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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 SEVENTH 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 seventh interim report. This report covers the Receiver's
5 activities from July 1, 2017, through September 30, 2017.

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 has been working to coordinate payment of the approved return of
6 \$700,000 in pensioner overpayments and \$2.9 million in interim distributions to
7 investors with allowed claims. While over 75% of the distribution payments were
8 made by June 30, 2017, the remaining 25% of the distribution payments were issued¹
9 by September 30, 2017, upon confirming distribution elections with the investors.

10 Meanwhile, the Receiver continues her efforts to preserve, protect, identify,
11 collect and maximize the value of receivership assets, including collection of
12 pensioner payments, as further discussed below.

13 II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

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

25
26
27 ¹ While all payments had been issued, two checks totaling \$41,985.42 remained
28 outstanding/uncashed as of September 30, 2017.

1 On October 7, 2015, the Bureau and Superintendent moved for a preliminary
2 injunction, appointment of a receiver, and other equitable relief ("Receiver Motion").
3 With the exception of Steven Covey,² Defendants answered the Complaint on
4 October 23, 2015. Defendants then opposed the Receiver Motion on October 30,
5 2015. At the hearing on the Receiver Motion held on December 18, 2015, the parties
6 informed the Court that they had agreed upon a stipulation regarding preliminary
7 injunction. Dkt. No. 56. The Joint Stipulation Requesting Entry of Stipulated
8 Preliminary Injunction, Appointment of a Receiver, and Related Orders was filed on
9 December 21, 2015. Dkt. No. 57. On January 8, 2015, the Court entered the
10 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 March 1,
20 2016, the Receiver filed a Motion for Order in Aid of Receivership (Dkt. No. 71),
21 seeking authority to engage Allen Matkins Leck Gamble Mallory & Natsis LLP
22 ("Allen Matkins") as her general counsel, for relief from Local Rule 66-5 and 66-7
23 and to file interim reports and interim fee applications on a quarterly basis. The
24 Court held a hearing on April 13, 2016, at which time it stated it would grant the
25 Receiver authority to engage Allen Matkins, grant relief from the requirement to
26

27 ² 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 serve notices by mail under Local Rule 66-7, extend the deadline under Local
2 Rule 66-5 to file a schedule of known creditors to July 2016, and allow the schedule
3 of known creditors to be filed under seal. The Receiver's application to file the
4 schedule of known creditors under seal was filed concurrently with the Receiver's
5 Second Interim Report (Dkt. No. 100).

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

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

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

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

23 **A. Cash Recoveries**

24 As discussed in the Receiver's prior interim reports, the balance in the
25 Receivership Entities' accounts as of her appointment on January 8, 2016, was
26 \$526,664. The balance increased steadily to \$2,787,495 as of December 31, 2016 (a
27 balance that does not reflect the Lynk Capital proceeds received in the second quarter
28 of 2017 from the sale of the loan participation interest), and then dropped to

1 \$487,777 as of September 30, 2017, due to the return of nearly \$700,000 in
2 pensioner overpayments and the distribution of a total of \$2,904,158 to investors
3 with allowed claims.

4 Between July 1, 2017, and September 30, 2017, the Receiver recovered and
5 took possession of a total of \$189,307 of additional funds, which primarily resulted
6 from the following:

- 7 • \$156,291 from Pensioner payments (payments net of rejections/
8 insufficient fund payments);
- 9 • \$9,278 in payments on the \$1.1 million Lynk Capital loan participation
10 interest sale (recovery of legal fees);
- 11 • \$17,259 in prior year tax refunds and \$5,817 in legal retainer refunds;
12 and
- 13 • \$662 of miscellaneous and interest income.

14 **B. Pensioner Communications and Collections**

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

22 She has also commenced her defaulted Pensioner collection efforts by
23 gathering information, working to first determine the likely costs and benefits of such
24 efforts, and sending collection letters. Initial collection letters were sent to
25 pensioners in April 2017, with Final Notice letters sent in July 2017. At this time, the
26 Receiver has proceeded with complaints against four pensioners, two of whom have
27 defaulted. The other two have filed answers to the complaints and the Receiver has
28

1 propounded discovery requests and will soon proceed with motions for summary
 2 judgment.

3 **C. Investor Claims Process**

4 Pursuant to the Court’s December 14, 2016 Order, the Receiver completed the
 5 Investor claims process. As previously mentioned, the Distribution Motion was filed
 6 on April 25, 2017, and approved on May 31, 2017. Accordingly, the Receiver has
 7 worked to coordinate payment of the \$2,904,158 of approved interim distributions.
 8 As of September 30, 2017, the Receiver had issued payments in the full amount of
 9 \$2,904,158, upon confirmation of distribution elections. As of September 30, 2017,
 10 distribution checks totaling \$2,862,173 had cleared (\$2,185,523 in the first quarter of
 11 2017 and \$676,650 in the second quarter of 2017) and two investor distribution
 12 checks in the total amount of \$41,985, remained outstanding.

