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 8 *and the Putative Class*

9  
 10 **UNITED STATES DISTRICT COURT**  
 11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
 12 **SOUTHERN DIVISION**

13 **JOHN UNDERWOOD**, on behalf of himself  
 14 and all others similarly situated,

15 Plaintiff,

16 v.

17 **FUTURE INCOME PAYMENTS, LLC;**  
**PENSIONS, ANNUITIES AND**  
 18 **SETTLEMENTS, LLC; CASH FLOW**  
**INVESTMENT PARTNERS, LLC; AND**  
 19 **SCOTT A. KOHN,**

20 Defendants.

Case No: 17-cv-1570

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff, by his attorneys, on behalf of himself and all others similarly situated, makes the  
2 following allegations pursuant to the investigation of his counsel and based on information and  
3 belief, except as to allegations pertaining to personal knowledge as to himself.

4 **I. NATURE OF THE ACTION**

5 1. This is a class action against Future Income Payments, LLC; Pensions, Annuities and  
6 Settlements, LLC; Cash Flow Investment Partners, LLC; and Scott A. Kohn (collectively,  
7 “Defendants” or “FIP”) concerning Defendants’ unlawful marketing, lending, and collection  
8 practices.

9 2. Plaintiff John Underwood (“Plaintiff” or “Mr. Underwood”) is a retired and disabled  
10 veteran of the United States Air Force and brings this action on behalf of himself and others  
11 similarly situated stating claims for (1) Declaratory Relief, Code of Civil Procedure § 1060, (2) the  
12 California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, (3) the California Usury  
13 Law, Stats. 1919, p. lxxxiii, Deering’s Uncod. Initiative Measures & Stats. 1919-1, (4) the California  
14 Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*, (5) the Federal Truth in Lending Act,  
15 15 U.S.C. § 1601 *et seq.*, (6) the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §  
16 1961 *et seq.*, and (7) unjust enrichment. All of these causes of action arise from Defendants’ pattern  
17 and practice of entering into transactions with retired and/or disabled veterans that contain numerous  
18 unconscionable and otherwise unenforceable provisions, and which are disguised loan transactions  
19 bearing usurious effective interest rates. Further, in connection with such transactions, Defendants’  
20 documents purport to obtain, in effect, assignment of retired military benefits, which are  
21 unenforceable in light of the anti-assignment provisions found at 37 U.S.C. § 701(c) and 38 U.S.C. §  
22 5301(a)(1), (3).

23 3. Defendants are engaged in the business of entering into loan transactions, which they  
24 call “Purchase and Sale Agreements,” with retired and/or disabled veterans. Under the terms of these  
25 contracts, Defendants loan the veteran a sum of money in exchange for a promise by the veteran to  
26 make future payments secured by the veteran’s military retirement or disability payments.  
27 Defendants attempt to disguise the nature of these transactions by inserting into their form contracts  
28 a clause stating that the transaction “is not a loan.” However, the transactions are—in substance and

1 by law—loans from Defendants to the veteran.

2 4. Regulators for the States of California, New York, Massachusetts, Iowa, Washington,  
3 North Carolina, Colorado, Pennsylvania, and Minnesota and the City of Los Angeles have all  
4 determined that Defendants’ products *are loans*.<sup>1</sup>

5 5. The terms of these loans are usurious and otherwise unfair and unlawful. For  
6 example, the imputed interest rate on the transaction between Defendants and Mr. Underwood is  
7 41.422%, which far exceeds the applicable usury limit. *See* Art. XV, Sec. 1, of the California  
8 Constitution.<sup>2</sup>

9 6. The assignment of military pension pay of enlisted military personnel upon retirement  
10 is prohibited by 37 U.S.C. § 701(c). Similarly, the assignment of disability benefits to all military  
11 veterans regardless of rank is illegal under 38 U.S.C. § 5301(a)(1) and (a)(3)(A) and (C). The  
12 contract between Defendants and Mr. Underwood, and the similar contracts between Defendants and  
13 the class members, effectively purport to obtain an illegal assignment of retired military pension and  
14 disability benefits in violation of these provisions. As a result, these contracts are void as a matter of  
15 law.

16 7. In addition, Defendants’ practices of requiring Plaintiff and class members to assign  
17 their military benefits in violation of federal law, and their representations intended to induce  
18 veterans to enter into these contracts and assign their benefits, constitute unfair, deceptive, and  
19 unconscionable acts or practices in the conduct of business, trade, or commerce, and are barred by  
20 state law.

21 **II. JURISDICTION AND VENUE**

22 8. This Court has original jurisdiction over the claims asserted herein individually and

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23 <sup>1</sup> *See, e.g.*, David Lazarus, “Pension Advance’ Company is Unmasked—And It’s No Friend of  
24 California Consumers,” LA Times (Mar. 14, 2017), *available at*  
25 [http://www.latimes.com/business/lazarus/la-fi-lazarus-cfpb-future-income-payments-20170317-](http://www.latimes.com/business/lazarus/la-fi-lazarus-cfpb-future-income-payments-20170317-story.html)  
26 [story.html](http://www.latimes.com/business/lazarus/la-fi-lazarus-cfpb-future-income-payments-20170317-story.html); Mark Brunswick, “Minnesota attorney general sues companies that allegedly bilked  
27 veterans and seniors,” Star Tribune (Aug. 17, 2017), *available at*  
28 [http://www.startribune.com/minnesota-ag-sues-companies-that-allegedly-bilked-veterans-and-](http://www.startribune.com/minnesota-ag-sues-companies-that-allegedly-bilked-veterans-and-seniors/440766003/)  
[seniors/440766003/](http://www.startribune.com/minnesota-ag-sues-companies-that-allegedly-bilked-veterans-and-seniors/440766003/).

<sup>2</sup> “Generally, the California Constitution sets a maximum annual interest rate of seven percent on  
loans and forbearances, but allows parties by written contract to set the interest rate at up to 10  
percent . . . .” *WRI Opportunity Loans II LLC v. Cooper*, 154 Cal. App. 4th 525, 533, 65 Cal. Rptr.  
3d 205 (2007) (citations and quotations omitted).

1 on behalf of the Class pursuant to 28 U.S.C. §1331 because one or more of the claims arise under  
2 the laws of the United States. Alternatively, this Court has original jurisdiction pursuant to 28  
3 U.S.C. § 1332(d) because: (1) the matter in controversy exceeds the sum or value of \$5,000,000,  
4 exclusive of interest and costs, and (2) at least one member of the class of plaintiffs is a citizen of  
5 a State different from any defendant.

6 9. Pursuant to 28 U.S.C. § 1367, this Court has supplemental subject matter  
7 jurisdiction as to state law claims not covered by 28 U.S.C. § 1332.

8 10. Personal jurisdiction is proper because a substantial part of the events or omissions  
9 giving rise to the claims occurred in the State of California: Defendants advertised to, solicited,  
10 and made and collected pension loans to and from pensioners, including Plaintiff, from  
11 Defendants' California headquarters. Moreover, the contractual documents prepared by Defendants  
12 and entered into by Plaintiff and the class members specify that the state or federal courts located in  
13 California shall have non-exclusive jurisdiction to hear and determine any claims or disputes  
14 pertaining or relating to the agreements.

