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11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**
14 **SOUTHERN DIVISION**

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

17 Plaintiffs,

18 v.

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

21 Defendants.
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Case No. 8:15-cv-1329

**RECEIVER'S FIRST INTERIM
REPORT AND INITIAL
INVENTORY**

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 first interim report and initial inventory. This report covers the
5 Receiver's activities from her appointment on January 8, 2016 through March 31,
6 2016.

7 I. EXECUTIVE SUMMARY

8 This equity receivership arises from the Complaint for Violations of the
9 Consumer Financial Protection Act and New York Banking and Financial Services
10 Laws ("Complaint") (Dkt. No. 1) filed on August 20, 2015 by the Consumer
11 Financial Protection Bureau ("Bureau") and Superintendent of Financial Services of
12 the State of New York ("Superintendent"). As further discussed below, the
13 Complaint alleges Defendants offered consumers ("Pensioners") "pension advances"
14 – lump-sum payments that Pensioners could receive in return for agreeing to direct
15 all or part of their pension payments to the Receivership Entities, over eight years, to
16 repay the advances. The Complaint also alleges that while soliciting Pensioners to
17 "sell" their pension income, Defendants simultaneously solicited investors
18 ("Investors"), often retirees, recruited through a network of financial advisors, to
19 provide the capital for the transactions with Pensioners. For a promise of a 6%
20 annual return, Investors paid the Receivership Entities an amount sufficient to fund
21 the lump-sum advances to Pensioners, as well as additional fees and the
22 Receivership Entities' expenses and profits.

23 On or about January 8, 2016, pursuant to the Court's Order Entering
24 Stipulated Preliminary Injunction, Appointment of a Receiver, and Related Matters
25 ("Appointment Order"), the Receiver took control of the Receivership Entities, their
26 books and records, bank accounts and assets. As of March 31, 2016, the Receiver
27 had secured and recovered \$1.17 million in cash and a \$1.1 million participating
28 interest in a commercial real estate loan. The other assets of the Receivership

1 Entities, including the receivables from Pensioners and Mr. Lichtig, are discussed
2 further below.

3 Other than the assets and collections noted above, the Receivership Entities
4 did not have any business or generate any revenue. Mr. Lichtig was solely in charge
5 of the Receivership Entities at the time of the Receiver's appointment. Therefore,
6 the Receiver promptly assumed responsibility of all servicing operations and
7 collections pursuant to the Appointment Order.

8 Because the Receivership Entities did not keep comprehensive or detailed
9 books and records of the Pensioner and Investor accounts and transactions, the
10 forensic accounting, which the Appointment Order directs the Receiver to conduct,
11 is necessary to provide accurate information about the detailed sources and uses of
12 funds of the Receivership Entities. Such accounting will ultimately determine the
13 balance of Pensioner and Investor accounts, and where the money raised by the
14 Receivership Entities came from, how it was transferred between and among them,
15 and to whom it was disbursed.

16 The Receiver therefore recommends the receivership continue, that she
17 continue her efforts to preserve, protect, identify, and maximize the value of
18 receivership assets, and to complete the Court-ordered forensic accounting enabling
19 her to propose a methodology, for the Court's consideration and approval, for
20 determining how to unwind or otherwise resolve the Pensioner and Investor
21 transactions subject of this case.

22 This report is preliminary and its contents may need to be materially modified
23 after further investigation and consideration. As discussed below, although the
24 Receiver and her professionals have made significant progress in a short period of
25 time, a great deal of work remains to be done.

26 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

27 As noted above, on August 20, 2015, the Bureau and Superintendent filed
28 their Complaint against Defendants Pension Funding, LLC, Pension Income, LLC,

1 Steven Covey, Edwin Lichtig, and Rex Hofelter. The Complaint alleges that
2 Defendants violated the Consumer Financial Protection Act of 2010 and New York
3 state law by making "pension advances" to pensioners while (a) failing to disclose
4 the transactions were loans, (b) failing to disclose or misrepresenting the interest
5 rate associated with the loans, (c) making various other misrepresentations about the
6 terms and/or benefits of the loans to pensioners, (d) charging interest rates to
7 pensioners located in New York that exceeded the maximum rate allowed by
8 New York law, and (e) engaging in the business of money transmitting without a
9 money transmitter license.

