

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)

Plaintiff,)

v.)

VEROS PARTNERS, INC,)
MATTHEW D. HAAB,)
JEFFERY B. RISINGER,)
VEROS FARM LOAN HOLDING LLC,)
TOBIN J. SENEFELD,)
FARMGROWCAP LLC,)
PINCAP LLC, and)

Defendants,)

PIN FINANCIAL LLC,)

Relief Defendant.)

Case No. 1:15-cv-659-JMS-MJD

RECEIVER’S MOTION FOR AUTHORITY TO ABANDON VEROS FARM LOAN HOLDING, FARMGROWCAP LLC, AND PINCAP LLC CLAIMS AGAINST ROSENTRETER FARMS, LLC, AFFILIATED FARMS, LLC & FARM ALLIANCE, LLC AND FOR INSTRUCTIONS REGARDING CLAWBACK CLAIMS AGAINST INVESTORS IN THE VEROS FARM LOAN HOLDING AND FARMGROWCAP INVESTMENTS

William E. Wendling, Jr., the Receiver herein, by counsel, respectfully seeks the Court’s authority to abandon the Veros Farm Loan Holding (hereinafter “VFLH”), FarmGrowCap LLC (hereinafter “FGC”), and PinCap LLC claims against Rosentreter Farms, LLC, Affiliated Farms, LLC & Farm Alliance, LLC (hereinafter collectively referred to as “the Rosentreter Entities”). Further, the Receiver seeks direction regarding clawback claims against investors in the Veros Farm Loan Holding and FarmGrowCap Investments. In support of this motion, the Receiver States:

1. On April 22, 2015, the Plaintiff, United States Securities and Exchange Commission (“SEC”) filed its Complaint [[Filing No. 1](#)] in this action and a motion for temporary restraining order, asset freeze and other relief [Filing No. 3]. Thereafter, the Court entered a Temporary Restraining Order [[Filing No. 12](#)].
2. On May 1, 2015, the Agreed Order Appointing Receiver (“Agreed Order”) was entered [[Filing No. 34](#)], appointing William E. Wendling, Jr. to serve without bond as the Receiver for the estates of the Receivership Defendants.
3. The Agreed Order at Paragraph 38, provides that the Receiver “may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.” [[Filing No. 34 at p.15](#)]
4. The Agreed Order further provides in Paragraph 44 that “[s]ubject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted...” [[Filing No. 34 at p. 17](#)]
5. Further, the Receiver is charged with the responsibility to:
 - To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees and agents of the Receivership Defendants;
 - To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;

To take such other action as may be approved by this Court.

Agreed Order Appointing Receiver [[Filing No. 34 at p. 5](#)]

6. VFLH, FGC, and PinCap LLC made investments in the Rosentreter Entities. The total principal owed at the time the Receivership was established was approximately \$1,023,353.00, plus interest.
7. The Receiver has previously stated in open court and various reports filed with the Court that the likelihood of collecting funds from the Rosentreter Entities for the benefit of the investors was remote at best.
8. The Receiver, in addition to statements to the Court and information contained in the Receiver's Ninth Quarterly Report [[Filing No. 404](#)], sent notice to the investors outlining the collectability issue of the Rosentreter Entities. The Receiver asked the investors to contact him with any questions they had about the Rosentreter Entities and to let the Receiver know if there were any objections or concerns should the Receiver suggest that no further action be taken to collect money owed the investors by the Rosentreter Entities.
9. The Receiver, on August 9, 2017, e-mailed [Exhibit A](#) to approximately 110 investors to e-mail addresses previously provided by the investors seeking input on the Rosentreter Entity matter. In response, the Receiver received eleven (11) responses from investors. One response, which represented it was sent on behalf of several investors (but did not name specific investors), stated that they did not want the Receiver to spend any Receivership assets trying to collect from the Rosentreter Entities.
10. On June 16, 2017, Magistrate Dinsmore, held an Issues Conference at the request of Interested Investors. At the Issues Conference, the collectability of the Rosentreter

Entities was discussed and the investor speaking for the interested investors stated that no further Receivership assets should be spent on the Rosentreter matter.