15 11. Personal jurisdiction is also proper because Future Income Payments, LLC; Pensions,  
16 Annuities and Settlements, LLC; and Cash Flow Investment Partners, LLC ("LLC Defendants")  
17 maintain a principal place of business at 18300 Von Karman Ave., Suite 410, Irvine, CA 92612 and  
18 maintain a registered agent, Scott Kohn, at 3535 E. Coast Highway #119, Corona Del Mar, CA  
19 92625. All located within this District.

20 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) and (c)(2) because  
21 all LLC Defendants are subject to Personal Jurisdiction in this District and the individual  
22 defendant—Scott Kohn—resides in this district.

23 13. Venue is also proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a  
24 substantial part of the events or omissions giving rise to the claims occurred in this District.  
25 Moreover, the contractual documents prepared by Defendants and entered into by Plaintiff and the  
26 class members specify this Court as a proper venue for litigating issues pertaining to the terms of  
27 those documents.

**III. PARTIES**

1 14. Plaintiff, John Underwood, is a retired enlisted military veteran residing in Otway,  
2 Ohio. Mr. Underwood retired from the United States Air Force as a Master Sergeant in 2010 after 23  
3 years of military service with a retirement income of \$2,053 per month.

4 15. Defendant FIP is a Delaware limited liability company with its principal place of  
5 business, as registered with the Nevada Secretary of State, at 2505 Anthem Village Dr., Ste E-599,  
6 Henderson, Nevada 89052 and its principal place of business, as registered with the California  
7 Secretary of State, at 18300 Von Karman Ave., Suite 410, Irvine, CA 92612. FIP was formed in  
8 April 2011 and has conducted business from 18300 Von Karman Ave., Suite 410, Irvine, California  
9 92612, and from 3535 East Coast Highway, #119, Corona del Mar, California 92625.

10 16. FIP formerly did business as Pensions, Annuities & Settlements, LLC.

11 17. When Pensions, Annuities & Settlements, LLC, changed names to FIP in 2011, FIP  
12 assumed all of Pensions, Annuities & Settlements, LLC's debts, obligations, rights, and liabilities.

13 18. FIP actively collected the loan repayments for loans entered into under its prior entity,  
14 Pensions, Annuities & Settlements, LLC.

15 19. FIP is Pensions, Annuities & Settlements, LLC's successor and liable for all  
16 allegations in this complaint that apply to Pensions, Annuities & Settlements, LLC.

17 20. FIP has or had the following marketing affiliates, all operating out of 18300 Von  
18 Karman Ave., Suite 410, Irvine, California 92612: Cash Flow Investment Partners, LLC  
19 (<http://www.lumpsum-settlement.com>); BuySellAnnuity, Inc. (<http://www.buysellannuity.com>); and  
20 Pension Advance, LLC.

21 21. FIP's business model is to solicit pensioners through the websites of its marketing  
22 affiliates and enter into contracts with pensioners in which pensioners receive a lump sum of money  
23 in exchange for some or all of the pensioners' monthly pension payments for a fixed period of time,  
24 generally five to ten years. FIP also enters into contracts with investors, who provide money for the  
25 lump sum cash payments and receive some or all of pensioners' monthly pension payments.

26 22. FIP and its marketing affiliates operate as a single integrated enterprise and are all  
27 jointly and severally liable for the allegations in this complaint.  
28

1           23. Defendant Scott A. Kohn is an individual who owns 100% of FIP and is its President,  
2 Secretary, and Treasurer. Mr. Kohn is FIP's sole Member, as defined in FIP's articles of formation,  
3 and as such has complete authority, power, and discretion to make any and all decisions regarding  
4 FIP. Mr. Kohn is also the sole owner of FIP's affiliated marketing entities, Cash Flow Investment  
5 Partners, LLC; BuySell Annuity, Inc.; and Pension Advance, LLC.

6           24. At all relevant times alleged in this matter, each Defendant acted in concert with, with  
7 the knowledge and approval of, and/or as the agent of the other Defendants within the course and  
8 scope of the agency regarding the acts and omissions alleged and are thus jointly and severally liable  
9 for the allegations in this complaint.

#### 10   **IV.    BACKGROUND**

##### 11           **A.     Military pension scams are stealing income from debt-burdened veterans**

12           25. In May 2003, the National Consumer Law Center, Inc. ("NCLC")<sup>3</sup> was researching  
13 consumer scams perpetrated on active military personnel and ultimately issued a report entitled *In*  
14 *Harm's Way-At Home: Consumer Scams and the Direct Targeting of America's Military and*  
15 *Veterans.*<sup>4</sup> While not the primary focus of the investigation, the report disclosed that the Judge  
16 Advocate General Corps felt that some of the greatest abuses they were seeing concerned the  
17 solicitation of retired military personnel to gain access to their pension payments.

18           26. NCLC discovered that companies and individuals were targeting veterans' benefits,  
19 usually by offering an up-front cash payment in return for several years of the veteran's monthly  
20 benefit, thus creating a growing threat to elder veterans and their dependents. These schemes

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22           <sup>3</sup> NCLC is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income  
23 consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and  
24 technical consulting and assistance on consumer law issues to legal services, government, and  
25 private attorneys representing low-income consumers across the country. NCLC publishes a series of  
26 twenty practice treatises on consumer credit laws, including *Unfair and Deceptive Acts and Practices*  
27 (8th Ed., 2012), updated at [www.nclc.org/library](http://www.nclc.org/library), and *Cost of Credit: Regulation, Preemption, and*  
28 *Industry Abuses* (4th Ed., 2009), updated at [www.nclc.org/library](http://www.nclc.org/library), as well as periodic reports on a  
range of topics related to consumer credit issues and low-income and elderly consumers. NCLC  
attorneys have written and advocated extensively on all aspects of consumer law affecting low-  
income and elderly people, conducted training for thousands of legal services and private attorneys  
on the law and litigation strategies to deal with predatory lending, unfair debt collection practices,  
and other consumer law problems, and provided extensive oral and written testimony to numerous  
Congressional committees on these topics.

<sup>4</sup> [https://www.nclc.org/images/pdf/special\\_projects/military/report-scams-facing-military.pdf](https://www.nclc.org/images/pdf/special_projects/military/report-scams-facing-military.pdf)

1 produced huge profits for the scammers, deprived veterans of funds they needed for their long-term  
2 financial security, and, NCLC contended, were illegal.

3 27. Veterans receiving retirement and disability benefits are highly attractive targets for  
4 financial exploitation:

5 • Retirement and disability benefit payments are regular, very dependable, and  
6 long-term. Furthermore, it is very easy to arrange automatic transfer of the funds each month  
7 through “allotments” set up through the Defense Finance and Accounting Servicer. A  
8 company that can convince a veteran to sign over rights to his or her pension payments, and  
9 can enforce such an agreement, faces an extremely low risk of non-payment. The companies  
10 often reduce this risk even further by requiring the veteran to buy life insurance and  
11 designate the company as the beneficiary.