10 On October 7, 2015, the Bureau and Superintendent moved for a preliminary
11 injunction, appointment of a receiver, and other equitable relief
12 ("Receiver Motion"). With the exception of Steven Covey,¹ Defendants answered
13 the Complaint on October 23, 2015. Defendants then opposed the Receiver Motion
14 on October 30, 2015. At the hearing on the Receiver Motion held on December 18,
15 2015, the parties informed the Court that they had agreed upon a stipulation
16 regarding preliminary injunction. Dkt. No. 56. The Joint Stipulation Requesting
17 Entry of Stipulated Preliminary Injunction, Appointment of a Receiver, and Related
18 Orders was filed on December 21, 2015. Dkt. No. 57. On January 8, 2015, the
19 Court entered the Appointment Order. Dkt. No. 61.

20 In accordance with the Appointment Order and the law governing federal
21 equity receiverships, upon her appointment, the Receiver promptly took steps to
22 implement the terms and provisions of the Appointment Order, including (a) taking
23 control of all accounts of the Receivership Entities, (b) imaging and preserving all
24 electronic data of the Receivership Entities, (c) securing and taking possession of all

25 _____
26 ¹ Mr. Covey has not answered the Complaint or otherwise appeared in the action.
27 His default was entered by the clerk on December 23, 2015. Dkt. No. 59. On
28 January 22, 2016, the Bureau and Superintendent filed an application for default
judgment against Mr. Covey. Dkt. No. 65. Accordingly, all references to actions
taken by "Defendants" are to Pension Funding, LLC, Pension Income, LLC,
Edwin Lichtig, and Rex Hofelter.

1 hard copy records and documents of the Receivership Entities, and (d) investigating,
2 issuing subpoenas, and gathering records as to the assets and potential claims of the
3 Receivership Entities.

4 On January 22, 2016, the Court entered the Stipulated Judgment. On March
5 1, 2016, the Receiver filed a Motion for Order in Aid of Receivership (Dkt. No. 71),
6 seeking authority to engage Allen Matkins Leck Gamble Mallory & Natsis LLP
7 ("Allen Matkins") as her general counsel, for relief from Local Rule 66-5 and 66-7
8 and to file interim reports and interim fee applications on a quarterly basis. The
9 Court held a hearing on April 13, 2016, at which time it stated it would grant the
10 Receiver authority to engage Allen Matkins, grant relief from the requirement to
11 serve notices by mail under Local Rule 66-7, extend the deadline under Local
12 Rule 66-5 to file a schedule of known creditors to July 2016, and allow the schedule
13 of known creditors to be filed under seal.

14 On March 25, 2016, Defendant Rex Hofelter's \$40,000 payment he was
15 obligated to pay under the Stipulated Judgment cleared the receivership estate's bank
16 account.

17 **III. ACTIONS TO IMPLEMENT APPOINTMENT ORDER**

18 **A. Cash Recoveries**

19 Pursuant to the Appointment Order, the Receiver has taken control of the
20 Receivership Entities' bank accounts.

21 1. Funds in Accounts at Takeover

22 The following chart reflects the accounts which had not been closed prior to
23 the appointment of the Receiver, and the balance found in each *open* account as of
24 the date of the Receiver's appointment (this chart does not reflect "power of
25 attorney" bank accounts, (a) the Receivership Entities set up in Pensioners' names,
26 and (b) used to receive and disburse pension payments):

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28

Account Holder Name	Bank	Balance at 1/7/16 ²
PGR, LLC - Reserve	South County Bank	\$483,998.46
PGR, LLC - Management	South County Bank	\$90,149.97
PGR, LLC – General	South County Bank	\$4,514.99
PGR, LLC – Future Obligations	South County Bank	\$103,698.95
Pension Income, LLC – Pension Collection	South County Bank	\$7,237.16
Pension Funding, LLC - General	South County Bank	\$137.88
Total		\$689,737.41