11. Based on the foregoing, it is the Receiver's position that any Receivership claims against the Rosentreter Entities should be abandoned by the Receivership as there is no realistic basis for recovery for the investors.
12. The Receiver has previously stated in open court and in various reports filed with the Court that there is approximately an additional \$180,000.00 that may be clawed back from Investors in the VFLH/FGC farm offerings who took their profits and did not make further investments.
13. The Receiver, in addition to statements to the Court and information contained in the Receiver's Ninth Quarterly Report [[Filing No. 404](#)] believes that any claims against VFLH/FGC investors that received profits on their investments in years 2012 and 2013 that did not make further investments should not be pursued.
14. The Receiver takes this position based upon the following:
 - a. The amount to be collected is approximately \$180,000.00
 - b. There are approximately twenty (20) investors in the VFLH/FGC farm offerings who took their profits and did not make further investments.
 - c. The economics to claw back the \$180,000.00 was discussed with the Court in previous hearings and filings.
 - d. In its February 16, 2017, Order [[Filing No. 359](#)] the Court ordered Receiver to "seek Court approval before pursuing any such interest recovery".
 - e. At the February 8, 2017 hearing and via other communications to the Receiver a number of investors voiced their sentiments that the Receiver not spend any funds pursuing the \$180,000.00.

- f. However, the Receiver felt it was important for all investors to have the opportunity to respond and share their input on the matter. Consequently, the Receiver e-mailed [Exhibit A](#) to e-mail addresses previously provided by the investors seeking input on the claw back and making suggestions on how claims could be pursued and suggesting that a demand letter be sent to the approximately twenty (20) investors requesting a voluntary repayment of their ill-gotten gains. Receiver suggested that no more than \$2,500 - \$5,000.00 be spent to prepare and send the demand letter.
- g. The Receiver also explained that if investors did not voluntarily refund their profits litigation would be necessary to force payment, including the possibility of multiple lawsuits. In this regard, the Receiver recommends collections be done on a contingent fee basis.
- h. One (1) out of eleven (11) investors responded and approved or felt the Receiver pursue the claw back investors. One (1) investor responded suggesting a fee structure, but again, a majority of those that responded requested the Receiver not take any action to pursue the claw back.
- i. Although the Receiver feels there is some viability and collection of some of the funds is possible, the Receiver is hesitant to pursue claims based on the fact that investors want the Receivership terminated as soon as possible and statements made to the Court and Receiver that investors do not want the Receiver to spend any additional Receivership funds even in an attempt to collect additional funds for distribution.

- j. The Receiver believes he can petition the Court to terminate the Receivership in the very near future. However, the pursuit of these claims would extend the receivership which also is objectional to many investors.
- k. Presently the VFLH/FGC investors, are estimated to receive a return of principal of approximately 54% (based upon what has been distributed to them to date and the estimated final receivership distribution). Even the if the entire \$180,000.00 in clawbacks was collected the Receiver, the investors would receive a *de minimus* percentage increase in their return on principal.

WHEREFORE, the Receiver, by counsel, requests that this Court enter an order allowing the Receiver to abandon the aforementioned claims, providing instructions on whether or not the Receiver should pursue the clawbacks and for all other proper relief.

Dated: October 6, 2017

/s/ William E. Wendling, Jr.

William E. Wendling, Jr., Receiver
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Respectfully submitted,

By /s/ Anne Hensley Poindexter

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Counsel for the Receiver

Certificate of Service

I hereby certify that on October 6, 2017, a copy of the foregoing **Motion for Authority to Abandon Veros Farm Loan Holding, FarmGrowCap LLC, and PinCap LLC Claims Against Rosentreter Farms, LLC, Affiliated Farms, LLC & Farm Alliance, LLC and Instructions Regarding Clawback Claims Against Investors in the Veros Farm Loan Holding and FarmGrowCap Investments** was filed electronically. Notice of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Anne Hensley Poindexter
Anne Hensley Poindexter, #14051-29
Altman, Poindexter & Wyatt LLC
90 Executive Drive, Suite G
Carmel, IN 46032
Telephone: (317) 350-1000
Fax: (844) 840-3461
Email: apoindexter@apwlawyer.com

