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10 Attorneys for Receiver  
KRISTA L. FREITAG

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

21 Defendants.  
22

Case No. 8:15-cv-1329

**EX PARTE APPLICATION FOR  
APPROVAL OF RECOMMENDED  
ADR PROCEDURE FOR INVESTOR  
CLAIM DISPUTES**

Ctrm.: 10A

Judge: Hon. Josephine L. Staton

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1 Krista L. Freitag ("Receiver"), the Court-appointed receiver for Defendants  
2 Pension Funding, LLC, Pension Income, LLC, and their subsidiaries, affiliates, and  
3 successors-in-interest (collectively, "Receivership Entities"), hereby submits this  
4 *Ex Parte* Application for Approval of Recommended ADR Procedure for Investor  
5 Claim Disputes pursuant to this Court's order approving in part the Receiver's  
6 Report and Recommendation (Dkt. No. 116) entered on December 14, 2016 (Dkt.  
7 No. 125).

8 On October 19, 2016, the Receiver filed her Forensic Accounting Report and  
9 Recommendation ("Report"). An email with a link to the Report was sent to all  
10 investors and pensioners. The Report was also posted to the website used to  
11 disseminate information to investors and pensioners. Although a number of  
12 investors and pensioners contacted the Receiver and/or her counsel to discuss the  
13 Report, no opposition to the Report or the recommendations contained therein was  
14 filed.

15 On December 9, 2016, the Court held a hearing on the Report. The Court  
16 noted that the Receiver had recommended that investor claim disputes be resolved  
17 via motion to the Court and expressed concern about the number of investors and  
18 the corresponding number potential claim disputes that might need to be resolved.  
19 The Court asked the parties about the possibility of using a dispute resolution  
20 procedure for claim disputes, such as appointing a special master to review disputes  
21 and make recommendations to the Court. When it was suggested that investor claim  
22 disputes go to a settlement conference with the Magistrate Judge, the Court stated  
23 that the Magistrate Judges in this District have a very heavy case load and it did not  
24 feel it was appropriate to add investor claim disputes to that case load.

25 Accordingly, the Receiver suggested and now recommends that investor  
26 claim disputes that cannot be resolved through direct discussions between an  
27 investor and the Receiver first go to mediation before being brought before the  
28 Court. Because (a) the calculation of investor claims is merely a function of

1 accounting (money invested, less money received in return), (b) a complete  
 2 accounting has been performed by the Receiver, and (c) there is a relatively small  
 3 number of investors (179), the Receiver does not anticipate that many investor  
 4 claims, if any, will involve disputes that cannot be promptly resolved.

5 It is also important to balance the very important need to keep expenses  
 6 associated with administration of the receivership to a minimum with the need to  
 7 give investors a fair opportunity to assert their claims. With all of that in mind, the  
 8 Receiver proposes that investor claim disputes that cannot be resolved through  
 9 direct discussions between an investor and the Receiver go to a half-day mediation  
 10 with one of the following recommended mediators:

Mediator	Company	Half-Day Mediation Fee
Hon. Mitchell Goldberg (Ret.)	Judicate West	\$4,195
Hon. John J. Hargrove (Ret.)	Judicate West	\$2,645
Hon. Randall Newsome (Ret.)	JAMS	\$4,200

16 These mediators are recommended based on their reputation as effective  
 17 mediators, experience in resolving claims in bankruptcy and/or receivership matters  
 18 (all are retired bankruptcy judges located in California), and reasonable rates. It  
 19 should be noted that many investors are located outside of Southern California, so it  
 20 may be necessary and appropriate to allow them to participate in the mediation by  
 21 telephone or video conference. If the mediation is unsuccessful in resolving the  
 22 claim dispute or the applicable investor fails to participate in the mediation, the  
 23 Receiver will file a motion to have the claim resolved by the Court.

24 Again, the Receiver does not anticipate that many investor claim disputes, if  
 25 any, will require mediation. Likewise, the Receiver does not anticipate that many, if  
 26 any, investor claim disputes will not be resolved via mediation. Even if there are  
 27 investor claim disputes that require the Court to make a determination, the Ninth  
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1 Circuit has made it clear that investor claims in federal equity receiverships can be  
2 properly determined via noticed motion and do not require a trial. *United States v.*  
3 *Arizona Fuels Corp.*, 739 F.2d 455, 458 (9th Cir. 1984) ("Receivership courts have  
4 the general power to use summary procedure in allowing, disallowing, and  
5 subordinating the claims of creditors."); *SEC v. Hardy*, 803 F.2d 1034, 1040 (9th  
6 Cir. 1986) (summary proceeding to approve categorization scheme regarding  
7 investors' claims was reasonable; fair notice and a reasonable opportunity to respond  
8 was given); *SEC v. Elliot*, 953 F.2d 1560, 1571 (11th Cir. 1992).

9 **Ex Parte Notice.** Pursuant to Local Rule 7-19, the following parties, who  
10 were both represented by counsel at the December 9, 2016 hearing, were advised of  
11 this application:

12 1) Consumer Financial Protection Bureau ("Bureau")

13 John C. Wells  
14 Consumer Financial Protection Bureau  
15 1700 G Street, NW  
16 Washington, DC 20552  
17 Tel: (202) 435-9319  
18 Email: john.wells@cfpb.gov

19 Owen P. Martikan  
20 Consumer Financial Protection Bureau  
21 301 Howard Street, 12th Floor  
22 San Francisco, CA 94106  
23 Tel: (415) 844-9790  
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25 2) Maria T. Vullo, Superintendent of Financial Services of the State of New  
26 York ("Superintendent")

27 Melissa J. O'Neill  
28 Office of the New York State Attorney General  
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New York, NY 10271-0332  
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1 Counsel for the Bureau and counsel for the Superintendent responded that  
2 they have no opposition to the recommendation. Accordingly, the Receiver requests  
3 an order approving her recommendation for mediation of investor claim disputes  
4 prior to seeking to have such disputes resolved by the Court, as described above.  
5

6 Dated: December 21, 2016

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

7 By:           /s/ Edward Fates          

8 EDWARD G. FATES  
9 Attorneys for Receiver  
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