

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 URGENT MOTION FOR AUTHORITY
TO SIGN INTERCREDITOR AGREEMENT**

William E. Wendling, Jr., the Receiver herein, by counsel, respectfully requests the Court for authority to sign the Intercreditor Agreement attached hereto. In support of this motion, the Receiver States:

1. On April 22, 2015, the Plaintiff, Unites States Securities and Exchange 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. Among other duties, the Receiver is charged with the responsibility to:

To manage, control, operate and maintain the Receivership Estates ...;

To use Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business...;

To take such action as necessary and appropriate for the preservation of the Receivership Property or to prevent the dissipation or concealment of Receivership Property;

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

4. On June 29, 2015, the Receiver filed the “Receiver’s Urgent Motion for Authority to Sign Agreement” [[Filing No. 71](#)] requesting the Court’s authority to enter into an agreement with the McFarlands that would allow the McFarlands to make a private loan to a blueberry farming operation in Michigan, hereinafter referred to as “True Blue.” (*The Receiver believed it was necessary to enter into that Agreement since McFarlands were previous investors in the Veros Private Offerings. They are not now investors in any Veros private offerings*) That Agreement contained a covenant not to sue based upon specific representations of McFarland but did not bind any private claims of any individual lenders/investors in separate actions they may file. The Receiver believed (and still believes) that the agreement was in the best interest of the receivership estate based upon the representations of True Blue’s financial conditions and the urgent need for operating funds for the 2015 harvest and processing. There was no objection by any other party in this matter, and on June 30, 2015, the Court granted this request [[Filing No. 73](#)]; and, the Receiver and the McFarlands signed the Agreement.

5. The McFarlands now request the Receiver to enter into an Intercreditor Agreement that would confer upon the McFarlands equal footing with respect to the collateral/security with the initial investors of the 2015 True Blue Berry Management LLC Private Offering. A copy of the Intercreditor Agreement is attached hereto and incorporated herein by reference as [Exhibit A](#).

6. Since this request has consequences to the investors in the Veros Private Offering “Short-Term Secured Loans to Provide 2015 Operating Capital,” the Receiver provides the following information to support his request to sign the Intercreditor Agreement:

a. Veros created a private placement entitled “Short-Term Secured Loans to Provide 2015 Operating Capital” to True Blue Berry Management, LLC, and obtained a total of \$2,617,000 in funds which were provided to True Blue as planned. Pursuant to the Short-Term Secured Loans Private Placement Memorandum (“PPM”) dated February 24, 2015, a second group of investors were being invited to participate in a second round of funding for the 2015 operating fund and both sets of investors would be subject to the same terms and provisions in that PPM and would have equal footing as it relates to collateral/security.

b. However, the complaint filed by the SEC against Veros terminated the efforts to complete the second round of funding. Thus, True Blue Berry management was left without a source of funding for the bulk of its 2015 operating expenses. Fortunately, the McFarland’s have agreed to fund the rest of the 2015 operating expenses.

c. The issue the Intercreditor Agreement brings forth is that the McFarlands want to be collateralized to the same extent as the initial investors. Although the addition of the McFarlands dilutes the initial investors’ claim to collateral/security, that same

dilution would have occurred anyway when the second round of funding took place as originally contemplated. Consequently, the initial investors will be in no different position as a result of executing this Intercreditor Agreement than they would have been had the second round of funding occurred as originally contemplated and agreed.

d. As stated in the Receiver's prior motion requesting authority to allow the McFarlands to invest in True Blue [[Filing No. 71](#)], the funding of this operation is extremely necessary to maintain its financial integrity, and there are five (5) different Veros private placement investments that would be adversely affected if this business runs into financial trouble.

7. The Intercreditor Agreement that McFarlands are requesting the Receiver to sign will place McFarlands in no different position than if the second round of investments had been completed and to which all investors had agreed and planned for.

8. This Intercreditor Agreement is therefore an ancillary matter to the authority granted to the Receiver to enter into the original agreement with the McFarlands [[Filing No. 73](#)] and time is of the essence.

9. This Intercreditor Agreement is necessary as an ancillary matter to ensure that True Blue will receive the needed operating funds for the 2015 harvest and because no other current source of funds is readily available at this time. The Receiver has been told that without funds for the 2015 harvest, True Blue will not have sufficient funds to meet other financial commitments including commitments to other lenders and investors.

10. The Receiver therefore requests the Court's authority to sign the Intercreditor Agreement and believes at this time that the Agreement is in the best interest of the Receivership Estate based upon the representations of True Blue's financial conditions and the urgent need for

operating funds for the 2015 harvest and processing.

11. Counsel for the United States Securities and Exchange Commission and counsel for the Defendants are aware of this motion and have informed the Receiver that there is no objection to the same. Counsel for MainSource Bank and private counsel for Veros Partners, Attorney Paganelli, have not been previously contacted regarding this motion due to the limited scope of their engagement in this cause.

WHEREFORE, the Receiver, by counsel, requests that this Court enter an order authorizing him sign the Intercreditor Agreement attached hereto as [Exhibit A](#), and for all other proper relief.

Respectfully submitted,

By s/Anne Hensley Poindexter .
Anne Hensley Poindexter, #14051-29
Rodney T. Sarkovics, #19547-49
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Counsel for the Receiver

Certificate of Service

I hereby certify that on July 16, 2015, a copy of the foregoing Receiver's Urgent Motion for Authority to Sign Intercreditor Agreement was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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INTER-CREDITOR AGREEMENT

This Inter-Creditor Agreement is made this 15th day of July, 2015 by and between Martin McFarland and Laura McFarland, husband and wife, of 10178 Lakewood Drive, Zionsville, Indiana 46077 ("McFarland") and Veros Partners, Inc., as agent for and on behalf of lenders identified in the Inter-Creditor and Administrative Agent Agreement entered into by the lenders and True Blue Berry Management, LLC, a Michigan Limited Liability Company ("Veros").