12 • Veterans are easy to reach through affinity marketing and advertising in targeted  
13 publications such as the Military Times Network. Although these publications are produced  
14 by a private, for-profit corporation, many service members and veterans perceive them to be  
15 “official” and assume that advertisers are screened or approved in some way. The companies  
16 may also use the internet, relying upon lead generators, referral networks, and commissions  
17 to reach more potential victims.<sup>5</sup>

18 • Veterans may have, or perceive themselves to have, unusually heavy debt  
19 burdens or poor credit as a result of the financial strains of deployments, frequent relocations,  
20 and other challenges of military service. Veterans, many of whom enlisted at a young age,  
21 may also be less familiar with the landscape of legitimate lenders and financial institutions.

22 28. A number of companies targeted military veterans by offering lump sums in exchange  
23 for the veteran’s promise to redirect monthly benefits payments directly to the company for a fixed  
24 number of years. The cost of these transactions can be astronomically high: NCLC has found  
25

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26 <sup>5</sup> The then-homepage of Veterans First Financial Services was highlighted in the Harm’s Way  
27 report. The advertisement featured an undulating American flag and, at the top, an eye-grabbing,  
28 full-color display of military insignias in motion across the screen. A three-part message flashed  
over those insignias: “You’ve worked hard—invest your money the way YOU want—If you’re a  
retired veteran, VFFS, Inc. can help!”

1 agreements with effective APRs of 27% all the way up to 106%. These typically are not small-dollar  
2 transactions – the agreements NCLC has examined involved principal amounts that sometimes  
3 exceed \$100,000, and on average fall in the range of \$40,000-\$55,000.

4 29. The companies try to characterize the transactions as sales or assignments rather than  
5 loans for two reasons. First, as the owner of one such company admitted in a deposition, they want  
6 to make the transaction non-dischargeable in bankruptcy. Where a true assignment or sale has taken  
7 place, the purchaser may have a property interest in the income stream that is unaffected by  
8 bankruptcy; in other words, the obligation effectively cannot be discharged by the veteran. Second,  
9 the companies want to avoid disclosure requirements and usury limits imposed by state law.

10 **V. SUBSTANTIVE ALLEGATIONS**

11 **A. Advertising and solicitation**

12 30. During the relevant period, FIP advertised to and solicited pensioners across the  
13 nation—including in California—through its marketing affiliates’ websites and other websites.<sup>6</sup>

14 31. FIP advertised its product as a way for pensioners to obtain cash quickly to meet their  
15 immediate needs and long-term goals. Calling the product a “lump sum,” “pension buyout,” and/or  
16 “pension advance,” FIP’s websites stated that it accepted most types of pension payments, including  
17 pensions from private companies, state or federal government pensions, military pensions, fire and  
18 police department pensions, and teachers’ pensions.

19 32. FIP also received referrals from other pension lenders and bought consumer leads  
20 from websites similar to its own websites.

21 33. FIP paid third parties to steer internet-search traffic to its websites, including a  
22 website with the uniform resource locator “<http://www.lumpsum-pensionloans.com>,” by targeting  
23 consumers who conducted searches for FIP-approved phrases such as “personal loans,” “pension  
24 loan,” “on line loan,” or “military retirement loan,” among others.

25 34. Nevertheless, FIP instructed its employees to avoid any mention of loans. Its  
26

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27 <sup>6</sup> For general background on FIP’s business practices, *see, e.g., In re. Future Income Payments,*  
28 *LLC*, NY Dept. Fin. Servs. (Oct. 20, 2016) (Consent Order), *available at* <http://www.dfs.ny.gov/about/ea/ea161020.pdf>.



1 telephone marketing script for inbound calls from interested consumers warned employees that  
2 “saying or mentioning ‘Pension Loan’ or the word ‘loan’ is an autofail.”<sup>7</sup>

3 35. In addition, the FIP product training manual stated that FIP purchases “future pension  
4 payments, and pay[s] sellers a lump sum in exchange for those payments” and that its product “is not  
5 a loan,” but acknowledged that “the IRS views it similar to a loan.”<sup>8</sup>

6 36. Despite this training and FIP’s characterization of its products as sales in its online  
7 advertising and promotional materials, between 2011 and the present date, some FIP employees  
8 referred to FIP’s product as a loan when communicating with consumers. For example, in a 2016  
9 investigation of FIP, the New York State Department of Financial Services discovered the following:  
10 instances of FIP employees introducing themselves as calling from “Pension Loans” or “Lumpsum  
11 Pension Loans”; using email addresses with the domain name of “@lumpsum-pensionloans.com”; at  
12 least one employee referring to a consumer’s “loan application” when communicating with the  
13 consumer; and another employee instructing a consumer to submit certain documents “to make the  
14 loan possible.”<sup>9</sup>

15 37. Consumers referred to the product as a loan and FIP as a lender in their  
16 communications with FIP. FIP only occasionally corrected consumers who used such terminology.

17 **B. Pension loan offer**

18 38. Consumers contacted FIP through its websites or by phone to obtain a quote and  
19 begin the application process. Representatives of FIP communicated with pensioners by phone,  
20 letter, or email to provide a quote for the loan amount and begin collecting information and  
21 documents from the pensioner to allow FIP to complete the underwriting process.

22 39. Pensioners were asked to submit a number of documents relating to their pension and  
23 financial situation, as well as documents evidencing their identity and marital status, to undergo a  
24 credit check and bankruptcy review, and to answer certain questions regarding their medical history.  
25 Many pensioners were asked to submit proof of life insurance as well.

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27 <sup>7</sup> *Id.* at ¶ 7.

28 <sup>8</sup> *Id.* at ¶ 8.

<sup>9</sup> *Id.* at ¶ 9.

1 40. After verifying the pensioners' information and deciding to extend an offer, FIP  
2 proposed to pensioners a lump sum of cash in exchange for a specified amount of the pensioners'  
3 monthly pension payments.

4 41. To complete the loan process, FIP required pensioners to complete and sign several  
5 documents provided by FIP in what FIP referred to as the "Seller Packet." FIP used several versions  
6 of the documents in the Seller Packet during the relevant period.

7 42. The Seller Packet consisted of approximately nine documents: (1) a contract entitled  
8 "Future Income Stream Purchase and Sale Agreement," "Buyer and Pensioner Purchase Agreement  
9 for Purchase of Future Income Stream," or "Future Income Payment Purchase and Sale Agreement";  
10 (2) Transaction Details; (3) Authorization for Automatic Payments; (4) Disclosures and  
11 Acknowledgments; (5) Certificate of Marital Status; (6) Security Guaranty and Indemnification  
12 Agreement; (7) Purchase Agreement; (8) Employment Verification Form; and (9) W9-Request for  
13 Taxpayer Identification Number and Certification.

14 43. In addition, depending on which version of the agreement was used, pensioners were  
15 asked to submit some or all of the following documents: (1) proof of life insurance policy with death  
16 benefits amount; (2) collateral assignment form assigning the life policy benefits to a FIP-designated  
17 assignee; (3) letter from the pensioner's pension payor confirming pension eligibility, amount, and  
18 term; (4) photographic identification, usually a driver's license; (5) voided check; (6) if previously  
19 married, a marital support document; (7) if the pensioner was self-employed, a copy of his or her  
20 personal or corporate tax return; and (8) a bill showing telephone or cellular phone details.

21 44. Once FIP received and verified all documents, pensioners executed a loan agreement  
22 with FIP.

### 23 **C. The loan agreement**

24 45. FIP's loan agreement provided that the pensioner would receive a "one-time, lump  
25 sum payment" in exchange for a specified amount of the pensioner's monthly pension for a specified  
26 number of months.

