

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON

COMMONWEALTH OF VIRGINIA
EX REL. MARK R. HERRING,
ATTORNEY GENERAL,

Plaintiff,

v.

FUTURE INCOME PAYMENTS, LLC
f/k/a PENSIONS, ANNUITIES, AND
SETTLEMENTS, LLC,
a Delaware limited liability company,

FIP, LLC,
a Nevada limited liability company,

and

SCOTT KOHN,
an individual,

Defendants.

Civil Action No. _____

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CIRCUIT COURT FOR THE CITY OF HAMPTON
HAMPTON, VIRGINIA

COMPLAINT

The Plaintiff, Commonwealth of Virginia, by, through, and at the relation of the Attorney General of Virginia, Mark R. Herring (“Plaintiff” or “Commonwealth”), petitions this Court to declare that the activities in which the Defendants, Future Income Payments, LLC f/k/a Pensions, Annuities, and Settlements, LLC; FIP, LLC (collectively, “FIP”); and Scott Kohn (“Kohn”) (collectively, “Defendants”) have engaged constitute violations of § 59.1-200(A)(5) and (14) of the Virginia Consumer Protection Act (“VCPA”); to enjoin Defendants from violating the VCPA; to order Defendants to restore to Virginia consumers the sums acquired from them in violation of the VCPA; and to grant such other relief requested in this Complaint.

PRELIMINARY STATEMENT

The Commonwealth seeks relief for approximately 650 Virginia consumers, many of them elderly and veteran pensioners, deceived by Defendants' unlawful "pension sale" scheme. Defendants' scheme begins with a single, principal deception—that FIP's agreements are *sales* and not *loans*. But, "O, what a tangled web" Defendants weave to fabricate that deception.¹ They relabel common loan terms with "sales" terminology. They title FIP a "buyer" rather than a lender. They misstate the effect of entering into a consumer loan, as though it were a sale. And they use this web of misrepresentations for two reasons: to try to exempt FIP's loans from consumer lending laws and regulations, and to collect interest on loans at deliberately high, illegal rates.

Cutting away the web of "sales" misrepresentations from any FIP agreement reveals an illegal, usurious loan.² The attached FIP agreement:

- Labels itself a "Purchase and Sale Agreement," despite the fact that the consumer was receiving a sum of money that he was obligated to repay, i.e., *receiving a loan*;
- Refers to a "Purchase Price" paid to the consumer, although that phrase actually means the *principal amount of the consumer's loan*;
- Claims that FIP is paying the Purchase Price to receive certain portions of the consumer's future pension payments (the "Payment Amounts"), but those payments actually constitute a *repayment schedule for a loan*;
- Refers to a "Discount" of the Purchase Price, which is actually *interest on the loan*—approximately **137% APR for five years** in the case of the attached loan;
- Requires the payment of a "Set-up Fee," which is an *origination fee common on many consumer loans*; and

¹ Sir Walter Scott, *Marmion*, Canto VI, Stanza 17 (1808).

² A true and accurate copy of a redacted version of a FIP "Purchase and Sale Agreement" with a Virginia consumer is attached as Exhibit A. This document was provided by FIP during the course of the Attorney General's investigation.

- Informs the consumer that the “sale” requires the filing of an IRS Form 1099 to report income, which was not actually required *because the agreement was a loan.*

Worse still, FIP specifically advertised this product to some of the most vulnerable Virginia consumers—elderly and military pensioners forced by financial distress to take out a loan.

The Commonwealth’s Complaint continues a line of private and public actions that expose FIP’s agreements for what they are. Class action litigants in California assert that Defendants “are engaged in the business of entering into loan transactions, which they call ‘Purchase and Sale Agreements’”³ A plaintiff in Florida claims that the “Illegal Contract, which FIP labeled ‘Future Income Payment and Sale Agreement,’ [was] a loan”⁴ A veteran in Alabama alleges that the “document, which FIP labeled ‘Future Income Payment Purchase and Sale Agreement,’ is, in substance, clearly a loan”⁵ And, a veteran in Massachusetts alleges that the “consumer credit agreement executed by [him] and FIP is a loan”⁶

In addition to nationwide private actions, numerous consumer financial regulators have investigated, brought, and settled enforcement actions against Defendants. For example, on March 24, 2016, the Commonwealth of Massachusetts filed an Assurance of Discontinuance (“AOD”) alleging that FIP’s transactions are “loans with annual percentage rates that far exceed the caps set under Massachusetts law.”⁷ And, on October 20, 2016, the New York Department of Financial Services entered into a Consent Order with FIP and Scott Kohn in which it alleged,

³ Class Action Complaint at ¶ 3, *Underwood v. Future Income Payments, LLC et al.*, No. 8:17-cv-01570-DOC-DFM (C.D. Cal. Sept. 11, 2017), ECF No. 1.

