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

INVESTORS' REPLY IN SUPPORT OF THEIR AMENDED 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, 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, 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 file this Reply in Support of their Motion to Stay and Objection.[1]

I. INTRODUCTORY STATEMENT

The Interested Investors constitute a majority of the investors by number and by dollar amount affected by the distribution at issue. They come from varied backgrounds and locations yet they share a common interest as investors with the former Veros Partners, LLC. All want an expedited resolution of the issues presented and a return of their funds in a just and fair manner. They are tired of the delay and costs associated with the ongoing receivership. They all object to the Receiver's three-part plan that will take months, if not years, to effectuate at a cost of hundreds of thousands of additional dollars.

Contrary to the SEC's unfounded speculations (and as the Receiver can attest), the Interested Investors were all provided with detailed information outlining the distributions under each of the proposed methodologies. The Interested Investors request the Court approve their methodology after their careful consideration and analysis of all available options.

The Interested Investors believe that the distribution should not only be significant and immediate, but it also must reflect investing principles that are both fair and equitable to the Farm Loan Investors based on the investments they *actually* made and the funds they or the Receiver *actually* received. The Interested Investors are sympathetic to the SEC's mission to protect

[1] Contrary to the SEC's position, nothing in the Parties' prior filings precludes a Reply. The prior filings simply established the SEC's and the Receiver's response deadlines because the Interested Investors were afraid of further delay. This Reply is just and proper pursuant to LR 7-1(c)(2).

investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. They feel, however, the SEC is placing the continued prosecution of this matter over investor protection. While it is up to the SEC to determine how and why it prosecutes this matter, this Court need not and should not sacrifice investor protection at that altar.

The SEC and the Receiver's arguments are addressed further below. This chart, however, is critical in understanding the Interested Investor's proposal.

Farm Loan Repayment Summary

Loan Description	Repayment	
	Yes	Partial
2012 CrossRoad Farm Loan	√	
2012 Kirbach Farms Loan	√	
2013 Veros Farm Loan Holding Loans		
Crossroads Family Farm	√	
D & S Farms	√	
Kirbach	√	
True Blue Berry Management, LLC	√	
Bassen Farms (a)	√	
Boyer Farms (b)		√
PinCap LLC (c,d)	√	
Rosentreter Farms (f)	√	
RJ Williams Farm (e)		√
2014 PinCap Bridge Loan	√	
2014 Farm Grow Cap Loans		
Crossroads Family Farm (50,000	√	
D & S Farms	√	
Kirbach	√	
True Blue Berry Management, LLC	√	
Boyer Farms (f)		√
Rosentreter Farms (f)		√

RJ Williams Farm (e)	√

a) Outstanding balance paid by was paid by PinCap LLC.

b) In accordance with the 2014 Farm Grow Cap PPM $84,436.13 debt was transferred from 2013 VFLH into the 2014.

c) Outstanding balance was to set to be paid by PinCap LLC upon final closing of Blue Crop Group.

d) Blue Crop Group, LLC reached an agreement with the Receiver to repay in Sept, 2016.

e) The receiver reached a settlement agreement with RJ Williams which then filed for Bankruptcy on November 10, 2016.

f) Filed and settled Bankruptcy

The Interested Investors base their proposal upon this chart, which is correct as of today, and the application of simple investing principles thereto. Admittedly, the Interested Investors' methodology does not treat all the investors alike – the SEC and the Receiver's primary criticism. Rather, it accounts for payments and losses and then treats similarly situated investors alike in a simple and easily applied manner. By doing so, the Interested Investors propose a distribution methodology which results in a fair and equitable return to the investors based upon actual investment performances. As such, the Interested Investors' proposed distribution method is the most fair and equitable solution because it applies gains and losses on a pro rata basis where those gains and losses occurred; it reduces additional costs and fees; it permits an immediate distribution of at least $3 million (though given the Interested Investors' plan, there is no reason the Receiver should hold on to more than $1million of their funds on an ongoing basis); and it resolves numerous investor objections now rather than later. Simply stated, the Interested Investors' plan results in an immediate distribution of more money with less expense in a manner that more equitably reflects the actual performance of the investments.

II. STATEMENT OF FACTUAL RESPONSES

In response to statements made by the SEC and the Receiver, the Interested Investors further state as follows:

First, the Receiver's proposed clawback methodology is inappropriate. It will, as a preliminary matter, cost more than the Receiver hopes to recover while interjecting months of further delay to any disbursement and recovery to the investors who, both the SEC and the Receiver must admit, were the actual victims of any fraud or malfeasance.

