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

PLAINTIFF'S RESPONSE TO THE INTERESTED INVESTORS' AMENDED MOTION TO STAY AND OBJECTION TO INTERIM DISTRIBUTION METHODOLOGY

Plaintiff United States Securities and Exchange Commission (the "SEC" or "Commission"), for its response to the Interested Investors' Amended Motion to Stay and Objection to Interim Distribution Methodology ("Interested Investors' Motion") [Filing No. 312], states as follows:

I. INTRODUCTION

This case involves several fraudulent farm loan investments offered by Defendants Matthew D. Haab, Jeffery B. Risinger, and Tobin J. Senefeld, as well as the entities they own and controlled, namely, Veros Partners, Inc. ("Veros"), Veros Farm Loan Holding LLC

("VFLH"), FarmGrowCap LLC ("FarmGrowCap"), PinCap LLC ("PinCap") and Relief Defendant Pin Financial LLC ("Pin Financial"). [*See* SEC's Amended Complaint, Filing No. 57] The Court already is familiar with the SEC's allegations regarding fraudulent farm loan offerings and the evidence filed in support thereof. [Filing Nos. 8-11] On May 7, 2015, this Court entered a Preliminary Injunction. [Filing No. 48]

On August 19, 2016, the Receiver, William E. Wendling, by counsel, filed Receiver's Motion for Authority to Make Interim Distributions to Investors of Veros Farm Loan Holding LLC and FarmGrowCap LLC [Filing No. 259] The Receiver sought approval of his plan to make an interim distribution of $3,000,000 to investors in VFLH and FarmGrowCap. On September 12, 2016, the Court approved the Receiver's plan and entered Order Authorizing Receiver to Make Interim Distributions to Investors of Veros Farm Loan Holding LLC and FarmGrowCap LLC. [Filing No. 269] The SEC also supports the Receiver's distribution plan. When a distribution plan is supported by the Receiver and SEC, the plan is entitled to deference by the Court. *S.E.C. v. Byers*, 637 F. Supp.2d 166, 175 (S.D.N.Y. 2009).

The Receiver's Court-approved plan has three (3) phases:

- ***Phase I***: The Receiver verified with the investors in VFLH and FarmGrowCap: the amount each invested in the 2013 VFLH Offering and/or the 2014 FarmGrowCap Offering and payments received. Investors were given thirty (30) days to identify any discrepancies relating to their contributions or payments received [Filing No. 259 at ECF p. 4];

- ***Phase II*:** The Receiver will contact each investor in the 2013 VFLH Offering and/or the 2014 FarmGrowCap Offering and notify each of the calculation of her/his *pro rata* share (principal contributions less payments received) and the amount the Receiver proposes to distribute to that investor. [Id.] Investors will be allowed to raise any objections to the

calculation or their proposed distribution within thirty (30) days. [Id.] The Receiver would also contact other investors who were paid using the contributions of the investors in the 2013 VFLH Offering and 2014 FarmGrowCap Offering and attempt to recover those funds [Id.]; and

- ***Phase III*:** The Receiver will attempt to resolve objections, if any, from investors.

[Id. at ECF p. 5] The Receiver will file with the Court an explanation of his accounting methodology and a schedule showing the proposed payment to each investor from the $3,000,000 interim distribution. [Id.] The Receiver will also file or describe any unresolved investor objections. [Id.] No payment can be made without Court approval.

Before having received the calculation of her/his *pro rata* share and the amount the Receiver proposes to distribute to the investor, the "Interested Investors" filed a motion seeking to stay the already-approved interim distribution plan and asking the Court to adopt an entirely different distribution proposal ("Interested Investors' Motion"). [Filing No. 312] That motion is filed on behalf of so-called "Interested Investors." However, as noted in the motion, not all of the "Interested Investors" invested in the 2013 VFLH Offering or 2014 FarmGrowCap Offering. [Filing No. 312 at ¶ 4] Rather, to be an "Interested Investor" one has to merely be an investor in any one of the 26 private offerings in which Veros Partners, Inc. controlled investor funds. [Id.] Hence, the motion in question was filed on behalf of some people who will not even receive a distribution, under either the Receiver's methodology or the Interested Investors' proposal, because they did not invest in the offerings to which the distribution applies.

