

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

FUTURE INCOME PAYMENTS, LLC; FIP, LLC;
CASH FLOW INVESTMENT PARTNERS LLC;
PENSION ADVANCE LLC; BUYSPELLANNUITY
INC.; CASH FLOW INVESTMENT PARTNERS
EAST LLC; CASH FLOW INVESTMENT
PARTNERS MIDEAST LLC; LUMPSUM PENSION
ADVANCE ATLANTIC LLC; LUMPSUM
PENSION ADVANCE SOUTHEAST LLC;
LUMPSUM SETTLEMENT WEST LLC; PAS
CALIFORNIA LLC; PAS GREAT LAKES LLC;
PAS NORTHEAST LLC; PAS SOUTHWEST LLC;
PENSION ADVANCE CAROLINAS LLC;
PENSION ADVANCE MIDWEST LLC; PENSION
LOANS SOUTH LLC; SCOTT KOHN; AND DOES
1-100,

Defendants.

Case No. 6:19-cv-02950-BHH

**ENTRY OF DEFAULT JUDGMENT
AND ORDER AND APPOINTMENT
OF A RECEIVER**

Plaintiff Bureau of Consumer Financial Protection (Bureau) commenced this civil action in the United States District Court for the Central District of California on September 13, 2018, under the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536(a)(1), 5564, & 5565, the Truth in Lending Act (TILA), 15 U.S.C. § 1638(a)-(b), and Regulation Z, 12 C.F.R. §§ 1026.17(a)-(b) (2015), 1026.18 (2015) against all named Defendants.

Defendants waived service on October 18, 2018, and had until November 19, 2018, under the Federal Rules of Civil Procedure, to answer or otherwise respond to the Complaint.

Defendants failed to respond. The Clerk of the United States District Court for the Central District of California entered a default against Defendants on December 21, 2018, under Fed. R. Civ. P. 55(a). On October 17, 2019, the United States District Court for the Central District of California transferred venue to this Court. The Bureau has filed a Motion for Entry of Default Judgment and Appointment of a Receiver (the Motion) pursuant to Fed. R. Civ. P. 55(b)(2).¹ The Court, having considered the Bureau's Motion, supporting declarations and exhibits, and the entire record in this matter, finds good cause to grant the requested relief.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. Defendant FIP, LLC, claims to be "America's largest pension cash flow originator with over \$150 Million in completed transactions." Compl. ¶ 21.
2. Defendant FIP, LLC, as well as Defendant Future Income Payments, LLC, extend or extended consumer credit and service or serviced consumer loans, and are therefore "covered persons," as defined by 12 U.S.C. § 5481(5), (6)(A), 15(A)(i). Compl. ¶¶ 10-11.
3. Defendants Cash Flow Investment Partners LLC, Pension Advance LLC, and BuySellAnnuity Inc. are or were marketing affiliates for Future Income Payments, marketing the credit products that Future Income Payments provides and collecting personal and financial information from consumers who express or expressed interest in the products. Compl. ¶ 12.

¹ The Motion was previously styled as an application in the Central District of California. *See* Notice of Application and Application for Entry of Default Judgment, Appointment of a Receiver, and Transfer of Venue (Application) (ECF No. 21).

4. These marketing affiliates are “covered persons” under the CFPA because they offer or have offered loans to consumers, 12 U.S.C. § 5481(5), (6)(A), 15(A)(i). They are also “covered persons” because they are “affiliates” of Future Income Payments and provide or have provided a service to Future Income Payments with respect to its extensions of consumer credit. *Id.* § 5481 (1), (6)(B), 26(A); Compl. ¶ 13.

5. Defendants Cash Flow Investment Partners East LLC; Cash Flow Investment Partners Mideast LLC; Lumpsum Pension Advance Atlantic LLC; Lumpsum Pension Advance Southeast LLC; Lumpsum Settlement West LLC; PAS California LLC; PAS Great Lakes LLC; PAS Northeast LLC; PAS Southwest LLC; Pension Advance Carolinas LLC; Pension Advance Midwest LLC; Pension Loans South LLC are “covered persons” because they service or serviced consumer loans. They are also “covered persons” because they are affiliates of Future Income Payments and provide or have provided a material service with respect to its extensions of consumer credit. 12 U.S.C. § 5481(6)(B), 26(A); Compl. ¶¶ 14-15.

6. Scott Kohn had managerial authority for all Defendant entities. Kohn is therefore a “related person” as to these entities, 12 U.S.C. § 5481(25)(C)(i), and because he is a “related person,” he is deemed a “covered person” under the CFPA. *Id.* § 5481(25)(B); Compl. ¶ 16.

7. The Defendant entities operate or have operated as a common enterprise, sharing physical addresses, website URLs, and webpages, and a common manager (Kohn), while engaging in the acts and practices described in the Complaint. Compl. ¶¶ 20, 46-48. “[W]here corporate entities operate together as a common enterprise, each may be held liable for the deceptive acts and practices of the other.” *In re Sanctuary Belize Litig.*, 409 F. Supp. 3d 380, 397 (D. Md. 2019) (quoting *FTC v. Grant Connect, LLC*, 763 F.3d 1094, 1105 (9th Cir. 2014)); *see also Rowe v. Brooks*, 329 F.2d 35, 39 (4th Cir. 1964) (finding a joint venture and imposing responsibility on both “joint adventurers” for liability incurred within the scope of the enterprise). Because Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged in the Complaint.

