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

15 Consumer Financial Protection Bureau
and Maria T. Vullo, Superintendent of
16 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.
22

Case No. 8:15-cv-1329

**RECEIVER'S THIRD INTERIM
REPORT**

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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 third interim report. This report covers the Receiver's activities
5 from July 1, 2016, through September 30, 2016.

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"). As further discussed below, the
12 Complaint alleges Defendants offered consumers ("Pensioners") "pension
13 advances" – lump-sum payments that Pensioners could receive in return for agreeing
14 to direct all or part of their pension payments to the Receivership Entities, over eight
15 years, to repay the advances. The Complaint also alleges that while soliciting
16 Pensioners to "sell" their pension income, Defendants simultaneously solicited
17 investors ("Investors"), often retirees, recruited through a network of financial
18 advisors, to provide the capital for the transactions with Pensioners. For a promise
19 of a 6% annual return, Investors paid the Receivership Entities an amount sufficient
20 to fund the lump-sum advances to Pensioners, as well as additional fees and the
21 Receivership Entities' expenses and profits.

22 On or about January 8, 2016, pursuant to the Court's Order Entering
23 Stipulated Preliminary Injunction, Appointment of a Receiver, and Related Matters
24 ("Appointment Order"), the Receiver took control of the Receivership Entities, their
25 books and records, bank accounts, and assets. The Receiver promptly assumed
26 responsibility of all servicing operations and collections pursuant to the
27 Appointment Order. As of September 30, 2016, the Receiver had secured and
28 recovered approximately \$2.51 million in cash and a \$1.1 million participating

1 interest in a commercial real estate loan. The other assets of the Receivership
2 Entities, including the receivables from Pensioners, are discussed further below.

3 Because the Receivership Entities did not keep comprehensive or detailed
4 books and records of the Pensioner and Investor accounts and transactions, the
5 Receiver worked diligently to complete a forensic accounting, which the
6 Appointment Order directed her to conduct. The Receiver's Forensic Accounting
7 Report and Recommendations, filed on October 19, 2016 (Dkt. No. 116), primarily
8 provides information on the balance of Pensioner and Investor accounts, where the
9 money raised by the Receivership Entities came from, how it was transferred
10 between and among them, and how it was disbursed. Such report also includes
11 recommendations regarding the most fair and equitable way to unwind or otherwise
12 resolve the pension advance transactions that are the subject of this case.

13 The Receiver therefore recommends the receivership continue, that she
14 continue her efforts to preserve, protect, identify, and maximize the value of
15 receivership assets, and, pursuant to the Court's direction, unwind or otherwise
16 resolve the Pensioner and Investor transactions subject of this case.

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

18 As noted above, on August 20, 2015, the Bureau and Superintendent filed
19 their Complaint against Defendants Pension Funding, LLC, Pension Income, LLC,
20 Steven Covey, Edwin Lichtig, and Rex Hofelter. The Complaint alleges that
21 Defendants violated the Consumer Financial Protection Act of 2010 and New York
22 state law by making "pension advances" to pensioners while (a) failing to disclose
23 the transactions were loans, (b) failing to disclose or misrepresenting the interest
24 rate associated with the loans, (c) making various other misrepresentations about the
25 terms and/or benefits of the loans to pensioners, (d) charging interest rates to
26 pensioners located in New York that exceeded the maximum rate allowed by
27 New York law, and (e) engaging in the business of money transmitting without a
28 money transmitter license.

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

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

19 On January 22, 2016, the Court entered the Stipulated Judgment. On
20 March 1, 2016, the Receiver filed a Motion for Order in Aid of Receivership (Dkt.
21 No. 71), seeking authority to engage Allen Matkins Leck Gamble Mallory &
22 Natsis LLP ("Allen Matkins") as her general counsel, for relief from Local
23 Rule 66-5 and 66-7 and to file interim reports and interim fee applications on a
24 quarterly basis. The Court held a hearing on April 13, 2016, at which time it stated
25 it would grant the Receiver authority to engage Allen Matkins, grant relief from the
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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 requirement to serve notices by mail under Local Rule 66-7, extend the deadline
2 under Local Rule 66-5 to file a schedule of known creditors to July 2016, and allow
3 the schedule of known creditors to be filed under seal (pursuant to an application the
4 Receiver will file in accordance with the Local Rules). The Receiver's application
5 to file the schedule of known creditors under seal was filed concurrently with the
6 Receiver's Second Interim Report (Dkt. No. 100).