27 46. Although the agreements were between FIP and pensioners, the agreements provided  
28 that FIP intended to sell and would sell the monthly pension payments remitted by pensioners and

1 assign FIP's rights under the agreement to third parties. These third parties were the investors who  
2 provided the lump sum funds that were paid to pensioners.

3 47. The transactions contractually obligated pensioners to repay the lump sum loan  
4 amounts by monthly payments over the term set by the loan agreement.

5 48. Until 2015, the pensioners personally guaranteed repayment of the lump sum loan  
6 amounts and monthly installment payments over the term set by the loan agreement.

7 49. Upon receipt of the lump sum amount into the pensioners' own bank accounts, the  
8 pensioners instructed the bank or financial institution at which their pension payments were  
9 deposited to transfer a specified amount of the pensions into a FIP-controlled account. To facilitate  
10 collection of the obligated payments, pensioners executed an authorization for electronic funds  
11 transfer granting FIP the power to collect the monthly pension installment payments from the  
12 pensioners' accounts.

13 50. Many pensioners also used credit or debit cards to make their monthly payments.

14 51. FIP deducted \$300 from the lump sum amount as an account set-up fee and servicing  
15 fee, and until September 2014 charged pensioners a "Management Fee" of \$10 per month for  
16 "services rendered in connection with the collection of cash flows."

17 52. FIP's contracts with investors provided that pensioners would remit their monthly  
18 pension payments to a FIP master account, called the "Payment Account," and FIP would thereafter  
19 remit the payments to the investor. The investor contracts did not include any information regarding  
20 the set-up and management fees FIP charged pensioners and took from their lump sum and monthly  
21 installment payments.

22 53. Although FIP's agreements referred to the transaction as a "sale" or "valid sale" and  
23 stated that the product is not a loan, the transaction lacked features of a sale, such as notification to  
24 third parties or the transfer of tax liability to the "purchaser." Rather, the transactions had all the  
25 indicia of a loan. For instance:

26 a. The agreements provided for an advance of money to pensioners and, conditioned  
27 only on the failure of their pension payor to continue making payments, pensioners'  
28 promise to repay in installments over a period set by the agreements.

- 1           b.     The agreements acknowledged that the lump sum amount was “significantly less”  
2           than the amount that the pensioner would pay under the agreement, and some stated  
3           the difference between the amount pensioners received as a lump sum and the amount  
4           they would have collected and retained if the transaction with FIP had not taken  
5           place. This difference, referred to in the agreements as the “discount,” was, in fact,  
6           the interest that the pensioner paid over the course of the loan. The APR, however,  
7           was not disclosed.
- 8           c.     Prior to extending the loan, FIP reviewed the borrower’s credit risk and engaged in  
9           standard loan underwriting assessment. For example, in order to obtain the loan  
10          approval, the borrower was required to verify the amount of his or her retirement or  
11          disability benefits by supplying FIP with income tax returns, pay checks or stubs, and  
12          evidence of other income and financial status. After receiving verification of the  
13          prospective borrower’s income and the other financial information, FIP provided the  
14          loan documents to the prospective borrower.
- 15          d.     In the agreements, FIP reserved a security interest in the pensioner’s retirement or  
16          disability benefits. In essence, Defendants paradoxically claim they purchase the  
17          pensioner’s benefits and also have a security interest in these benefits.
- 18          e.     Pensioners were required to personally guarantee repayment of the lump sum and  
19          monthly installment payments.
- 20          f.     The loan agreements had stringent recourse provisions in the event a pensioner failed  
21          to make the monthly payments: any disruption, interruption, decrease, or elimination  
22          of payments was deemed a material breach of the contract and caused all remaining  
23          and unpaid payments to be immediately due and payable.
- 24          g.     The agreements also provided that any breach could require a pensioner to pay FIP’s  
25          and any subsequent purchasers’ legal fees and costs incurred pursuing a claim against  
26          the pensioner.
- 27          h.     Pensioners who failed to make timely payments were charged late fees equal to 1.5%  
28          of the delinquent payment. Payments returned to FIP for insufficient funds resulted in

1 a \$55 fee, in addition to any late fees.

2 54. Some of the agreements FIP entered into with pensioners contained provisions stating  
3 that any “intentional violation” of the pensioner’s obligations under the contract that “deprived [FIP]  
4 of the economic benefits contemplated by this agreement could under certain circumstances,  
5 constitute criminal conduct, punishable by criminal fines or imprisonment.”

6 55. The agreements FIP entered into with pensioners contained numerous other  
7 provisions which are unconscionable, illegal, or otherwise unenforceable, including language  
8 purporting to:

- 9 a. illegally bind borrowers’ heirs;  
10 b. effect a waiver of certain legal remedies and rights; and  
11 c. exclude the borrower’s obligations under the agreement and the security interest  
12 granted therein from the borrower’s bankruptcy estate.

13 56. The agreements FIP entered into with pensioners contained a choice-of-law provision  
14 that specifically selects California law to govern the agreements.

15 **D. FIP kicked out of California and charged with predatory lending**

16 57. FIP maintained its principal place of business in Irvine, California, until the  
17 California Commissioner of Business Oversight (“Commissioner”) issued a March 3, 2015 cease-  
18 and-desist order, charging that the company was issuing loans without a license in violation of  
19 California Financial Code Section 22100, *et seq.* The Commissioner ordered FIP to desist and refrain  
20 from engaging in the business of a finance lender or broker in the State of California without first  
21 obtaining a license from the Commissioner or otherwise being exempt. “[FIP] insisted that they  
22 weren’t making loans, that what they were offering were ‘sales agreements,’” said Tom Dresslar, a  
23 spokesman for the California Department of Business Oversight. “That was wrong. They were  
24 loans.”<sup>10</sup>

25 58. In February 2017, Los Angeles City Attorney Mike Feuer (“City Attorney Feuer”)  
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27 <sup>10</sup> David Lazarus, “‘Pension Advance’ Company is Unmasked—And It’s No Friend of California  
28 Consumers,” LA Times (Mar. 14, 2017), *available at* <http://www.latimes.com/business/lazarus/la-fi-lazarus-cfpb-future-income-payments-20170317-story.html>.

1 filed suit against FIP, alleging that the company “charged interest rates as high as 96%, far above  
2 California’s 10% usury limit, and threatened borrowers, falsely, that defaulting on the loans could  
3 subject them to criminal liability.” In a statement, City Attorney Feuer called this “predatory  
4 lending” and said that such practices “can exploit the very real financial struggles of California’s  
5 most vulnerable residents, including seniors and veterans.”<sup>11</sup>

6 59. According to the lawsuit, FIP also subjects pensioners in default to illegal and  
7 harassing debt collection practices, such as repeated telephone calls starting as early as 5:30 a.m. In  
8 addition, the lawsuit alleges that FIP solicits California investors to invest in underlying pension  
9 loans, but fails to disclose material information and makes material misrepresentations. For example,  
10 the lawsuit alleges that FIP affirmatively assures investors (falsely) that the pension loans comply  
11 with all applicable laws. As a result, investors unknowingly bear the risk of loss on loans which are  
12 legally challenged or deemed void.