8. From at least April 2011 through April 2018, Defendants contracted with

consumers for over \$436 million in Pension-Advance Products. *See* Compl. ¶¶ 24-45; Declaration of Matt Heidari ¶ 13 (ECF No. 29). This figure includes the total amount consumers contracted to pay, plus fees, to receive a lump sum, minus the lump sums the consumers received. Heidari Decl. ¶ 13. Defendants caused harm in the amount of the total fees and interest consumers paid on the lump sums they received.

9. This is an action by the Bureau instituted under the CFPA, 12 U.S.C. §§ 5531, 5536(a), 5564, & 5565, and TILA, 15 U.S.C. § 1638(a)-(b). The Complaint seeks permanent injunctive relief, redress to consumers, disgorgement, a civil money penalty, and the appointment of a receiver. The Bureau has authority to seek this relief.

10. This Court has jurisdiction over the subject matter of this case and has jurisdiction over Defendants under 12 U.S.C. § 5565(a)(1) and 28 U.S.C. §§ 1331 and 1345.

11. Venue in this District is proper under 12 U.S.C. § 5564(f).

12. Kohn executed a Waiver of Service of Summons on October 18, 2018, on behalf of all Defendants (ECF No. 12).

13. Defendants failed to answer the Complaint or otherwise defend this action.

14. The Clerk of Court properly entered defaults against Defendants on December 21, 2018 (ECF No. 15).

15. Defendants are not minors, incompetent persons, or current members of the military service.

16. Defendants were served with notice of the Application by U.S. mail on August 9, 2019, at least seven days before any hearing on the Application. Declaration of Alanna B. Carbis ¶¶ 8-9 (ECF No. 24). The written notice included the amount of the civil penalty requested by the Bureau. *Id.* The amount has since been adjusted for inflation, per 12 C.F.R. § 1083.1.

17. Because of Defendants' default and the Clerk of Court's entry of default against Defendants, the Court may now exercise its discretion to enter a default judgment against Defendants. Fed. R. Civ. P. 55(b); *see also Quicken Loans Inc v. Junkins*, No. 1:17-CV-02411-JMC, 2018 WL 272274, at *3 (D.S.C. Jan. 3, 2018).

18. The court considers whether the party moving for default has set forth claims for which relief can be granted pursuant to the Federal Rule of Civil Procedure 12(b)(6) standard. *Mary Kay Inc. v. Ayres*, 827 F. Supp. 2d 584, 590 (D.S.C. 2011); *see also J&J Sports Prods., Inc. v. Brazilian Paradise, LLC*, 789 F. Supp. 2d 669, 673 (D.S.C. 2011).

19. The allegations in the Complaint filed in this action are taken as true, with the exception of the allegations relating to the amount of damages. *See* Fed. R. Civ. P. 8(b)(6); *see also DIRECTV, Inc. v. Rawlins*, 523 F.3d 318, 322 n.2 (4th Cir. 2008) (“Due to [defendant’s] default, we accept [plaintiff’s] allegations against him as true.”); *Quicken Loans Inc.*, 2018 WL 272274, at *3 (“The defendant, by his default, admits the plaintiff’s well pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established[.]”) (quoting *Ryan v. Homecomings Fin. Network*, 253 F.3d 778, 780 (4th Cir. 2001)).

20. The Complaint states claims on which relief can be granted.

21. Based on the well-pleaded allegations in the Complaint that state claims on which relief can be granted, judgment is entered against Defendants, in favor of Plaintiff, on Counts I through III.

22. Section 1055 of the CFPB, 12 U.S.C. § 5565, empowers this Court to order legal and equitable relief, including injunctive relief, restitution, and civil money penalties. To obtain a permanent injunction, the Court considers whether the Bureau has shown:

- a. that it has suffered an irreparable injury;
- b. that remedies available at law, such as monetary damages, are inadequate to compensate for that injury;
- c. that, considering the balance of hardships between the plaintiff and the defendant, a remedy in equity is warranted; and
- d. that the public interest would not be disserved by a permanent injunction.

eBay, Inc. v. MercExchange, LLC, 547 U.S. 388, 391 (2006); *see also Mary Kay Inc. v. Ayres*, 827 F. Supp. 2d 584, 595 (D.S.C. 2011) (same); *CFPB v. Pension Funding, LLC*, No. SACV 15-

1329-JLS, 2016 WL 7644793, at *7 (C.D. Cal. July 11, 2016) (“[B]ecause the Court finds that [defendant] has violated the CFPB, injunctive relief is warranted.”).

23. Once the Court’s equitable powers are invoked, the full breadth of the Court’s authority is available, including the power to grant such additional relief as is “necessary to accomplish complete justice,” *FTC v. Ross*, 897 F. Supp. 2d 369, 386-87 (D. Md. 2012), *aff’d*, 743 F.3d 886 (4th Cir. 2014), such as the appointment of a receiver. *SEC v. Inteligentry, Ltd.*, 749 F. App’x 661, 663 (9th Cir. 2019); *see also SEC v. Parish*, No. 2:07-CV-00919-DCN, 2010 WL 5394736, at *1 (D.S.C. Feb. 10, 2010) (using a receiver to manage and distribute assets to investors and creditors).

