

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CONSUMER FINANCIAL PROTECTION
BUREAU and STATE OF FLORIDA,
OFFICE OF THE ATTORNEY GENERAL,
Department of Legal Affairs,

Plaintiffs,

Case no. 9:14 CV 80931/COHN/SELTZER

vs.

MICHAEL HARPER, et al.,

Defendants.

**RECEIVER'S FIFTH INTERIM REPORT, CONCERNING THE STATUS
OF VARIOUS MATTERS, AND MOTION TO CONTINUE RECEIVERSHIP**

Mark J. Bernet, Receiver for The Hoffman Law Group, P.A., f/k/a The Residential Litigation Group, P.A., Nationwide Management Solutions, LLC, Legal Intake Solutions, LLC, File Intake Solutions, LLC, and BM Marketing Group, LLC (the "Receiver"), hereby files his fifth interim report, relating to the status of various matters. For the sake of brevity, the fifth interim report discusses events that have occurred since the filing of the *Receiver's Fourth Interim Report, Concerning the Status of Various Matters, including Money to be Paid to Victims* (doc. no. 157) ("Fourth Interim Report"), dated February 9, 2016.¹ The Receiver also moves for entry of an order extending his appointment as receiver, through September 30, 2016, to permit the Receiver to continue to work with the Plaintiffs to facilitate the restitution process, and so that the Receiver can participate in bar disciplinary proceedings pending in another state.

1. Transfer of funds. The funds recovered by the Receiver are to be included in a fund that will be distributed to the consumer-clients of the Hoffman Law Group, who are the victims of the unlawful conduct. As reported in the Receiver's Fourth Interim Report, the

¹ The Fourth Interim Report is adopted by this reference.

Receiver transferred \$655,736.98 to the Plaintiffs by wire transfer on June 5, 2015. In May of 2016, the Receiver transferred an additional \$25,000.00 to the Florida Attorney General, as permitted under the Default Judgment. In June of 2016, the Receiver transferred an additional \$135,000 to the CFPB.

2. Cooperating with the Plaintiffs to determine the identity and location of, and the amount of injury to, each Affected Consumer. The Receiver has taken possession of the electronic records of The Hoffman Law Group, which are maintained through a file management software program known as Lead-Trac. The program is administered by a third-party software management company. The Lead-Trac system contains the names and contact information of all of the consumer-clients of the Hoffman Law Group. The Receiver is continuing to work with the Plaintiffs to assure that they have access to the Lead-Trac system to develop a master contact service list with pertinent information. The Receiver also has provided the Quickbooks program, containing the Hoffman Law Group's financial records, to the Plaintiffs so that they can ascertain how much each consumer-client paid. The Receiver also has received well over a hundred calls from consumer-clients; after filling them in on the status of the case, he passes their contact information along to the Plaintiffs.

3. Liquidating the Assets of the Receivership Defendants. As reported in the Receiver's Fourth Interim Report, the Receiver sold the Receivership Defendants' personal property to equipment brokers and at two separate auction sales.

4. Pursuing Lawsuits. By its March 3, 2016 *Order on Receiver's Order to Show Cause* (doc. no. 158), the Court extended the time for the Receiver to pursue claims on behalf of the Receivership Estate through June 30, 2016. The sole claim that the Receiver chose to pursue as of that date was a lawsuit against attorney Phillip R. Berwish. Berwish, a New York attorney,

who was engaged by The Hoffman Law Group to prepare the first "mass joinder" lawsuit filed on behalf of consumer clients. The Receiver filed the lawsuit in this Court, but venue was transferred to the Eastern District of New York. At status conferences the New York magistrate judge raised questions concerning its subject matter jurisdiction.² The Receiver was confident that the lawsuit properly was brought in federal court. However, the magistrate judge's comments, along with (i) the fear that the cost of pursuing the claim would increase significantly, and (ii) the uncertainty of collecting on any judgment that might be obtained, caused the Receiver to consult with the Plaintiffs concerning the economic realities of pursuing the matter. Ultimately, the Receiver opted to settle the Berwish lawsuit by accepting a \$3,000 payment. The Berwish lawsuit is now concluded.

5. IRS Issues. There has been no further contact from the IRS concerning the alleged "frivolous tax returns" discussed in the Receiver's Fourth Interim Report. The Receiver does not expect that there will be any further contact.

6. Consumer Redress. As previously reported, the funds collected by the Receiver will be included in a consumer compensation fund administered by the CFPB. In addition, the CFPB has allocated money from its Civil Penalty Fund to the eligible class of victims in this case. A total of \$11,730,579.00 – the amount of damages awarded by the Court – will be dedicated to providing compensation to consumers. The timing of distributions remains uncertain because of the complexity of creating and confirming the database of consumers and determining the amounts paid by each consumer-victim. The Receiver continues to receive calls and e-mails from consumers on a daily basis; most consumers are aware that they will receive distributions but they are, naturally, curious as to the timing of the distributions. The Receiver

² The Court's subject matter jurisdiction is premised upon 12 U.S.C. §5565(a) and 28 U.S.C. §§754, 1331, 1332 & 1367(a). The New York magistrate judge, however, expressed the concern (without actually ruling) that subject matter jurisdiction would lie only in this Court, and not in her court.