This is the second distribution proposal put forth by the Interested Investors. The Interested Investors did not provide any evidence that all of the "Interested Investors" or all of the investors in the affected farm loan offerings have received, reviewed, and approved this second distribution proposal. The first proposal had to be withdrawn because it assumed,

incorrectly, that Williams Farms would make the payments under the settlement agreement it entered into with the Receiver. Williams Farms filed a Notice of Bankruptcy on November 10, 2016. It is highly unlikely that it will pay the full settlement amount.

Interested Investors filed their motion ***before*** the Receiver could advise each investor of the calculation of her/his *pro rata* share and the amount the Receiver proposes to distribute to the investor. Additionally, Interested Investors have not provided any evidence that the investors have actually been notified of their proposed distribution under the Interested Investors' proposal. Therefore, the Court has no basis to conclude that the investors prefer the Interested Investors' proposal to the Receiver's Methodology. In addition, even if certain investors are unhappy with the Receiver's plan that is insufficient for the Court to reject the Receiver's plan and approve the Interested Investors' proposal. "In supervising an equitable receivership, the primary job of the district court is to ensure that the proposed plan of distribution is fair and reasonable. The district court has broad equitable power in this area, so appellate scrutiny is narrow." *S.E.C. v. Wealth Management LLC*, 628 F.3d 323, 332 (7th Cir. 2010) (citations omitted) (approving pro rata distribution of available funds). "An equitable plan is not necessarily a plan that everyone will like." *U.S. v. Petters*, No. 08-5348, 2011 WL 281031, *11 (D. Minn. Jan. 25, 2011).

Interested Investors' Motion and distribution proposal should be rejected for each of the following reasons, *inter alia*:

1. Interested Investors' Motion and distribution proposal are based on the misconception that the 2012 farm loans to Crossroads Farm and Kirbach Farms were fully repaid by those farms on November 19, 2013 and September 10, 2013, respectively. [Filing No. 312 at ¶ 17 and 312-1] In fact, neither Crossroads nor

Kirbach fully repaid its 2012 loan in 2013. In addition, funds from the investors in the 2013 VFLH Offering were used to pay principal and interest to the investors in the 2012 Kirbach Offering and 2012 Crossroads Offering;

2. Interested Investors' Motion and distribution proposal are based on the misconception that all nine (9) loans in the 2013 VFLH Offering were fully repaid by those nine borrowers that received loans. [Filing No. 312 at ¶ 19] In fact, certain farms in the 2013 VFLH Offering did not repay their loans in 2014 when due. Additionally, funds from investors in the 2014 FarmGrowCap Offering were used to repay certain amounts to the investors in the 2013 VFLH Offering and the remaining balances owed the investors in the 2013 VFLH Offering were not paid to those investors but were "rolled over" into the 2014 FarmGrowCap Offering;

3. Interested Investors' Motion and proposal are based on information and records created and maintained by Defendant Matthew Haab and are therefore tainted and based on inaccurate assumptions. (September 28, 2016 Email and attachment from Matthew Haab to Jarit Loughmiller which provides Interested Investors' initial distribution proposal attached as Ex. 1);

4. Interested Investors' Motion fails to advise the Court of what percentage of the $3,000,000 interim distribution each investor or category of investor will receive. This failure on the Interested Investors' part makes it impossible for the Court to determine that their proposal is indeed *pro rata*, fair, and reasonable; and

5. Based on Interested Investors' Motion and a review of their proposal and calculations performed by the SEC, the investors do not receive the same percentage of their final balance due (based on the $3,000,000 interim distribution

amount). In other words, the investors are not treated equally with respect to the distribution of the $3,000,000.