24. The CFPB also authorizes this Court to order restitution, 12 U.S.C. §§ 5565(a)(1) and (2)(c), “[i]n the absence of proof of ‘actual damages.’” *CFPB v. Gordon*, 819 F.3d 1179, 1195 (9th Cir. 2016) (internal citation omitted); *see also Ross*, 897 F. Supp. 2d at 386. The government “bears the burden of proving that the amount it seeks in restitution reasonably approximates the defendant’s unjust gains.” *Gordon*, 819 F.3d at 1195 (internal citation omitted); *see also* Restatement (Third) of Restitution and Unjust Enrichment § 51 (2011) (“[T]here are numerous disgorgement cases in which, given the nature of the transaction, the most precise measurement of the defendant’s unjust gains can be no more than a reasonable approximation, or else a set of upper and lower bounds within which the gains necessarily fall. A remedy may be allowed in such cases, notwithstanding the residual uncertainty, because of a presumption that resolves against the conscious wrongdoer an uncertainty created by the wrong”); *cf. Ross*, 897 F. Supp. 2d at 388 (“[U]nder Section 13(b) a court may order disgorgement of a defendant’s ‘unjust enrichment’ when it is not possible to reimburse all of the consumers who have been injured by the defendant’s misrepresentations.”) (citation omitted).

25. A district court may use a defendant’s net revenues as a basis for measuring unjust gains. *Gordon*, 819 F.3d at 1195; *see also FTC v. Gill*, 265 F.3d 944, 958 (9th Cir. 2001) (“In the absence of proof of ‘actual damages,’ the court properly used the amounts consumers paid as the basis for the amount Defendants should be ordered to pay for their wrongdoing.”);

Ross, 897 F. Supp. 2d at 380. If the government makes this threshold showing, the burden shifts to the defendant to demonstrate that the net revenues figure overstates the defendant’s unjust gains. *Gordon*, 819 F.3d at 1195; *Ross*, 897 F. Supp. 2d at 388.

26. The CFPA also authorizes the Court to order civil money penalties against “[a]ny person [including individuals and entities] that violates, through any act or omission, any provision of Federal consumer financial law.” 12 U.S.C. § 5565(a)(2)(H), (c)(1). The CFPA provides three tiers of penalties, based on the subject’s degree of scienter: up to \$5,883 per day for any violation; up to \$29,416 per day for each reckless violation; and up to \$1,176,638 per day for each knowing violation. *Id.* § 5565(c)(2)(A)-(C); 12 C.F.R. § 1083.1. The amounts assessed within these tiers depend on various factors listed in the statute, including the “gravity of the violation”; “severity of the risks to or losses of the consumer” and “such other matters as justice may require.” 12 U.S.C. § 5565(c)(3).

27. As set forth in detail below, the Bureau is entitled to an Order imposing a permanent injunction, appointing a receiver, and requiring Defendants to pay consumer restitution in the amount of \$436,137,001.12 and a civil money penalty in the amount of \$65,481,736.

28. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, whether civil or criminal.

29. Entry of this Order is in the public interest because it provides redress to aggrieved parties, prevents future violations of law, avoids Defendants’ unjust enrichment, and promotes the enforcement of federal consumer protection law.

DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

30. “Affected Consumers” includes all consumers who contracted with Defendants between April 2011 and April 2018 for a Pension-Advance Product.

31. “Assisting Others” includes, but is not limited to:

- a. consulting in any form whatsoever;

- b. providing administrative support services;
- c. performing customer service functions, including but not limited to receiving or responding to consumer complaints;
- d. formulating or providing, or arranging for the formulation or provision of, any advertising or marketing material, including but not limited to any telephone sales script, direct mail solicitation, or the text of any Internet website, email, or other electronic communication;
- e. formulating or providing, or arranging for the formulation or provision of, any marketing support material or service, including but not limited to web or Internet Protocol addresses or domain name registration for any Internet websites, affiliate marketing services, or media placement services;
- f. providing names of, or assisting in the generation of, potential customers;
- g. participating in or providing services related to the offering, sale, or servicing of a product, or the collection of payments for a product;
- h. performing marketing, billing, or payment services of any kind; and
- i. acting or serving as an owner, officer, director, manager, or principal of any entity.

32. “Consumer Financial Product or Service” is synonymous in meaning and equal in scope to the definition of the term in Section 1002(5) and (15) of the CFPA, 12 U.S.C. § 5481(5) & (15), and, subject to applicable restrictions contained in the CFPA, includes, but is not limited to extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions).

33. “Corporate Defendants” means: Future Income Payments, LLC, formerly known as Pension, Annuities and Settlements, LLC, and its successors and assigns; FIP, LLC and its successors and assigns; Cash Flow Investment Partners LLC and its successors and assigns;

Pension Advance LLC and its successors and assigns; BuySellAnnuity Inc. and its successors and assigns; Cash Flow Investment Partners East LLC and its successors and assigns; Cash Flow Investment Partners Mideast LLC and its successors and assigns; Lumpsum Pension Advance Atlantic LLC and its successors and assigns; Lumpsum Pension Advance Southeast LLC and its successors and assigns; Lumpsum Settlement West LLC and its successors and assigns; PAS California LLC and its successors and assigns; PAS Great Lakes LLC and its successors and assigns; PAS Northeast LLC and its successors and assigns; PAS Southwest LLC and its successors and assigns; Pension Advance Carolinas LLC and its successors and assigns; Pension Advance Midwest LLC and its successors and assigns; and Pension Loans South LLC and its successors and assigns.

