

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Consumer Lender
3 Activities of:

No. 19F-BD0052-SBD

4 **FUTURE INCOME PAYMENTS, LLC f/k/a**
5 **PENSIONS, ANNUITIES AND**
6 **SETTLEMENTS, LLC; FIP, LLC; FUTURE**
7 **INCOME PAYMENTS LLC; FUTURE**
8 **INCOME PAYMENTS; FIP LLC; FIP;**
9 **CASH FLOW OUTSOURCING SERVICES**
10 **INC.; CASH FLOW INVESTMENT**
11 **PARTNERS, LLC; BUYSPELLANNUITY**
12 **INC.; PENSION ADVANCES LLC;**
13 **PENSIONS, ANNUITIES AND**
14 **SETTLEMENTS; PAS; LUMP SUM**
15 **PENSION PURCHASE. AND SCOTT KOHN,**
16 **PRESIDENT/MANAGER/OWNER/DIRECT**
17 **OR/OFFICER/MEMBER/PRINCIPAL**
18 **AND/OR AGENT FOR EACH AND ALL**
19 **LISTED ENTITIES**

ORDER TO CEASE AND DESIST;
NOTICE OF OPPORTUNITY FOR
HEARING; CONSENT TO ENTRY
OF ORDER

20 Respondents.

21 Under Arizona Revised Statutes (“A.R.S.”) § 6-137, the Superintendent of the Arizona
22 Department of Financial Institutions (“Department”) issues this Order to Cease and Desist
23 (“Order”) containing the following Findings of Fact, Conclusions of Law, and Superintendent’s
24 Order against Future Income Payments, LLC, f/k/a Pensions, Annuities and Settlements, LLC and
25 Future Income Payments LLC which have also been known as, or has conducted business as,
26 Future Income Payments LLC; Future Income Payments; FIP, LLC; FIP LLC; FIP; Cash Flow
Outsourcing Services Inc.; Cash Flow Investment Partners, LLC; BuySellAnnuity Inc.; Pension
Advances LLC; Pensions, Annuities and Settlements; PAS; and Lumpsum Pension Purchase
 (“Respondent Companies”) and Scott Kohn (“Kohn”),
 President/Manager/Owner/Director/Officer/Member/Principal and/or agent for each and all listed
 entities (collectively, “Respondents”)

Under Titles 6 and 41 of the A.R.S. and Title 20, Chapter 4 of the Arizona Administrative
Code (“A.A.C.”), Respondents are hereby notified that they are entitled to a hearing to contest the

1 allegations set forth in this Order. A request for hearing (“Request for Hearing”) shall be filed
2 with the Department **within thirty (30) days** of service of this Order, *see* A.R.S. § 6-137(D), and
3 shall identify with specificity the reason(s) why an administrative hearing is being sought in
4 accordance with A.R.S. § 41-1092.03(B).

5 Under A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or her
6 own behalf or by counsel as a party to this proceeding. Upon receiving the Request for Hearing,
7 the Department shall issue a notice of hearing scheduling the matter for hearing in accordance with
8 A.R.S. § 41-1092.05.

9 Persons with disabilities may request reasonable accommodations such as interpreters,
10 alternative formats, or assistance with physical accessibility. Requests for special
11 accommodations should be made as soon as practicable but no later than **fourteen (14) business**
12 **days** before the scheduled hearing. To request accommodation, please call the Office of
13 Administrative Hearings at (602) 542-9826.

14 Under A.R.S. § 41-1092.06, **Respondents have the right to request an informal**
15 **settlement conference (“ISC”)**. To request an ISC you must file a written request with the
16 Department no later than **twenty (20) days** before the scheduled hearing. The ISC will be held
17 within **fifteen (15) days** after receipt of your request. If an ISC is requested, a person with the
18 authority to act on behalf of the Department will be present. Likewise, Respondents should have a
19 person with authority to act present at the ISC.

20 Please note that in requesting an ISC, Respondents waive any right to object to the
21 participation of the Department’s representative in the final administrative decision of this matter.
22 Further, any statements, either written or oral, made by the Department, Respondents, or their
23 representatives at an ISC, including a written document, created or expressed solely for the
24 purpose of settlement negotiations, are inadmissible in any subsequent administrative hearing. *See*
25 A.R.S. § 41-1092.06. Conversely, any written or oral statements made by any party outside an
26 ISC may be admissible in any subsequent hearing.

1 conduct business in Arizona.

