

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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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, )  
PINCAP. LLC, and )  
 )  
Defendants, )  
 )  
PIN FINANCIAL LLC, )  
 )  
Relief Defendant, )  

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**INVESTORS' MOTION TO STAY AND  
OBJECTION TO INTERIM DISTRIBUTION METHODOLOGY**

Comes now Eric and Jennifer Armstrong, David and Patricia Bednarz, Jonah and Sara Beer, Don Bice, Isaac and Julie Brewer, Jose and Astrid Cardenas, Patrizia Cavozzoni, Robert Christianson, John Friedman, Doug and Judi Garrison, Jody Friedman, Andre Guillaume, Alvin and Carol Haab, Barry and Glenda Griffin, David Hatchett, Tim and Lori Hillstrom, Bill Harlow, James Hulskotter, Mary Huse, Dannon Hulskotter, Bart Jackson, Samuel Judd, Wendy James, Kelly Keenan, Sam and Karen Kegerreis, Larry Kaelin, Joseph Losco, Jason Luchtefeld, Michael Kluesner, Matt McCrady, Tracy and Julie Miller, Tom and Sandra Mason, David and Barbara Moroknek, George and Marie Napier, Doug and Dana Miller, Kim Prather, Renee Reiner, Gene

and Priscella Rund, Phil and Sheila Roberts, Myron Schroer, Robert and Nancy Poole, Kurt and Loretta Showalter, Erik Streib, Jeremy Reinhardt, Wes Taylor, Anne Turner, Todd Schumacher, Brian Tretter, Jeanne White, Kevin Tretter, Darrell Webb, Tim and Jeanene Williams, Mike Watkins and Jack Whitlock (the “Interested Investors”), by counsel, and state their Objection to the Receivers proposed interim distribution; request a hearing relating thereto; and respectfully request the Court stay any further implementation of the Receiver’s proposed methodology until such time as that hearing occurs. In support thereof, the Interested Investors state as follows:

1. On May 1, 2015 the Court entered an Agreed Order Appointing Receiver (the “Agreed Order”), appointing William E. Wendling, Jr. to serve as the Receiver over Veros Farm Loan Holding, LLC (“VFLH”), FarmGrowCap, LLC (“FarmGrowCap”), PinCap LLC (“PinCap”), and all private offerings in which Defendant Veros Partners controlled investor funds (“Private Offerings”).

2. On August 29, 2016, the Receiver filed a Motion for Authority to Make Interim Distributions to Investors of Veros Farm Loan Holding LLC and FarmGrowCap LLC (the “Motion”). ([Filing No. 259](#)). The Court approved the Motion on September 12, 2016, permitting the Receiver to move forward with his distribution plan. ([Filing No. 269](#)). The Receiver has done so – providing preliminary information to investors. The Receiver is now working on an “accounting methodology” and “proposed preliminary payments” for submission to the investors and the Court.

3. Rather than object later on an *ad hoc* basis as contemplated by the Receiver, the Interested Investors upon receiving this information and reviewing the Receiver’s plan hereby object to any further implementation of the Receiver’s methodology for the reasons set forth below. The Receiver’s plan is neither fair nor reasonable under the circumstances.

4. Each of the Interested Investors is an investor in one or more of the Defendants' Private Offerings, and as such, each has an interest in the Receiver effectuating as efficient and just distribution of assets as reasonably possible.

5. Further, the following Interested Investors were invested in one or more of the farm loans related to Crossroads 2012, Kirbach 2012, VFLH 2013, PinCap Bridge 2014, and/or FarmGrowCap 2014 and, therefore, will be directly, financially impacted by the Receiver's proposed distribution plan: Eric & Jennifer Armstrong, Brian Badman, David & Patricia Bednarz, Jonah & Sara Beer, Don Bice, Patrizia Cavazzoni, Jose and Astrid Cardenas, Robert Christianson, John Friedman, Doug & Judi Garrison, Barry & Glenda Griffin, Andre Guillaume, Alvin and Carol Haab, Bill Harlow, David Hatchett, Tim and Lori Hillstrom, James Hulskotter, Mary Huse, Wendy James, Samuel Judd, Larry Kaelin, Kelly Keenan, Sam and Karen Kegereis, Michael Kleusner, Joseph Losco, Jason Luchtefeld, Tom and Sandra Mason, Doug and Dana Miller, Tracy and Julie Miller, David and Barbara Moroknek, George and Marie Napier, Robert and Nancy Poole, Renee Reiner, Phil and Sheila Roberts, Gene and Priscella Rund, Myron Schroer, Todd Schumacher, Kurt and Loretta Showalter, Erik Streib, Wes Taylor, Brian Tretter, Kevin Tretter, Anne Turner, Mike Watkins, Darrell Webb, Jeanne White, Jack Whitlock and Time and Jeanene Williams (the "Farm Loan investors").