continues to respond to these calls and e-mails. More information about the CFPB's Civil Money Penalty Fund is available online at <http://files.consumerfinance.gov/about-us/payments-harmed-consumers/civil-penalty-fund/>. Also, the Receiver will post updates on his website, at www.bernet-receiver.com, as soon as information is available. **Consumer clients who have moved or changed e-mail addresses or telephone numbers are encouraged to send their updated information to the Receiver.**

7. Funds on Account and Amounts Owed. As of May 31, 2016, the Receiver had \$14,735.46 in a receivership checking account and \$321,397.47 in a receivership money market account.³ The Receiver has a monthly obligation to a storage facility of \$176, for storage of the Receivership Defendants' computers and paper records. All taxes owed have been paid; although the IRS has asserted its "frivolous" penalty of \$10,000 (*see* Section IV of the Receiver's Fourth Interim Report), the Receiver does not anticipate that he will have to pay that penalty.

The Receivership Defendants also will be obligated to pay the fees and costs charged by the Receiver and his attorneys. These are subject to court approval. The Receiver is filing contemporaneously with this report (i) *Receiver's Fourth Application for Payment for Services Rendered and Reimbursement for Costs Incurred*, seeking \$60,000.00 in fees and \$618.20 in costs, and (ii) *Receiver's Fourth Application for Payment for Services Rendered and Reimbursement for Costs for Akerman LLP*, seeking \$62,053.70 in fees and \$1,088.28 in costs. Neither of these applications is opposed by any of the parties hereto.

MOTION TO EXTEND RECEIVERSHIP THROUGH SEPTEMBER 30, 2016

The Receiver moves the Court for entry of an order extending the receivership through September 30, 2016. The Receiver has three tasks remaining: Destruction of records and ESI;

³ The Receiver's May 2016 statement for the money market account shows an "account analysis fee" of \$75.00. The Receiver has disputed the fee.

facilitating the consumer redress process; and testifying at disciplinary proceedings brought by an out-of-state bar association against an attorney connected with this case in an out-of-state forum.

Destruction of Records. At the conclusion of this case the Receiver will seek permission from the Court to destroy the electronic and paper records of the Receivership Defendants. Doing so will assure that the personally identifiable information contained in those records cannot be used improperly. However, it is premature at this time to destroy these records, due to pending investigations by governmental entities and a state bar association.

Consumer Redress Issues. As noted, consumers continue to contact the Receiver for updates on the consumer redress process. The Receiver also continues to work with the CFPB to create the consumer restitution database. The process likely will extend for several more months.

Out-of-State Bar Disciplinary Proceedings. An attorney connected to this case and licensed in a foreign state presently has disciplinary proceedings pending against him by his state bar association, relating to his participation in the activities that are the subject of this lawsuit.⁴ The Receiver has responded to a records subpoena from that state bar association. The Receiver also has committed to testify, as a witness, at a hearing to be held in the disciplinary proceedings. The hearing presently is scheduled for mid-August, but may be continued.

WHEREFORE, the Receiver moves the Court for entry of an order extending the receivership through September 30, 2016, to permit the Receiver the opportunity to complete the tasks described above.

⁴ Bar disciplinary proceedings, while pending, are confidential. For this reason, the Receiver has not identified the attorney or the state in which the disciplinary proceedings are pending. The Receiver will provide further information to the Court, under seal, if requested.

LOCAL RULE 7.1(a)(3) CERTIFICATION

The Receiver certifies that prior to filing this motion he made a reasonable effort to confer with all parties who may be affected by the relief requested herein. Counsel for all parties have indicated that they do not object to the entry of an order granting the Receiver's motion.

Dated: Tampa, Florida
June 27, 2016

/s/ Mark J. Bernet

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was served by CM/ECF to Melissa Guidorizzi, Esquire, 1700 G Street NW, Washington, DC 20552, e-mail melissa.guidorizzi@cfpb.gov; Leanne Hartmann, Esquire, 1700 G Street NW, Washington, DC 20552, e-mail leanne.hartmann@cfpb.gov; Maureen Elin McOwen, Esquire, 1700 G. Street NW, Washington, DC 20552, e-mail molly.mcowen@cfpb.gov; Jennifer Pinder, Esquire, 3507 E. Frontage Road, Suite 325, Tampa, Florida 33607, e-mail jennifer.pinder@myfloridalegal.com; Hector E. Lora, Esquire, The Lora Law Firm, LLC, 174 N.E. 106th Street, Miami Shores, Florida 33138, e-mail hectorlora@bellsouth.net; John A. Richert, Esquire, Hornstine, Pelloni & Hornstine, LLC, 13575 58th Street North, Clearwater, Florida 33760, e-mail john@hornstine.com; and Andrew N. Cove, Esquire, Cove & Associates, P.A., 225 S. 21st Avenue, Hollywood, Florida 33020, e-mail anc@covelaw.com, main@covelaw.com, this 27th day of June, 2016.

/s/ Mark J. Bernet

Receiver

cc: Lou Hornstine, Esquire (via e-mail to lou@hornstine.com)