2 7. At all times relevant to this Order, Kohn has never been licensed with the
3 Department as a consumer lender.

4 8. At all times relevant to this Order, Kohn had managerial authority or oversight of
5 Respondent Companies to direct their affairs or through other entities directed the affairs of the
6 Respondent Companies.

7 9. At all times relevant to this Order, neither Kohn nor Respondent Companies were
8 exempt from licensure as a consumer lender within the meaning of A.R.S. § 6-602.

9 **FINDINGS OF FACT**

10 10. In April 2017, following the receipt of a consumer complaint, the Department
11 commenced an investigation of Respondents' business in Arizona. The investigation disclosed the
12 following:

- 13 a. On May 16, 2017, the Department sent a letter to Kohn inquiring about
14 Respondents' consumer lending activities in Arizona and required a response to the
15 consumer's complaint. Respondents were also invited to present to the Department
16 "any information relevant and material" for the Department's investigation.
17 Respondents failed to respond to this letter.
- 18 b. On August 14, 2017, the Department sent a second letter to Respondents inquiring
19 about their consumer lending activities in Arizona
- 20 c. On September 1, 2017, Ripley Rand ("Mr. Rand"), attorney for Respondents,
21 responded to the Department's letter assuring the Department that Respondents
22 have resolved the issue related to the consumer's complainant and claiming that
23 Respondents do not engage in unlicensed consumer lender activity in Arizona.
- 24 d. On September 8, 2017, the Department sent a 'follow-up' email to Mr. Ripley
25 Rand, attorney for Respondents, requesting "the names of any ... Arizona residents
26 who have engaged in ... purchase transactions with FIP."

- 1 e. On September 29, 2017, Mr. Rand, on behalf of Respondents, provided to the
2 Department a list of Arizona consumers who had entered into an agreement with
3 Respondent Companies. The list contained the names of **four hundred thirty-eight**
4 **(438) Arizona consumers.**
- 5 f. On April 27, 2018, the Department sent a letter to Mr. Rand requesting additional
6 information related to the Arizona consumer agreements, such as the date of the
7 agreement; the date of the agreement termination; the interest rate for each
8 consumer; the amount of the loan being provided to the consumer; the number of
9 payments and amount of each payment; the number of consumers who had
10 defaulted on their agreements; and the remedy to be used if the consumer defaulted
11 on the agreement.
- 12 g. Respondents failed to respond to the Department's April 27th request.
- 13 h. Based on available information, the Department concluded that Respondents
14 engaged in deceptive acts and practices.
- 15 i. Respondents lured vulnerable Arizona consumers who were in need of immediate
16 cash into illegal and expensive loans.
- 17 j. Respondents marketed their product over the internet as the purchase of an asset,
18 specifically the purchase of all or a portion of a consumer's income from a pension,
19 social security, veteran benefit, or other income stream, in exchange for an up-front
20 lump sum payment in cash.
- 21 k. Arizona consumers who contracted with Respondents were required to execute a
22 "Purchase and Sale Agreement," (the Agreement" or "Agreements") or some
23 variation thereof.
- 24 l. Under these agreements, Respondents pay a lump sum in exchange for an
25 assignment of the right to collect payments due to Arizona consumers under a
26 pension, disability plan or other employee or government benefit program.

- 1 m. Respondents presented these Agreements to consumers as an “irrevocable and final
2 sale of” the consumers’ future income.
- 3 n. The Agreements contained a statement that “neither Seller nor [Respondents] intend
4 this agreement to be regarded as a loan or other financial instrument” and if “a court
5 ever finds that the sale of the Purchased Asset was ineffective or that [the]
6 [a]greement created a loan rather than an absolute sale of the Purchased Asset, that
7 [the] [a]greement will serve as a security agreement under the Uniform Commercial
8 Code or similar law of the state in which Seller resides.”
- 9 o. The Agreements were usually limited to a certain period of time.
- 10 p. The consumers were subsequently obligated to repay a larger total amount through
11 monthly payments. The annual percentage rate charged to some Arizona consumers
12 was approximately 200%.
- 13 q. The Agreements usually contained a provision regarding resale of the “Purchased
14 Asset” to a third party “Subsequent Purchaser.” The Agreements provided that
15 Respondents intended to sell and would sell the monthly pension payments remitted
16 by consumers and assign Respondents’ rights under the Agreements to third party
17 “Subsequent Purchaser.”
- 18 r. In addition to their “Purchase and Sale Agreement,” Respondents required
19 consumers who contracted with them to execute an “Authorization for Automatic
20 Payment (Electronic Funds Transfer/EFT)” or an equivalent document providing
21 that they authorize Respondents and their respective bank(s) to initiate recurring
22 debit entries as to consumers’ checking/savings account as “payment for sale of an
23 asset.”
- 24 s. Further, consumers were required to pay a “one-time setup fee” in the amount of
25 three hundred dollars (\$300.00) which was deducted from the lump sum paid to
26 consumers.