6. The Farm Loan investors, collectively, account for seventy-five percent (75%) of the outstanding FarmGrowCap 2014 principal. They include investors who disproportionately invested in FarmGrowCap 2014 and who would, therefore "benefit" from any redistribution of funds pursuant to the Receiver's proposed distribution plan. Other investors representing an additional fifteen percent (15%) of the outstanding 2014 principal have expressed agreement with

the Farm Loan investors' proposed method for distribution of FarmGrowCap 2014 funds as set forth in this Objection.

7. As noted by the Receiver, the investors in the FarmGrowCap 2014 offering, in total, are due Eight Million Six Hundred Seventy-Five Thousand Eight Hundred Nineteen and 43/100 Dollars (\$8,675,819.43) (including principal and interest) as of April 25, 2015 (the date of the Security and Exchange Commission's filing of this matter) (Motion, [Filing No. 259 at ECF p.3](#)).<sup>1</sup> The principal amount due to FarmGrowCap 2014 Investors is Seven Million Eight Hundred Sixty-Five Thousand Five Dollars (\$7,865,005).

8. The Receiver has currently collected \$4,179,776 in cash receipts. Additionally, the Williams Farm settlement could add another Two Million Five Hundred Ninety-Two Thousand Eight Hundred Seventy-Six Dollars (\$2,592,876.00) via an installment payment portion of that agreement. ([Filing No. 259 at ECF p.3](#); [Filing No. 195](#)). The installment payments will be made, if at all, over six years. The interest rate paid relating thereto is five-percent per year. The Receiver anticipates small additional recoveries, but does not anticipate that the total recovery will exceed Six Million Five Hundred Thousand Dollars. (\$6,500,000.00). ([Filing No. 259 at ECF p.3](#)). However, this number is not accurate as the Receiver later acknowledged to Investors that the anticipated total recovery is approximately \$7.1M which the investors believe is more accurate. All the parties are in agreement, however, that the total maximum recovery is both finite and unlikely to increase further.

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<sup>1</sup> The Receiver uses the term FarmGrowCap to refer loosely to investors who invested in one or more of a series of farm loans in 2012, 2013 and 2014. The 2012 loans were actually made directly by the investors to two individual farms who, as set forth below, eventually repaid those amounts. The 2013 loans were pooled and made through VFLH. The 2014 loans were also pooled and made through FarmGrowCap (excepting a one-month bridge loan made through PinCap). Unless expressly noted, this distinction is not generally material for purposes of this Motion and Objection. Many of the same investors invested in each of the 2012, 2013 and 2014 offerings and they are all called "Farm Loan investors" for purposes of this Motion.

9. As such, before Receivership expenses, the FarmGrowCap 2014 investors will realize a net loss of at least \$1.5 million in relation to the total principal and interest amount due. The total principal loss, before Receivership expenses, is \$756,000 of the original FarmGrowCap 2014 principal loan amount of \$10,945,000.

10. Rather than pay the FarmGrowCap 2014 investors on a pro-rated basis, thereby distributing this loss equally among them, the Receiver proposes a complex, administratively burdensome, unnecessarily expensive and unjust plan whereby the Receiver will attempt to “claw back” monies previously distributed to Farm Loan investors in 2012 and 2013. The Receiver intends to comingle these “recovered” 2012 and 2013 funds with recent recoveries and distribute the lump sum across all FarmGrowCap investors, thereby taking from Peter to give to Paul. As many of the 2012 and 2013 Farm Loan investors also invested in 2014, the Receiver’s plan will in many instances charge Paul administrative receivership costs and fees to take from Paul now to give to Paul later at some point further down the road.