Interested Investors' Motion claims and their distribution proposal is based on the misconception that there was no Ponzi scheme. The SEC has previously presented evidence of a Ponzi scheme. Based upon that evidence, the Court entered a Temporary Restraining Order, a Preliminary Injunction Order, an order appointing a Receiver, and judgments against Defendants Haab, Risinger, and Veros. [Filing Nos. 12, 34, 48, 272, 273, and 274] In order to grant the Interested Investors' Motion and approve their distribution proposal, which denies there was a Ponzi scheme, the Court would have to find that there was no Ponzi scheme. Such a finding would be a repudiation of the Court's previous orders. Furthermore, issues relating to the Ponzi scheme and payments will be part of the upcoming trial involving Defendant Senefeld. It would be premature for the Court to find there was no Ponzi scheme.

The briefing schedule agreed to by the Interested Investors, the SEC, and the Receiver and entered by the Court does not provide for a reply brief. [Filing Nos. 308, 309] Accordingly, the SEC requests that a hearing be scheduled as soon as possible.

ARGUMENT

II. CERTAIN FARMS DID NOT PAY THEIR LOANS WHEN DUE, AND NEW INVESTOR MONEY WAS USED TO PAY THE INVESTORS IN EARLIER, SEPARATE OFFERINGS.

A. Interested Investors' Motion and Proposal Are Based on the Fallacy That 2012 Loans to Crossroads and Kirbach Were Paid in Full by Those Farms in 2013.

For the 2012 Crossroads Offering, $3,370,000 was raised from investors. [Amended Declaration of Craig L. McShane, Filing No. 31-1[1] at p. 1] The stated rate of return for investors

[1] Filing No. 31-1 was produced by Veros. The SEC has determined that some of the information contained in 31-1, such as the final repayment date, is inaccurate.

was 12%. [Id.] The investors were supposed to be repaid their principal and interest by March 30, 2013. [Id.] For the 2012 Kirbach Offering, $1,430,000 was raised from investors. [*Id.*] The stated rate of return for investors was 11.5%. [Id.] The investors were supposed to be repaid their principal and interest by March 30, 2013. [Id.]

Interested Investors' Motion and Exhibit A, without any evidence whatsoever, state the bare conclusions that the $3,370,000 loan to Crossroads Farm was repaid in full on November 19, 2013 and the $1,430,000 million loan to Kirbach Farms was repaid in full on September 10, 2013. [Filing No. 312 at ¶ 17 and 312-1] Interested Investors' Motion also claims that it is incorrect that "investment funds were allegedly channeled from later year investors to earlier year investors." [Filing No. 312 at ¶ 16] Interested Investors failed to provide any analysis, declarations, or documentary evidence demonstrating that these 2012 loans were paid in full on the stated dates and that investor funds from the 2013 VFLH Offering were not used to pay investors in the 2012 Crossroads Offering or 2012 Kirbach Offering. Furthermore, the erroneous final payment dates stated in the motion are well after the March 30, 2013 date the investors were supposed to be repaid their principal and interest.

As detailed in the previously filed Amended Declaration of Craig McShane, an SEC accountant, McShane reviewed bank account statements, deposit slips, wire transfer confirmations, and electronic fund transfer details for certain bank accounts controlled by the defendants. [Filing No. 31 at ECF pp. 2-3 ¶ 4] With respect to the 2012 Crossroads Offering and 2012 Kirbach Offering, McShane identified instances in which investor funds from the 2013 VFLH Offering were used to pay investors in the 2012 Crossroads Offering and 2012 Kirbach Offering. [Filing No. 31 at ECF p. 9 ¶ 19]

Below is a summary chart:

