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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.
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Case No. 8:15-cv-1329

**RECEIVER'S FOURTH INTERIM
REPORT**

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

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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 fourth interim report. This report covers the Receiver's activities
5 from October 1, 2016, through December 31, 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 of
19 a 6% annual return, Investors paid the Receivership Entities an amount sufficient to
20 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 Stipulated
23 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 Appointment
27 Order. As of December 31, 2016, the Receiver had secured and recovered
28 approximately \$2.79 million in cash and a \$1.1 million participating interest in a

1 commercial real estate loan. The other assets of the Receivership Entities, including
2 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 provided 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 included
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. The
13 recommendations specifically addressed the collection of Lump Sums (as defined
14 therein) from Pensioners, collection activity against Pensioners (as necessary and
15 appropriate), pursuit of claims to recover voidable transfers, and a proposed investor
16 claims process.

17 As further discussed below, in response to the Receiver's Forensic Accounting
18 Report and Recommendations, on December 14, 2016, the Court accepted most of
19 the Receiver's recommendations, and on January 4, 2017, the Court further ordered
20 an alternative dispute resolution process in the event of an unresolvable Investor
21 claim dispute between the Receiver and an Investor.

22 Accordingly, the Receiver continues her efforts to preserve, protect, identify,
23 and maximize the value of receivership assets and, pursuant to the Court's direction,
24 unwind or otherwise resolve the Pensioner and Investor transactions subject of this
25 case.

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

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

1 Covey, Edwin Lichtig, and Rex Hofelter. The Complaint alleges that Defendants
 2 violated the Consumer Financial Protection Act of 2010 and New York state law by
 3 making "pension advances" to pensioners while (a) failing to disclose the
 4 transactions were loans, (b) failing to disclose or misrepresenting the interest rate
 5 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 ("Receiver Motion").
 12 With the exception of Steven Covey,¹ Defendants answered the Complaint on
 13 October 23, 2015. Defendants then opposed the Receiver Motion on October 30,
 14 2015. At the hearing on the Motion held on December 18, 2015, the parties
 15 informed the Court that they had agreed upon a stipulation regarding preliminary
 16 injunction. Dkt. No. 56. The Joint Stipulation Requesting Entry of Stipulated
 17 Preliminary Injunction, Appointment of a Receiver, and Related Orders was filed on
 18 December 21, 2015. Dkt. No. 57. On January 8, 2015, the Court entered the
 19 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 hard copy records and documents of the Receivership Entities, and (d) investigating,

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 issuing subpoenas, and gathering records as to the assets and potential claims of the
2 Receivership Entities.

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

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

20 On October 19, 2016, the Receiver's Forensic Accounting Report and
21 Recommendations was filed (Dkt. No. 116) and heard on December 9, 2016. The
22 results therefrom are further discussed below in Section III(B). On December 14,
23 2016, the Court issued its Order Approving In Part the Receiver's [Forensic
24 Accounting] Report and Recommendations (Dkt. No. 125). On December 21, 2016,
25 the Receiver filed her Ex Parte Application for Approval of Recommended ADR
26 Procedure for Investor Claim Disputes (Dkt. No. 126). On January 4, 2017, the
27 Court issued its Order Denying the Receiver's Ex Parte Application and Adopting a
28 Revised Investor Dispute Resolution Process (Dkt. No. 128).

III. ACTIONS TO IMPLEMENT APPOINTMENT ORDER

A. Cash Recoveries

Pursuant to the Appointment Order, the Receiver has taken control of the Receivership Entities' bank accounts. As discussed in the Receiver's prior interim reports, the balance in the Receivership Entities' accounts as of her appointment on January 8, 2016, was \$526,664. As of March 31, 2016, June 30, 2016, September 30, 2016, and December 31, 2016, the Receivership Entity cash balance had increased to \$1,175,556, \$2,086,361, \$2,500,797, and \$2,787,495, respectively.

Between October 1, 2016, and December 31, 2016, the Receiver recovered and took possession of a total of \$369,748 of additional funds, which primarily resulted from the following:

- \$347,247 from Pensioner payments (payments net of rejections/insufficient fund payments);
- \$22,040 in payments on the aforementioned \$1.1 million loan participation interest; and
- \$461 of miscellaneous and interest income.