13 60. City Attorney Feuer seeks, among other things, an injunction prohibiting FIP from  
14 collecting on the predatory loans issued to California pensioners, as well as selling unlawful and  
15 fraudulent loans to California investors. In addition, City Attorney Feuer seeks restitution for  
16 pensioners, as well as civil penalties.

17 **E. FIP shut down in New York and forced to repay**

18 61. In 2016, the New York State Department of Financial Services (the “Department”)  
19 commenced an investigation to determine whether FIP violated New York Banking and Financial  
20 Services Laws by lending without a license, making usurious loans, conducting money transmitting  
21 without a license, and making intentional misrepresentations regarding a financial product or service  
22 in the State of New York. The Department concluded that:

- 23 a. FIP entered into loan agreements pursuant to which New York pensioners borrowed a  
24 lump sum of money in exchange for some or all of the pensioner’s monthly pension  
25 payments;
- 26 b. FIP made loans in New York State without a lending license;

27  
28 <sup>11</sup> <http://www.lacityattorney.org/single-post/2017/02/16/City-Attorney-Mike-Feuer-Sues-to-End-Allegedly-Predatory-Pension-Loan-Business>.

- 1 c. FIP charged a rate of interest on the loans they entered into with New York
- 2 pensioners that exceeded the rate permitted by New York Banking and General
- 3 Obligations Laws;
- 4 d. FIP transmitted money to and from New York State without a money transmitter
- 5 license; and
- 6 e. FIP misrepresented to New York pensioners the legal status of the transactions by
- 7 mischaracterizing the loans as sales of an asset, misrepresenting the interest charged
- 8 by calling it a discount, and omitting the APR.

9 62. On October 20, 2016, the Department and FIP entered into a Consent Order  
10 (“Order”), requiring FIP to pay a \$500,000 civil penalty to the Department, cease all consumer-  
11 related transactions within New York State or with any New York resident, and refrain from  
12 participating in any money-transmitting activity in New York State except to the extent required to  
13 fulfill their obligations pursuant to the Order.

14 63. The Order further required FIP to reform the agreements previously entered into with  
15 New York pensioners as follows:

- 16 a. The total amount owed for each agreement shall be revised to equal only the lump
- 17 sum advanced;
- 18 b. The reformed agreements shall reflect that pensioners shall have no further payment
- 19 obligation beyond the lump sum amount set forth in their agreements;
- 20 c. All payments already made by New York pensioners shall be applied to the lump sum
- 21 amounts; and
- 22 d. FIP will forgive all amounts due (\$6,348,232 across 292 transactions) in excess of the
- 23 amount advanced.

24 **VI. ALLEGATIONS RELATING TO PLAINTIFF**

25 64. Plaintiff John Underwood is a resident of Scioto County, State of Ohio.

26 65. Mr. Underwood served for 23 years in the United States Air Force, attaining the rank  
27 of Master Sergeant.

28 66. In 2010, Mr. Underwood retired from the U.S. Air Force.

1           67.     Sometime thereafter, Mr. Underwood saw an advertisement placed by FIP through a  
2 Google search advertising a way for military personnel to obtain cash advances.

3           68.     In approximately December 2012, Mr. Underwood contacted Pensions, Annuities,  
4 and Settlements, LLC, and the parties began to correspond regarding Defendants providing upfront  
5 cash to Mr. Underwood in exchange for his payment of a substantially larger amount over time.  
6 After eliciting information regarding Mr. Underwood's military retirement benefits, checking his  
7 credit, and obtaining other underwriting information, Defendants informed Mr. Underwood that FIP  
8 would provide him \$10,000.00 in cash, less a \$300 setup fee, in exchange for, among other things,  
9 Mr. Underwood's promise to pay to FIP \$397 per month for 60 months.

10          69.     On or about December 29, 2012, Mr. Underwood was forwarded a document titled,  
11 "Future Income Stream Purchase and Sale Agreement" by Pensions, Annuities and Settlements,  
12 LLC, which provided for the exchange of upfront cash for payments over time as described in the  
13 previous paragraph above. On or about December 19, 2012, Mr. Underwood executed the Purchase  
14 and Sale Agreement. This Agreement required Mr. Underwood to instruct the bank or financial  
15 institution to which his pension and disability payments are paid to forward monthly payments in an  
16 amount equal to \$397 to an account established by Defendants. The Agreement purported to waive  
17 Mr. Underwood's right to redirect such payments to any other destination and included severe  
18 penalties should Mr. Underwood so direct any such payments.

19          70.     The gross loan proceeds from the above-described transaction was \$10,000.00. In  
20 addition, Mr. Underwood had to pay a one-time \$300 account setup and servicing fee—which was  
21 withheld from the gross loan proceeds of \$10,000.00—and a \$10 monthly management fee.

22          71.     Mr. Underwood thus received \$9,700.00 (\$10,000 less \$300) as net loan proceeds.  
23 For such loan, Mr. Underwood was required to assign a portion of his military and disability pension  
24 in the amount of \$397 per month for 60 months. To date, Mr. Underwood has already paid  
25 Defendants at least \$20,644 in pension payments that includes \$520 in monthly management fees.

26          72.     Over the term of the loan, Mr. Underwood would repay \$23,820.00 (not including  
27 setup fees). The imputed interest rate on such a loan is 41.422%. If an event occurred which resulted  
28 in accelerated payment, such as a material breach of the Agreement, the imputed interest rate would



1 be even higher.

2 73. Mr. Underwood relied on the representations made by Defendants, as alleged herein,  
3 and was injured as a result. For example, Mr. Underwood relied on the representation that the  
4 “Future Income Stream Purchase and Sale Agreement” was not a “loan.” Additionally, FIP failed to  
5 disclose material information from Mr. Underwood, such as the fact that assignment of his military  
6 pension and/or disability benefits is expressly prohibited by federal law. Based on Defendants’  
7 misrepresentation and/or omissions, Mr. Underwood was injured as a result from being charged a  
8 higher interest rate than would otherwise be allowable under California law and having his military  
9 pension and/or benefits unlawful assigned. Had Mr. Underwood known the true nature of the  
10 transactions, he would not have entered in to the “Future Income Stream Purchase and Sale  
11 Agreement.”

12 **VII. CLASS ALLEGATIONS**

13 74. This action is brought as a class action pursuant to Federal Rule of Civil Procedure  
14 Rule 23. The proposed class is defined as follows:

15 All retired enlisted military personnel or disabled military personnel of any rank who  
16 have entered into a transaction with Defendants in which Defendants paid upfront  
17 cash in return for the veteran’s promise to redirect monthly pension or disability  
benefits directly to any Defendant.

18 Excluded from the class are any persons who have previously obtained a judgment or settled any  
19 claims against Defendants concerning the types of claims asserted herein or have previously  
20 executed releases precluding any such claims against Defendants.