⁴ Complaint at ¶ 14, *Lewis v. Future Income Payments, LLC*, No. 6:16-cv-00551-CEM-TBS (M.D. Fla. Mar. 31, 2016), ECF No. 1.

⁵ Complaint at ¶ 18, *Friley v. Future Income Payments, LLC, et al.*, No. 1:16-cv-00013-CG-B (S.D. Ala. Jan. 11, 2016), ECF No. 1.

⁶ Complaint at ¶ 53, *Meehan v. Future Income Payments, LLC*, No. 1:16-cv-10483-IT (D. Mass. Mar. 8, 2016), ECF No. 1.

⁷ Assurance of Discontinuance at p. 2, *In re Future Income Payments, LLC f/k/a Pensions, Annuities, and Settlements, LLC*, No. 16-0977A (Suffolk Sup. Ct. Mar. 24, 2016). In the AOD, FIP agreed to provide relief totaling approximately \$2 million for 85 veterans and other pensioners residing in Massachusetts. See <http://www.mass.gov/ago/news-and-updates/press-releases/2016/2016-03-28-veterans-pensions.html>.

“Although FIP’s agreement referred to the transaction as a sale[,]” the agreement “had all the indicia of a loan”⁸

The Consumer Financial Protection Bureau (“CFPB”) served FIP with a Civil Investigative Demand (“CID”) on November 23, 2016.⁹ Ordering that FIP comply with the CID, the United States District Court for the Central District of California observed, “In the past few years, the income stream market has come under sharp scrutiny for allegedly marketing loans at undisclosed, exorbitant interest rates to vulnerable populations, including veterans and the elderly.”¹⁰ And most recently, the State of Minnesota filed an enforcement action alleging that “FIP unlawfully makes loans to Minnesota residents, many of whom are veterans or spouses of veterans, secured by their future pension or military benefit payments”¹¹

Accordingly, Virginia consumers affected by Defendants’ willful VCPA violations are entitled to considerable relief. The Commonwealth therefore prays that this Court grant the relief requested in its Complaint and states the following in support thereof:

JURISDICTION AND VENUE

1. The Commonwealth brings this action pursuant to its authority in Virginia Code § 59.1-203, which provides, *inter alia*, that the Attorney General may bring an action to enjoin any violation of the VCPA.

⁸ Consent Order at ¶ 26, *In re Future Income Payments, LLC* (N.Y. Dept. Fin. Serv. Oct. 20, 2016), available at <http://www.dfs.ny.gov/about/ea/ea161020.pdf>. FIP agreed to pay a \$500,000.00 civil penalty and to provide approximately \$6.35 million in relief based upon 292 transactions with New York consumers. *Id.* at ¶¶ 28, 49, and 68.

⁹ Order at p. 2, *Consumer Fin. Prot. Bureau v. Future Income Payments, LLC*, No. SACV 17-00303-JLS (SSx) (C.D. Cal. May 17, 2017), ECF No. 47.

¹⁰ *Id.* The District Court’s Order is currently stayed pending FIP’s appeal regarding the constitutionality of the CFPB’s structure. Order, *Consumer Fin. Prot. Bureau v. Future Income Payments, LLC*, No. 17-55721 (9th Cir. June 1, 2017), ECF No. 10.

¹¹ First Amended Complaint at ¶ 1, *State of Minn. v. Future Income Payments, LLC et al.*, No. 27-CV-17-12579 (Cty. of Hennepin Dist. Ct. Sep. 26, 2017).

2. The Circuit Court for the City of Hampton has authority to entertain this action and to grant the relief requested pursuant to Virginia Code §§ 8.01-620, 17.1-513, 59.1-203, 59.1-205, and 59.1-206.

3. Venue is preferred in this Court pursuant to Virginia Code § 8.01-261(15)(c), because some or all of the acts to be enjoined are, or were, being done in Hampton, Virginia. Venue is permissible in this Court pursuant to Virginia Code § 8.01-262(4) because portions of the Commonwealth's causes of action arose in Hampton, Virginia.

4. Prior to the commencement of this action, the Commonwealth gave the Defendants Future Income Payments, LLC and Kohn written notice that its VCPA claims were contemplated. In that written notice, Defendants Future Income Payments, LLC and Kohn were afforded a reasonable opportunity either to appear before the Office of the Attorney General of Virginia (the "Attorney General") to demonstrate that they had not violated the VCPA, or to execute an Assurance of Voluntary Compliance ("AVC") pursuant to Virginia Code § 59.1-203(B). Defendants Future Income Payments, LLC and Kohn were not able to demonstrate that they did not violate the VCPA, and did not agree to execute an Assurance of Voluntary Compliance.