B. Forensic Accounting Report and Recommendations

As previously discussed, on October 19, 2016, the Receiver's Forensic Accounting Report and Recommendations was filed (Dkt. No. 116) and was heard on December 9, 2016. The Appointment Order directed the Receiver "to make an accounting, as soon as practicable, to this Court and the Plaintiffs of the status of each completed transaction related to Defendants' pension-advance products and to propose a methodology, subject to the Court's approval, for determining how to unwind or otherwise resolve any such transaction." To that end, the Receiver and her staff (a) reviewed and analyzed the Receivership Entities' bank records and books and records, (b) evaluated the Receivership Entities' sources of funds, and (c) evaluated the Receivership Entities' use of funds. Through this forensic accounting, the Receiver determined where the money raised by the Receivership

1 Entities came from, how it was transferred between and among them, and to whom it
2 was disbursed. Importantly, this accounting allowed the Receiver to analyze and
3 ascertain the activity, status, and balance of Pensioner and Investor accounts.

4 To briefly summarize, according to Receivership Entities' bank and book
5 records, during the period from August 2011 through early January 2016, PF-PI
6 raised approximately \$26 million from approximately 181 Investors and, combined
7 with another \$1 million of company money, used the funds to, among other things,
8 (a) make Lump Sum Payments to 286 Pensioners in the total amount of
9 approximately \$15.4 million, (b) make commission and agency payments to third
10 parties totaling approximately \$2.2 million, (c) make net payments to or for the
11 benefit of Defendants Lichtig, Hofelter, and Covey totaling approximately
12 \$3.4 million, (d) make an investment in a loan secured by real estate in the net
13 amount of \$1.2 million, (e) make monthly payments to Investors whose Pensioners
14 defaulted on their contracts in the total amount of approximately \$1.2 million, and
15 (f) fund new contracts with Pensioners (with PF-PI as the Investor) totaling
16 approximately \$1 million.

17 Armed with the forensic accounting analysis summarized above, the Receiver
18 was able to make recommendations therein with regard to unwinding or otherwise
19 resolving the Pensioner and Investor transactions. The Receiver's recommendations
20 are briefly summarized as follows:

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

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

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

4 In response to these recommendations, on December 14, 2016, the Court
5 issued its Order Approving In Part the Receiver's [Forensic Accounting] Report and
6 Recommendations (Dkt. No. 125), wherein the Court generally agreed that the
7 Receiver's proposals regarding collection of principal amounts received by
8 Pensioners, collection activity against Pensioners, pursuit of claims to recover
9 voidable transactions, and a proposed investor claims process, appropriately balanced
10 the interests of the Pensioners and Investors. The Court, however, had a few
11 qualifications. The Court specifically (a) directed that any Pensioner collection
12 efforts must strictly comply with any applicable state or federal collection laws,
13 (b) provided Investors 60 days to submit any challenge to their claims (rather than
14 the proposed 30 days), (c) required clear explanation of the Investors losses and
15 documentation required during the claims process, and (d) asked for a proposed
16 alternative dispute resolution process in the event of an unresolvable claim dispute
17 between Investors and the Receiver.

18 In response to the last Court qualification noted above, on December 21, 2016,
19 the Receiver filed her Ex Parte Application for Approval of Recommended ADR
20 Procedure for Investor Claim Disputes (Dkt. No. 126). On January 4, 2017, the
21 Court issued its Order Denying the Receiver's Ex Parte Application and Adopting a
22 Revised Investor Dispute Resolution Process (Dkt. No. 128), wherein the Court
23 ordered, in the event of an unresolvable dispute between Receiver and an Investor,
24 either party should file a written notice with the designated Magistrate Judge, who
25 will, on a case-by-case basis, determine whether to proceed by way of settlement
26 conference or whether to hear the dispute and provide the Court with her Report and
27 Recommendations.