Account Holder Name	Bank	Balance at 1/8/16
PGR, LLC - Reserve	South County Bank	\$319,952.85
PGR, LLC - Management	South County Bank	\$93,020.63
PGR, LLC - General	South County Bank	\$7,653.78
PGR, LLC – Future Obligations	South County Bank	\$103,698.95
Pension Income, LLC – Pension Collection	South County Bank	\$2,200.00
Pension Income, LLC - General	South County Bank	\$137.88
Total		\$526,664.09

2. Funds Recovered Subsequent to Takeover

Between January 8, 2016 and March 31, 2016, the Receiver recovered and took possession of a total of \$651,662 of additional funds, primarily a result of the following:

- \$464,488 from Pensioner payments (payments net of rejections/insufficient fund payments);

² The balance in the receivership estate bank accounts is being presented as of January 7, 2016 and January 8, 2016 to properly reflect the balance the day before the Receiver's appointment (January 7, 2016); however, significant Pensioner and Investor activity occurred/posted the morning of January 8, 2016 prior to the Receiver's appointment (which occurred late in the day on January 8, 2016). The Receivership Estate accounting will start with the January 7, 2016 balance.

- 1 • \$115,400 in payments on the aforementioned \$1.2 (now \$1.1) million
2 loan participation interest (\$100,000 of principal plus February 2016
3 and March 2016 interest payments);
4 • \$40,000 from Rex Hofelter pursuant to the Stipulated Judgment, and
5 • \$31,299 in unused retainers paid to law firms prior to the Receiver's
6 appointment and \$475 of miscellaneous deposits.

7 The Receiver will continue to collect Pensioner payments, as appropriate, and
8 through her forensic accounting, will pursue recoveries of any improper transfers or
9 other amounts properly belonging to the Receivership Entities.

10 **B. Other Assets**

11 Upon her appointment, the Receiver learned that the Receivership Entities
12 held a \$1.2 (now \$1.1) million loan participation interest in a commercial note (in
13 favor of the lead lender) secured by a Commercial Deed of Trust over three separate
14 pieces of real property:

- 15 • 22.21 acres of raw land in Fort Washington, Maryland;
16 • 28 single-family lots located in Clinton, Maryland; and
17 • 32 single-family lots located in Upper Marlboro, Maryland.

18 Immediately upon learning of this asset, the Receiver reached out to the
19 lead lender to obtain all associated books and records and to direct interest and other
20 payments to the receivership estate. The Receiver continues to obtain updates on
21 the status of this asset; however, the timing for liquidation of this asset remains to be
22 determined.

23 **C. Control Over Computer Hardware, Software and Documents**

24 Prior to the close of business, on Friday, January 8, 2016, upon receipt of a
25 copy of the Appointment Order, the Receiver immediately took steps to notify the
26 known banking institutions of the Appointment Order, demanded a freeze on the
27 accounts, and reached out to Defendants to coordinate the takeover commencement.
28 Because the Receivership Entities no longer maintained a separate office and all

1 operations were conducted from Defendant Edwin Lichtig's personal residence, the
2 Receiver coordinated the imaging of computers and recovery of documents with
3 Mr. Lichtig. The Receiver retained the services of SETEC Investigations, a forensic
4 computer specialist, to image all of the computers and hard drives located at
5 Mr. Lichtig's home office. By imaging the known computers and hard drives, the
6 Receiver was able to preserve e-mails, documents, and accounting information
7 maintained on the devices.

8 The Receivership Entity records and operations were controlled by Defendant
9 Lichtig. As such, on January 13, 2016, a member of the Receiver's staff retrieved all
10 books and records from two separate locations in Pleasant Hill and Lafayette,
11 California (near and at Defendant Lichtig's home). The records collected were
12 primarily held in three, four drawer file cabinets and were largely organized and
13 labeled (although certain records at Defendant Lichtig's home were commingled
14 with other records). The Receiver's staff member coordinated the boxing and
15 delivery to a local reprographics company that would later scan and create digital
16 images of all of the records. The physical files were ultimately shipped for storage
17 to Iron Mountain.