34. “Criminal Matter” means *U.S. v. Kohn et al.*, CR. No. 6:19-239 (D.S.C.).

35. “Defendants” means the Individual Defendant and the Corporate Defendants, individually, collectively, or in any combination, and each of them by whatever names each might be known.

36. “Effective Date” means the date on which the Order is issued.

37. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Bureau of Consumer Financial Protection, or his delegate.

38. “Individual Defendant” means Scott Kohn, and any other name by which he may be known.

39. “Pension-Advance Product” means any product or service that provides or arranges lump-sum payments to consumers in return for their agreement to redirect all or part of their pension payments or other future income stream for some period to repay the funds.

40. “Receiver” means Beattie B. Ashmore of Beattie B. Ashmore, P.A.

41. “Receiver Order” means the most current Order of Appointment entered in *In re Receiver*, 6:19-CV-01112-BHH (D.S.C.).

42. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against

Defendants based on substantially the same facts as described in the Complaint (ECF No. 1).

ORDER

I.

PERMANENT BAN ON PENSION-ADVANCE PRODUCTS

IT IS HEREBY ORDERED that:

43. Defendants and their officers, agents, servants, employees, attorneys, subsidiaries, affiliates, and successors in interest, and those persons in active concert or participation with any of them, who have actual notice of this Order, whether acting directly or indirectly, are permanently restrained from:

- a. advertising, marketing, promoting, offering for sale, or selling any Pension-Advance Products;
- b. performing any services in connection with Pension-Advance Products;
- c. Assisting Others engaged in advertising, marketing, promoting, offering for sale, or selling any Pension-Advance Products;
- d. Assisting Others engaged in performing any services in connection with Pension-Advance Products;
- e. selling any customer information or leads to others, or using customer information or leads collected through their pension-advance business to advertise or market other products; or
- f. receiving any remuneration or other consideration from, holding any ownership interest in, providing services to, or working in any capacity for any person engaged in or Assisting Others in advertising, marketing, promoting, offering for sale, or selling Pension-Advance Products.

Nothing in this Order shall be read as an exception to this paragraph.

II.

PROHIBITION ON DECEPTIVE ACTS OR PRACTICES

IT IS FURTHER ORDERED that:

44. Defendants and their officers, agents, servants, employees, attorneys, subsidiaries, affiliates, and successors in interest, and those persons in active concert or participation with any of them, who have actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any Consumer Financial Product or Service, may not misrepresent, or assist others in misrepresenting, expressly or impliedly:

- a. any material aspect of such product or service, including its nature or central characteristics;
- b. the interest rate associated with such product or service;
- c. the total cost of the product or service; or
- d. any other fact material to consumers, such as any material restrictions, limitations, or conditions.

III.

PROHIBITION ON USING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that:

45. Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, may not disclose, use, or benefit from customer information, including the name, address, telephone number, email address, Social Security number, other identifying information, or any data that enables access to a consumer's account (including a credit card, bank account, pension account, or other financial account, and including any bank accounts used by any Defendant to receive a consumer's pension payments or other future income streams) that Defendants obtained before the Effective Date in connection with the advertising, sale, or provision of a Pension-Advance Product; or attempt to collect, sell, assign,

or otherwise transfer any right to collect payment from any consumer who purchased or agreed to purchase a Pension-Advance Product from Defendants.

46. Customer information may be disclosed if requested by the Receiver, a government agency, or as required by law, regulation, or court order.

IV.

PROHIBITION ON SELLING CONSUMER DEBTS

IT IS FURTHER ORDERED that:

47. Unless expressly ordered by the Court, neither the Receiver nor should any officer, agent, servant, employee, or attorney of the Receiver be permitted to sell to third-party debt buyers consumer debt relating to Defendants' Pension-Advance Products.

V.

ORDER TO PAY REDRESS

IT IS FURTHER ORDERED that:

48. A judgment for monetary relief is entered in favor of the Bureau and against Defendants in the amount of \$436,137,001.12 for the purpose of providing redress to Affected Consumers. To the extent the Receiver's accounting, pursuant to ¶ 67(f), identifies unpaid amounts, the judgment shall be reduced by the total amount consumers have failed to repay.

49. The monetary judgment set forth in this section is immediately due and payable upon entry of this Order and is enforceable against any asset owned by, on behalf of, for the benefit of, or in trust by or for Defendants.

50. This Order grants to the Bureau all rights and claims that any Defendant has to any assets currently in the possession, custody, or control of the Receiver or in the receivership estate, and Defendants shall forfeit any rights to the funds in the receivership estate.

51. Any financial or brokerage institution, escrow agent, title company, commodity trading company, business entity, or person, whether located within the United States or outside the United States, that holds, controls, or maintains accounts or assets of, on behalf of, or for the benefit of any Defendant shall turn over such account or asset to the Receiver or its designated

agent within ten business days of receiving notice of this Order by any means, including but not limited to via facsimile or email. Any such funds must be paid to the Receiver, by wire transfer to the Receiver or the Receiver's agent, and according to the Receiver's wiring instructions.

