UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
v.	**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, and PINCAP LLC,	
Defendants,	
PIN FINANCIAL LLC,	
Relief Defendant.	

PLAINTIFF'S RESPONSE TO DEFENDANT TOBIN J. SENEFELD'S MOTION TO STAY

Plaintiff United States Securities and Exchange Commission (the "SEC" or "Commission"), for its response to Defendant Tobin J. Senefeld's Motion to Stay Case Management Plan Deadlines [Filing No. 211], states as follows:

1. As an initial matter, the parties' Case Management Plan was entered, by agreement, nearly one year ago, on June 17, 2015. Senefeld, the SEC and the other defendants jointly proposed a schedule pursuant to which the SEC would disclose first its expert witnesses, if any, and defendants would disclose their experts, if any, two weeks later. (*See* Filing No. 62 at § III. F) Although the final Case Management Plan entered by the Magistrate Judge adjusted

slightly the parties' proposed deadlines, the overall structure of the Case Management Plan remained the same. (*See* Filing No. 67 at § III. F) So Senefeld was aware of the possibility that he might be required to retain an expert, and disclose that expert's opinion, well before the Court ruled on any summary judgment motions.

2. If Senefeld desired a ruling on his summary judgment motion before he was required to retain an expert, for the reasons described in his motion (Filing No. 2011 at ¶¶ 5-7, 9-10), he could have filed his motion for summary judgment well before the close of fact discovery. However, Senefeld chose to wait and file his motion for summary judgment until March 28, 2016, after the close of fact discovery. In fact, Senefeld did not show any interest in retaining an expert witness until after the SEC responded to his motion for summary judgment (*see* Filing No. 197), and just before the May 15th deadline for disclosing defense experts.

3. The SEC objects to Senefeld's request because granting Senefeld's proposal would postpone several important deadlines in this matter, including the submission of Final Exhibit and Witness Lists (June 3rd , the completion of expert and damages discovery (July 22nd) and the submission of objections to expert testimony (August 5th). If these dates are postponed, in order to allow Senefeld to retain an expert, and allow for the preparation of an expert report, then the stay he requests will delay any trial of this matter.[1]

4. The SEC, the Receiver, and the investors in Veros Farm Loan Holdings LLC ("VFLH") and FarmGrowCap LLC ("FarmGrowCap"), all have an interest in a prompt and efficient resolution of this action. Senefeld does not. Obviously, staying the Case Management

[1] Although the Court has not set a trial date, or a scheduled Pre-Trial conference (which would trigger deadlines for additional pretrial filings), under the existing Case Management Plan the parties had committed to be ready for trial in December, 2016. The SEC intends to be ready for trial on the parties' agreed schedule. And even if this case is not actually tried in December, it could be tried early in 2017 if the parties comply with the current schedule.

Plan deadlines will further delay the trial of the SEC's claims against Senefeld, as well as any collection proceedings against Senefeld if the SEC prevails on its claims against him.

5. In addition, the SEC did not retain an expert witness in this matter because none appeared to be necessary to prove its claims, or to respond to any affirmative defenses. Senefeld now has indicated his desire to rely on expert testimony, if he is required to go to trial, although he has not suggested what his expert might say. So it appears that Senefeld wishes either: (a) to raise an unpleaded affirmative defense, which should not be permitted; or (b) to bolster his arguments against the SEC's disgorgement claims, which is premature, as any such arguments would be decided by the Court after a finding of liability. Accordingly, granting Senefeld's proposal would confer a significant and unwarranted litigation advantage.

6. Senefeld has identified two forensic accountants, either of whom he may wish to retain as an expert witness, if his motion for summary judgment is denied, or granted only in part. (Filing No. 211 at ¶ 7) However, each of these men charge more than $500 per hour. (*Id.*) Senefeld's personal assets remain frozen by order of this Court. And Senefeld offers no evidence (such as an engagement letter) that he actually would retain either of those experts if he were allowed time to do so. The Court should not vacate its remaining case management deadlines if Senefeld is merely bluffing.

7. Finally, none of the authorities cited by Senefeld stand for the proposition that a litigant may wait until the eve of an expert disclosure deadline, and then seek to stay expert discovery during a pending summary judgment motion, simply because no trial date is set.[2]

[2] In *Novelty, Inc. v. Mountain View Marketing*, 2010 WL 1325436 (S.D. Ind. Mar. 30, 2010), the court bifurcated and stayed litigation on recently filed counterclaims, but allowed the remainder of the case to proceed to trial within 3 months, even though there were pending motions for summary judgment and sanctions which needed to be resolved before trial. In *Columbus Regional Hosp. v. Federal Emergency Mgmt. Admin.*, 2012 WL 1066793 (S.D. Ind. Mar. 28, 2012), the court affirmed a magistrate's ruling which denied a party leave to take discovery in

None of these cases involve stays of expert discovery to allow the Court to rule on a dispositive motion, and the reasoning in each of the cases cited is closely tied to the facts. Accordingly, while the Court indisputably has the power to grant Senefeld's motion, none of the cases he has cited suggest that granting the requested stay would be appropriate.

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order to respond to a summary judgment motion; but the Court did not stay the existing case management deadlines until it was determined whether movant would prevail. In *Finch v. City of Indianapolis*, 2011 WL 2516242 (S.D. Ind. June 23, 2012), the court denied a plaintiffs' motion to seek discovery relevant only to punitive damages, while the defendants' motion for summary judgment based on qualified immunity was pending, because the plaintiffs had not shown any factual basis for their allegations. In *U.S. ex rel. Robinson v. Indiana University Health, Inc.*, 2015 WL 3961221 (S.D. Ind. June 30, 2015), the court denied defendants' motion for a stay of discovery while a party's Rule 12(b)(6) motion was pending, because the plaintiff faced serious pressure to prepare its case for trial. And in *Duneland Dialysis LLC v. Anthem Ins. Cos., Inc.*, 2010 WL 1418392 (S.D. Ind. April 6, 2010), the court granted a stay of discovery pending a ruling on a motion to dismiss, because the plaintiffs failed to show the need for the proposed discovery, and also because the case was not set for trial.

Wherefore, Plaintiff United States Securities and Exchange Commission respectfully requests that this Court enter an order denying Defendant Tobin J. Senefeld's Motion to Stay Case Management Plan Deadlines.

Dated: May 19, 2016.

Respectfully submitted,

By: ***/s/Robert M. Moye***
Robert M. Moye (MoyeR@sec.gov)
Doressia L. Hutton (HuttonD@sec.gov)
U.S. SECURITIES AND EXCHANGE COMMISSION
175 West Jackson Blvd., Suite 900
Chicago, IL 60604
(312) 353-7390

Attorneys for Plaintiff U.S. Securities and Exchange Commission

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2016, I served copies of ***Plaintiff's Response to Defendant Tobin J. Senefeld's Motion to Stay*** on all counsel of record through the Court's ECF filing system.

/s/Robert M. Moye
Robert M. Moye