5. Prior to the commencement of this action, Defendant FIP, LLC waived its rights under Virginia Code § 59.1-203(B) to appear before the Attorney General either to demonstrate that it did not violate the VCPA or to execute an AVC.

6. This Court has personal jurisdiction over all Defendants pursuant to Virginia Code § 8.01-328.1(A)(1) because Defendants transacted business in the Commonwealth by entering into approximately 950 loan agreements with approximately 650 Virginia residents, and

pursuant to Virginia Code § 8.01-328.1(A)(3) because Defendants caused tortious injuries to approximately 650 Virginia consumers by violating the VCPA as alleged in this Complaint.

PARTIES

7. The Plaintiff is the Commonwealth of Virginia, by, through, and at the relation of Mark R. Herring, Attorney General of Virginia.

8. Defendant Future Income Payments, LLC is a Delaware limited liability company with a registered agent, Agents and Corporations, Inc., located at 1201 Orange Street, Suite 600, One Commerce Center, Wilmington, Delaware 19801. As of this date, Future Income Payments, LLC has not registered to transact business in the Commonwealth of Virginia.

9. Defendant FIP, LLC is a Nevada limited liability company with a registered agent, ISL, Inc., located at 321 West Winnie Lane, Suite 104, Carson City, Nevada 89703. As of this date, FIP, LLC has not registered to transact business in the Commonwealth of Virginia.

10. Defendants Future Income Payments, LLC and FIP, LLC are collectively referred to as "FIP" in the Commonwealth's Complaint, unless otherwise expressly stated.

11. Upon information and belief, Defendant Scott Kohn ("Kohn") is a resident of the State of Nevada. During all relevant times, Kohn has been, and continues to be, the sole owner and manager of Defendant Future Income Payments, LLC. During all relevant times, Kohn had the complete authority, power, and discretion to make any and all decisions regarding Defendant Future Income Payments, LLC's business operations in Virginia and nationwide.

12. Upon information and belief, during all relevant times, Kohn has been, and continues to be, the sole owner and director of Cash Flow Outsourcing Services, Inc. ("CFOS"), a corporation based in the Philippines. CFOS is the managing member of Defendant FIP, LLC. Consequently, during all relevant times, Kohn had the complete authority, power, and discretion

to make any and all decisions regarding Defendant FIP, LLC's business operations in Virginia and nationwide.

13. Whenever any reference is made in this Complaint to any act of the "Defendants" or to the acts of any one of them, such allegations shall be deemed to include FIP and Kohn, acting jointly and severally, as if the act of any one of them were the act of the other, whether as principal, under an express or implied agency, or with actual or apparent authority to perform the acts alleged.

FACTS

Defendants Advertised to and Solicited Virginia Consumers

14. From approximately June 2011 through June 2017, FIP advertised to and solicited approximately 650 pensioners in the Commonwealth of Virginia through various marketing websites, and directly by telephone and e-mail.

15. FIP advertised its product as a way for pensioners to obtain cash to meet their immediate needs or long term goals, referring to the product as a "lump sum," "pension buyout," and "pension advance."

16. Upon information and belief, FIP paid third parties to steer internet traffic to its websites by targeting consumers who searched online for FIP-approved phrases such as "personal loans," "pension loan," "online loan," or "military retirement loan" among others. One such website was <http://www.lumpsum-pensionloans.com>, which is now <http://www.pensionpurchasing.com>. A screenshot of the latter website appears as follows:¹²

¹² <http://www.pensionpurchasing.com/> (last visited December 22, 2017).

LumpSum
Pension Purchase

Live Support
OFFLINE

Call us **Toll FREE**
1-877-252-5205
or email us [click here](#)

HOME | MILITARY PENSIONS | GOVT PENSIONS | CORPORATE PENSIONS | STATE/COUNTY/CITY PENSIONS | PRE-OWNED ANNUITIES | ABOUT US | CONTACT

Lumpsum Pension Purchases

- Get up to \$10,000 in as Soon as 3 Days
- Use the Cash any way You Want
- No Life Insurance Needed
- Free No Obligation Quotes

**Sell Us Part of Your Pension
GET CASH NOW**

First Name _____ Last Name _____
 City Name _____ Select State
 Zip/Postal Code _____ Phone:###-###-####
 your.name@gmail.com
 How Much Would You Like? \$5,000

I have read the Privacy Statement, agreement to receive Electronic Documents, and state-specific notices. To read the TCGA statement [click here](#) for our full Privacy Policy [click here](#)

[See How Much I Can Get](#)

17. After being steered to or contacted by FIP, Virginia pensioners were asked to provide various documents relating to their pension and financial status to begin the loan underwriting process. Virginia pensioners were also required to provide documents evidencing their identity and marital status, to undergo a credit check and bankruptcy review, and to answer certain questions related to their medical history.