52. Any funds received by the Receiver in satisfaction of this judgment will be deposited into a fund or funds administered by the Receiver, or to the Receiver's agent according to applicable statutes and regulations to be used for redress to Affected Consumers, including but not limited to refund of moneys, restitution, damages, or other monetary relief, and for any attendant expenses for the administration of any such redress.

53. If the Bureau determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or if funds remain after redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Defendants will have no right to challenge any actions that the Bureau or its representatives may take under this section.

54. Payment of redress to any Affected Consumer under this Order may not be conditioned on that Affected Consumer waiving any right.

VI.

ORDER TO PAY CIVIL MONEY PENALTY

IT IS FURTHER ORDERED that:

55. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in the Complaint, and taking into account the factors in 12 U.S.C. § 5565(c)(3), a judgment awarding a civil money penalty in the amount of \$65,481,736, for Defendants' reckless conduct (\$25,000 per day for 1,565 days and \$29,416 per day for 896 days) for each day on or after July 21, 2011 (the date the CFPA became effective) that Defendant entities were operating,² is entered against Defendants, jointly and severally, with post-judgment interest at the legal rate. Given the allegations in the Complaint and evidence in the Bureau's Motion, the Court considered the following mitigating factors, pursuant to 12 U.S.C. § 5565(c)(3): (a) the size of financial resources and good faith of the person charged; (b) the gravity of the violation or failure

² Defendant entities were operating from at least 2011 through April 2018.

to pay; (c) the severity of the risks to or losses of the consumer; (d) the history of previous violations; and (e) such other matters as justice may require. Consideration of these factors supports the penalty amount. This monetary judgment is enforceable against any asset owned by, on behalf of, for the benefit of, or in trust by or for, Defendants.

56. Within ten days of the Effective Date, Defendants must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

57. The civil money penalty paid under this Order shall be deposited in the Civil Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

58. For all purposes, Defendants must treat the civil money penalty paid under this Order as a penalty paid to the government. Regardless of how the Bureau ultimately uses those funds, Defendants may not:

- a. claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Order; or
- b. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Order.

59. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Defendants may not argue that Defendants are entitled to, nor may Defendants benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action or because of any payment that the Bureau makes from the Civil Penalty Fund. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Defendants based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Defendants must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau, and pay the amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an

additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

60. The civil penalty imposed by this Order represents a civil penalty owed to the United States Government, is not compensation for actual pecuniary loss, and, thus, as to each Defendant, it is not subject to discharge under the Bankruptcy Code under 11 U.S.C. § 523(a)(7).

VII.

ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

61. In the event of any default on Defendants' obligations to make payment under this Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

62. Defendants relinquish all dominion, control, and title to the funds paid and all other assets transferred or paid under this Order to the fullest extent permitted by law and no part of the funds or other assets may be returned to Defendants.

63. The facts alleged in the Complaint will be taken as true and be given collateral estoppel effect, without further proof, in any proceeding based on the entry of the Order, or in any subsequent civil litigation by or on behalf of the Bureau in a proceeding to enforce its rights to any payment or monetary judgment under this Order, such as a nondischargeability complaint in any bankruptcy case.

64. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Bureau under § 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and for such purposes this Order will have collateral estoppel effect against each Defendant, even in such Defendant's capacity as debtor-in-possession.

65. Under 31 U.S.C. § 7701, Defendants, unless it already has done so, must furnish to the Bureau its taxpayer-identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

66. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, if any, Defendants must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Defendants paid or are required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

VIII.

APPOINTMENT OF A RECEIVER

IT IS FURTHER ORDERED that:

67. Beattie B. Ashmore, whose business address is at 650 E. Washington Street, Greenville, SC 29601, is appointed as permanent receiver (Receiver) for all Defendants and Defendants' subsidiaries, affiliates, and successors in interest. Mr. Ashmore's appointment by the U.S. District for the District of South Carolina in the Criminal Matter, and the need for coordination and consistency, were relevant factors in the Court's selection. The Receiver shall have full powers of an equity receiver, including but not limited to full power over all funds, assets, negotiable instruments, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers, and other real or personal property, including notes, deeds of trust, and other interests in real property, belonging to, being managed by, or in the possession of or control of Defendants and any of their subsidiaries, affiliates, and successors in interest, and including all funds and assets transferred from any Defendant to entities controlled or managed by Kohn. For the purposes of executing his responsibilities under this Order, the Receiver is not subject to the provisions of ¶ 43(b) or (d). The Receiver shall be the agent of this Court and solely the agent of this Court in acting as Receiver under this Order. The Receiver shall be accountable directly to this Court. The Receiver shall comply with all laws and Local Rules of this Court governing federal equity receivers. The Receiver is immediately authorized, empowered, and directed, as outlined and defined herein and in the Receiver Order, to the degree feasible and not duplicative or inconsistent with the Receiver's duties set forth in the Receiver Order:

- a. to have access to and to collect and take custody, control, possession, and charge of all funds, assets, negotiable instruments, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other real or personal property, owned or controlled, directly or indirectly, including notes, deeds of trust and other interests in real property of, or managed by, Defendants, and their subsidiaries, affiliates, and successors in interest, with full power to sue, foreclose, marshal, sell, liquidate, collect, receive, and take into possession all such property;
- b. to have control of, and to be added as the sole authorized signatory for all of Defendants' accounts, and the accounts of their subsidiaries, affiliates, and successors in interest, including all accounts over which Defendants, and any of their officers, employees or agents, have signatory authority, at any bank, title company, escrow agent, financial institution, or brokerage firm that has possession, custody, or control of any of Defendants' assets or funds, in whatever form such assets may exist and wherever located, or which maintains accounts over which Defendants or any of their officers, employees, or agents have signatory authority;
- c. to open one or more bank accounts as designated depositories for Defendants' funds and shall deposit all of Defendants' funds in such a designated account and shall make all payments and disbursements from the receivership estate from such accounts;
- d. to conduct such investigation and discovery as may be necessary to locate and account for all of the funds, assets, negotiable instruments, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers, and other real or personal property, including notes, deeds of trust, and other interests in real property of, or managed by, Defendants, and their subsidiaries, affiliates, and successors in interest, or transferred from

Defendants to entities controlled or managed by Kohn, and to engage and employ attorneys, accountants, and other persons to assist in such investigation and discovery;

- e. to take such action as is necessary and appropriate to preserve and take control of and to prevent the dissipation, concealment, or disposition of any funds, assets, negotiable instruments, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers, and other real or personal property, including notes, deeds of trust, and other interests in real property of, or managed by, Defendants, or their subsidiaries, affiliates, and successors in interest, including all funds and assets transferred from Defendants to entities controlled or managed by Kohn;
- f. to make an accounting, as soon as practicable, to the Court and the Bureau of the assets and financial condition of Defendants, and the assets under their management, or managed by their subsidiaries, affiliates, and successors in interest, or transferred from Defendants to entities controlled or managed by Kohn, including all notes, deeds of trust, and other interests in real property and to file the accounting with the court and to deliver copies thereof to all parties;
- g. to make an accounting, as soon as practicable, to the Court and the Bureau of the status of each transaction related to Defendants' Pension-Advance Products and, where funds are available, to return interest and fees to consumers;
- h. where appropriate, to establish a reasonable and fair payment plan for consumers to repay the amount of their lump sums;
- i. to prevent the inequitable distribution of assets and determine, adjust, and protect the interests of consumers who have transacted business with Defendants;
- j. to make such payments and disbursements from the funds and assets taken into custody, control, and possession or thereafter received by the Receiver, and to incur, or authorize the making of such agreements as may be necessary and

- advisable in discharging the Receiver's duties;
- k. to employ attorneys, accountants, and others to investigate, advise, and where appropriate, to institute, pursue, and prosecute all claims and causes of action of whatever kind and nature which may now or hereafter exist, including in state or federal courts, in federal bankruptcy courts, or in foreign jurisdictions, as a result of the activities of present or past employees or agents of Defendants;
 - l. to institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal, or foreign courts that the Receiver deems necessary and advisable to preserve or recover Defendants' assets, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;
 - m. to have access to and monitor all mail, electronic mail, and telephones of, as well as any other form of communication used by, Defendants, in order to review such communications which the Receiver considers relevant to the business of Defendants, and discharging the Receiver's duties, and to make appropriate notification to the United States Postal Service to forward delivery of any mail addressed to Defendants, or to any of its subsidiaries or affiliates;
 - n. to operate and control the content of information posted on any of Defendants' internet websites;
 - o. to seek discovery from parties and non-parties without regard to the timing limitations set forth in Fed. R. Civ. P. 26(d)(1);
 - p. to exercise all of the lawful powers of Defendants and their officers, directors, employees, representatives, or persons who exercise similar powers and perform similar duties;
 - q. to maintain accurate records of all receipts and expenditures that it makes as Receiver; and
 - r. to cooperate with reasonable requests for information or assistance from any state

or federal law enforcement agency.

68. All duties and responsibilities set forth herein are to be read in harmony with those set forth in the Receiver Order, and the Receiver is to take whatever actions are necessary for the protection of Affected Consumers. To the extent this Order is in conflict with the Receiver Order, the Receiver has the ability to seek guidance and clarity from the Court.

IX.

ACCESS TO AND CONTROL OF PROPERTY

IT IS FURTHER ORDERED that:

69. Defendants, their subsidiaries, affiliates, and successors in interest, any entities controlled or managed in full or in part by Kohn to which funds or assets were transferred from Defendants and their officers, agents, servants, employees, and attorneys, and any other persons who are in custody, possession or control of any assets, negotiable instruments, collateral, books, records, papers, notes, deeds of trust, and other interests in real property, or other property of, or managed by Defendants shall forthwith give access to and control of such property to the Receiver.

X.

ACTIONS IN DEFENDANTS' NAMES

IT IS FURTHER ORDERED that:

70. No officer, agent, servant, employee, or attorney of Defendants or their subsidiaries or affiliates shall take any action or purport to take any action, in the name of or on behalf of Defendants or any of their subsidiaries, affiliates, and successors in interest, including posting any information on any internet websites that purports to be any communication on behalf of Defendants, without the written consent of the Receiver or order of the Court.

XI.