From: William Wendling
To:

REDACTED

Cc: [Jessica Smith](#); [William Wendling](#)
Subject: VFLH/FGC Receivership Status
Date: Wednesday, August 9, 2017 4:10:55 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)

The purpose of this email is to provide you with information about the status of the Receivership as it relates to the Veros Farm Loan Holding and Farm Grow Cap investments. On July 21st, the Receivership sent a second interim distribution of \$450,000 to the investors. It is the intent of the Receiver to make a final distribution before the end of 2017. The Receiver believes that it is possible to close out the receivership before the end of the year. However, if that cannot be accomplished there may be a third interim distribution.

Presently, the Receivership is actively trying to collect money that is still owed to the Veros Farm Loan Holding and Farm Grow Cap investors, but the bulk of funds to be collected has already occurred. There are additional claw backs to consider. Pursuant to a previous order of the court the Receiver is obligated to notify the court and investors the estimated cost and time commitment that the Receiver anticipates to pursue these claw backs. The amount to be collected is approximately \$180,000. These funds represent individuals that invested in the 2012 and 2013 Veros Farm Loan Holding who did not roll their investments into the 2014 Farm Grow Cap investment pool. In essence, they received profits that were paid by 2014 investors. The law says that they are to return the false profits that they collected.

The Receiver believes that to pursue these investors will initially cost between \$2,500 and \$5,000. If an investor does not voluntarily refund their profits then litigation will be necessary to force payment. Multiple lawsuits would have to be filed against each investor who did not voluntarily return payment. Unfortunately, from previous experience, collecting on the claims can be

expensive. A concern is how much should the Receivership be willing to spend to collect \$180,000 from 20 plus former investors? A number of investors have let the court and the Receiver know that they do not want to see Receivership any assets spent in an effort to collect these claims. The Receiver and the Court are cognizant of that concern. Before the Receiver pursues litigation, he will seek approval from the court to proceed.

The final collection matter for the Veros Farm Loan Holding and Farm Grow Cap investors to understand is that of a loan to Rosentreter Farms. This is a farming operation in Illinois. This borrower owes approximately, \$1,172,000 to Farm Grow Cap. As stated in several notifications, the possible recovery is not good, and in the Receiver's opinion, not economically feasible. Based on information that was obtained from the debtor, his counsel, the SEC defendants and other sources there is no money available for the debtor to pay loan. In addition, Rosentreter's attorney contends that Farm Grow Cap defaulted on its obligation causing Mr. Rosentreter to shut down his business. He also believes that he is owed commissions or fees for referring a client to Pin Cap. Those claims have been made in response to demands for payment and his attorney has indicated counterclaims would be asserted in any action to recover on the debt. In that regard, if litigation is filed the Receiver would only consider a contingent fee arrangement so that receivership assets are not wasted on fruitless litigation. However, believes that our lawyer would require an hourly contract to defend Rosentreter's counter claims. The Receiver and the Magistrate assigned to this case have been told by a number of the investors that they do not want any receivership assets used to pursue collection on the Rosentreter collection effort.

It is the Receiver's intent to notify the court that the Receiver communicated this information to the investors and requested the investors to notify the Receiver within 30 days of any objections. Upon the expiration of the 30 days the Receiver will file a motion requesting permission to abandon the Rosentreter claim. The motion will reflect any objections to the plan.

In conclusion, the information and request to investors above is a significant part of the plan to wind down the receivership, which is in keeping with the Receiver's reports to the court on terminating the Receivership will be as soon as reasonably possible.

Pleased do not hesitate to contact the undersigned if you have questions or comments.

Sincerely,

William E. Wendling, Jr.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
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UNITED STATES SECURITIES)
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Plaintiff,)

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PINCAP LLC, and)

Defendants,)

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Relief Defendant.)

