

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 MOTION FOR AUTHORITY
TO TRANSFER PRIVATE PLACEMENT, VEROS CHERRY FARMS
LLC 2014, \$1,750,000 LINE OF CREDIT LOAN TO INVESTMENT MEMBERS**

William E. Wendling, Jr., the Receiver herein, by counsel, respectfully seeks the Court’s authority to transfer one of the Private Placements of the Receivership, the Veros Cherry Farms LLC 2014, \$1,750,000 Line of Credit Loan to its Investor Members (hereinafter “Investment Members”). In support of this motion, the Receiver states:

1. On April 22, 2015, the Plaintiff, United States Securities and Exchange Commission (“SEC”) 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. The Agreed Order at Paragraph 38, provides that the Receiver “may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.” [[Filing No. 34, at ECF p. 15](#)]

4. The Agreed Order further provides in Paragraph 44 that “[s]ubject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted...” [[Filing No. 34, at ECF p. 17](#)]

5. Further, the Receiver is charged with the responsibility to:

To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees and agents of the Receivership Defendants;

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

To take such other action as may be approved by this Court.

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

6. The Investment Members in the Veros Cherry Farms LLC 2014 Operating Loan approached the Receiver requesting that this Private Placement be released from the Receivership and transfer it to the Investment Members.

7. The Investment Members have obtained independent counsel and independent accountants to review and advise them as to their investments and their role in this proposed transaction regarding the legal and tax ramifications. A spokesman for the Investment Members indicated the Investment Members are relying upon the advice of their independent agents in making this proposal.

8. Pursuant to the terms of the Agreed Order Appointing Receiver as set forth herein above, the Receiver instructed Blue & Co. to perform an analysis of each Private Placement to determine the status of each and whether there were any concerns regarding that Private Placement. The Receiver and Blue & Co. complied with the Court's direction. Blue & Co. has completed its analysis of the Veros Cherry Farms LLC 2014, \$1,750,000 Line of Credit Loan. Attached hereto and incorporated herein as [Exhibit A](#) is a copy of the correspondence from Blue & Co. indicating that based on the Blue & Co. procedures performed related to the Veros Cherry Farms LLC 2014, \$1,750,000 Line of Credit Loan, no issues of concern were found or identified.

9. Legal counsel for the Investment Members will take the lead in preparing the necessary documents to satisfy the legal requirements of the transfer upon the Court's approval of this Motion.

10. On November 14, 2016, the Receiver sent an email to the Investment Members setting forth the present situation of the Cherrys' delinquent loans and providing an update on the Receiver's collections efforts, including hiring bankruptcy counsel David Krebs. The Cherrys did not meet their obligation to make the payment due on this loan. The Receiver relayed a summary of the settlement proposal made by the Cherrys' counsel, and his recommendations regarding litigation if unable to reach a settlement. The Receiver stated that it was his understanding that despite the advantages of leaving the various Cherry Farms private offerings

and the individual loans in the Receivership, the Investment members desire to pursue whatever remedies are available to them independently from the Receivership. The Receiver stated that it was also his understanding the Investment Members recognize that these private offerings and the individual loans are in serious financial trouble and understand the Receiver's position as to collection and litigation against the Cherrys, but that they wish to proceed without the involvement of the Receivership. The Receiver requested each and every investor to respond to the Receiver in writing no later than November 28, 2016, stating whether they do, or do not, approve of this transfer. A copy of that November 14, 2016, email is attached hereto as [Exhibit B](#).

11. As of November 28, 2016, every investor has responded in writing to the Receiver approving of and requesting the transfer of the various Cherry Farms private offerings and the individual loans out of the Receivership. Accordingly, the Receiver is satisfied that the investment members have full knowledge and understanding of their situation and are capable of proceeding in the collection efforts.

12. The Receiver certifies that there are no funds in the Receiver's Cherry Farms bank account, that there have never been any funds in said account, and no payments have been made in that Private Placement since the Receiver took it over upon his appointment.

13. Accordingly, the Receiver believes that transferring the Private Placement assets to the Investment Members is appropriate and therefore requests the Court's authority to execute all legal forms necessary, including a Release, to accomplish the transfer.