11. Specifically, on August 19, 2016, the Receiver filed the Motion in which he proposed a three-tier interim distribution plan as follows:

- a. The Receiver will determine each FarmGrowCap 2014 investor’s net capital loss by determining his, her or their amount invested in VFLH or FarmGrowCap and their payments received (Phase I);
- b. The Receiver will contact each investor and provide them with their *pro rata* share (principal contribution less payments received) of the total invested capital along with their proposed preliminary distribution. The Receiver will also determine which FarmGrowCap 2014 investors received payments relating to the 2012 and 2013 investments and will “attempt to recover those funds.” (Phase II); and

c. Finally, after considering objections and consulting with the SEC, the Receiver will then “file an explanation of his accounting methodology and a schedule showing each of the proposed preliminary payments [to FarmGrowCap investors] with the Court.” The Receiver will, at that late hour, “file or describe in its filing any unresolved investor objections, and provide a response to each of those objections, along with a request for a hearing on the Receiver’s proposed preliminary distribution.” (Phase 3). (Motion, [Filing No. 259 at ECF pp. 4-5](#)).

12. As such, the Receiver’s Plan will not distribute funds on a *pro rata* basis among the FarmGrowCap 2014 investors because a FarmGrowCap 2014 investor who invested more heavily in 2012 and 2013 farm loans (rather than FarmGrowCap 2014) will be required to return more funds than a FarmGrowCap 2014 investor who invested more heavily in FarmGrowCap 2014 (rather than in 2012 and 2013 farm loans).

13. The Receiver’s plan is premised on the mistaken assumption that such investors are not similarly situated because investment funds were allegedly channeled from later year investors to earlier year investors. This is not what occurred.

14. For example, in 2012 a loan was made by investors directly to Crossroads Family Farm LLC and another loan was made by investors directly to Kirbach Farms for \$3.37 million and \$1.43 million respectively. These loans were paid late, but they were paid in full on November 19, 2013 and September 10, 2013 respectively. As a result, the 2012 Farm Loan investors realized five million three hundred six thousand seven hundred and fifty dollars and fifty-seven cents (\$5,306,750.57), which included full payment of penalties, interest and fees, all of which were paid prior to the filing of the SEC complaint. A Summary of the Farm Loan-related loans is attached hereto as Exhibit A.

15. While payments were made late, and subsequent year funds may have been initially used to cover gaps or late payments (which may violate applicable law), as an equitable matter, the ultimate payment of Crossroads 2012 and Kirbach 2012 investors as of today did not result in any funds being taken from 2013 and 2014 Farm Loan investors. To the extent those investors contributed funds to the 2012 Farm Loan investors, those funds were replaced when the Crossroads 2012 and Kirbach 2012 loans were paid in full.

16. The same is true in 2013. The VFLH 2013 investors contributed just over \$9.664 million to fund nine loans. Not all were paid on time – and 2014 investment funds may have been used to again cover gaps or late payments amounts to VFLH 2013 investors – but given the settlement with Williams Farm there are no losses attributable to the VFLH 2013 investors.

17. As such, the monies invested by the FarmGrowCap 2014 investors were fully invested in the 2014 farm loans. In total, the FarmGrowCap 2014 investors invested just over \$10.945 million in six loans. Unfortunately, three of these loans did not pay. One of those loans – the RJW Williams Farm loan – is subject to installment payments under a settlement agreement, as discussed above. The other two, the Boyer Farms loan and the Rosentreter Farms loan, resulted in \$819,553.92 and \$1,071,410.85 defaults respectively. The Receiver has stated that “It is expected [FarmGrowCap 2014] will realized \$150,000” in recovery of Boyer Farms.

18. In other words, of the total \$1.5 million “lost” (in principal and interest) by the Farm Loan investors collectively from 2012 - 2014, \$1.7 million was lost in relation to loans funded and made in 2014.<sup>2</sup> Stated another way, the FarmGrowCap 2014 investors did not lose \$1.5 million because those funds were used to pay the 2012 and 2013 Farm Loan investors (often

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<sup>2</sup> Per the terms of contractual agreements, the Receiver has used PinCap earnings to defer losses. At this time, the total losses are less than the default amounts excepting the Receiver’s costs and fees.

themselves). Rather, the FarmGrowCap 2014 investors lost \$1.5 million because two of the 2014 loans defaulted.

19. As such, the Receiver's plan to "recover" fees from the 2012 and 2013 Farm Loan investors to reduce the FarmGrowCap 2014 investors' losses is neither fair nor reasonable. There is no need or justification for the receiver to incur the costs and delay associated with an attempt to determine which Farm Loan investors received payments relating to the 2012 and 2013 investments and to "attempt to recover those funds."

20. Instead, the Receiver should simply determine each FarmGrowCap 2014 investor's 2014 losses and should distribute funds to the FarmGrowCap investors on a fair and reasonable basis based thereon.