Further, there were no "false profits" earned by any Farm Loan Investors relating to Kirbach and Crossroads Farms Loans. Notwithstanding any accounting or other problems and irregularities, eventually those loans were paid in full at default interest rates, with exception of the final Crossroads payment, whereby the Receiver settled for $50,000 less than the total amount owed (the payment consisted of principle and interest; default interest was waived). Additionally, the Rosentretter loan paid in full in 2013 but was a complete loss in 2014.

Finally, even those investors who would benefit from any clawbacks oppose them. They realize that the cost and delay of any such clawbacks are prohibitive and that the clawbacks are unjust and improper regardless. The Farm Loan Investors have waited months, if not years, for a return of their funds – funds that decrease daily because of new and increasing Receiver fees. There is no reason for the Receiver to engage in further proceedings, delay and costs – costs that reduce the net recovery to the investors daily.

Second, the Interested Investors' methodology more correctly applies the losses and gains to the Farm Loan Investors who would otherwise have received or been affected thereby. For example, the 2012 loans were ultimately repaid in full. The Kirbach and Crossroads loans were ultimately repaid in full. The Rosentretter 2013 loan was paid in full in 2013, but the Rosentretter 2014 loan was a complete loss. It is just and proper, therefore, to treat 2012, 2013 and 2014 investors differently.

Further, the filing of the SEC's complaint effectively stopped the Blue Crop Group permanent offering, which prevented the PinCap guarantee from being repaid. Of the total $1,099,164.52 due from Boyer in 2013, all but $84,436.13 was completely repaid prior to the 2014 loan. The $84,436.13 remaining balance was rolled over to the 2014 principal loan and the rollover was fully disclosed (actually overstated) in the 2014 PPM. The Williams 2013 loan was repaid 64% prior to the SEC's complaint.

Third, the Investors' proposed methodology corrects for the outstanding Williams 2013 balance. By correcting for the Williams 2013 unpaid balance, *it ensures that all 2014 Investors share equally on a pro rata basis based on their 2014 principal investment*. This is just, fair and reasonable.

Fourth and finally, the Receiver said it best in his 4th Interim Report (ECF No. 205 dated 5-12-2016 on Page 15, paragraph 1, sentence 1 & 2) where he stated: "Initially, the Receiver's concern was to determine whether the financial accounting for each private placement reflected what money was solicited for that private placement, whether the money solicited actually went into the private placement and whether any monies were taken out of a private placement for the purpose of either supporting or financing matters not related to that specific private placement. **The Receiver and his accountants have determined that when an investor was asked to participate in a private placement his or her funds were actually used in that private placement and that none of the money was removed or taken to support or pay off any other investments.**"

It is neither just nor proper now for the Receiver to propose a distribution methodology that contradicts this basic reality. The Receiver's methodology is neither fair nor reasonable. The Objection should stand.

III. THE RECEIVER AND SEC'S ARGUMENTS FAIL

A. The Receiver's Arguments Fail Given His Acknowledgments Regarding Loan Repayments.

The Receiver suggests that Farm Loan Investors cannot rely on investment principles in allocating costs and losses relating to the different farm loans. Where, as here, many of the loans ultimately were repaid in full, this is nonsensical.

Further, it is disingenuous for the Receiver or the SEC to imply the Interested Investors withdrew their Motion and Objection for any improper reason. Simply stated, they did so in light of the Williams Farm bankruptcy – which rendered the Receiver's settlement largely valueless and the costs and fees incurred relating thereto largely wasted – and the fact that both the Receiver and the SEC suggested they would negotiate in good faith with the investors if they withdrew their objection for a period of time to allow for discussions. Though the Interested Investors' concerns are well known, neither the Receiver nor the SEC came forth with any plan or suggestion whatsoever to address them.

Finally, the Receiver's position asserts that distributions must be made in this case as if the underlying investments were a traditional ponzi scheme. The SEC defines a ponzi scheme as follows:

> A Ponzi scheme is an investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. Ponzi scheme organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk. With little or no legitimate earnings, Ponzi schemes require a constant flow of money from new investors to continue. Ponzi schemes inevitably collapse, most often when it becomes difficult to recruit new investors or when a large number of investors ask for their funds to be returned.

See https://www.sec.gov/spotlight/enf-actions-ponzi.shtml.

The Interested Investors take no position as to whether this was a ponzi scheme. Currently, however, it no longer looks like one from a distribution standpoint because there were legitimate investments and earnings that returned funds to certain classes of the Farm Loan Investors. The Receiver, and the SEC, act as if this is not the case *not because this is in the investor's best interest, but because it could negatively impact their prosecution of this matter*. The SEC and the Receiver appear to be prioritizing the prosecution of their criminal case at the expense of investor wellbeing. The Interested Investors are entitled to Object thereto and to propose a just and reasonable distribution methodology under the circumstances.[2]

In the Receiver's objection he is claiming that, in the relevant period, the investments presented as a Ponzi scheme and therefore concludes that the Receiver's methodology for determining loss allocation and payment using a "normal claw back" is reasonable. The Farm Loan Repayment Summary above does not depict a situation that requires the use of a "normal claw back" as proposed by the Receiver/SEC.