18. To complete the loan process, Virginia pensioners were required to execute several documents provided by FIP. For example, one disabled military pensioner (“H.H.”) residing in Virginia was required to execute a “Future Income Payment Purchase and Sale Agreement,” which included an “Authorization for Automatic Payment (Electronic Funds Transfer / EFT).”¹³ In a complaint filed with the Attorney General, H.H. stated the following:

I . . . made a Pension Loan thru [sic] my computer for the sum of \$5,500.00. After receiving the final printed out contract, [I] was informed that I would have to pay the difference of \$35,420.00 and was under stress when the final contract stated that I would have to

¹³ A redacted version of H.H.’s agreement with FIP is attached hereto as Exhibit A, and was provided by FIP during the Attorney General’s investigation.

pay that amount for a \$5,500 loan. I don't think that it is a fair practice to commit a fraudulent contract to pay [well over the amount] of the loan. There should be a law against companies that do this to a disabled veteran.

19. As another example, a Virginia pensioner ("G.B.") retired after 11 years of employment with the United States Department of Defense due to a disabling injury and received a pension. To complete the loan process, G.B. was also required to execute a "Future Income Payment Purchase and Sale Agreement" and an "Authorization for Automatic Payment (Electronic Funds Transfer / EFT)."¹⁴ In a complaint filed with the Attorney General, G.B. stated the following:

I was continually being contacted by [FIP]. I was in a financial situation where I could hardly keep up paying my bills. [FIP] told me they could loan me \$3,071. . . . I didn't understand the extension to me . . . to borrow \$3,071 and pay back \$15,000. Who does that[?]

Defendants' Agreements with Virginia Consumers Are Usurious Loans Disguised as Sales

20. Despite FIP's attempts to hide the true nature of its agreements through various misrepresentations, FIP's agreements with Virginia consumers are illegal, usurious loans.

21. A loan is the "delivery by one party to and receipt by another party of a sum of money upon agreement, express or implied, to repay it with or without interest."¹⁵ All of FIP's approximately 950 agreements with Virginia pensioners meet this definition.

¹⁴ A redacted version of G.B.'s agreement with FIP is attached hereto as Exhibit B, and was provided by FIP during the Attorney General's investigation.

¹⁵ *Commonwealth v. Bar D Fin. Servs.*, 32 Va. Cir. 429, 430 (City of Richmond Cir. Ct. 1994). Virginia Code § 6.2-300 defines a "loan" as a "loan or forbearance of money," and Black's Law Dictionary defines a "loan" as something "lent for the borrower's temporary use; esp., a sum of money lent at interest[.]" Black's Law Dictionary (10th ed. 2014).

22. Using H.H.'s agreement with FIP as an example, the agreement itself is titled "Future Income Payment Purchase and Sale Agreement," and the opening recitals read as follows:

Recitals

1. Seller is entitled under a pension from a government or private enterprise ("Pension Company") to receive an income stream comprised of fixed, monthly payments (the "Purchased Asset").
 2. If Seller were to die, the Purchased Asset will cease.
 3. Seller wants to sell and FIP wants to buy some or all of the monthly payments ("Payment Amounts") comprising the Purchased Asset.
 4. As consideration for the irrevocable and final sale of the Payment Amounts to FIP, the Seller shall accept a one-time, lump sum payment (the "Purchase Price").
 5. Upon payment of the Purchase Price to Seller, Seller shall thereafter remit to FIP the Payment Amounts and all other amounts due under this Agreement.
 6. FIP may re-sell the Payment Amounts and assign its rights under this Agreement to a subsequent purchaser (the "Subsequent Purchaser").
23. The self-serving title of H.H.'s agreement with FIP and words like "seller," "sell," "buy," and "purchase" are mere labels that "are not controlling" under Virginia law as to the true nature of the agreement.¹⁶

24. For instance, the "Purchase Price" is actually the principal loan amount received by H.H.—\$5,500.00 minus a \$300.00 "Set-up fee." Importantly, FIP misrepresented a loan origination fee as a "Set-up fee" to further obscure the true nature of its agreements.