21 75. This action is brought as a class action pursuant to Federal Rule of Civil Procedure  
22 Rule 23. The proposed class is defined as follows:

23 76. There are genuine questions of law and fact common to the class that predominate  
24 over any individual questions. These common questions, which demonstrate a community of interest  
25 among class members, include:

26 a. Whether the form transactions Defendants have entered into with class members  
27 should be classified as loans under applicable law;  
28

1 b. Whether Defendants' transactions involve the obtaining of an assignment of the class  
2 members' right to receive military pension benefits and, if so, whether such renders the  
3 transactions illegal and either void ab initio or voidable at the option of the veteran;

4 c. Whether the form documents drafted by Defendants and used by them in their  
5 transactions with class members contain provisions which are unconscionable and  
6 unenforceable;

7 d. Whether California law should be applied in assessing the legality of Defendants'  
8 transactions, regardless of where the veteran resides, as stated in the form contract documents  
9 drafted by Defendants;

10 e. Whether Defendants' conduct violates the Unfair Competition Law;

11 f. Whether Defendants' transactions impose interest rates in excess of the maximum  
12 rate permitted under Cal. Const. Art. XV, § 1 and the Usury Law;

13 g. Whether Defendants' conduct violates the Consumer Legal Remedies Act;

14 h. Whether Defendants failed to disclose certain material credit terms in violation of the  
15 Truth in Lending Act;

16 i. Whether Defendants' conduct violates the unlawful debt collection provisions of the  
17 Racketeer Influenced and Corrupt Organizations Act;

18 j. Whether Defendants have been unjustly enriched by the retention of payments by  
19 class members in the manner described within;

20 k. Whether Defendants should be enjoined from continuing to procure the assignment of  
21 military retirement and disability pension benefits;

22 l. Whether Defendants should be ordered to provide restitution to the class;

23 m. Whether class members are entitled to an award of damages as a result of Defendants'  
24 conduct, and if so, in what amount; and

25 n. Whether class members are entitled to disgorgement of any funds received by  
26 Defendants, and if so, in what amount.

27 77. The claims of Plaintiff are typical of the claims of the class members. Each class  
28 member was subjected to the same illegal conduct of Defendants, was harmed in the same way, and

1 has claims for relief under the same legal theories.

2 78. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has  
3 common interests with all members of the class and will vigorously protect the interest of the class  
4 through qualified counsel experienced in handling class action and consumer protection cases.  
5 Neither the named Plaintiff nor class counsel has any interests which would conflict with the  
6 interests of the class members.

7 79. A class action is a superior method for the fair and efficient adjudication of this  
8 controversy. Most class members are unaware of the availability of legal challenge to the  
9 transactions they entered into with Defendants. Moreover, given the common questions to be  
10 resolved, class litigation is the superior method of resolving these legal challenges in one  
11 proceeding, thus avoiding a multiplicity of parallel suits. A class action will avoid the possibility of  
12 inconsistent adjudications of the same legal question.

13  
14 **FIRST CAUSE OF ACTION**  
15 **(Declaratory Relief, 28 U.S.C. §§ 2201 *et seq.*)**

16 80. Plaintiff restates all prior allegations as though fully pled herein.

17 81. An actual and justiciable controversy exists between the parties as to their respective  
18 rights and obligations under the form document entitled “Purchase and Sale Agreement” (the  
19 “Agreement”), which each class member has entered into with Defendants. Plaintiff, on behalf of the  
20 class, contends that some or all of the provisions in the Agreement are illegal, void, voidable,  
21 unconscionable, and/or unenforceable. Plaintiff is informed and believes that Defendants contend to  
22 the contrary.  
23

24 82. Plaintiff seeks the following declarations regarding his obligations, and those of class  
25 members, under the Agreement:

- 26 a. The transaction evidenced by the Agreement is, under law and equity, a loan, subject  
27 to applicable usury limitations on the maximum permissible rate of interest which  
28 may be charged and recovered;

- 1 b. Defendants may not enforce or collect any amount from Plaintiff or class members  
2 beyond return of the principal of the loan, because the interest rate evidenced in the  
3 Agreements with Defendants exceeds the maximum permissible rate set forth in Cal.  
4 Const. Art. XV, § 1;
- 5 c. The provisions of the Agreement purporting to require Plaintiff and class members to  
6 provide Defendants direct access to military benefits are void and unenforceable  
7 attempts to circumvent the prohibition upon assignments of military benefits set forth  
8 in 38 U.S.C. § 5301(a)(3)(C), 37 U.S.C. § 701(c), 15 U.S.C. §§ 1601, et seq., and  
9 16.C.F.R. § 444.2(a)(3);
- 10 d. The provision in the Agreement purporting to cause all remaining and unpaid  
11 payments to be immediately due and payable if there is “any disruption, interruption  
12 or decrease in those payments . . . caused by the [veteran]” is an unenforceable  
13 penalty clause; and
- 14 e. The Agreement is unconscionable and unenforceable, and/or void as a matter of law.

15 WHEREFORE Plaintiff prays for relief as hereinafter set forth.

16 **SECOND CAUSE OF ACTION**  
17 **(Violation of the California Unfair Competition Law,**  
18 **Bus. & Prof. Code §17200 et seq. (“UCL”))**

18 83. Plaintiff restates all prior allegations as though fully pled herein.

19 84. Defendants’ practice of requiring Plaintiff and class members to assign their right to  
20 receive military pension and/or disability benefits is expressly prohibited by federal law as alleged  
21 herein. Moreover, Defendants’ transactions involve the assessment of interest that exceeds the  
22 maximum rate set forth in Cal. Const. Art. XV, § 1, violate the CLRA, and violate California Civil  
23 Code, section 1670.5. Therefore, Defendants’ practices constitute unlawful competition under the  
24 “unlawful prong” of the UCL.

25 85. The acts complained of herein, including the disguising of loan transactions as non-  
26 loan transactions, the insertion into contracts of numerous unconscionable and unenforceable terms,  
27 the presentation of misleading descriptions of the purported benefits of its transactions to veterans,  
28 and the charging of imputed interest in excess of the legally permitted rate, constitute unlawful

1 competition under the “unfair” and “fraudulent” prongs of the UCL.

2 86. These acts offend established public policies or are immoral, unethical, oppressive,  
3 unscrupulous, or substantially injurious to consumers. Alternatively, these acts cause harm to  
4 veterans which outweigh any utility flowing from them.

5 87. The acts complained of herein, including the disguising of loan transactions as non-  
6 loan transactions, in order to charge a higher interest rate, are also capable of deceiving a reasonable  
7 consumer.

8 88. Plaintiff has suffered an economic injury and has lost money or property as a result of  
9 Defendants’ acts of unfair competition.

10 89. On information and belief, Defendants continue to engage in some or all of these  
11 unlawful acts and will continue to do so unless enjoined. As a result of these acts of unfair  
12 competition, over the last four years Defendants have obtained money or property from Plaintiff and  
13 class members which they should not, in equity, be permitted to retain, including but not limited to  
14 excess interest payments. Plaintiff and the general public are entitled to injunctive relief, restitution,  
15 and other equitable relief.

16 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

17 **THIRD CAUSE OF ACTION**  
18 **(The Usury Law, Cal. Const. Art. XV, § 1)**

19 90. Plaintiff restates all prior allegations as though fully pled herein.

20 91. As alleged above, Plaintiff and class members have paid to Defendants interest in  
21 excess of the maximum permissible rate authorized under Cal. Const. Art. XV, § 1. Pursuant to the  
22 Usury Law, Stats. 1919, p. xxxiii, Deering's Uncod. Initiative Measures & Stats. 1919-1, Plaintiff  
23 and class members are entitled to repayment from Defendants of treble the amount of all such  
24 interest paid within one year past.