21. More specifically investors representing ninety percent of the outstanding FarmGrowCap 2014 funds approve the following simpler, less-expensive and more efficient methodology:

- a. New Investors in FarmGrowCap 2014 (FarmGrowCap investors who did not invest in VFLH in 2013) shall have two options.<sup>3</sup> Because there is an unpaid balance on the Williams Farm 2013 loan, the \$2M settlement exposes these new FarmGrowCap 2014 Investors to a prior Investment not applicable to them which is due to the Williams Farm 2013 unpaid balance. These Investors will individually choose from one of the 2 options below:
  - i. Option 1 - Equalize Williams Exposure by Giving Credits and Stay Invested in FarmGrowCap 2014. With this option, the Williams 2013 and Williams 2014 loans are effectively combined which results in a

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<sup>3</sup> 14 of the 64 FarmGrowCap 2014 investors are "New Investors".



credit to the new FarmGrowCap 2014 Investors. This credit is the result of the pro rata distribution to all FarmGrowCap 2014 Investors of previously paid interest on the Williams 2013 loan (interest paid to only the Investors that re-invested in FarmGrowCap 2014) as well as the outstanding principal amount attributable to only the Williams Farm 2014 loan. This credit will be paid to new FarmGrowCap 2014 Investors using the cash currently held by the Receiver. Once the credit is paid, all FarmGrowCap 2014 Investors are equal and share in any remaining funds pro rata including any future Williams settlement repayments. The applied credit amount for these investors is approximately +9%. With this Option, these investors stay invested in FarmGrowCap 2014.

- ii. Option 2 - Advance of Outstanding Williams Principal Payments for Immediate Payoff. With this option, new FarmGrowCap 2014 Investors are given advance payment in an amount equal to their pro rata share of the unpaid Williams Farm principal amount. This will effectively remove the risk with unpaid Williams Farm principal amounts for the new FarmGrowCap 2014 Investors and therefore will have an immediate payoff of their investment with no losses attributable to Williams Farm. However, with this option these Investors will accept all other losses that their investment was exposed to in FarmGrowCap 2014 (i.e., Rosentretter, Boyer, Receivership fees).

- b. As to Farm Loan investors who invested in both VFLH 2013 and FarmGrowCap 2014, these investors were invested in all of the farms that were loaned money in both 2013 and 2014 via the pooled loan investments. Therefore, these investors should be exposed to the gains and losses relating thereto based on each individual Farm Loan investor's decision to invest amounts in FarmGrowCap 2014. Accordingly, any and all investors that were in both VFLH 2013 and FarmGrowCap 2014 shall be on a pro rata basis based on their 2014 losses subject to the payments made to the New investors as set forth above.
- c. Previous Farm Loan Investors that did not invest in FarmGrowCap 2014 will receive no funds relating thereto. No action shall be taken, however, to attempt to "claw back" funds from these 2012 and 2013 Farm Loan investors.

22. This would be more fair and reasonable. [SEC v. Wealth Management LLC, 628 F.3d 323, 333 \(7th Cir. 2010\)](#).

23. Ultimately, any FarmGrowCap investor who invested in 2014 is similarly situated because any funds they contributed to earlier years were returned from funds recovered those years already. As such, the Farm Loan investor's proposed distribution methodology based on each FarmGrowCap 2014 investor's 2014 losses in fair and reasonable. *Id.* ("Distribution of assets [to] ensures that investors with substantively similar claims to repayment receive proportionately equal distributions" is fair and reasonable).

24. The Receiver's plan is, in contrast, inequitable because it gives "some investors preference even though all investor's claims were substantively the same." *Id.* at 334 (quotation and citation omitted).

25. The Interested Investor's proposal has one additional, significant advantage: it is more efficient, expedient and less expensive.

26. The Receiver's proposed plan will take considerable time while the receiver determines (unnecessarily) which FarmGrowCap 2014 investor's received payments relating to the 2012 and 2013 investments and attempts to recover those funds and Farm Loan investors fight such recovery or otherwise object on an *ad hoc* basis.

27. Further, the investors generally will pay for this entire process and any and all accounting and legal fees incurred in relation thereto. The Receiver has already charged and the Court has approved payments of \$173,839.69, including \$130,379.77 from the Receiver's FarmGrowCap account ([Filing No. 111 at ECF p.2](#)); \$219,940.26, including \$171,719.76 from the Receiver's FarmGrowCap account ([Filing No. 147 at ECF p.2](#)); \$173,886.63, including \$115,792.13 from the Receiver's FarmGrowCap account ([Filing No. 192 at ECF p.2](#)); \$194,876.83, including \$146,363.02 from the Receiver's FarmGrowCap account ([Filing No. 233 at ECF p.2](#)); and \$206,316.48, including \$115,288.21 from the Receiver's FarmGrowCap account ([Filing No. 276 at ECF p.2](#)).