25. The "Purchased Asset" and "Term" actually comprise the loan repayment schedule for H.H, and this excerpt from Exhibit A to H.H.'s agreement with FIP makes that clear:

¹⁶ *Donnelly v. Donatelli & Klein, Inc.*, 258 Va. 171, 180, 519 S.E.2d 133, 138 (1999).

8. PENSION COMPANY: Department of Veterans Affairs
9. PENSION COMPANY ADDRESS: 810 Vermont Ave NW Washington, DC 20420
10. TRACKING NO. OF PENSION: _____
11. AMOUNT OF EACH PENSION PAYMENT SOLD TO FIP ("Payment Amounts"): \$682.00
- NUMBER OF PAYMENT AMOUNTS: 60
- FREQUENCY: Monthly
- TERM: 60 months, ending on May 2, 2020
- AMOUNT OF EACH MONTHLY PENSION PAYMENTS DUE TO FIP OR THE SUBSEQUENT PURCHASER FOR TERM: \$682.00
12. PURCHASE PRICE TO SELLER: \$5,200.00
(including \$300 deduction for Set-up Fee)

By these terms, H.H. agreed to repay a closed-end installment loan with a five-year (60 month) term and with monthly payments to FIP in the amount of \$682.00. This illustrates a key deception underlying FIP's pension sale scheme—it would ascertain the amount of the pensioners' monthly payment and then offer a loan, the repayment of which would be based upon a monthly payment of principal and interest *equal to* the monthly pension payment.

26. Further, Exhibit C to H.H.'s agreement shows how FIP misrepresented the payment of interest on a loan as a "Discount" from the "Purchase Price:"

4) **Acknowledgment of Discount.**

Seller acknowledges that, by accepting the Purchase Price in exchange for the Payment Amounts as set forth in the Agreement, SELLER WILL RECEIVE SUBSTANTIALLY LESS MONEY THAN IF SELLER WERE TO RETAIN THE PERIODIC PAYMENTS COMPRISING THE PURCHASED ASSET. If Seller were to elect to receive the full amount of the Payment Amounts over the Term, Seller would receive the sum of \$ 40,920.00. Because, however, Seller is entering into the Agreement Seller will receive the Purchase Price, of \$ 5,500.00. The difference between the payments comprising the Purchased Asset and the Purchase Price is \$ 35,420.00. Seller understands that the Purchase Price represents a significant discount of the Payment Amounts comprising the Purchased Asset.

SELLER'S INITIALS: X

DS
HH

For H.H., this “Discount” actually equates to **an approximate APR of 137% over a five-year term.**¹⁷ In other words, H.H. agreed to repay FIP \$35,420.00 (plus the \$300 “Set-up” fee) in interest over the course of five years in return for a loan of \$5,500 (less the \$300 “Set-up” fee), resulting in that APR. For G.B., the “Discount” actually equates to **an approximate APR of 97% over a five-year term.** And, in the case of another veteran (“W.D.”) whose information was provided to the Attorney General, the “Discount” actually equates to **an approximate APR of 183% over a five-year term.**¹⁸

27. H.H.’s agreement with FIP also illustrates how FIP misrepresented the existence of tax liability for the “sale” of pension payments:

3.5 **Income Tax Reporting.** Seller acknowledges that: (a) as a result of Seller selling the Purchased Asset to FIP for the Purchase Price, FIP will send an IRS Form 1099 to Seller and to the IRS in connection with this transaction, and (b) Seller is responsible to report properly to all applicable taxing authorities income derived from this sale.

This clause is yet another step taken by FIP to mislead Virginia pensioners into believing that they were “selling” their pension payments and deriving “income” for tax reporting purposes. But because FIP was making loans to Virginia pensioners, and not “buying” their payments, Virginia pensioners never incurred tax liability at all. As the Supreme Court explained:

*Borrowed funds are excluded from income in the first instance because the taxpayer's obligation to repay the funds offsets any increase in the taxpayer's assets; if the taxpayer is thereafter released from his obligation to repay, the taxpayer enjoys a net increase in assets equal to the forgiven portion of the debt, and the basis for the original exclusion thus evaporates.*¹⁹

¹⁷ Interest rates stated in this Complaint are based on calculations of “simple” interest, i.e., dividing the amount of interest paid in an annual period by the amount of the loan proceeds to derive an APR.

¹⁸ A redacted version of W.D.’s agreement with FIP is attached hereto as Exhibit C, and was provided by FIP during the Attorney General’s investigation.

¹⁹ *United States v. Centennial Sav. Bank FSB*, 499 U.S. 573, 582 (1991) (emphasis added).

Neither H.H., G.B., W.D., nor any of the approximately 650 Virginia pensioners who took out loans with FIP incurred tax liability by taking out loans with FIP, despite its misrepresentations.