Ultimately, the Receiver's position fails to account for the reality that as the loans were carried forward, payments were received and most of the debtors cleared. The Receiver also does not recognize the receipt of interest or default interest payments in relation to many of those loans. He does, however, acknowledge collections from all investments with the exception of Rosentreter Farms in the 2014 Farm Grow Cap. His own figures show that monies remain outstanding from only three borrowers: Rosentreter Farms, Boyer Farms and RJ Williams Farms.

Accordingly, the Interested Investors distribute those losses on a pro-rata investment basis by a simple accounting method. Since RJ Williams filed for bankrupty on November 10, 2016, the Interested Investors proposed a revised methodology in accordance with the previous investing

[2] It is worth noting that none of the Defendants admitted to the existence of a ponzi scheme in any of their settlements or Judgements. *See, e.g.*, ECF No. 273 & 274.

principles that equalizes the RJ Williams outstanding debt for the 2014 only investors. Thereby, returning any paid principle and interest that may have been received by the 2013/2014 investors on a pro rata basis to the 2014 only Farm Loan Investors.

B. The SEC's Arguments Similarly Fail.

The SEC's arguments mirror, in many ways, those made by the Receiver and they fail for the same reasons. Similarly, the SEC claims that the Interested Investor methodology fails because it does not act as if a ponzi scheme occurred. As set forth previously, the Interested Investors take no position on this issue whatsoever. They simply account for the reality that monies were eventually recovered from many of the farms and take what would seem an unremarkable position that the distribution should reflect this reality.

The SEC further objects that the Interested Investors' methodology does not distribute funds on a pure pro-rata basis. Ultimately, neither does the Receiver's methodology – as his clawback, if effectuated, will result in monies being clawed back from 2012 or 2013 investors who also lost monies in 2014. Regardless, the Interested Investor's' methodology does permit for pro-rata distributions after accounting for 2013 losses by "favoring" 2014 only Farm Loan Investors by crediting those Farm Loan Investors principle and interest based upon the outstanding 2013 balance. Accordingly, the New 2014 only Farm Loan Investors (15 in total) may receiver a larger percentage of the pro-rata distribution than the other 2014 Farm Loan Investors, but this is fair, equitable and has been accepted by a majority of the Farm Loan Investors. Further, it is not inconsistent with the principles underlying the Receiver's proposed methodology. It is, however, simpler, less expensive and quicker to implement.

The SEC suggests the investors should to wait for results of an upcoming trial of Defendant Senefeld before objecting to any distribution methodology. The Interested Investors respectfully

disagree. As set forth previously, their collective recovery is capped. Every day additional funds dissipate into Receiver costs and fees.

The SEC further suggests the Interested Investors were not provided with information sufficient to analyze their positions or to make informed decisions and that the information they did receive was provided, at least in part, by Matthew Haab, which somehow makes it inaccurate or incorrect. As set forth in their previous filings and above, however, the Receiver's own filings and documents – provided to this Court and, in some instances informally to investors, supports the Interested Investors' position. It is worth stating again: **"The Receiver and his accountants have determined that when an investor was asked to participate in a private placement his or her funds were actually used in that private placement and that none of the money was removed or taken to support or pay off any other investments."**

The SEC unfairly and improperly restates the Interested Investors' methodology. As set forth herein, their methodology is remarkably simple and could be applied immediately to determine each Farm Loan Investor's distribution effective immediately.

Finally, the SEC purports that the alleged criticism of the Receiver is unfair and unwarranted and that the Interested Investors are causing cost and delay by exercising their appropriate rights to petition this Court for relief. This argument is irrelevant and counterfactual. Ultimately, if the SEC was concerned about costs and delays, it could have worked with the Interested Investors at any time during this process to address their concerns and to facilitate a distribution of their monies. Further, the Receiver's costs are well-known to this Court. Whether they are reasonable or not is irrelevant – they are an ongoing factual reality. Every day the distribution of funds and the wind down of business affairs continues, the net recovery to the investors, collectively, dwindles. This is not a criticism – it is a fact.

Given no further recoveries are anticipated, the wind-down of business affairs and the distribution of substantially all of the monies – monies that belong to the investors – is just and proper. The Interested Investors' proposed methodology for making this distribution is fair and reasonable.

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, 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, 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, and order the Receiver to implement the Interested Investor's methodology.

Respectfully submitted,

/s/ Hamish S. Cohen

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CERTIFICATE OF SERVICE

I hereby certify that December 28, 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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