Summary of Account Transfers Used to Repay Investors in Different Farm Loan Offerings				
Debit Account	Debit Account Source	Credit Account	Credit Account Use	Total Funds Transferred
VFLH	Investor Deposits	Kirbach	Repay Investors in 2012 Kirbach Offering	$398,813.60
VFLH	Investor Deposits Loan Repayments[2]	Crossroads	Repay Investors in 2012 Crossroads Offering	$2,393,750.18

Interested Investors' Motion erroneously asserts that the $3,370,000 loan to Crossroads Farm was repaid in full by Crossroads on November 19, 2013. To the contrary, on November 20, 2013, $415,001.58 was transferred from the 2013 VFLH Offering bank account to the 2012 Crossroads Offering bank account.[3] [Filing No. 316, McShane Declaration filed December 21, 2016 at ¶ 9(c)] Five (5) days later on November 25, 2013, the same amount, $415,001.58 was paid out of the 2012 Crossroads Offering bank account to the investors in the 2012 Crossroads Offering. [Id.] Following this transfer, the 2012 Crossroads Offering bank account had a balance of $0.00 demonstrating that the payment to the investors in the 2012 Crossroads Offering could not have been made without using the funds from the 2013 VFLH Offering. [Id.]

In addition, Defendant Haab testified that funds from the 2013 VFLH Offering were used to pay investors in the 2012 Crossroads Offering. [Filing No. 191-1 at 34, 35, 36, Haab Tr. 196:15-25; 197:1-2; 202:23-25; 203:1-4] Shawn Gustafson, a senior analyst at FarmGrowCap, testified that "[b]ased on the information provided to me by Haab and Veros Partners in 2013, I knew that some funds contributed by investors in the 2013 Veros Farm Loan Holding offering

[2] The term "Loan Repayment" refers to payments from the farms who received loans from the identified offering (debit account) and which were for the benefit of investors in that offering.

[3] In addition to this transfer, on April 12, 2013, $1,256,467.12 was transferred from the 2013 VFLH Offering account to the 2012 Crossroads Offering bank account, and on July 24 and 25, 2013, a total of $722,281.48 was transferred from the 2013 VFLH Offering account to the 2012 Crossroads Offering bank account. [Filing No. 316 at ¶ 9(a) and (b)]

were used to repay investors in the 2012 farm loan offerings." [Declaration of Shawn Gustafson, Filing No. 198-2 at ¶ 12]

In sum, Interested Investors have not presented any evidence that Crossroads paid its 2012 loan in full on November 19, 2013. In fact, the evidence, including the bank account records, establishes that Crossroads did not pay its 2012 loan in full by November 19, 2013 and funds from the 2013 VFLH Offering were used to pay the investors in the 2012 Crossroads Offering. The Interested Investors' proposal is based on inaccurate information and is thus fatally flawed.

Interested Investors' Motion also erroneously asserts that the $1,430,000 loan to Kirbach Farms was repaid in full by Kirbach Farms on September 10, 2013. To the contrary, on September 18, 2013, $50,063.60 was transferred from the 2013 VFLH Offering bank account to the 2012 Kirbach Offering bank account. [Filing No. 316 at ¶ 16(b)] On that same date, $57,331.05 was paid out of the 2012 Kirbach Offering bank account to the investors in the 2012 Kirbach Offering. [Id.] Following this transfer, the 2012 Kirbach Offering bank account had a balance of $0.00 demonstrating that the payment to the investors in the 2012 Kirbach Offering could not have been made without using the funds from the 2013 VFLH Offering. [Id.] In addition, Defendant Haab testified that funds from the 2013 VFLH Offering were used to pay investors in the 2012 Kirbach Offering. [Filing No. 191-1 at 33, Haab Tr. 190:7-25]

In sum, Interested Investors did not present any evidence that Kirbach repaid its 2012 loan in full on September 10, 2013. In fact, the evidence, including the bank account records, establishes that Kirbach did not pay its 2012 loan in full by September 10, 2013 and funds from the 2013 VFLH Offering were used to pay the investors in the 2012 Kirbach Offering. Interested Investors' proposal is based on inaccurate information and is thus fatally flawed.