- 1 t. In some instances, consumers were also charged an account maintenance fee in the
2 amount of ten dollars (\$10.00) per month.
- 3 u. Consumers who failed to make a timely payment were charged a late fee of 1.5% of
4 the delinquent payment.
- 5 v. The Agreements provided that consumers would be charged thirty-five dollars
6 (\$35.00) for any form of payment returned to Respondents for non-sufficient funds.
- 7 w. Some consumers were also charged a “one-time business start-up processing and
8 set up fee of \$599.”
- 9 x. Respondents presented to consumers that their product was “a purchase” of their
10 future payments and Respondents’ agreements referred to the transaction as a “sale”
11 or “valid sale.”
- 12 y. In reality, Respondents’ product was a loan because (a) it offered a lump-sum of
13 cash in exchange for repayment on a monthly basis in a defined amount, (b) the
14 repayment exceeded the lump-sum of cash provided, which excess represented a
15 finance charge under A.R.S. § 6-632, (c) Respondents required consumers to
16 provide information reflecting consumer’s ability to repay the cash received, though
17 an asset purchase transaction would not require such information from the
18 consumer, (d) Respondents were not responsible for payment of the income taxes,
19 though an asset purchase would impose such liability upon Respondents, (e)
20 Respondents did not become assignees of the pension or other income stream and
21 did not take title in those benefits or income stream, and (f) the income streams that
22 Respondents contracted for are not legally assignable.

23 11. A review of the Agreements entered into between Respondents and Arizona
24 consumers disclosed the following information:

- 25 a. **Complaint # 4021062** - A review of the agreement between the
26 complainant and Respondents revealed that the agreement was executed on

1 January 25, 2017. The agreement provided that the complainant was to
2 receive a lump sum (“Purchase Price”) in the amount of \$3,900.00
3 (“including the deduction for Set-up Fee”) in exchange for a monthly
4 payment of \$650.00 for a period of 60 months, beginning on March 2, 2017
5 and ending on February 2, 2022. The total amount owed by the complainant
6 was \$39,000.00. The difference between the amount received by the
7 complainant and the amount owed was \$35,100.00. The agreement provided
8 for a one time set-up fee in the amount of three hundred dollars (\$300.00).
9 The agreement contained a provision regarding authorization for Electronic
10 Funds Transfers and also a provision regarding Respondents’ intent to resale
11 the “Purchased Asset” to “Subsequent Purchaser.”

12 b. **Complaint # 4021516** - A review of the agreement between the
13 complainant and Respondents revealed that the agreement was executed on
14 December 5, 2017. The agreement provided that the complainant was to
15 receive a lump sum (“Purchase Price”) of \$3,106.00 (“including \$300.00
16 deduction for Set-up Fee”) in exchange for a monthly payment of \$350.00
17 for a period of 60 months, beginning on January 2, 2018, and ending on
18 December 2, 2022. The total amount owed by the complainant was
19 \$21,000.00. The difference between the amount received by the complainant
20 and the amount owed was \$17, 894.00. The agreement provided for a one
21 time set-up fee in the amount of three hundred dollars (\$300.00) and a “one-
22 time business start-up processing and set up fee of \$599.” The agreement
23 also contained a provision regarding “Authorization for Electronic Funds
24 Transfers” and a provision regarding Respondents’ intent to resale the
25 “Purchased Asset” to “Subsequent Purchaser.”