28. In fact, many of FIP's agreements with Virginia pensioners include the *potential* for a discharge of indebtedness, i.e., a forgiveness of their loans, which *could* result in tax liability.²⁰ The following excerpt from H.H.'s agreement with FIP makes this clear:

- 1.3 The Seller promises FIP the full and complete performance of all the provisions, conditions, warranties, covenants, and agreements contained in this Agreement. Specifically, and without limitation, Seller will promptly remit to FIP and any Subsequent Purchaser all Payment Amounts received from the Pension Company and all other amounts set forth in Section 2, below. However, both Seller and FIP recognize that, unless Seller breaches this Agreement, FIP and any Subsequent Purchaser are depending on the Pension Company as the ultimate obligor and if Seller does not, in good faith, receive payments from the Pension Company (because the Pension Company becomes insolvent or for other, similar reasons), Seller is NOT responsible to pay the Payment Amounts to FIP or any Subsequent Purchaser. Notwithstanding this, Seller agrees to fully cooperate with FIP and any Subsequent Purchaser in such a case to file claims in bankruptcy or take such other reasonable steps in order to get the payment obligations of the Pension Company fulfilled, but in no event will Seller have to file suit or bear any unreasonable expense in connection with FIP or any Subsequent Purchaser making such claims on Seller's behalf.

Based on this language, a condition subsequent to the execution of the loan—the insolvency of the “Pension Company”—could potentially discharge H.H.'s obligation to repay FIP. Upon information and belief, no Virginia pensioners' obligations to repay their loans with FIP were discharged based upon the failure or insolvency of their pension providers.

29. Further, based upon information received from FIP, the Attorney General is aware that only 1% of over 650 Virginia pensioners who took out loans with FIP died during the term of their loans. Consequently, 99% of Virginia pensioners remain fully obligated to repay their loans, revealing the illusory nature of the payment discharge provision in the second recital

²⁰ I.R.C. § 61(a)(12).

found in Paragraph 22 of this Complaint.²¹ And, some of the 1% of pensioners who died actually repaid their principal prior to their death due to high monthly installment payments. This is presumably why FIP also requested health information from those Virginia pensioners it solicited.

30. On the other hand, agreements entered into with Virginia pensioners by Pensions, Annuities, and Settlements, LLC ("PAS") (the f/k/a of Defendant Future Income Payments, LLC) specifically stated that the death of the borrower would not discharge the obligation to repay.²²

8.3. Additional Guarantees. The guarantees set forth in this Section 8 shall be in addition to, and not in lieu of, any other guarantees which the Seller may now or hereafter make in respect of Seller's obligations under the terms of this Agreement. The guarantees in this Section 8 shall not be discharged or otherwise released by the Seller's death. PAS and any Subsequent Purchaser shall have a guarantee binding upon the Beneficiary, Seller's heirs, executors, administrators, successors, or assigns.

Consequently, PAS obligated not only the Virginia pensioner to repay, but also, in the case of the attached agreement, the pensioner's spouse and heirs as well. PAS went so far as to require the pensioner to purchase a life insurance policy to secure the repayment obligation:

3.1. Life Insurance Policy.

3.1.1. Obligation to Obtain Policy. In order to secure the Seller's obligations under the terms of this Agreement in the event of the Seller's death prior to the end of the Term, Seller shall obtain a life insurance policy with a face amount of no less than \$30,000 which shall remain in effect for a period of no less than the Term (the "Policy").

31. In sum, although FIP's loan agreements with Virginia pensioners have some variations, FIP has always been virtually guaranteed repayment by the Virginia pensioners, or

²¹ Like the condition subsequent of the pension company's insolvency, the second recital, i.e., the death of the borrower, simply discharges the borrower's obligation to repay.

²² A redacted version of a borrower's agreement with PAS (again, the f/k/a of Defendant Future Income Payments, LLC) is attached hereto as Exhibit D, and was provided by FIP during the Attorney General's investigation.

FIP built-in potential events that would discharge the pensioners' obligations to repay, knowing those events were unlikely to occur.