B. Interested Investors' Motion and Proposal Are Based on the Misconception That There Are No Losses Attributable to the 2013 VFLH Offering

For the 2013 VFLH Offering, $9,664,000 was raised from investors. [Filing No. 31-1 at p. 1] The stated rate of return for investors was 10%. [Id.] The investors were supposed to be repaid their principal and interest by April 30, 2014. [Id.]

Interested Investors' Motion erroneously asserts that "given the settlement with Williams Farm there are no losses attributable to the VFLH 2013 investors." [Filing No. 312 at ¶ 19] This statement is belied by the evidence and even other statements in Interested Investors' Motion and their Exhibit A. For example, later in their motion, they state that Williams Farm borrowed money through the 2013 VFLH Offering and "as of the date of the filing of the Complaint in this matter . . . $1,447,620.46 was past due and owing." [Filing No. 312 at ¶ 22] In addition, Interested Investors' Exhibit A shows that Williams Farms has still not paid its 2013 loan made through the 2013 VFLH Offering. [Filing No. 312-1] Furthermore, Interested Investors' Motion states "it is likely that the Williams Farm recovery, if any, will be significantly reduced." [Filing No. 312 at ¶ 10] Based on Interested Investors' Motion, Williams owes $1,447,620.46 on its 2013 loan through the 2013 VFLH Offering, has filed a notice of bankruptcy, and if there is any recovery on the 2013 loan it is likely to be significantly reduced. [Filing No. 312 at ¶¶ 10, 22 and 312-1] Hence, there are losses attributable to the 2013 VFLH Offering.

Furthermore, Boyer Farms did not pay its 2013 loan in full in 2014. [Filing No. 316 at ¶ 27(a) – (c)] Interested Investors' Exhibit A even admits this when it states "$84,436.13 transferred from 2013 loan to 2014 loan on 1/31/15." [Filing No. 312-1] If $84,436.13 was "transferred" from Boyer Farms' 2013 loan to its 2014 loan in 2015, the 2013 loan obviously was not paid by Boyer Farms in 2014 when it was due.

Interested Investors' Exhibit A also shows that PinCap LLC still has not paid its 2013 loan through the 2013 VFLH Offering. [Filing No. 312-1]

Moreover, funds from the 2014 FarmGrowCap Offering were used to pay investors in the 2013 VFLH Offering. McShane identified instances in which investor funds from the 2014 FarmGrowCap Offering were used to pay investors in the 2013 VFLH Offering. [Filing No. 31 at p. 9 ¶ 19] Below is a summary chart:

Summary of Account Transfers Used to Repay Investors in Different Farm Loan Offerings				
Debit Account	Debit Account Source	Credit Account	Credit Account Use	Total Funds Transferred
FarmGr-owCap	Investor Deposits Loan Repayments	VFLH	Repay Investors in 2013 VFLH Offering	$1,408,816.42

Defendant Haab testified that funds from the 2014 FarmGrowCap Offering were used to pay investors in the 2013 VFLH Offering. [Filing No. 9-4 at 68, Haab Tr. 270:14-18] In addition, Shawn Gustafson stated,

> In 2014, the investors in the 2013 Veros Farm Loan Holding offering were supposed to be repaid their principal and interest. However, based on the information provided to me by Haab and Veros Partners, I knew that the farms that received loans from Veros Farm Loan Holding had not fully repaid their loans by the time the 2013 Veros Farm Loan Holding offering became due and the 2014 FarmGrowCap offering was offered to the investors as an investment opportunity.
>
> Based on the information provided to me by Haab and Veros Partners, I knew that some funds contributed by investors and loan repayments from the borrowers in the 2014 FarmGrowCap offering were used to repay investors in the 2013 Veros Farm Loan Holding offering.
>
> Additionally, based on the information provided to me by Haab and Veros Partners, I knew that some of the investors in the 2013 Veros Farm Loan Holding offering did not receive repayment in full. I understood that their interest was paid and their principal was "rolled over" into the 2014 FarmGrowCap offering as a reinvestment in the 2014 offering.