26 c. **Complaint # 4021308** - A review of the agreement between the

1 complainant and Respondents revealed that the agreement was executed on
2 October 8, 2013. The agreement provided that the complainant was to
3 receive a lump sum (“Purchase Price”) of \$10,000.00 (“including the
4 deduction for Set-up Fee”) in exchange for a monthly payment of \$431.00
5 for a period of 60 months, beginning on March 2, 2017 and ending on
6 February 2, 2022. The total amount owed by the complainant was
7 \$25,860.00. The difference between the amount received by E.W. and the
8 amount owed was \$15,860.00. The agreement provided for a one time set-
9 up fee in the amount of \$300.00, a “late payment fee equal to 1.5% of the
10 delinquent payment(s),” an “Account Management Fee” in an amount of
11 \$10 per month for the term of the agreement and for any form of payment
12 returned for non-sufficient funds, the complainant was to be charged \$35.00
13 in addition to the late fee. The agreement contained a provision providing
14 authorization for Electronic Funds Transfers and provision regarding
15 Respondents’ intent to resale the “Purchased Asset” to “Subsequent
16 Purchaser.”

17 CONCLUSIONS OF LAW

18 12. Under A.R.S. §§ 6-601, *et seq.* the Superintendent has the authority and the duty to
19 regulate all persons engaged in the consumer lender business and with the enforcement of statutes,
20 rules, and regulations applicable to consumer lenders.

21 13. Respondents conduct set forth in the Findings of Fact constitutes unlawful activity
22 in violation of A.R.S. § 6-603(A), which states, “Unless exempt under section 6-602, a person,
23 whether located in this state or in another state, shall not engage in the business of a consumer
24 lender without first being licensed as a consumer lender by the superintendent.”

25 14. Respondents conduct set forth in the Findings of Fact constitutes unlawful activity
26 in violation of A.R.S. § 6-632, which states, “[a] licensee [sic] may contract for and receive

1 finance charges on consumer loans”. However, in no event shall finance charges for a consumer
2 loan exceed a rate of 36%.

3 15. Respondents conduct set forth in the Findings of Fact constitutes unlawful activity
4 in violation of A.R.S. § 6-613(B), which states, “Any consumer lender loan that is made by a
5 person who is required to be licensed pursuant to this chapter but who is not licensed is void, and
6 the person making that consumer lender loan has no right to collect, receive or retain any principal,
7 finance charges or other fees in connection with that consumer lender loan.”

8 16. The violations constitute grounds for: (1) the issuance of an order under A.R.S. §
9 6-137 directing Respondents to cease and desist from this prohibited conduct and to take the
10 appropriate affirmative actions, within a reasonable period of time prescribed by the
11 Superintendent to correct the conditions resulting from their unlawful acts, practices, and
12 transactions; (2) the imposition of a civil monetary penalty under A.R.S. § 6-132; (3) the issuance
13 of an order declaring that any consumer lender loan made by Respondents is void under A.R.S. §
14 6-613(B); (4) the issuance of an order directing Respondents to pay restitution of monies,
15 including any compensation such as any principal, finance charges or other fees, which
16 Respondents collected, received or retained, under A.R.S. §§ 6-131(A)(3) and 6-613(B); and (5)
17 any other remedy necessary or proper for the enforcement of statutes and rules regulating
18 consumer lenders under A.R.S. §§ 6-123 and 6-131.

19 **SUPERINTENDENT’S ORDER**

20 A. Respondents shall immediately cease and desist from committing the violations set
21 forth in the Findings of Fact and Conclusions of Law, and cease all consumer lender activity in
22 Arizona.

23 B. Under A.R.S. § 6-613, all Agreements between Respondents and Arizona
24 consumers are void. Respondents shall have not right to collect, receive or retain any principal,
25 finance charges or other fees in connection with their Agreements with Arizona consumer.

26 C. Respondents shall not collect, or attempt to collect, any payment or fee from

1 Arizona consumers.

2 D. Respondents shall comply with all Arizona statutes and rules regulating Arizona
3 consumer lender companies, *see* A.R.S. §§ 6-601, *et seq.*

4 E. The Department shall to use all available means, including, but not limited to, the
5 Department's website, Facebook, and other social media platforms to inform Arizona consumers
6 of the provisions of this Order.

7 F. Under A.R.S. § 6-132, the Superintendent may assess a civil penalty against Kohn
8 and Respondent Companies of not more than five thousand dollars (\$5,000.00) for each violation
9 per day. In this case, a civil money penalty of **one hundred thousand dollars (\$100,000.00)** is
10 assessed, which amount Respondents shall immediately pay to the Department.


11 G. Kohn and Respondent Companies are jointly and severally liable for payment of the
12 civil money penalty, and any other legal fees and expenses to collect this penalty.