13 **D. General Communications**

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

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

22 **A. Consolidated Cash Activity**

23 The following summary reflects the Receivership Entities' consolidated cash
 24 balance as of September 30, 2017:

25 East West Bank - Receiver	\$355,474
26 South County Bank - Receiver	\$200,885
27 South County Bank – PGR Reserve	\$7,180
28 South County Bank – PGR Management	Closed
South County Bank – PGR General	\$3,475

1	South County Bank – PGR Future Obligations	Closed
2	South County Bank - Pension Income	Closed
3	South County Bank - Pension Funding	Closed
4	Grand Total	\$567,014

5 As of September 30, 2017, outstanding checks totaled \$79,237, resulting in a
6 September 30, 2017 reconciled cash balance of \$487,777.

7 The following is a summary of the consolidated cash activity in the Receiver-
8 controlled Receivership Entities' bank accounts for the period from July 1, 2017,
9 through September 30, 2017:

10	Account Cash Balance at 6/30/17	\$1,180,672
11	Collection – Note Sale Legal Fees Recovery	\$9,278
12	Collection – Pensioner Payments (July-Sept.)	\$159,649
13	Collection – Tax Refund, Other Misc. & Interest	\$23,737
14	Pensioner Payments Rejected (July-Sept.)	(\$3,358)
15	Receiver Fees	(\$88,796)
16	Receiver Legal Fees	(\$72,814)
17	Investor Interim Distribution	(\$718,635)
18	Other Miscellaneous Expenses	(\$1,956)
19	Cash Book Balance at 9/30/17	\$487,777

20 The following is a summary of the consolidated cash activity in the Receiver-
21 controlled Receivership Entities' bank accounts for the period from January 7, 2016
22 through September 30, 2017:

23	Account Cash Balance at 1/7/16³	\$689,737
24	January 8, 2016 Pensioner Payments	\$99,009 ⁴
25	January 8, 2016 Investor Payments	(\$262,082) ⁵
26	Recovery – Bird Marella Law Firm Retainer	\$9,743

27 ⁴ Pensioner payments collected prior to the Receiver's appointment, but posted to
the account on January 8, 2016.

28 ⁵ Payments to Investors issued prior to the Receiver's appointment, but posted to
the account on January 8, 2016.

1	Recovery – David Arietta Law Firm Retainer	\$14,084
2	Recovery – Ramsey Law Firm Retainer	\$7,472
3	Recovery – GCA Law Partners Retainer	\$5,817
4	Collection – Loan Principal	\$1,000,000
5	Collection – Loan Interest (Feb. 16-Sept 17)	\$124,553
6	Collection – Loan Sale Legal Fee Recovery	\$9,278
7	Collection – Rex Hofelter Judgment	\$40,000
8	Collection – Ed Lichtig Judgment	\$282,108
9	Collection – Pensioner Payments (Feb. 16-Sept 17)	\$2,659,914
10	Collection – Tax Refund, Other Misc. & Interest	\$21,505
11	Pensioner Payments Rejected (Feb. 16-Sept 17)	(\$51,107)
12	Receiver Fees	(\$314,756)
13	Receiver Legal Fees	(\$209,144)
14	Return of Pensioner Lump-Sum Overpayments	(\$698,528)
15	Investor Interim Distribution	(\$ 2,904,158)
16	Other Miscellaneous Expenses ⁶	(\$35,668)
17	Cash Book Balance at 9/30/17	\$487,777

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. The Receiver is also in the process of pursuing cost-effective collections where appropriate.

B. Maximize Value of Other Assets

The Receiver completed her work to recover and maximize the value of the Receivership Entities' \$1.1 million loan participation interest ("Loan Participation").

⁶ Primarily reflects Pensioner asset search fees, bank fees, income tax return and income-tax related payments.

1 As discussed in the Receiver's motion for approval of the proposed sale transaction
2 (Dkt. No. 140), the Receivership Entities invested a total of \$1.6 million in the Loan
3 Participation. With no control over the master loan or the underlying collateral, with
4 a maturity date that had already passed, and with no ability to assign/sell the
5 participation interest without the lead lender's approval, the Receiver deemed it in
6 the best interest of the receivership estate to pursue a sale to a buyer located by the
7 lender. The Court approved the motion on May 31, 2017 (Dkt. No. 148) and the
8 Receiver thus completed the approved transaction. As a result, including pre-
9 receivership and post-receivership interest and principal payments, the Receivership
10 Entities recovered a total of \$1,738,891 in payments on the original \$1.6 million
11 investment, and additionally recovered \$9,278 of legal fees incurred in connection
12 with the sale.

13 **C. Quarterly Reports**

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

16
17 Dated: November 28, 2017


KRISTA L. FREITAG
Receiver

18
19 Dated: November 28, 2017

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21 By: */s/ Edward Fates*

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KRISTA L. FREITAG

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