18 As significant portions of the Defendants' enterprise were based on web
19 services, the Receiver has spent time investigating websites controlled by the
20 Defendants. Ultimately, the Receiver pointed one of the two known Receivership
21 Entity URL's (www.pensionincomellc.com) to the Receivership website and learned
22 that the www.uspensionfunding.com website had been dismantled (along with the
23 related email server) in June of 2015. A discussion with the hosting service for the
24 www.uspensionfunding.com website revealed that because the service had long
25 been shut off, no backup copies of the data existed. The
26 www.pensionincomellc.com website was reviewed by the Receiver's staff, but it did
27 not appear to contain company files, but rather was simply the website code for the
28 company website.

1 The Receiver also served attorneys, accountants, and other professionals
2 engaged by the Receivership Entities with notices and requested that they preserve
3 and produce all electronic and other documents in their possession, custody or
4 control as provided for in the Appointment Order.

5 **D. Interviews with Employees, Assessing Business Operations**

6 While taking control of the Receivership Entities, the Receiver met with
7 Mr. Lichtig and his counsel to review the company's operations as well as to identify
8 and address the assets of the Receivership Entities. The series of meetings with
9 Mr. Lichtig lasted several hours, during which the Receiver primarily focused on
10 identifying assets of the Receivership Entities that needed to be secured, as well as
11 gaining understanding of past and present operations. Among other things, these
12 meetings successfully transitioned Pensioner payment collection responsibilities and
13 abilities to the Receiver and one of her staff members.

14 Other than the servicing of Pensioner contracts, the Receiver's initial
15 investigation indicates that none of the Receivership Entities generated any revenue
16 from business operations. As such, the Receiver determined it was not necessary to
17 retain any employees of the Receivership Entities.

18 **E. Forensic Accounting**

19 While several excel workbooks and copies of underlying contracts with both
20 Pensioner and Investor information were obtained, comprehensive and detailed,
21 historical *accountings* of Pensioner and Investor accounts (e.g., total amounts
22 received and paid since inception of each contract) do not exist. From the records
23 received, the Receiver did obtain identities and contact information for Pensioners,
24 Investors and others.

25 Because the Receivership Entities did not keep comprehensive or detailed
26 books and records of the Pensioner and Investor accounts/transactions, the forensic
27 accounting, which the Appointment Order directs the Receiver to conduct, is
28 necessary to provide accurate information about the detailed sources and uses of

1 funds of the Receivership Entities. Such accounting will ultimately determine the
2 balance of Pensioner and Investor accounts, and where the money raised by the
3 Receivership Entities came from, how it was transferred between and among them,
4 and to whom it was disbursed.

5 Accordingly, and with the assistance of counsel, the Receiver issued
6 subpoenas to gather documents from several financial institutions. Such documents
7 are critical to the Receiver's forensic accounting due to the lack of a detailed
8 accounting system reflecting Pensioner and Investor transaction details since
9 inception of each applicable contract. Upon receipt of banking records, the Receiver
10 and her staff promptly commenced the forensic accounting and investigation. As
11 discussed below, due to the number of bank accounts, the high volume of
12 transactions, and the lack of a thorough and centralized accounting system, the
13 forensic accounting project will take time to complete. Nonetheless, through March
14 31, 2016, the Receiver and her staff had completed almost an entire year of the
15 forensic accounting. The Receiver anticipates the accounting will be completed in
16 June 2016.

17 **F. Territorial Jurisdiction Over Receivership Assets**

18 By filing the Complaint and the Appointment Order with other federal district
19 courts in the United States, the territorial jurisdiction of this Court over receivership
20 assets is extended to such districts. 28 U.S.C. § 754, *see also* Haile v. Henderson
21 Nat'l Bank, 657 Fed. 2d 816, 822 (6th Cir. 1981). Based on information obtained to
22 date regarding property owned by Receivership Entities or in which they may have a
23 security interest and in conformity with Section 754 and federal law, the Receiver
24 has filed the Complaint and the Appointment Order in the United States District
25 Courts for the Northern Districts of California, the District of Maryland, and the
26 Middle and Southern Districts of Florida (the location of the lead lender). As
27 additional information becomes available, the Receiver will file and record the
28 Complaint and the Appointment Order in additional districts and counties.