OTHER INJUNCTION PROVISIONS

IT IS FURTHER ORDERED that:

71. During the pendency of this receivership, except by leave of the Court and not

otherwise inconsistent with the Receiver Order, all clients, investors, trust beneficiaries, note holders, creditors, claimants, lessors, and all persons or entities acting on their behalf, including sheriffs, marshals, servants, agents, employees, and attorneys, and all other persons or entities seeking any kind of relief relating to Defendants' Pension-Advance Products, in law or in equity, except regulatory or governmental agencies, are hereby permanently restrained and enjoined from, directly or indirectly:

- a. commencing, prosecuting, continuing, or enforcing any suit or proceeding (other than the present action by the Bureau) against Defendants, any of their subsidiaries, affiliates, and successors in interest that manage or control their assets, or any consumers that agreed to redirect all or part of their pension payments or other future income stream in connection with a Pension-Advance Product with respect to their activities relating to the Pension-Advance Products;
- b. using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or crediting or enforcing a lien upon any property or property interests owned by Defendants, any of their subsidiaries, affiliates, and successors in interest that manage or control their assets, or any consumers that agreed to redirect all or part of their pension payments or other future income stream in connection with a Pension-Advance Product with respect to their activities relating to the Pension-Advance Products; and
- c. doing any act or thing whatsoever to interfere with the taking control, possession or management by the Receiver appointed hereunder of the property and assets owned, controlled or in the possession of Defendants, or any of their subsidiaries or affiliates, or in any way to interfere with or harass the Receiver, or the Receiver's attorneys, accountants, employees or agents or to interfere in any manner with the discharge of the Receiver's duties and responsibilities hereunder.

XII.

RECEIVER'S EXPENSES

IT IS FURTHER ORDERED that:

72. Defendants shall pay the costs, fees, and expenses of the Receiver incurred in connection with the performance of the Receiver's duties described in this Order, including the costs and expenses of those persons who may be engaged or employed by the Receiver to assist the Receiver in carrying out the Receiver's duties and obligations. The monthly payment of all fees, costs and expenses for services rendered in connection with the Receiver's duties will be paid in the manner and procedure set forth in the Receiver Order.

XIII.

COOPERATION WITH THE RECEIVER

IT IS FURTHER ORDERED that:

73. Defendants and their subsidiaries, affiliates, and successors in interest and their officers, agents, servants, employees, and attorneys, shall cooperate with and assist the Receiver, the Receiver's attorneys, accountants, employees and agents, and shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver, the Receiver's attorneys, accountants, employees, or agents in the course of the Receiver's duties. Defendants and their subsidiaries, affiliates, and successors in interest and their officers, agents, servants, employees, and attorneys shall not interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, collateral, premises, and choses in action described above.

74. Defendant Kohn must relinquish control of, ownership claims to, and any other interests in Defendant entities, and any of their subsidiaries, affiliates, or successors in interest, including all funds and assets transferred from Defendant entities to entities controlled or managed by Kohn, and any other entity determined by the Court to be part of the receivership, including any claims to records, information, documents, assets, bank accounts, negotiable

instruments, collateral, books, records, papers, notes, deeds of trust and other interests in real property, or other property of any receivership entity.

75. Defendants, and their agents, servants, employees, attorneys, affiliates, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, must cooperate with the Receiver as necessary to assist the Receiver in determining the identity and location of, and the amount of injury sustained by any person affected by Defendants' Pension-Advance Products. Defendants must make available or turn over to the Receiver such information in their or their agents' possession or control within 14 days of receiving a written request from the Receiver.

76. Defendants may not bring any claim against any receivership entity.

77. Defendants may not bring any claim against a consumer for payments related to Pension-Advance Products.

XIV.

NO BOND REQUIRED

IT IS FURTHER ORDERED that:

78. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence, the Receiver shall not be liable for any loss or damage incurred by any of the Defendants, their officers, agents, servants, employees and attorneys or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of his duties and responsibilities.

XV.

BUREAU'S ACCESS TO BOOKS AND RECORDS

IT IS FURTHER ORDERED that:

79. Representatives of the Bureau are authorized to have continuing access to inspect or copy any or all of the corporate books and records and other documents of Defendants, and their subsidiaries, affiliates, and successors in interest and continuing access to inspect their funds, property, assets and collateral, wherever located.

XVI.

PRESERVATION OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that:

80. Except as otherwise ordered by the Court, Defendants and their officers, agents, servants, employees, attorneys, subsidiaries, affiliates, and successors in interest, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are permanently restrained from, directly or indirectly: destroying, mutilating, concealing, transferring, altering, or otherwise disposing of, in any manner, any documents, which includes all books, records, computer programs, computer files, computer printouts, contracts, correspondence, memoranda, brochures, or any documents of any kind in their possession, custody or control, however created, produced, or stored (manually, mechanically, electronically, or otherwise), related in any way to Defendants.

XVII.

SCHEDULE OF ASSETS

IT IS FURTHER ORDERED that:

81. Defendants shall, within thirty days of the date of issuance of this Order, prepare and deliver to the Bureau a detailed and complete schedule of all of Defendants' assets, including all real and personal property exceeding \$5,000 in value, and all bank, securities, futures, Internet payment processor, and other accounts identified by institution, branch address and account number. The accountings shall include a description of the sources of all such assets. Such accountings shall be filed with the Court and copies shall be delivered to the Bureau as required under ¶ 93. After completion of the accountings, Defendants shall produce to the Bureau's office, at a time agreeable to the Bureau, all books, records and other documents supporting or underlying the accountings. This paragraph is not intended to affect the rights or duties of the Receiver, which are set forth in Sections VIII-XIII of this Order.

