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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 SECOND 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 second interim report. This report covers the Receiver's
5 activities from April 1, 2016 through June 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 advances"
13 – lump-sum payments that Pensioners could receive in return for agreeing to direct
14 all or part of their pension payments to the Receivership Entities, over eight years, to
15 repay the advances. The Complaint also alleges that while soliciting Pensioners to
16 "sell" their pension income, Defendants simultaneously solicited investors
17 ("Investors"), often retirees, recruited through a network of financial advisors, to
18 provide the capital for the transactions with Pensioners. For a promise of a 6%
19 annual return, Investors paid the Receivership Entities an amount sufficient to fund
20 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 June 30, 2016, the Receiver had secured and recovered
28 nearly \$2.1 million in cash and a \$1.1 million participating interest in a commercial

1 real estate loan. The other assets of the Receivership Entities, including the
2 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 has worked diligently to complete a forensic accounting, which the
6 Appointment Order directs her to conduct. The forensic accounting is necessary to
7 provide accurate information about the detailed sources and uses of funds of the
8 Receivership Entities. Such accounting will ultimately determine the balance of
9 Pensioner and Investor accounts, and where the money raised by the Receivership
10 Entities came from, how it was transferred between and among them, and to whom
11 it was disbursed. Such accounting will also be critical in determining the most fair
12 and equitable way to unwind or otherwise resolve the pension advance transactions
13 that are the subject of this case. The Receiver has completed the majority of the
14 forensic accounting; however, the Receiver just received (on July 20, 2016) the
15 older Chase Bank records and has not had sufficient time to incorporate said
16 banking data. Nevertheless, the Receiver was able to make reasonable assumptions
17 based on the records she does have, assumptions which are sufficient to produce the
18 schedule of known creditors, filed under seal, concurrently herewith. The Receiver
19 expects to complete her accounting on or before September 30, 2016 and present her
20 report and proposal for resolving the pension advance transactions shortly thereafter.

21 The Receiver therefore recommends the receivership continue, that she
22 continue her efforts to preserve, protect, identify, and maximize the value of
23 receivership assets, and to complete the Court-ordered forensic accounting enabling
24 her to propose a methodology, for the Court's consideration and approval, for
25 determining how to unwind or otherwise resolve the Pensioner and Investor
26 transactions subject of this case. As discussed below, although the Receiver and her
27 professionals have made substantial progress, some work remains to be done.

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

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

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

23 In accordance with the Appointment Order and the law governing federal
24 equity receiverships, upon her appointment, the Receiver promptly took steps to
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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, which was granted on July 11, 2016. Dkt. Nos. 65,
96. Accordingly, all references to actions taken by "Defendants" are to Pension
Funding, LLC, Pension Income, LLC, Edwin Lichtig, and Rex Hofelter.

1 implement the terms and provisions of the Appointment Order, including (a) taking
2 control of all accounts of the Receivership Entities, (b) imaging and preserving all
3 electronic data of the Receivership Entities, (c) securing and taking possession of all
4 hard copy records and documents of the Receivership Entities, and (d) investigating,
5 issuing subpoenas, and gathering records as to the assets and potential claims of the
6 Receivership Entities.

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

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

23 III. ACTIONS TO IMPLEMENT APPOINTMENT ORDER

24 A. Cash Recoveries

25 Pursuant to the Appointment Order, the Receiver has taken control of the
26 Receivership Entities' bank accounts. As discussed in the Receiver's First Interim
27 Report, the balance in the Receivership Entities' accounts as of her appointment on
28 January 8, 2016 was \$526,664.09, and as of the March 31, 2016, the Receiver had

1 collected an additional \$651,662, bringing the total cash in the receivership estate to
2 \$1,178,326.09.

3 Between April 1, 2016 and June 30, 2016, the Receiver recovered and took
4 possession of a total of \$914,303.94 of additional funds, which primarily resulted
5 from the following:

- 6 • \$609,987.54 from Pensioner payments (payments net of
7 rejections/insufficient fund payments);
- 8 • \$21,999.99 in payments on the aforementioned \$1.1 million loan
9 participation interest;
- 10 • \$282,108.47 from Edwin Lichtig pursuant to the Stipulated Judgment,
11 and
- 12 • \$207.94 of miscellaneous and interest income.

13 In the second quarter 2016, the Receiver also set up an insured and interest
14 bearing bank account for a large portion of the Receivership Estate's funds with
15 East West Bank.