28

1 **C. Pensioner Communications**

2 As a result of the Court's orders, the Receiver thus proceeded to communicate
3 via email and physical mail with Pensioners to ensure they understand their Court-
4 ordered Lump Sum payment responsibility. This communication has prompted
5 several defaulted Pensioners to resume payment and/or has prompted Pensioners to
6 pay off their remaining Lump Sum owing in full. The Receiver also prepared to and
7 has as of the date of this report, issued the return of all overpayment amounts to
8 Pensioners who made payments in excess of their Lump Sums. She has also
9 commenced her collection efforts by working to first determine the cost/benefit of
10 such efforts.

11 **D. Investor Claims Process**

12 Pursuant to the Court's Order, the Receiver also commenced the Investor
13 claims process by sending each investor an email explanation and an official Claims
14 Notice via USPS Certified Return Receipt Mail, which clearly explains the claims
15 process and includes a summary and detailed schedule reflecting the detailed and
16 summarized total amounts paid and received, and thus each contract's net loss. Such
17 net loss will be the basis for each Investor's claim calculation.

18 In the correspondence, the Receiver clearly explained that if the list of
19 payments and the net loss amount reflected on the schedule are accurate, no action is
20 necessary. If, on the other hand, they disagree with the schedule, they were directed
21 to respond in writing to the Receiver (email or physical mail) within 60 days of the
22 date of the letter (February 26, 2017), state the nature of the dispute, and provide
23 copies of all documentation supporting the disputed position, including bank records
24 showing payments believed missing.

25 Per the Court's directive, the Receiver will work to resolve all disputes, if any,
26 and upon doing so, intends to file a proposed distribution plan with the Court and
27 request permission to make an interim distribution to Investors in late spring/early
28 summer 2017.

E. General Communications

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

IV. POST-RECEIVERSHIP RECEIPTS AND DISBURSEMENTS

A. Consolidated Cash Activity

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

East West Bank - Receiver	\$1,829,574
South County Bank - Receiver	\$928,809
South County Bank – PGR Reserve	\$11,129
South County Bank – PGR Management	\$5,000
South County Bank – PGR General	\$2,312
South County Bank – PGR Future Obligations	\$5,000
South County Bank - Pension Income	\$5,671
South County Bank - Pension Funding	Closed
Grand Total	\$2,787,495

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

Account Cash Balance at 9/30/16	\$2,500,797
Collection - Loan Interest (Oct.-Dec.)	\$22,040
Collection - Pensioner Payments (Oct.-Dec.)	\$349,949
Collection - Other Misc. & Interest	\$461
Pensioner Payments Rejected	(\$2,702)
Receiver Fees	(\$53,025)
Receiver Legal Fees	(\$25,124)
Other Miscellaneous Expenses	(\$4,901)
Cash Book Balance at 12/31/16	\$2,787,495

The following is a summary of the consolidated cash activity in the Receiver-controlled Receivership Entities' bank accounts for the period from January 7, 2016 through December 31, 2016:

Account Cash Balance at 1/7/16	\$689,737
January 8, 2016 Pensioner Payments	\$99,009
January 8, 2016 Investor Payments	(\$262,082)
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.-Dec.)	\$81,440
Collection – Rex Hofelter Judgment	\$40,000
Collection – Ed Lichtig Judgment	\$282,108
Collection – Pensioner Payments (Feb.-Dec.)	\$1,964,298
Collection – Other Misc. & Interest	\$1,866
Pensioner Payments Rejected (Feb.-Dec.)	(\$43,555)
Receiver Fees	(\$126,464)
Receiver Legal Fees	(\$56,113)
Other Miscellaneous Expenses	(\$14,048)
Cash Book Balance at 12/31/16	\$2,787,495

V. RECOMMENDATIONS

As a general matter, the Receiver continues 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 orders.

A. Receivership Asset Recovery Efforts and Investigation

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. As part of her investigation, the Receiver will evaluate whether any claims against third parties should be pursued to recover assets or for damages caused to the Receivership Entities. The Receiver is also in the process of evaluating cost-effective collection options.

1 **B. Maximize Value of Other Assets**

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

4 **C. Quarterly Reports**

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

7
8 Dated: January 30, 2017

By: 

KRISTA L. FREITAG
Receiver

10
11 Dated: January 30, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

13 By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
KRISTA L. FREITAG