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

11 On October 19, 2016, the Receiver's Forensic Accounting Report and
12 Recommendations was filed (Dkt. No. 116) and is set for hearing on December 9,
13 2016.

14 III. ACTIONS TO IMPLEMENT APPOINTMENT ORDER

15 A. Cash Recoveries

16 Pursuant to the Appointment Order, the Receiver has taken control of the
17 Receivership Entities' bank accounts. As discussed in the Receiver's First and
18 Second Interim Reports, the balance in the Receivership Entities' accounts as of her
19 appointment on January 8, 2016, and as of June 30, 2016, was \$526,664 and
20 \$2,086,361, respectively.

21 Between July 1, 2016 and September 30, 2016, the Receiver recovered and
22 took possession of a total of \$521,743 of additional funds, which primarily resulted
23 from the following:

- 24 • \$499,022 from Pensioner payments (payments net of
25 rejections/insufficient fund payments);
- 26 • \$22,000 in payments on the aforementioned \$1.1 million loan
27 participation interest; and
- 28 • \$721 of miscellaneous and interest income.

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

4 **B. Forensic Accounting**

5 As previously discussed, on October 19, 2016, the Receiver's Forensic
6 Accounting Report and Recommendations was filed (Dkt. No. 116) and is set for
7 hearing on December 9, 2016. The Appointment Order directed the Receiver "to
8 make an accounting, as soon as practicable, to this Court and the Plaintiffs of the
9 status of each completed transaction related to Defendants' pension-advance
10 products and to propose a methodology, subject to the Court's approval, for
11 determining how to unwind or otherwise resolve any such transaction." To that end,
12 the Receiver and her staff (a) reviewed and analyzed the Receivership Entities' bank
13 records and books and records, (b) evaluated the Receivership Entities' sources of
14 funds, and (c) evaluated the Receivership Entities' use of funds. Through this
15 forensic accounting, the Receiver determined where the money raised by the
16 Receivership Entities came from, how it was transferred between and among them,
17 and to whom it was disbursed. Importantly, this accounting allowed the Receiver to
18 analyze and ascertain the activity, status, and balance of Pensioner and Investor
19 accounts.

20 To briefly summarize, according to Receivership Entities' bank and book
21 records, during the period from August 2011 through early January 2016, PF-PI
22 raised approximately \$26 million from approximately 181 Investors and, combined
23 with another \$1 million of company money, used the funds to, among other things,
24 (a) make Lump Sum Payments to 286 Pensioners in the total amount of
25 approximately \$15.4 million, (b) make commission and agency payments to third
26 parties totaling approximately \$2.2 million, (c) make net payments to or for the
27 benefit of Defendants Lichtig, Hofelter, and Covey totaling approximately
28 \$3.4 million, (d) make an investment in a loan secured by real estate in the net

1 amount of \$1.2 million, (e) make monthly payments to Investors whose Pensioners
2 defaulted on their contracts in the total amount of approximately \$1.2 million, and
3 (f) fund new contracts with Pensioners (with PF-PI as the Investor) totaling
4 approximately \$1 million.

5 Armed with the forensic accounting analysis summarized below, the Receiver
6 was able to make recommendations therein with regard to unwinding or otherwise
7 resolving the Pensioner and Investor transactions. The Receiver's recommendations
8 are briefly summarized as follows:

9 1. **Pensioner Transactions** - The Receiver recommended that collections
10 from Pensioners be limited to the "Lump Sums" they received in light of the strong
11 likelihood that Federal and New York laws were violated by Defendants in
12 soliciting and carrying out Pensioner transactions;

13 2. **Collections from Pensioners** - The Receiver recommended and sought
14 authority to begin collection activity on defaulted Pensioners, including, where and
15 only as appropriate, filing actions and enforcing judgments to collect the full Lump
16 Sums; and

17 3. **Investor Claims** - The Receiver recommended and set forth proposed
18 procedures for the efficient and effective review and administration of Investor
19 claims against the receivership estate.