Veros holds a security interest in certain assets and properties of True Blue Berry Management, LLC, and its related entities and persons, whose address is 9548 Co. Rd. 215, Grand Junction, Michigan 49056 (collectively, the "Debtor") to secure certain credit facilities that Veros has extended to the Debtor. The Debtor has requested McFarland to extend a credit facility to the Debtor to be secured by certain assets and properties of the Debtor. McFarland is not willing to do so unless Veros agrees that Veros' security interests in assets and properties that serve as security for the Veros debt, now and in the future owned by the Debtor, shall be of equal priority to McFarland's security interests in and its liens on those assets and properties.

Veros and McFarland agree as follows:

1. Priority. All security interests, mortgage interests, and other liens that have been or in the future are held or obtained by McFarland in or on any Collateral, as defined below, shall have equal priority to all security interests, mortgage interests, and other liens that have been held or obtained by Veros in or on any Collateral. This equality of priority shall exist notwithstanding the time or order of attachment or perfection of any security interest, mortgage interest, or other lien that has been or in the future is given by the Debtor to Veros in any of the Collateral or the time or order of filing of any financing statement or mortgage with respect to any such security interest, mortgage interest, or other lien or the priorities that would exist in the absence of this Agreement. In this Agreement, "Collateral" means all real and personal property now or in the future owned by the Debtor and covered by any such security interest, mortgage interest or other lien, wherever located, and all proceeds and products of the foregoing.

2. Notice of Action. Each party agrees that if it accelerates payment of that party's outstanding credit to Debtor or takes any action to foreclose or otherwise realize on that parties' Collateral, that party shall promptly give the other party written notice describing the action taken and shall furnish the other party with all information concerning the executing party's outstanding credit to the Debtor requested by the other party. This agreement shall constitute: (i) written notice by each party to the other party of a claim of an interest by that party in the Collateral pursuant to §9-504(3) of the Uniform Commercial Code, UCC §9-611; and (ii) written notice of demand by Veros to McFarland and McFarland to Veros pursuant to § 9-504(1)(c) with respect to distribution of the proceeds of any disposition of Collateral by either party.

3. Assignment. The parties shall not sell, transfer, or assign any security interest, mortgage interest or lien encumbering the Collateral unless, before the sale, transfer, or assignment, they have furnished to the purchaser, transferee, or assignee a copy of this Agreement. This agreement is binding upon all transferees, assignees or successors-in-interest to the parties.

4. Scope of Agreement. Nothing contained in this Agreement shall be construed as: (i) constituting any agreement by or obligation of either party to the other to extend credit to the Debtor in any particular amount or amounts or at any particular time or times, or (ii) except as provided in Paragraph 2 above, as limiting the right of either party at any time to take any action that it considers necessary or desirable to collect or enforce any indebtedness or obligation then owing by the Debtor to that party or to modify any credit facility that has been or is in the future extended to the Debtor, including increasing or decreasing the amount of the credit facility, or to extend additional or different credit facilities to Debtor or to receive or accept any payment from the Debtor in respect of any indebtedness or obligation then owing to that party. Each party has, and shall have, complete and absolute discretion with respect to the granting of any credit to the Debtor from time to time, and neither party shall have any obligation to obtain any consent from the other party, or to give the other party any notice, with respect to the granting or the terms of any extension of credit or with respect to the obtaining by that party of any security interest or lien on any property or asset of the Debtor or the modification of any terms or conditions of any extension of credit or security interest or lien.

5. No Third-Party Beneficiary. Neither the Debtor nor any person other than the parties to this Agreement is intended to be a beneficiary of any provision of this Agreement.

6. Waiver and Amendment. This Agreement may not be changed, and no provision of it may be waived, except by a writing signed by the parties.

7. Notices. Any notice or other communication under this Agreement shall be in writing and personally delivered or mailed by first-class mail, postage prepaid, or sent by express, overnight courier to:

a. If to McFarland:

Martin and Laura McFarland
10178 Lakewood Drive
Zionsville, Indiana 46077

b. If to Veros:
c/o William E. Wendling
Court Appointed Receiver
One Penn Mark
11595 North Meridian Street
Carmel, IN 46032

or to another address that either party shall specify to the other by written notice.

8. Indiana Law. This Agreement shall be governed by and construed in accordance with the loan laws of the State of Indiana, without giving effect to conflict-of-laws principles.

9. Complete Agreement. This is the complete agreement of the parties and supersedes any prior agreements, understandings, and representations.

10. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their successors and assigns.

The parties have signed this Inter-Creditor Agreement as of the date stated on the first page.

McFARLAND:

Martin McFarland

Laura McFarland

VEROS PARTNERS:

By: _____
William E. Wendling
Court Appointed Receiver for
Veros Partners Inc.

DEBTOR'S ACKNOWLEDGEMENT

The Debtor joins the foregoing Inter-Creditor Agreement and agrees that it recognizes and agrees to the equality of priority in the security interest of the assets of the Debtor as set forth above between Creditors Veros and McFarland. Debtor agrees to be bound by the terms set forth above in the instant Inter-Creditor Agreement.

Dated: July 15, 2015

Dennis M. Hartmann, individually and on behalf of True Blue Berry Processing, Inc., True Blue Fresh, LLC, Reichart's Middlebranch Ranch, Inc. and all related entities

Dated: July 15, 2015

Shelly A. Hartmann, individually and on behalf of True Blue Berry Processing, Inc., True Blue Fresh, LLC, Reichart's Middlebranch Ranch, Inc. and all related entities