28. Accordingly, the FarmGrowCap investors have already paid the Receiver \$679,542.89 in fees at a rate of over \$45,000 per month – a rate that shows no sign of slowing given the Receivers complex and controversial proposed plan.

29. No reasonable justification exists, however, for the Receiver to continue to incur costs or fees at this or any other rate when all of the FarmGrowCap 2014 investors are, in actuality, similarly situated; the amount that can now justly be covered from earlier investment years is no more than approximately \$80,000; and – in the Receiver's own words – “before future receivership fees and expenses, the total anticipated recovery is not expected to exceed Six Million Five

Hundred Thousand Dollars (\$6,500,000.00).” ([Filing No. 259 at ECF p.3](#)). As stated before, this number is inaccurate. Even if the total recovery is higher, however, it is now capped. Every dollar spent out of the FarmGrowCap fund on receiver fees is now a dollar less the FarmGrowCap 2014 investors will receive in aggregate.

30. Additional proceedings, therefore, will only decrease the FarmGrowCap 2014 investor’s net recovery significantly. In short, pursuant to the Receiver’s proposal, the Farm Loan investors will receive less net proceeds, and they will receive them generally later in time. This is neither fair nor reasonable. As such, the Receiver should be stayed from further implementing his proposed interim distribution methodology, and incurring further costs relating thereto, until such time as the Court can hear this Objection.

WHEREFORE, interested investors Eric and Jennifer Armstrong, David and Patricia Bednarz, Jonah and Sara Beer, Don Bice, Isaac and Julie Brewer, Jose and Astrid Cardenas, Patrizia Cavozzoni, Robert Christianson, John Friedman, Doug and Judi Garrison, Jody Friedman, Andre Guillaume, Alvin and Carol Haab, Barry and Glenda Griffin, David Hatchett, Tim and Lori Hillstrom, Bill Harlow, James Hulskotter, Mary Huse, Dannon Hulskotter, Bart Jackson, Samuel Judd, Wendy James, Kelly Keenan, Sam and Karen Kegerreis, Larry Kaelin, Joseph Losco, Jason Luchtefeld, Michael Kluesner, Matt McCrady, Tracy and Julie Miller, Tom and Sandra Mason, David and Barbara Moroknek, George and Marie Napier, Doug and Dana Miller, Kim Prather, Renee Reiner, Gene and Priscella Rund, Phil and Sheila Roberts, Myron Schroer, Robert and Nancy Poole, Kurt and Loretta Showalter, Erik Streib, Jeremy Reinhardt, Wes Taylor, Anne Turner, Todd Schumacher, Brian Tretter, Jeanne White, Kevin Tretter, Darrell Webb, Tim and Jeanene Williams, Mike Watkins and Jack Whitlock respectfully object to the Receiver’s interim distribution methodology, request the Court stay any further implementation of that methodology

until such time as this objection is resolved, request a hearing on this motion and objection and request all other relief as is just and proper.

Respectfully submitted,

/s/ Hamish S. Cohen

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**CERTIFICATE OF SERVICE**

I hereby certify that October 21, 2016, a copy of the foregoing was filed electronically. Service of this filing is being made to the following parties via operation of the Courts CM/ECF system:

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

_____	)	
UNITED STATES SECURITIES	)	
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VEROS FARM LOAN HOLDING LLC,	)	
TOBIN J. SENEFELD,	)	
FARMGROWCAP LLC,	)	
PINCAP. LLC, and	)	
	)	
Defendants,	)	
	)	
PIN FINANCIAL LLC,	)	
	)	
Relief Defendant,	)	
_____	)	

**ORDER GRANTING INVESTORS' MOTION TO STAY AND  
OBJECTION TO INTERIM DISTRIBUTION METHODOLOGY**

This matter, having come before the Court on the Interested Investors' Motion to Stay and Objection to Interim Distribution Methodology, and the Court being duly advised, hereby GRANTS said Motion.

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Receiver's interim distribution methodology is hereby stayed until such time as is later identified by this Court.

IT IS FURTHER ORDERED that a hearing on the Interested Investors' Objection is set for \_\_\_\_\_, 2016 at \_\_\_\_\_ a.m./p.m.

SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
Judge  
United States District Court  
Southern District of Indiana

Distribution to:  
All ECF registered counsel of record.