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

19 **B. Forensic Accounting**

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

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

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

6 Accordingly, and with the assistance of counsel, the Receiver issued
7 subpoenas to gather documents from several financial institutions. Such documents
8 are critical to the Receiver's forensic accounting due to the lack of a detailed
9 accounting system reflecting Pensioner and Investor transaction details since
10 inception of each applicable contract. Upon receipt of banking records, the Receiver
11 and her staff promptly commenced the forensic accounting and investigation. As
12 discussed below, due to the number of bank accounts, the high volume of
13 transactions, and the lack of a thorough and centralized accounting system, the
14 forensic accounting project will take time to complete. Nonetheless, through
15 June 30, 2016, the Receiver had completed a majority of the forensic accounting;
16 however, she just received the older Chase Bank account records necessary to
17 complete the accounting. The Receiver anticipates the accounting will be completed
18 on or before September 30, 2016.

19 At this point, more than 100 Pensioners have filed bankruptcy and/or have
20 defaulted on their contractual obligations, approximately 20 of which have occurred
21 since the Receiver's appointment. In such cases, prior to the appointment of the
22 Receiver, the Receivership Entities were using reserve funds to keep Investor
23 payments current. The Receiver is working to send collection letters to defaulted
24 pensioners and has responded to file proofs of claim in the bankruptcies which have
25 occurred since her appointment. The Receiver's counsel is also researching the
26 older, pre-receivership bankruptcies to see what, if anything, can be recovered and if
27 any distributions were made from such bankruptcies directly to Investors.

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1 **C. 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, additional frequently asked questions, may also be added to
 5 the website. The Internet address for the webpage is
 6 <http://www.ethreadvisors.com/cfpb-case-docs>. In addition, the Receiver is
 7 maintaining a dedicated e-mail address and telephone line for Pensioner and
 8 Investor inquiries and regularly returns emails and phone calls from investors.

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

10 **A. Consolidated Cash Activity**

11 The following summary reflects the Receivership Entities' consolidated cash
 12 balance as of June 30, 2016:

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|---|--------------------|
| 13 East West Bank - Receiver | \$1,828,392 |
| 14 South County Bank - Receiver | \$234,264 |
| 15 South County Bank – PGR Reserve | \$6,440 |
| 16 South County Bank – PGR Management | \$5,000 |
| 17 South County Bank – PGR General | \$2,265 |
| 18 South County Bank – PGR Future Obligations | \$5,000 |
| 19 South County Bank - Pension Income | \$5,000 |
| South County Bank - Pension Funding | Closed |
| 20 Grand Total | \$2,086,361 |

21 The following is a summary of the consolidated cash activity in the Receiver-
 22 controlled Receivership Entities' bank accounts for the period from April 1, 2016
 23 through June 30, 2016:

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|--|--------------------|
| Account Cash Balance at 3/31/16 | \$1,175,556 |
| Collection - Loan Interest (April-June) | \$22,000 |
| Collection - Ed Lichtig Judgment | \$282,108 |
| Collection - Pensioner Payments (April-June) | \$623,805 |
| Collection - Other Misc. & Interest | \$208 |
| Pensioner Payments Rejected | (\$13,817) |
| Other Miscellaneous Expenses ² | (\$3,499) |
| Cash Book Balance at 6/30/16 | \$2,086,361 |

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 June 30, 2016:

| | |
|---|--------------------------|
| Account Cash Balance at 1/7/16³ | \$689,737 |
| January 8, 2016 Pensioner Payments | \$99,009 ⁴ |
| January 8, 2016 Investor Payments | (\$262,082) ⁵ |
| 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.-June) | \$37,400 |
| Collection – Rex Hofelter Judgment | \$40,000 |
| Collection – Ed Lichtig Judgment | \$282,108 |
| Collection – Pensioner Payments (Feb.-June) | \$1,103,997 |
| Collection – Other Misc. & Interest | \$682 |
| Pensioner Payments Rejected | (\$29,520) |
| Other Miscellaneous Expenses ⁶ | (\$6,269) |
| Cash Book Balance at 6/30/16 | \$2,086,361 |

² Primarily reflects bank fees and income-tax related payments.

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

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

⁶ Primarily reflects bank fees and income-tax related payments.

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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, to complete her forensic accounting, 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 may also be necessary to take the depositions of certain individuals to obtain a complete picture of the enterprise.

B. Receivership Asset Recovery Efforts and Investigation

The Receiver will continue to collect Pensioner payments, as appropriate, 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 will also evaluate cost-effective collection options and will seek Court approval before pursuing any such claims or collection actions.

C. Accounting

The Receiver has obtained a significant volume of bank records and records held by third parties; the Receiver will complete her accounting to establish, among other things, the total funds each Pensioner and Investor has paid and received, enabling her to propose a plan and methodology, for the Court's consideration and approval, for unwinding or otherwise resolving the Pensioner and Investor transactions that are the subject of this case. As noted above, the Receiver expects

1 to complete her accounting in the next 60 days and present her report and proposal
2 for resolving the pension advance transactions shortly thereafter.

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

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

6 **E. Quarterly Reports**

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

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Dated: July 29, 2016



KRISTA L. FREITAG

Dated: July 29, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: _____/s/ Edward Fates
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