14. Counsel for the United States Securities and Exchange Commission has reviewed this motion and has no objection to the same.

WHEREFORE, the Receiver, by counsel, requests that this Court enter an order approving the transfer of the Veros Cherry Farms LLC 2014, \$1,750,000 Line of Credit Loan Private Placement assets to the Investor Members and authorizing the Receiver to execute all documents necessary to facilitate the transfer of this Private Placement, and for all other proper relief.

Respectfully submitted,

By /s/ Anne Hensley Poindexter

Anne Hensley Poindexter, #14051-29
Altman, Poindexter & Wyatt LLC
75 Executive Drive, Suite G
Carmel, IN 46032
Telephone: (317) 350-1000
Fax: (844) 840-3461
Email: apoindexter@apwlawyer.com

Counsel for the Receiver

Certificate of Service

I hereby certify that on January 25, 2017, a copy of the foregoing ***Receiver's Motion for Authority to Transfer Veros Cherry Farms LLC 2014, \$1,750,000 Line of Credit Loan to Investment Members*** was filed electronically. Notice of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Anne Hensley Poindexter

Anne Hensley Poindexter, #14051-29
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75 Executive Drive, Suite G
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CPAs / ADVISORS

EXHIBIT A



Blue & Co., LLC / 12800 N. Meridian Street, Suite 400 / Carmel, IN 46032
main 317.848.8920 fax 317.573.2458 email blue@blueandco.com

January 13, 2017

Mr. William E. Wendling, Jr.
Cohen Garelick & Glazier, P.C.
8888 Keystone Crossing Blvd.
Suite 800
Indianapolis, Indiana 46240

Re: *Veros Partners, Inc. Receivership (Case No. 1:15-cv-659-JMS-MJD): Cherry Farms 2014, \$1.75M Line of Credit Loan*

Dear Mr. Wendling:

As set forth in the August 5, 2015 engagement letter between Blue & Co., LLC (“Blue”) and your former firm, Campbell Kyle Proffitt, LLP, and now subsequently Cohen Garelick & Glazier, P.C. (“Counsel” or “Receiver”), and as authorized by the United States District Court Southern District of Indiana Indianapolis Division (the “Court”), we have provided certain consulting and analysis in connection with the Veros Partners, Inc. and certain related entities/investments (“Veros”) matter referenced above as requested by the Receiver related to certain Veros private placements. The focus of this correspondence is related the Cherry Farms 2014, \$1.75M Line of Credit Loan (“Cherry Farms 2014 Loan” or “Private Placement”). The procedures performed in connection with this Private Placement did not constitute a formal review, or full-scale forensic investigation, and were limited to the following agreed upon procedures:

1. Obtaining an understanding of the Private Placement by analyzing certain documentation provided to Blue, by Counsel and Receiver;
2. Determining the amount raised by the Private Placement;
3. Identifying the corresponding investors of the Private Placement;
4. To the extent available, analyze the Private Placement monthly bank statements to identify any potential irregularities;
5. Performing any necessary bookkeeping services on behalf of the Private Placement, as performed by Aliign, LLC (“Aliign”), a related entity of Blue; and
6. To the extent identified by Blue or Aliign, note any extraordinary transactions (i.e., deposits, transfers, withdrawals, etc.) or irregularities that may necessitate additional procedures or further investigation, as part of the analysis performed with respect to the Private Placement.

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Cherry Farms 2014, \$1.75M Line of Credit Loan - \$1,750,000

Investment Overview:

- Overview of Private Placement:
Cherry Farms, LLC sought to secure up to a \$1,750,000 loan to use to finance expenses related to their 2014 crop as well as pay down other current debts. The loan was secured by a first crop lien on the 2014 and future crops along with second liens on the farm's machinery and equipment and all other personal property. The proceeds from the 2014 and future crops were to be protected to certain coverage level per acre from both a yield and price standpoint by a crop insurance policy that the lending group were to be attached to. The loan was also be personally guaranteed by the principals of Cherry Farms (James Cherry, Susan Cherry & Jeff Cherry).
- Date of Private Placement Memorandum – April 2014
- Timing and Time Horizon: The loan was to be interest-only, with semi-annual interest payments, along with two scheduled principal repayment dates. The first principal payment of \$200,000 was due one year from the date of the loan closing, April 14, 2012, and a balloon principal payment of \$600,000 due on April 14, 2013.
- Proceeds Raised - \$1,750,000
- Expected Return - The return on this investment was expected to be approximately 11.5% gross with the expected return net of all expected and scheduled fees and costs of approximately 10.5%.
- Recourse: Recourse and/or security for this lending amount was to include the following. Note that these recourses were stated to remain in existence until the agreed-upon repayment was received in full.
 - First lien position on the proceeds from future crops (2014 crops and future crops until repayment is received in full.)
 - First lien position on this year's and future year's crop insurance policies.
 - Second lien position on all personal property (farm equipment, etc.) (pari passu with the Term Loan and Restructuring Loan).
 - Personal guarantees from James, Susan and Jeff Cherry which would include all net equity in current land holdings.
- The Private Placement literature makes note that upon closing of the Cherry Farms 2014 Loan, Cherry Farms will have loans outstanding including the Restructuring Loan (\$1,200,000) and the Term Loan (\$800,000).

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- Bankruptcy Risk
 - There was noted a risk that Cherry Farms and all of its principals could declare bankruptcy. This risk was said to be mitigated by the following factors:
 - Crop Lien - The crop lien, once secured, will remain on this year's crop even in the event of bankruptcy, so there would still be the proceeds from this year's crop to protect the loan amount. If needed, outside labor could be hired to harvest this year's crop.
 - Threat of Losing their Livelihood - Since liens and personal guarantees are attached to virtually of all their future cash proceeds and to their business and personal property, the principals of Cherry Farms would risk losing everything they had including their occupation that they have been involved with for their entire life / working career.
 - Integrity and Evaluation of Management - The principals of Cherry Farms have many years of experience in farming. Based on interactions with these principals they appear capable and confident in their abilities.

- Source & Use of Funds:

Loan Amount	\$1,750,000.00
Legal Expense (Closing)	<u>(7,500.00)</u>
Net Proceeds	\$1,742,500.00
Final Payoff of Existing 2012 Line of Credit	(1,454,524.00)
Seed & Fertilizer Payments	<u>(285,146.00)</u>
Total Current Liabilities Paid Immediately After Closing	<u>(1,739,670.00)</u>
Working Capital Available for Remainder of Year	<u><u>\$2,830.00</u></u>

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- Stated Repayment Schedule

Loan Amount	\$1,750,000.00
Total Repayment Proceeds to be Paid	<u>1,947,381.90</u>
Total Payments from Lending Group to Veros Partners	<u>17,500.00</u>

- Advisory/Management Fee: Veros shall be entitled to collect from the Lending Group an administration fee equal to \$17,500.00, which covers administrative agent for the time involved with initial and ongoing due diligence during the term of the loan, oversight of the disbursement of loan funds, preparation of applicable tax documents, periodic reporting to the lending group, and all other related management and administrative duties involved with this agreement, the loan and the loan documents. The administrative fee shall be due and payable as part of the final payment in the amount of \$17,500.00 from the final payment under the Note.

- Investors Noted:

- Redact [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- Conflict of Interest Noted in Private Placement Literature

- “Veros Partners Relationship with Cherry Farms - As of 2010, Cherry Farms engaged Veros Partners in a professional service relationship to assist them with maintaining their financial records and completing future tax returns and required filings. Fees received for those services are completely separate and independent of this proposed loan. Veros Partners is an independent, fee-only investment advisor and is not receiving any other compensation in connection with this loan outside of their potential management and performance fees disclosed on the outline of fees and expenses connected to this loan. No form of compensation is being received from Cherry Farms or any other party as part of this proposed loan.