***FIP Disguised its Loans as Sales to Avoid
State and Federal Consumer Protection Laws***

32. Noted above, in addition to the execution of FIP's "Purchase and Sale Agreement," Virginia pensioners were required to execute an "Authorization for Automatic Payment (Electronic Funds Transfer / EFT)." In H.H.'s agreement with FIP, this requirement reads as follows:

- 4.3 Authorization for Electronic Funds Transfers. By completing and signing Exhibit B hereto, Seller hereby agrees to cause Seller's Bank to initiate an electronic funds transfer (each, an "EFT") from Seller's Bank account as set forth in Exhibit B, to the FIP Payment Account as set forth in Exhibit B, in an amount equal to the Amount of Each Monthly Pension Payment to FIP or the Subsequent Purchaser for Term, as set forth in Exhibit A. During the Term, Seller shall notify FIP prior to any change in Seller's Bank and shall execute another EFT form satisfactory to FIP, or any Subsequent Purchaser, in order to facilitate the transfer of the Amount of Each Monthly Pension Payment to FIP or the Subsequent Purchaser for Term without interruption. If any EFT is rejected for non-sufficient funds ("NSF"), FIP may: i) resubmit the EFT for the same amount; ii) require the Seller to pay the costs set forth in Section 2.2, above, plus FIP's actual additional costs associated with collecting such delinquent amount, and/or iii) declare the Seller in material breach of this Agreement, subject to the provisions of Section 8.

This paragraph was a covenant made by H.H., i.e., H.H. was obligated to execute an electronic funds transfer agreement ("EFT agreement") to receive his loan proceeds. And, H.H.'s EFT agreement with FIP reads, in part, as follows:

**AUTHORIZATION FOR AUTOMATIC PAYMENT
(ELECTRONIC FUNDS TRANSFER / EFT)**

I/we authorize the Future Income Payments, LLC (and its successors and assignees) and the bank named below to initiate debit entries to my/our checking/savings account as payment for sale of an asset as follows:

33. Based on Paragraph 4.3 of H.H.'s agreement and the EFT agreement, H.H. was required to allow FIP to access his bank account for repayment as a condition of receiving his

loan proceeds. Upon information and belief, each of the approximately 650 Virginia pensioners who took out loans with FIP were required to execute similar EFT agreements as a condition of receiving their loan proceeds. FIP's requirement that Virginia pensioners execute EFT agreements as a condition of receiving their loan proceeds violated § 1693k of the Federal Electronic Funds Transfer Act ("EFTA"), 15 U.S.C. §§ 1693 to 1693r, and its implementing regulation, Regulation E, 12 C.F.R. §§ 1005.1 to 1005.36.

34. Despite violating the EFTA, FIP nonetheless required the execution of EFT agreements by Virginia pensioners to avoid any anti-assignment laws that could render its loan agreements void.²³ Thus, to avoid potential illegal assignments, each of the Virginia pensioners would receive pension payments from their provider in his or her own bank accounts, and FIP would then exercise its right under the EFT agreements to debit the amount of the pension payment from the pensioners' bank accounts. This process underlies FIP's pension sale scheme—there was never a "sale," "conveyance," or assignment of any pension payments. The fact that the pensioners' loan repayment amounts are the same amounts as their monthly payments to FIP is a subterfuge allowing FIP to claim that it is "buying" the pension payments and to claim that its "purchase" is not subject to consumer lending laws.

35. By labeling its closed-end installment loans as "sales," FIP also sought to avoid the requirement of providing closed-end credit disclosures required by the Federal Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601 to 1693r, and its implementing regulation, Regulation Z, 12 C.F.R. §§ 1026.1 to 1026.60. No Virginia pensioners received closed-end credit disclosures as required by TILA and Regulation Z—disclosures that would have benefitted pensioners like H.H. and G.B. who expressed shock at the exorbitant amount of interest they were required to repay FIP.

²³ See 38 U.S.C. 5301(a).

36. Further, FIP never registered to conduct business in the Commonwealth and never applied for any lending licenses through the Virginia State Corporation Commission's Bureau of Financial Institutions ("BFI"). Because FIP never received any form of consumer lending license from BFI, FIP's loans were and are subject to Virginia's general usury cap—12% annual interest pursuant to Virginia Code § 6.2-303(A).

37. Finally, because FIP's loans were and are subject to Virginia's general usury cap, and because the APR on each of FIP's loans with Virginia pensioners far exceeded that cap, the affected Virginia pensioners could have sought redress under Virginia's usury statutes, Virginia Code §§ 6.2-300 to 329. For instance, the affected pensioners could have brought private actions under Virginia Code § 6.2-305 to recover not only the usurious interest paid, but an additional sum equal to *twice* the amount of usurious interest paid in the two years preceding the filing of their actions. But because FIP took unreasonable advantage of Virginia pensioners by misrepresenting its loans as "sales," it avoided potential private actions under Virginia's usury laws.

CAUSES OF ACTION

COUNT I – Virginia Consumer Protection Act

38. The Commonwealth re-alleges and incorporates by reference the allegations of Paragraphs 1 through 37, including any subparts or footnotes thereto, of this Complaint.