Case No. 1:15-cv-659-JMS-MJD

**ORDER AUTHORIZING RECEIVER TO ABANDON VEROS FARM LOAN
HOLDING, FARMGROWCAP LLC, AND PINCAP LLC CLAIMS AGAINST
ROSENTERER FARMS, LLC, AFFILIATED FARMS, LLC
AND
ORDER DIRECTING RECEIVER TO NOT PURSUE CLAWBACK
CLAIMS AGAINST INVESTORS**

WHEREAS this matter has come before this Court upon the motion of William E. Wendling, Jr. (“Receiver”), by counsel, for authority to abandon Veros Farm Loan Holding, FarmGrowCap LLC and PinCap LLC Claims Against Rosentreter Farms, LLC, Affiliated Farms, LLC & Farm Alliance, LLC and for Instructions Regarding Clawback Claims Against Investors in the Veros Farm Loan Holding and FarmGrowCap LLC Investments;

WHEREAS the Court finds that the Receiver's request to abandon Veros Farm Loan Holding, FarmGrowCap LLC, and PinCap LLC claims against Rosentreter Farms, LLC, Affiliated Farms, LLC, and Farm Alliance, LLC as set forth in his motion is reasonable; and

WHEREAS the Court has considered the information set forth in Receiver's Motion as to the pursuit of clawback claims against the Investors in the Veros Farm Loan and FarmGrowCap LLC Investments and finds that it is not in the best interests of the Receivership or the Investors for Receiver to pursue said claims;

IT IS THEREFORE ORDERED THAT:

The Receiver's Motion for Authority to Abandon Veros Farm Loan Holding, FarmGrowCap LLC and PinCap LLC claims against Rosentreter Farms, LLC, Affiliated Farms, LLC, and Farm Alliance, LLC, is hereby approved, and the Receiver is hereby authorized to take all steps necessary to effectuate the abandonment of said claims.

Further, the Receiver is directed to not pursue the clawback claims against the Investors of the Veros Farm Loan and FarmGrowCap LLC Investments.

Dated: _____

Honorable Jane Magnus-Stinson, Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

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Case No. 1:15-cv-659-JMS-MJD

VEROS PARTNERS, INC,
MATTHEW D. HAAB,
JEFFERY B. RISINGER,
VEROS FARM LOAN HOLDING LLC,
TOBIN J. SENEFELD,
FARMGROWCAP LLC,
PINCAP LLC, and

Defendants,

PIN FINANCIAL LLC,

Relief Defendant.

ORDER AUTHORIZING RECEIVER TO ABANDON VEROS FARM LOAN
HOLDING, FARMGROWCAP LLC, AND PINCAP LLC CLAIMS AGAINST
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AUTHORIZING RECEIVER TO PURSUE CLAWBACK
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WHEREAS this matter has come before this Court upon the motion of William E. Wendling, Jr. (“Receiver”), by counsel, for authority to abandon Veros Farm Loan Holding, FarmGrowCap LLC and PinCap LLC Claims Against Rosentreter Farms, LLC, Affiliated Farms, LLC & Farm Alliance, LLC and for Instructions Regarding Clawback Claims Against Investors in the Veros Farm Loan Holding and FarmGrowCap LLC Investments;

WHEREAS the Court finds that the Receiver's request to abandon Veros Farm Loan Holding, FarmGrowCap LLC, and PinCap LLC claims against Rosentreter Farms, LLC, Affiliated Farms, LLC, and Farm Alliance, LLC as set forth in his motion is reasonable; and

WHEREAS the Court has considered the information set forth in Receiver's Motion as to the pursuit of clawback claims against the Investors in the Veros Farm Loan and FarmGrowCap LLC Investments and finds that it is reasonable for Receiver to pursue said claims;

IT IS THEREFORE ORDERED THAT:

The Receiver's Motion for Authority to Abandon Veros Farm Loan Holding, FarmGrowCap LLC and PinCap LLC claims against Rosentreter Farms, LLC, Affiliated Farms, LLC, and Farm Alliance, LLC, is hereby approved, and the Receiver is hereby authorized to take all steps necessary to effectuate the abandonment of said claims.

Further, the Receiver is directed to pursue the clawback claims against the Investors of the Veros Farm Loan and FarmGrowCap LLC Investments and take such action as necessary to initiate same.

Dated: _____

Honorable Jane Magnus-Stinson, Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

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