XVIII.

TRANSFER OF ASSETS

IT IS FURTHER ORDERED that:

82. Within ten days from the date of this Order, Defendants shall transfer to the Receiver all assets, funds, and other property held in foreign locations in Defendants' names, or for the benefit of any Defendant or under Defendants' direct or indirect control, or over which any Defendant exercises control or signatory authority.

XIX.

REPORTING REQUIREMENTS

IT IS FURTHER ORDERED that:

83. Defendants must notify the Bureau of any development that may affect compliance obligations arising under this Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of any bankruptcy or insolvency proceeding by or against any Defendant; or a change in any Defendant's name or address. Each Defendant must provide this notice, if practicable, at least 30 days before the development, but in any case no later than 14 days after the development.

84. Within seven days of the Effective Date, Defendants must:

- a. designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with each Defendant;
- b. identify all businesses for which any of the Defendants is the majority owner, or that any of the Defendants directly or indirectly controls, by providing all of those businesses' names, telephone numbers, and physical, postal, email, and Internet addresses;

- c. describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales;
- d. identify Defendant Kohn's telephone numbers and all email, Internet, physical, and postal addresses, including all residences;
- e. describe in detail Defendant Kohn's involvement in any business for which he performs services in any capacity or which he either wholly or partially owns, including Defendant Kohn's title, role, responsibilities, participation, authority, control, and ownership.

85. Each Defendant must report any change in the information required to be submitted under ¶ 84 at least 30 days before the change or as soon as practicable after learning about the change, whichever is sooner.

86. Within 90 days of the Effective Date, and again one year after the Effective Date, Defendants must submit to the Enforcement Director an accurate written compliance progress report (Compliance Report), which, at a minimum:

- a. lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which Defendants have complied with each such paragraph and subparagraph of the Order; and
- b. attaches a copy of each Order Acknowledgment obtained under Section XX, unless previously submitted to the Bureau.

XX.

ORDER DISTRIBUTION AND ACKNOWLEDGMENT

IT IS FURTHER ORDERED that,

87. Within seven days of the Effective Date, each Defendant must submit to the Enforcement Director an acknowledgment of receipt of this Order, sworn under penalty of perjury.

88. Within 30 days of the Effective Date, each corporate Defendant and Defendant Kohn, for any business for which he is the majority owner or which he directly or indirectly

controls, must deliver a copy of this Order to each of its board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of the Order.

89. For five years from the Effective Date, each corporate Defendant and Defendant Kohn, for any business for which he is the majority owner or which he directly or indirectly controls, must deliver a copy of this Order to any business entity resulting from any change in structure referred to in Section XIX, any future board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who will have responsibilities related to the subject matter of the Order before they assume their responsibilities.

90. Defendants must secure a signed and dated statement acknowledging receipt of a copy of this Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 et seq., within 30 days of delivery, from all persons receiving a copy of this Order under this section.

XXI.

RECORDKEEPING

IT IS FURTHER ORDERED that:

91. Each Defendant must create and retain for at least ten years from the Effective Date, all documents and records necessary to demonstrate full compliance with each provision of this Order, including for any business for which Defendant Kohn, individually or collectively with any other Defendant, is a majority owner or which he directly or indirectly controls, as well as all submissions to the Bureau.

92. Defendants must make the documents identified in ¶ 91 available to the Bureau upon the Bureau's request.

XXII.

NOTICES

IT IS FURTHER ORDERED that:

93. Unless otherwise directed in writing by the Bureau, Defendants must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, “BCFP v. Future Income Payments, LLC, et al., No. 6:19-cv-02950-BHH” and send them by overnight courier or first-class mail to the below address and contemporaneously by email to Enforcement_Compliance@cfpb.gov, as follows:

Assistant Director for Enforcement
Bureau of Consumer Financial Protection
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington, DC 20552

XXIII.

COOPERATION WITH THE BUREAU

IT IS FURTHER ORDERED that:

94. Defendants must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, any person affected by Defendants’ Pension-Advance Product. Defendants must provide such information in their or their agents’ possession or control within 14 days of receiving a written request from the Bureau.

95. Defendants must cooperate fully with the Bureau in this matter and in any investigation related to or associated with the conduct described in the Complaint. Defendants must provide truthful and complete information, evidence, and testimony. Kohn must appear and Defendant entities must cause their officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that the Bureau may reasonably request upon ten days written notice, or other reasonable notice, at such places and times as the Bureau may designate, without the service of compulsory process.

XXIV.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that:

96. Within 14 days of receipt of a written request from the Bureau, Defendants must submit additional compliance reports or other requested non-privileged information, related to requirements of this Order, which must be made under penalty of perjury; provide sworn testimony related to requirements of this Order and Defendants' compliance with those requirements; or produce non-privileged documents related to requirements of this Order and Defendants' compliance with those requirements.

97. For purposes of this section, the Bureau may communicate directly with Kohn, unless Kohn retains counsel related to these communications.

98. The given Defendant must permit Bureau representatives to interview about the requirements of this Order and Defendant's compliance with those requirements any employee or other person affiliated with Defendant who has agreed to such an interview. The person interviewed may have counsel present.

99. Nothing in this Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

IT IS SO ORDERED, this 22nd day of February, 2021,
Greenville, South Carolina.

/s/Bruce Howe Hendricks
United States District Judge