39. Pursuant to Virginia Code § 59.1-197, the VCPA is to be applied as remedial legislation to promote fair and ethical standards of dealing between suppliers and the consuming public.

40. In connection with consumer transactions, the VCPA prohibits suppliers from, among other things:

- a. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits pursuant to Virginia Code § 59.1-200(A)(5); and
 - b. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction pursuant to Virginia Code § 59.1-200(A)(14).
41. During all relevant times, FIP was a “supplier” of “goods” or “services” in connection with “consumer transactions” as those terms are defined in Virginia Code § 59.1-198.
42. FIP violated the VCPA through the acts and practices described in this Complaint, including without limitation:
- a. Misrepresenting that its “Purchase and Sale Agreement[s]” or similarly-titled agreements were sales and not loans in violation of Virginia Code §§ 59.1-200(A)(5) and (14);
 - b. Misrepresenting that the “Purchase Price” or a similar phrase was an amount FIP would pay to Virginia consumers as part of a “sale,” rather than the principal amount of the loans extended by FIP to Virginia consumers, in violation of Virginia Code §§ 59.1-200(A)(5) and (14);
 - c. Misrepresenting that the phrases “Purchased Asset,” “Payment Amounts,” or similar phrases referred to FIP’s “purchase” of pension payments from Virginia consumers, rather than the amount to be repaid by Virginia consumers on their loans with FIP, in violation of Virginia Code §§ 59.1-200(A)(5) and (14);
 - d. Misrepresenting the payment of interest on Virginia consumers’ loans with FIP as a “Discount” of the “Purchase Price” in violation of Virginia Code §§ 59.1-200(A)(5) and (14);

- e. Misrepresenting the payment of loan origination fees on Virginia consumers' loans with FIP as "Set-up fee[s]" in violation of Virginia Code §§ 59.1-200(A)(5) and (14); and
- f. Misrepresenting that Virginia consumers would incur tax liability by "selling" their pension payments, despite the fact they did not incur any tax liability by taking out loans with FIP, in violation of Virginia Code §§ 59.1-200(A)(5) and (14).

43. FIP willfully engaged in the acts and practices described in this Complaint in violation of the VCPA.

44. Individual consumers have suffered losses as a result of the aforesaid willful violations of the VCPA by FIP.

**Count II – Individual Liability of Kohn
under the Virginia Consumer Protection Act for His Active Participation**

45. The Commonwealth re-alleges and incorporates by reference the allegations of Paragraphs 1 through 44, including any subparts or footnotes thereto, of this Complaint.

46. A corporation can act only through its officers and agents, and where the business itself involves a violation of the law, all who participate in it are liable.

47. During all relevant times, Kohn, individually or together with others, directed, controlled, approved, or participated in the acts and practices of FIP, including those acts and practices that are the subject of this Complaint.

48. By virtue of his active participation in the wrongful and willful acts of FIP, Kohn should be held personally liable for all violations of the VCPA committed by or through FIP.

49. Individual consumers suffered losses as a result of Kohn's use and control of FIP and his implementation of a fraudulent pension sale scheme.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Commonwealth of Virginia, prays that this Court:

A. Preliminarily and permanently enjoin Defendants and their members, managers, officers, employees, agents, successors and assigns from violating § 59.1-200 of the VCPA pursuant to Virginia Code § 59.1-203;

B. Grant judgment against the Defendants, jointly and severally, and award to the Commonwealth all sums necessary to restore to any Virginia consumers the money or property acquired from them by Defendants in connection with their violations of § 59.1-200 of the VCPA pursuant to Virginia Code § 59.1-205;

C. Enter any additional orders or decrees as may be necessary to restore to any Virginia consumers the money or property acquired from them by Defendants in connection with their violations of § 59.1-200 of the VCPA pursuant to Virginia Code § 59.1-205;

D. Grant judgment against the Defendants, jointly and severally, and award to the Commonwealth civil penalties of up to \$2,500.00 per violation for each willful violation of § 59.1-200 of the VCPA pursuant to Virginia Code § 59.1-206(A), the exact number of violations to be proven at trial;

E. Grant judgment against the Defendants, jointly and severally, and award to the Commonwealth its costs, reasonable expenses incurred in investigating and preparing the case up to \$1,000.00 per violation of § 59.1-200 of the VCPA, and attorneys' fees pursuant to Virginia Code § 59.1-206(C); and


F. Grant such other and further relief as this Court deems equitable and proper.

Dated: March 6, 2018

Respectfully submitted,

COMMONWEALTH OF VIRGINIA,
EX. REL. MARK R. HERRING,
ATTORNEY GENERAL

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