13 H. The provisions of this Order shall be binding upon Kohn and Respondent
14 Companies and their directors, officers, members, employees, agents, representatives, and other
15 persons participating directly or indirectly in the affairs of Respondent Companies

16 I. This Order shall become effective upon service, and shall remain effective and
17 enforceable until such time as, and except to the extent that it shall be stayed, modified,
18 terminated, or set aside by a court of competent jurisdiction or by the Superintendent.

19 SO ORDERED this 6th day of February, 2019.

20 Robert D. Charlton, Superintendent
21 Arizona Department of Financial Institutions

22 By: 
23 Mark Murphy, Division Manager
24 Licensing & Consumer Affairs
25 Arizona Department of Financial Institutions
26

CONSENT TO ENTRY OF ORDER

1
2 A. Respondents acknowledge that they have been served with a copy of the foregoing
3 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
4 same, are aware of the right to an administrative hearing in this matter, and have knowingly and
5 voluntarily waived that right.

6 B. Respondents accept the personal and subject matter jurisdiction of the Department and
7 the Superintendent over them and consent to the entry of the foregoing Findings of Fact,
8 Conclusions of Law, and Order.

9 C. Respondents state that no promise of any kind or nature has been made to induce them
10 to consent to the entry of this Order, and that they have done so knowingly, and voluntarily.

11 D. Respondents agree to immediately cease from engaging in the unlawful conduct,
12 activities, or events set forth in the Findings of Fact and Conclusions of Law.

13 E. Respondents acknowledge that the acceptance of this Consent to Entry of Order by the
14 Superintendent is solely to settle this matter and does not preclude this Department or any other
15 agency of this state or subdivision thereof from instituting other proceedings as may be appropriate
16 now or in the future.

17 F. Respondents acknowledge and agree that failure to correct the violations set forth
18 above in this Order or any future findings of repeat violations may result in disciplinary action that
19 may include a greater civil money penalty.

20 G. Scott Kohn, individually and on behalf of Respondent Companies, represents that by
21 the virtue of his capacity he has been authorized to consent to the entry of this Order.

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1 H. Respondents waive all rights to seek an administrative or judicial review or otherwise
2 to challenge or contest the validity of this Order before any court of competent jurisdiction.

3
4 **DATED** this ____ day of _____, 2019.

5
6 By: _____
7 Scott Kohn, President/Manager
8 Future Income Payments, LLC
9 Future Income Payments LLC and
10 Respondent Companies

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17 **ORIGINAL** of the foregoing filed this 6th
18 day of February, 2019, in the office of:

19 Robert D. Charlton, Superintendent
20 Arizona Department of Financial Institutions
21 Attn: Lola Duncan
22 100 North 15th Avenue, Suite 261
23 Phoenix, Arizona 85007
24 LDuncan@azdfi.gov

25 **COPY** of the foregoing mailed and/or delivered same date to:

26 Mark Murphy, Division Manager
Richard Traveler, Examiner-In Charge
Arizona Department of Financial Institutions
Attn: Ana Starcevic
100 North 15th Avenue, Suite 261
Phoenix, Arizona 85007
AStarcevic@azag.gov

1 Roberto Pulver, Assistant Attorney General
Office of the Attorney General
2 2005 North Central Avenue
Phoenix, Arizona 85004
3 Roberto.Pulver@azag.gov

4 **COPY** mailed same date by
Certified Mail, Return Receipt Requested, to:

5
6 Scott Kohn, President/Manager
Future Income Payments LLC
2850 West Horizon Ridge Parkway
7 Henderson, NV 89052
Respondents
8 Tracking No. 7009 2250 0001 3651 9008

9 Conservitas Company Services LLC
Future Income Payments LLC
10 2505 Anthem Village Drive, Suite E-599
Henderson, NV 85052
11 Statutory Agent
Tracking No. 7012 3050 0002 0740 9040

12 Agents and Corporations, Inc., Statutory Agent
13 Future Income Payments, LLC
1201 Orange Street, Suite 600
14 One Commerce Center
Wilmington, DE 19801
15 Statutory Agent for Respondent Companies
Tracking No. 7012 3050 0002 0740 9057

16 Scott Kohn
17 Future Income Payments, LLC
3535 East Coast Highway #119
18 Corona Del Mar, CA 92625
Tracking No. 7009 2250 0001 3651 8995

19 Scott Kohn
20 Future Income Payments, LLC
18300 Von Karman Avenue, Suite 410
21 Irvine, CA 92612
Tracking No. 7009 2250 0001 3651 8988

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