20 **C. Investor Communications**

21 The Receiver established a dedicated web page on her website that provides
22 case information and updates for Pensioners and Investors. With progression of the
23 case, additional frequently asked questions may also be added to the website. The
24 Internet address for the webpage is <http://www.ethreadvisors.com/cfpb-case-docs>.
25 In addition, the Receiver is maintaining a dedicated email address and telephone line
26 for Pensioner and Investor inquiries and regularly returns emails and phone calls
27 from investors.

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

2 **A. Consolidated Cash Activity**

3 The following summary reflects the Receivership Entities' consolidated cash
4 balance as of September 30, 2016:

5 East West Bank - Receiver	\$1,829,113
6 South County Bank - Receiver	\$480,569
7 South County Bank – PGR Reserve	\$172,006
8 South County Bank – PGR Management	\$5,000
9 South County Bank – PGR General	(\$366)
10 South County Bank – PGR Future Obligations	\$5,000
11 South County Bank - Pension Income	\$9,475
12 South County Bank - Pension Funding	Closed
Grand Total	\$2,500,797

13 The following is a summary of the consolidated cash activity in the Receiver-
14 controlled Receivership Entities' bank accounts for the period from July 1, 2016
15 through September 30, 2016:

16 Account Cash Balance at 6/30/16	\$2,086,361
17 Collection - Loan Interest (July-Sept)	\$22,000
18 Collection - Pensioner Payments (July-Sept)	\$510,354
19 Collection - Other Misc. & Interest	\$721
20 Pensioner Payments Rejected	(\$11,332)
21 Receiver Fees	(\$73,438)
22 Receiver Legal Fees	(\$30,988)
23 Other Miscellaneous Expenses	(\$2,881)
Cash Book Balance at 9/30/16	\$2,500,797

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

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1	Account Cash Balance at 1/7/16²	\$689,737
2	January 8, 2016 Pensioner Payments	\$99,009 ³
3	January 8, 2016 Investor Payments	(\$262,082) ⁴
4	Recovery – Bird Marella Law Firm Retainer	\$9,743
5	Recovery – David Arietta Law Firm Retainer	\$14,084
6	Recovery – Ramsey Law Firm Retainer	\$7,472
7	Collection – Loan Principal	\$100,000
8	Collection – Loan Interest (Feb.-Sept.)	\$59,400
9	Collection – Rex Hofelter Judgment	\$40,000
10	Collection – Ed Lichtig Judgment	\$282,108
11	Collection – Pensioner Payments (Feb.-Sept.)	\$1,614,349
12	Collection – Other Misc. & Interest	\$1,404
13	Pensioner Payments Rejected (Feb.-Sept.)	(\$40,852)
14	Receiver Fees	(\$73,438)
15	Receiver Legal Fees	(\$30,988)
16	Other Miscellaneous Expenses ⁵	(\$9,149)
17	Cash Book Balance at 9/30/16	\$2,500,797

V. RECOMMENDATIONS

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

A. Document Recovery Efforts

As necessary and appropriate, the Receiver will continue to obtain records from financial institutions where the Receivership Entities maintained accounts as well as from attorneys and accountants engaged by the Receivership Entities. It

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

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

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

1 may also be necessary to take the depositions of certain individuals to obtain a
2 complete picture of the enterprise.

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

4 The Receiver will continue to collect Pensioner payments, as appropriate, and
5 seek to locate any presently unaccounted for or misappropriated receivership assets
6 that may exist. As part of her investigation, the Receiver will evaluate whether any
7 claims against third parties should be pursued to recover assets or for damages
8 caused to the Receivership Entities. The Receiver will also evaluate cost-effective
9 collection options. The Receiver will seek Court approval before pursuing any such
10 claims or collection actions.

11 **C. Maximize Value of Other Assets**

12 The Receiver will continue her efforts to recover the value of the
13 Receivership Entities' \$1.1 million loan participation interest.

14 **D. Quarterly Reports**

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

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Dated: November 11, 2016

By: 
KRISTA L. FREITAG
Receiver

Dated: November 11, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
By: _____/s/ Edward Fates
EDWARD G. FATES
Attorneys for Receiver
KRISTA L. FREITAG