1 **G. Investor Communications**

2 The Receiver has established a dedicated web page on her website which
3 provides case information and updates for Pensioners and Investors. With
4 progression of the case, frequently asked questions, may also be added to the
5 website. The Internet address for the webpage is [http://www.ethreadvisors.com/
6 cfpb-case-docs](http://www.ethreadvisors.com/cfpb-case-docs). In addition, the Receiver is maintaining a dedicated e-mail address
7 and telephone line for Pensioner and Investor inquiries and regularly returns a
8 significant volume of emails and phone calls from investors.

9 **H. Investor Notices**

10 Upon her appointment, the Receiver immediately took steps to implement the
11 terms and provisions of the Appointment Order, including sending notices to all
12 known Pensioners, Investors and other vendors of the Receivership Entities. The
13 Receiver initially sent approximately 400 letters to Pensioners and Investors,³ at
14 their addresses reflected in the books and records of the Receivership Entities, to
15 inform them of the case and her appointment as receiver, and direct them to the
16 Receiver's website for information and updates. The letter also provided the
17 dedicated e-mail address and telephone line for Pensioner and Investor inquiries.

18 **IV. EDWIN LICHTIG BANKRUPTCY**

19 On March 1, 2016, Mr. Lichtig filed a chapter 13 bankruptcy case in the
20 Northern District of California. The Bureau and the United States Trustee objected
21 to the bankruptcy filing, after which Mr. Lichtig moved to voluntarily dismiss the
22 case. The dismissal order was entered on April 20, 2016.

23 On April 26, 2016, Mr. Lichtig paid the \$282,000 plus interest he was
24 obligated to pay to the Receiver pursuant to the Stipulated Judgment. The deadline
25 for payment was April 1, 2016.

26 _____
27 ³ Some Investor's contact information was actually the contact information for a
28 third-party administrator. The Receiver made an effort to ensure that any such
third-party passed along the notices to the actual Investors. Additionally, some
Investors and Pensioners have more than one account.

1 **V. SUSPENSION OF PAYMENTS TO INVESTORS**

2 As discussed above, the Receivership Entities solicited Investors to provide
3 the capital for the advances made to Pensioners. In return, Investors were promised
4 a 6% annual return. Accordingly, the Receivership Entities were making monthly
5 payments to Investors. However, some of the monthly payments were being funded
6 by the Receivership Entities' reserve account because Pensioners have defaulted on
7 their contracts. This was rapidly consuming the Receivership Entities' assets.

8 The Receiver has yet to propose and the Court has yet to approve a plan for
9 resolving the pension advance' transactions that are the subject of the Complaint.
10 Accordingly, in order to ensure a fair and equitable distribution to all Investors after
11 approval by the Court, the Receiver has suspended payments to Investors. As
12 provided in the Appointment Order, once her forensic accounting is complete, the
13 Receiver intends to prepare a report and plan to resolve the pension advance
14 transactions and request Court approval of the plan. Part of the plan will be a
15 process to determine all Investor claims and authorization to make distributions to
16 those with allowed claims. Until such time as a plan is approved by the Court,
17 payments to Investors should remain suspended.

18 **VI. POST-RECEIVERSHIP RECEIPTS AND DISBURSEMENTS**

19 **A. Consolidated Cash Activity**

20 The following summary reflects the Receivership Entities' consolidated cash
21 balance as of March 31, 2016:

22	South County Bank – Receiver	\$1,152,247
23	South County Bank – PGR Reserve	\$5,000
24	South County Bank – PGR Management	\$5,000
25	South County Bank – PGR General	\$3,216
26	South County Bank – PGR Future Obligations	\$5,000
27	South County Bank – Pension Income	\$5,000
28	South County Bank – Pension Funding	\$93
	Grand Total	\$1.175.556

1 The following is a summary of the consolidated cash activity in the Receiver-
 2 controlled Receivership Entities' bank accounts for the period from January 8, 2016
 3 through March 31, 2016:

Account Cash Balance at 1/7/16 ⁴	\$689,737
January 8, 2016 Pensioner Payments	\$99,009 ⁵
January 8, 2016 Investor Payments	(\$262,082) ⁶
Recovery – Bird Marella Law Firm Retainer	\$9,743
Recovery – David Arietta Law Firm Retainer	\$14,084
Recovery – Ramsey Law Firm Retainer	\$7,472
Collection – Loan Principal	\$100,000
Collection – Loan Interest (Feb.-March)	\$15,400
Collection – Rex Hofelter Judgment	\$40,000
Collection – Pensioner Payments (Feb.-March)	\$480,191
Collection – Other Misc.	\$475
Pensioner Payments Rejected	(\$15,703)
Other Miscellaneous Expenses ⁷	(\$2,770)
Account Cash Balance at 3/31/16	\$1,175,556

16 1. Cash Management

17 Pursuant to the Appointment Order, the Receiver opened a new receivership
 18 account into which all pre-receivership and receivership account funds were swept,
 19 with the exception of the minimum bank balances required to avoid fees (\$5,000) in
 20 all pre-receivership accounts. The Receiver has strategically left the pre-receiver
 21 accounts open to ensure access to electronic online account history – this provides
 22 for a most efficient forensic accounting process. Additionally, a handful of
 23 Pensioners automatically deposit payments into the Pension Income - Pension

25 _____
 26 ⁵ Pensioner payments collected prior to the Receiver's appointment, but posted to
 the account on January 8, 2016.

27 ⁶ Payments to Investors issued prior to the Receiver's appointment, but posted to
 the account on January 8, 2016.

28 ⁷ Primarily reflects bank fees and income-tax related payments.

1 Collection account. Lastly, the Receiver is working to effectively insure a majority
2 of the receivership estate cash on hand, while also earning nominal interest thereon.

3 2. Insurance

4 The Receiver has not yet found evidence of any Receivership Entity E&O,
5 D&O or other such insurance coverages.

6 **VII. RECOMMENDATIONS**

7 As a general matter, the Receiver recommends that the receivership continue
8 and that she be authorized to continue to marshal, preserve and protect the assets of
9 the Receivership Entities, investigate and pursue recovery of any misappropriated
10 funds, if any, to conduct a forensic accounting, and carry out her other duties under
11 the Court's Appointment Order.

12 **A. Document Recovery Efforts**

13 As necessary and appropriate, the Receiver will continue to obtain records
14 from financial institutions where the Receivership Entities maintained accounts as
15 well as from attorneys and accountants engaged by the Receivership Entities. It
16 may also be necessary to take the depositions of certain individuals to obtain a
17 complete picture of the enterprise.

18 **B. Receivership Asset Recovery Efforts and Investigation**

19 The Receiver will continue to collect Pensioner payments, as appropriate, and
20 seek to locate any presently unaccounted for or misappropriated receivership assets
21 that may exist. As noted above, it is possible certain assets may be located as the
22 Receiver completes the forensic accounting for the enterprise. As part of her
23 investigation, the Receiver will evaluate whether such third parties should be liable
24 for damages caused to the Receivership Entities. The Receiver will seek Court
25 approval before pursuing any such claims.

26 **C. Accounting**

27 The Receiver has obtained a significant volume of bank records and will
28 complete her accounting to establish, among other things, the total funds each

1 Pensioner and Investor has paid and received, enabling her to propose a
2 methodology, for the Court's consideration and approval, for determining how to
3 unwind or otherwise resolve the Pensioner and Investor transactions subject of this
4 case.

5 **D. Maximize Value of Other Assets**

6 The Receiver will continue her efforts to recover the value of the
7 Receivership Entities' \$1.1 million participating interest in a commercial real estate
8 loan.

9 **E. Quarterly Reports**

10 The Receiver will file, on a quarterly basis, interim reports and interim fee
11 applications for herself and her counsel.

12
13 Dated: April 29, 2016



KRISTA L. FREITAG
Receiver

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16 Dated: April 29, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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18 By: /s/ Edward Fates
EDWARD G. FATES
Attorneys for Receiver
KRISTA L. FREITAG

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