25 92. The transactions entered into between Defendants, on the one hand, and Plaintiff and  
26 class members, on the other, were in substance loans calling for usurious rates of interest. Under the  
27 terms of these transactions, usurious interest was absolutely payable by Plaintiff and class members.  
28 On information and belief, Defendants willfully entered into each of the transactions with Plaintiff

1 and class members, intending to receive the interest payments called for under those transactions.

2 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

3 **FOURTH CAUSE OF ACTION**  
4 **(Violation of the California Consumer Legal Remedies Act,**  
5 **Cal. Civ. Code §§ 1750 *et seq.* (“CLRA”))**

6 93. Plaintiff restates all prior allegations as though fully pled herein.

7 94. By entering into the subject transactions with Defendants involving the assignment of  
8 their military pension and/or disability pay, Plaintiff and the class members are consumers as that  
9 term is defined in Civil Code § 1761.

10 95. Defendants have violated Civil Code §§ 1770(a)(5), (14) and (19), through the acts  
11 alleged herein, thereby entitling Plaintiff and members of the class to relief under Civil Code § 1780  
12 by, *inter alia*:

13 a. Representing that goods or services have characteristics which they do not have or  
14 that a person has a status, affiliation or connection which he or she does not have, in violation  
15 of § 1770(a)(5);

16 b. Representing that a transaction confers or involves rights, remedies or obligations  
17 which it does not have or involve, or which are prohibited by law, in violation of §  
18 1770(a)(14); and

19 c. Inserting an unconscionable provision in a contract, in violation of § 1770(a)(19).

20 96. Defendants’ violations of Civil Code § 1770 described above present a continuing  
21 threat to class members and members of the public in that Defendants are continuing to engage in  
22 these practices, are continuing to refuse to refund amounts paid by consumers, and will not cease  
23 until an injunction is issued by the Court.

24 97. By letter dated August 3, 2017, mailed as directed in Civil Code § 1782 and received  
25 by Defendants on August 8, 2017, Plaintiff notified Defendants of their violations of the CLRA and  
26 demanded that Defendants provide remedies to rectify their conduct.

27 98. Defendants have failed to give or agree to give within a reasonable time, a sufficient  
28 remedy as set forth in California Civil Code § 1782(c) for the above-mentioned violations of law.

99. As a direct and proximate result of the aforementioned acts, Plaintiff and each

1 member of the class he represents have suffered injury in an amount subject to proof at trial and are  
2 entitled to recover damages pursuant to California Civil Code § 1780.

3 100. Plaintiff and the members of the class are entitled to an award of attorneys' fees and  
4 costs against Defendants pursuant to the provisions of Civil Code § 1780(d).

5 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

6 **FIFTH CAUSE OF ACTION**  
7 **(Violation of the Federal Truth in Lending Act,**  
8 **15 U.S.C. §§ 1601 *et seq.*, ("TILA"))**

9 101. Plaintiff restates all prior allegations as though fully pled herein.

10 102. TILA and Regulation Z require that certain material disclosures be provided to a  
11 consumer before consummation of a loan contract. 15 U.S.C. § 1638(a)-(b); 12 C.F.R. § 1026.17(a)-  
12 (b), 1026.18.

13 103. Among the required material disclosures in a closed-end credit transaction are the  
14 finance charge and APR. 15 U.S.C. §§ 1602(v), 1638(a)(3)-(4); 12 C.F.R. § 1026.18(d)-(e).

15 104. The finance charge is "the sum of all charges, payable directly or indirectly by the  
16 person to whom the credit is extended, and imposed directly or indirectly by the creditor as an  
17 incident to the extension of credit." 15 U.S.C. § 1605(a).

18 105. Regulation Z requires that a contract for closed-end credit disclose the finance charge,  
19 "using that term, with a brief description such as 'the dollar amount the credit will cost you.'" 12  
20 C.F.R. § 1026.18(d).

21 106. The APR is "a measure of the cost of credit, expressed as a yearly rate." 12 C.F.R. §  
22 1026.22(a)(1); *see also* 15 U.S.C. § 1606(a).

23 107. Regulation Z requires that a contract for closed-end credit disclose the APR, "using  
24 that term, with a brief description such as 'the cost of your credit as a yearly rate.'" 12 C.F.R. §  
25 1026.18(e).

26 108. The "discount," "management fee," and "account setup and servicing fee" charged by  
27 Defendants are all incident to the extension of credit and part of the finance charge required to be  
28 disclosed to consumers and included in calculation of the APR disclosed to consumers. 15 U.S.C. §§  
1605(a), 1606(a), 1638(a)-(b); 12 C.F.R. §§ 1026.18, 1026.22.

1 109. In the course of extending closed-end credit, Defendants used credit agreements that  
2 did not include the brief descriptions of the finance charge and APR required by Regulation Z. 12  
3 C.F.R. § 1026.18(d)-(e).

4 110. In the course of extending closed-end credit, Defendants used credit agreements that  
5 failed to disclose the finance charge and APR required by TILA and Regulation Z. 15 U.S.C. §§  
6 1605(a), 1606(a), 1638(a)-(b); 12 C.F.R. § 1026.18(d)-(e); 12 C.F.R. § 1026.22.

7 111. Defendants therefore violated TILA and Regulation Z. 15 U.S.C. §§ 1605(a),  
8 1606(a), 1638(a)-(b); 12 C.F.R. § 1026.18(d)-(e); 12 C.F.R. § 1026.22.

9 112. Plaintiff and the members of the class are entitled to an award of actual damages,  
10 twice the amount of any finance charge, costs and reasonable attorney's fees pursuant to the  
11 provisions of 15 U.S.C. § 1640.

12 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

13 ///

14 **SIXTH CAUSE OF ACTION**  
15 **(Violation of the Racketeer Influenced and Corrupt Organizations Act,**  
16 **18 U.S.C. § 1961 *et seq.* ("RICO"))**  
17 **(Against Defendant Kohn)**

18 113. Plaintiff restates all prior allegations as though fully pled herein.

19 114. This count is against Mr. Kohn for violation of RICO, 18 U.S.C. § 1962(c), for using  
20 Future Income Payments, LLC; Pensions, Annuities and Settlements, LLC; and Cash Flow  
21 Investment Partners, LLC, (the "Enterprise Defendants") to collect unlawful debt.

22 115. RICO Section 1962(c) provides that: "It shall be unlawful for any person employed or  
23 associated with any enterprise engaged in, or the activities of which affect, interstate or foreign  
24 commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs  
25 through a pattern of racketeering activity *or collection of unlawful debt.*"<sup>12</sup> (emphasis added). *See*  
26 *United States v. Aucoin*, 964 F.2d 1492, 1496-97 (5th Cir. 1992) ("It is clear to us that Congress  
intentionally created a statutory scheme where proof of the collection of unlawful debt is a *substitute*

27 <sup>12</sup> Unlawful debt" generally means a debt that is incurred or contracted in a gambling activity or  
28 business in violation of federal, state or local law or is unenforceable, in whole or in part, due to  
usury laws. 18 U.S.C. § 1961(6).