[Declaration of Shawn Gustafson, Filing No. 198-2 at ¶¶ 13, 14, 15]

In sum, not all of the farms who borrowed money through the 2013 VFLH Offering repaid their loans. In addition, funds from the 2014 FarmGrowCap Offering were used to pay investors in the 2013 VFLH Offering when the borrowers did not repay their 2013 loans on time and multiple borrowers still have not repaid their loans. Hence, Interested Investors' proposal is fatally flawed because it is based on the erroneous assumption that there are no losses attributable to the 2013 VFLH Offering.

III. INTERESTED INVESTORS' PROPOSAL IS NOT *PRO RATA*, FAIR, OR REASONABLE.

A. Defendant Matthew Haab Has Been Involved With The Creation of Interested Investors' Distribution Proposal

Interested Investors' Motion and Proposal are based on information, assumptions, and calculations provided by Defendant Matthew Haab, who settled with the SEC in this matter. The settlement included Haab being barred from the securities industry and paying $183,640 in ill-gotten gains. On September 28, 2016, Defendant Haab wrote to Jarit Loughmiller, the accountant retained by the Receiver:

> Attached is the farm loan investor repayment summary that I have been requested to forward to you. I am happy to connect to help answer any questions you may have and/or to help explain this to you and bring you up to speed on the calculations contained within this spreadsheet.
> --
> Thanks,
> Matt

(Ex. 1, September 28, 2016 Email from Matthew Haab to Jarit Loughmiller) The initial proposal was forwarded by Haab on behalf of investors who are opposing the Receiver's plan. Certain mistaken assumptions, or misrepresentations of fact, in the initial proposal forwarded by Defendant Haab are also in the current version of the proposal. As demonstrated in Section II., certain assumptions simply do not comport with the facts. Of course, the SEC is concerned that

Haab assisted certain investors with respect to a proposed distribution plan when the SEC alleged that Haab engaged in fraudulent offerings and a Ponzi scheme that led to the need for a Receiver and distribution plan.

Interested Investors also obtained, apparently from Defendant Haab, confidential information regarding each investor's investment in the 2013 VFLH Offering and 2014 FarmGrowCap Offering and how much money each investor had received to date. This appears to have been done without obtaining the consent of each investor. The Receiver did not provide the confidential information to the Interested Investors.[4]

B. Interested Investors' Proposal Does Not Treat the Investors Equally And Fails To Provide Any Information on Each Investor's Proposed Distribution

Interested Investors' Motion fails to advise the Court of what percentage of the $3,000,000 interim distribution each investor will receive. Rather, Interested Investors provide a mere truncated overview of their proposal. On the other hand, the Receiver's plan, which has been approved by the Court, requires the Receiver to provide the Court with "an explanation of his accounting methodology and a schedule showing each of the proposed preliminary payments." [Filing No. 269 at ECF p. 2] The failure of Interested Investors to provide a schedule showing what percentage of the $3,000,000 interim distribution each investor will receive makes it impossible for the Court to determine that their proposal is, as they claim, *pro rata*, fair, and reasonable. This failure alone requires denial of their motion.

