution
 8 Plan approved by the Court on May 21, 2017, the Receiver noticed and received no
 9 objections to proceed with a second interim distribution in February 2018. Thus, the
 10 Receiver worked to issue the second interim distributions in the total amount of
 11 \$439,933 to investors, increasing the minimum net recovery of investors with
 12 approved claims to approximately 55.5% (pursuant to the Court-approved rising tide
 13 distribution methodology). To date, all second interim distributions have been
 14 issued, bringing the total amount distributed to \$3,344,091.

15 **D. General Communications**

16 The Receiver established a dedicated web page on her website which provides
 17 case information and updates for Pensioners and Investors. With progression of the
 18 case, frequently asked questions are added to the website. The Internet address for
 19 the webpage is <http://www.ethreadvisors.com/cfpb-case-docs>. In addition, the
 20 Receiver is maintaining a dedicated email address and telephone line for Pensioner
 21 and Investor inquiries and regularly returns emails and phone calls from Pensioners
 22 and Investors.

23 **IV. POST-RECEIVERSHIP RECEIPTS AND DISBURSEMENTS**

24 **A. Consolidated Cash Activity**

25 The following summary reflects the Receivership Entities' consolidated cash
 26 balance as of September 30, 2018:

27 East West Bank - Receiver	\$170,760
28 South County Bank - Receiver	\$118,044

1	South County Bank – PGR Reserve	\$4,601
2	South County Bank – PGR Management	Closed
3	South County Bank – PGR General	\$1,794
4	South County Bank – PGR Future Obligations	Closed
5	South County Bank - Pension Income	Closed
6	South County Bank - Pension Funding	Closed
	Grand Total	\$295,199

7 As of September 30, 2018, outstanding checks totaled \$42,379, resulting in a
8 September 30, 2018 reconciled cash balance of \$252,820.

9 The following is a summary of the consolidated cash activity in the Receiver-
10 controlled Receivership Entities' bank accounts for the period from July 1, 2018,
11 through September 30, 2018:

12	Account Cash Balance at 6/30/18	\$244,700
13	Collection – Pensioner Payments (July-September)	\$55,351
14	Collection – Tax Refund, Other Misc. & Interest	\$235
15	Other Miscellaneous Expenses	(\$2,599)
16	Receiver Fees	(\$22,964)
17	Receiver Legal Fees	(\$21,903)
	Cash Book Balance at 9/30/18	\$252,820

18 The following is a summary of the consolidated cash activity in the Receiver-
19 controlled Receivership Entities' bank accounts for the period from January 7, 2016,
20 through September 30, 2018:

21	Account Cash Balance at 1/7/16²	\$689,737
22	January 8, 2016 Pensioner Payments	\$99,009 ³
23	January 8, 2016 Investor Payments	(\$262,082) ⁴

24 ² The beginning balance in the receivership estate bank accounts is presented as of
25 January 7, 2016 because Pensioner and Investor activity occurred/posted the
26 morning of January 8, 2016, prior to the Receiver's appointment (which occurred
late in the day on January 8, 2016).

27 ³ Pensioner payments collected prior to the Receiver's appointment, but posted to
the account on January 8, 2016.

28 ⁴ Payments to Investors issued prior to the Receiver's appointment, but posted to
the account on January 8, 2016.

1	Recovery – Bird Marella Law Firm Retainer	\$9,743
2	Recovery – David Arietta Law Firm Retainer	\$14,084
3	Recovery – Ramsey Law Firm Retainer	\$7,472
4	Recovery – GCA Law Partners Retainer	\$5,817
5	Collection – Loan Principal	\$1,000,000
6	Collection – Loan Interest	\$124,553
7	Collection – Loan Sale Legal Fee Recovery	\$9,278
8	Collection – Rex Hofelter Judgment	\$40,000
9	Collection – Ed Lichtig Judgment	\$282,108
10	Collection – Pensioner Payments (Feb. 16-Sept. 18)	\$2,989,409
11	Collection – Tax Refund, Other Misc. & Interest	\$22,443
12	Pensioner Payments Rejected (Feb. 16-Mar. 17)	(\$51,487)
13	Receiver Fees	(\$371,996)
14	Receiver Legal Fees	(\$260,520)
15	Return of Pensioner Lump-Sum Overpayments	(\$698,528)
16	Investor First Interim Distribution	(\$2,904,158)
17	Investor Second Interim Distribution	(\$439,933)
18	Other Miscellaneous Expenses ⁵	(\$52,129)
19	Cash Book Balance at 9/30/18	\$252,820

V. RECOMMENDATIONS

As a general matter, the Receiver continues to marshal, preserve and protect the assets of the Receivership Entities and carry out her other duties under the Court's orders.

A. Receivership Asset Recovery Efforts

The Receiver will continue to collect Pensioner Lump Sum payments and seek to locate any presently unaccounted for or misappropriated receivership assets that may exist. The Receiver is also in the process of pursuing cost-effective collections where appropriate.

⁵ Primarily reflects Pensioner asset search fees, bank fees, income tax return and income-tax related payments.

1 As collections slowly dwindle as Pensioners pay off their Lump Sums, the
2 Receiver has been regularly evaluating the costs and benefits of the receivership to
3 ensure that collections exceed ongoing administrative costs. The Receiver has and
4 will continue to keep the Court and the interested parties updated. The Receiver is
5 on track with respect to the plan laid out in her response to the Court's order dated
6 January 25, 2018. Dkt. No. 179.

7 **B. Quarterly Reports**

8 The Receiver will continue to file, on a quarterly basis, interim reports and
9 interim fee applications for herself and her counsel.

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11 Dated: November 8, 2018



KRISTA L. FREITAG
Receiver

12

13 Dated: November 8, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ Edward Fates

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Attorneys for Receiver
KRISTA L. FREITAG

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