1 for a showing that appellants engaged in two or more predicate acts forming a pattern of racketeering  
2 activity.”) (emphasis in original) (internal quotations and citation omitted); *see also Durante Bros. &*  
3 *Sons, Inc. v. Flushing Nat'l Bank*, 652 F. Supp. 101, 103 (E.D.N.Y. 1986) (To state a claim for  
4 collection of an unlawful debt under RICO, plaintiff must show that the loan carries twice the  
5 enforceable interest rate and is incurred in connection with the business of lending money at a  
6 usurious rate).<sup>13</sup>

7 116. Mr. Kohn is a person within the meaning of Section 1962(c).

8 117. The Enterprise Defendants are enterprises within the meaning of Section 1962(c). *See*  
9 *Cedric Kushner Promotions, LTD., v. Don King*, 533 U.S. 158 (2001) (while the enterprise required  
10 by the statute must be more than the person operating under another name, the requisite distinctness  
11 between respondent and his corporation was established since they were legally different entities).

12 118. Mr. Kohn is employed by or associated with the Enterprise Defendants. Specifically,  
13 Mr. Kohn owns 100% of the Enterprise Defendants and has complete authority, power, and  
14 discretion to make any and all decisions regarding the Enterprise Defendants.

15 119. The Enterprise Defendants are engaged in interstate commerce, and their activities  
16 affect interstate commerce. Specifically, the Enterprise Defendants advertised to, solicited, and made  
17 and collected pension loans to and from pensioners across the nation.

18 120. The Enterprise Defendants also use instrumentalities of interstate commerce in their  
19 daily activities, including automobiles, telephones, the internet, and the mails.

20 121. Mr. Kohn conducts or participates in the affairs of the Enterprise Defendants through  
21 the collection of unlawful debt in violation of 18 U.S.C. § 1962(c). Specifically, Mr. Kohn directed  
22 the Enterprise Defendants to make and collect pension loans to and from pensioners at a rate of  
23 interest in excess of the legal rate in California.

24 122. The pension loans (and the interest rates charged therein) constitute unlawful debt  
25 within the meaning of Section 1962(c) as the term is defined in Section 1961(6). Specifically,

26 a. A substantial portion of the interest rate is unenforceable under state usury law. Under

27  
28 <sup>13</sup> Under California law, interest will be twice the enforceable rate if it exceeds 20 percent per year. Cal. Const., Art. XV § 1.

1 California law, a lender is prohibited from charging a rate greater than 10% per  
2 annum as compensation for the use of money. Cal. Const. Art. XV, §1.

3 b. The Enterprise Defendants make pension advances as part of their business. The  
4 Enterprise Defendants' practice of making usurious pension advances to veterans and  
5 other pensioners constitutes the principal portion of their business and is  
6 memorialized in their training manuals. Defendants use the pension advances as a  
7 scheme to steal income from debt-burdened veterans by charging interest rates higher  
8 than is lawfully allowed.

9 c. The pension advances are issued at a rate far in excess of twice the enforceable rate  
10 allowed in California. 18 U.S.C. § 1961(6).

11 119. The pension advances occur across state lines in interstate commerce as many class  
12 members, including Plaintiff, reside in different states than Defendants.

13 120. Defendants attempt to collect on the pension advances by directly debiting accounts  
14 and pursuing other debt collection practices.

15 123. As a direct and proximate result of the aforementioned acts, Plaintiff and each  
16 member of the class he represents have suffered injury in an amount subject to proof at trial and are  
17 entitled to recover threefold the damages sustained and the cost of the suit, including reasonable  
18 attorneys' fees, against Defendants pursuant to the provisions of 18 U.S.C. § 1964(c). *Allstate Ins.*  
19 *Co. v. Polack*, No. CV 08-0565 (ADS) (ETB), 2012 U.S. Dist. LEXIS 141927, at \*23 (E.D.N.Y.  
20 Sep. 12, 2012) ("an award of treble damages is mandatory") (emphasis added) (*citing Cullen v.*  
21 *Margiotta*, 811 F.2d 698, 713 (2d Cir. 1987)) (noting that "civil RICO requires that a successful  
22 plaintiff be awarded treble damages").

23 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

24 **SEVENTH CAUSE OF ACTION**  
25 **(Unjust Enrichment)**

26 124. Plaintiff restates all prior allegations as though fully pled herein.

27 125. Defendants, by the actions alleged above, have collected money from Plaintiff and  
28 class members under such circumstances that in equity and good conscience Defendants cannot

1 retain, and which in justice and fairness belongs to Plaintiff and the class.

2 126. Within the last four years, Defendants have become indebted to Plaintiff and class  
3 members in the amount of all excess interest paid within that period. No part of these sums have  
4 been repaid to Plaintiff or class members.

5 127. As a result of Defendants' violations, described above, Defendants have unjustly  
6 enriched themselves at the expense of the class. Defendants' unjust enrichment continues to accrue  
7 as they continue to engage in their unlawful business practices and collect loan payments and excess  
8 interest, as described above.

9 128. Defendants' retention of money gained through their unlawful and deceptive practices  
10 is unjust considering the circumstances under which the funds were obtained.

11 129. As a result of the foregoing, Plaintiff and the members of the class have been  
12 deprived of their money and suffered loss as alleged above.

13 130. To prevent unjust enrichment, Defendants should be required to identify, account for,  
14 fully refund, and provide restitution of their ill-gotten gains including interest collected in excess of  
15 the legal maximum, and fruits of those gains, to Plaintiff and the class. Defendants should be ordered  
16 to refund all sums paid to them, together with interest thereon, and to pay reasonable attorneys' fees  
17 and costs.

18 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

19 **VIII. PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, on behalf of himself and others similarly situated, requests and  
21 prays that this Court enter a judgment against Defendants as follows:

- 22 (a) Certifying this case as a Class Action with Plaintiff as class representative and  
23 Plaintiff's counsel as class counsel;
- 24 (b) Declaring the respective rights and obligations of the parties under the "Purchase and  
25 Sale Agreements";
- 26 (c) Declaring the assignment by Plaintiff and those similarly situated of their military  
27 pensions void or voidable;
- 28 (d) Ordering Defendants to restore to Plaintiff and class members all amounts collected

1 by Defendants which may have been acquired by means of any practices found by this Court  
2 to be illegal, unfair, or deceptive or otherwise prohibited by law;

3 (e) Permanently enjoining Defendants from taking any assignment of the disability  
4 payments of any veteran and the pension benefits of any enlisted veteran;

5 (f) Awarding treble damages in amounts to be proven at trial;

6 (g) Awarding treble the amount of all excess interest paid to Defendants within the past  
7 year prior to the filing of this Complaint;

8 (h) Awarding pre-judgment interest on all other amounts awarded;

9 (i) Awarding costs and attorneys' fees as authorized by law; and

10 (j) Granting such other and further relief as may be deemed just and proper in the  
11 premises.

12 **IX. JURY DEMAND**

13 Plaintiff, JOHN UNDERWOOD, individually and on behalf of all others similarly situated,  
14 by and through his attorneys, hereby demands a trial by jury pursuant to Rule 38 of the Federal  
15 Rules of Civil Procedure and the court rules and statutes made and provided with respect to the  
16 above-entitled cause.

17 DATED: September 11, 2017

Respectfully submitted,

FINKELSTEIN & KRINSK LLP

By: /s/ Jeffrey R. Krinsk

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*Attorneys for Plaintiff  
and the putative class*

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Payday Loan Companies Prey on Retired, Disabled Veterans](#)

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