What is clear from Interested Investors' Motion is that they attempt to create at least two (2) categories of investors: (1) investors who invested in the 2014 FarmGrowCap Offering but not in the 2013 VFLH Offering ("New 2014 FarmGrowCap Investors") and (2) investors who

[4] Presumably, this is one reason why Interested Investors did not provide the Court with a schedule showing the amount each investor would receive.

invested in the 2013 VFLH Offering and 2014 FarmGrowCap Offering ("2013 and 2104 Investors"). [Filing No. 312 at ¶ 25] What is also clear is that these two groups of investors are not treated equally with respect to the distribution of the $3,000,000. Interested Investors' Motion states, "60 percent of the 2014 only investors receive a greater distribution. Not surprisingly, a majority of investors support this methodology." [Id. at ¶ 26] Interested Investors' proposal provides an up-front payment to only the fifteen (15)[5] New 2014 FarmGrowCap Investors. Interested Investors state, "[t]he Williams 2013 and Williams 2014 loans are effectively combined which results in a credit to the new FarmGrowCap 2014 Investors. . . . This credit will be paid to new FarmGrowCap 2014 Investors using the cash currently held by the Receiver." [Id. at ¶ 25.a.] The 2013 and 2014 Investors are thus being treated differently than the New 2014 FarmGrowCap Investors.

Furthermore, McShane has reviewed the description of the proposal in Interested Investors' Motion, the spreadsheet provided by Haab, a subsequent spreadsheet provide by Interested Investors' attorney, and other documentary evidence. [Filing No. 316 at ¶ 8] Based upon his review, Interested Investors' proposal results in different returns (as a percentage of the final balance due to each investor) for different investors. [Id. at ¶¶ 45-46] In other words, investors would not receive the same percentage return on their final balance due. [Id.] For example, under the Interested Investors' proposal Investor 1337, who invested only in the 2014 FarmGrowCap Offering, will receive 61.78% while Investor 392, who invested in the 2013 VFLH Offering and 2014 FarmGrowCap Offering, will receive 35.03%. [Id. at ¶ 46] In comparison, under the Receiver's methodology, each investor will receive the same percentage payment on the final balance due. For example, the Receiver identifies the sum of all outstanding

[5] Fifteen (15) is the number determined by Interested Investors. McShane has determined that two (2) of the fifteen (15) had invested in previous offerings other than the 2013 VFLH Offering.

principal balances as $6,331,209.64. If $3,000,000 is distributed, all investors will receive 47.38% ($3,000,000/$6,331,209.64). [Id. at ¶ 44] Furthermore, under the Receiver's Distribution Methodology any future distributions would be made in the same percentage established.

Stated another way, under Interested Investors' proposal, the fifteen (15) New 2014 FarmGrowCap Investors receive more cash than under the Receiver's Methodology. [Filing No. 316 at ¶ 48] Since they receive more, some investors have to receive less under Interested Investors' proposal. Under Interested Investors' proposal, the investors who invested in the 2013 VFLH Offering and 2014 FarmGrowCap Offering receive less cash than under the Receiver's Methodology. [Id. at ¶ 49] Hence, Interested Investors' proposal results in a preference for the New 2014 FarmGrowCap Investors.

Moreover, the Interested Investors' proposal does not account for a significant portion of the $1,718,609.64 in "false profits" paid to investors in the 2012 Crossroads Offering, the 2012 Kirbach Offering, the 2013 VFLH Offering, and the 2014 PinCap Bridge Loan Offering. (Under the circumstances of these offerings, any cash and/or non-cash rollover repayments returned to investors exceeding the cash they invested are "false profits.") [Filing No. 316 at ¶¶ 37-38] The Interested Investors' approach increases the pro-rated share of the final distribution for some investors, decreases it for others, and allows some individuals to keep interest payments while other investors will lose some of the principal they invested. [Id. at ¶ 36] This is simply inequitable.

Under the Receiver's Distribution Methodology, any false profits received by an investor will reduce the principal balance owed to that investor. [Id. at FN 2] The Receiver is not asking the investors in the 2013 VFLH Offering and/or 2014 FarmGrowCap Offering to write a check

to the Receivership. [Filing No. 316 at FN 2] The principal balance owed to that investor will simply be reduced by the false profits received. If an investor received false profits and did not invest in the 2014 FarmGrowCap Offering, they will be asked to return their false profits. [Id. at FN 3]

C. Interested Investors' Proposal Is Not Efficient and Less Expensive

As detailed in the McShane Declaration, Interested Investors' proposal requires thirteen (13) steps in order to make an interim distribution to the investors. [Filing No. 316 at ¶32] Many of these steps have to be done for each investor. [Id.] These steps involve multiple determinations and calculations. [Id.] In stark contrast, the Receiver's Distribution Methodology requires far fewer steps and is significantly less complicated. For each investor: (**1**) identify the amount contributed to each affected offering and total; (**2**) identify the amount repaid from each affected offering and total; (**3**) subtract total amount repaid from total amount contributed; (**4**) determine pro-rated share by dividing each investor's balance due by total balance due all investors; (**5**) distribute the funds. [Id. at ¶ 31] Steps 1 through 4 have been completed. Interested Investors state the erroneous bare conclusion that their proposal "is more efficient, expedient and less expensive." [Filing No. 312 at ¶ 29] This bare conclusion is directly contradicted by the fact that their proposal requires multiple steps, determinations, and calculations that have to be made before any distribution. The Interested Investors never provided the SEC with any information regarding how much or what percentage of the $3,000,000 interim distribution each investor would receive under their proposal. Hence, they either have not yet done that work or do not want the SEC to see it.

Furthermore, the determinations required under Interested Investors' proposal such as determining the principal amount owed to each investor and the cash repaid to each from the

2014 FarmGrowCap Offering will require verification. Under Interested Investors' proposal someone appointed by the Court and, at a minimum, an accountant will have to be paid to make these determinations and other determinations and to perform the calculations and actually make the distributions. Hence, their proposal is not more efficient and less expensive.

D. Interested Investors' Criticism Of The Receiver Is Unfair And Unwarranted

It is awful that these investors were defrauded by the defendants. However, Interested Investors are not helping the situation by attacking the Receiver's fair and reasonable distribution plan. The Receiver has diligently and efficiently pursued a number of delinquent borrowers for payments on their delinquent notes. He entered into a settlement agreement with Williams Farm (before they filed for bankruptcy). The Receiver has collected over $4,000,000 for the defrauded investors.

Further, the Receiver has worked with an accountant to develop a cash-in, cash out methodology that treats all investors in the affected offerings equally. [Filing No. 316 at ¶¶ 31, 33] He has been stymied in his efforts to disburse the $3,000,000 by Interested Investors filing a motion to stay the distribution. Additional costs to the investors are attributable to the Receiver having to review Interested Investors' proposals, communicating with investors regarding this proposal, attempting to resolve this matter with the Interested Investors' attorney, and filing a response brief.

In addition, the Receiver has done remarkable work to manage all of the private offerings he was tasked with managing. It is not the Receiver's fault that many of the private offerings had serious problems well before they were transferred to the Receivership and he has had to spend time and resources to address those numerous problems. At the request of investors, he has transferred seven (7) private offerings out of the Receivership and an additional two (2) have

been completed and the investors paid. The Receiver is in the process of transferring more private offerings out of the Receivership. All of these motions required time and resources and contributed to the costs of the Receivership.

CONCLUSION

For all of the foregoing reasons, Plaintiff Securities and Exchange Commission respectfully requests that the Court deny Investors' Amended Motion to Stay and Objection to Interim Distribution Methodology. The briefing schedule agreed to by the Interested Investors, the SEC, and the Receiver and entered by the Court does not provide for a reply brief. [Filing Nos. 308, 309] Accordingly, the SEC requests that a hearing be scheduled as soon as possible.

Dated: December 21, 2016

Respectfully submitted,

By: /s/ Doressia L. Hutton
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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2016, I filed the foregoing **Plaintiff's Response to the Interested Investors' Amended Motion to Stay and Objection to Interim Distribution Methodology** via CM/ECF, which will notify all counsel of record.

/s//Doressia L. Hutton
Doressia L. Hutton