- Individual bank accounts specific to this Private Placement were not provided (rather two Mainsource accounts covered multiple Cherry Farms placements). Specifically, Mainsource bank accounts (i.e., xxx8103 for the period April 22, 2013 through April 30, 2015; and Account xxx4679 for the period March 28, 2012 through April 25, 2013) were provided in connection with the Cherry Farms, LLC private placements. It appears to date no payments have been made to the investor group.

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- Aliign bookkeeping items noted
 - For purposes of the accounting for this placement, the Cherry Farms, LLC related private placements included several placements dating back to at least 2010 that lacked individual bank accounts (for each respective placement). As a result of the prior accounting structure utilized by the prior accountants (Veros), the analytical procedures and bookkeeping performed by Aliign was limited (i.e., did not include accounting back to the inception of all private placement activity with Cherry Farms, LLC). The aforementioned limitations were due to the limited access and availability to obtain the necessary accounting records dating back to the inception of each of the Cherry Farms, LLC placements, as well as the resources available (i.e., the fees associated with such efforts), and as such the Receiver has requested that Aliign perform a high-level accounting analysis to ensure there are no material issues identified. In performance of this analysis, while Aliign has not noted any material issues in performance of their analysis, they have provided a list of Disclosure Items (in a separate correspondence issued to the Receiver) related to the accounting analysis performed on the Cherry Farms, LLC placements.

The accounting analysis performed by Aliign (and Blue) is restricted and should only be utilized for purposes of the Receiver transitioning Cherry Farms, LLC placements and is limited as a result of the aforementioned scope and availability of documents produced. As such, the accounting analysis performed by Aliign should be utilized for no other purpose, including financial statement generation.

It is important to note, that while the scope of the analysis and agreed upon procedures to be performed by Blue and Aliign was not restricted by any of the parties, the Receiver requested that any such analysis and procedures be performed in the most cost-efficient manner with the investor group's financial interest in mind. Further, it is important to note with respect to this Private Placement, the work performed by Blue (and subsequently Aliign) was limited to the data produced and as such limited in scope.

While no specific items were noted (beyond those discussed above) in regards to any accounting improprieties associated with this Private Placement during the limited analysis of such data, to the extent bank statements, or other accounting related records were produced, additional observation may have been noted. It is important to note, consistent with the information included in the investment literature in support of this Private Placement, that an apparent conflict of interest was associated with this Private Placement through the professional service relationship between Veros Partners and Cherry Farms, LLC, along with other similar private placements amongst said parties.

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As previously noted, the procedures and analyses set forth within this correspondence and as performed by Blue and Aliign, do not constitute a full-scale forensic review, or a fairness opinion with respect to the Private Placement. To the extent additional procedures had been performed, our findings may have been different. As set forth above, and limited to the agreed upon procedures outlined previously specific to this Private Placement, we have not noted any risks (beyond those included in the Private Placement's offering memorandum and related literature, as prepared by Veros and their representatives), irregularities, or concerns beyond those set forth in this correspondence with respect to the Cherry Farms 2014, \$1.75M Line of Credit Loan.

Regards,

Blue & Co., LLC

Blue & Co., LLC

From: [William Wendling](#)

To: Redact

Cc: [Anita Haworth](#); [Anne Poindexter](#)

Subject: Notice to all Cherry Farms Investors - please respond no later than Nov. 28, 2016

Date: Monday, November 14, 2016 10:36:53 AM

Importance: High

To the Veros Partners Cherry Farms Investors,

Anne Poindexter and I met with Redact and Hamish Cohen to discuss the possible transfer of the Veros Partners Cherry Farms Private Placements from the Receivership to a new entity formed by the investors that will be self-managed. It is my understanding that a majority of the member investors are currently in agreement with that plan. Redact indicated that he anticipates that those he has not heard from will also agree to the transfer. However, he indicated a few investor members have inquired about the status of the settlement proposal made by the Cherrys.

With regard to settlement, several weeks ago the Receiver was presented with a "Confidential Settlement Negotiations" document by the Cherrys' attorney. Although the member investors were notified that the Receiver had received this proposal, copies were not distributed to the member investors. It was not sent to the member investors at that time, in part, to allow David Krebs (the bankruptcy attorney the Receiver hired) time to review the Veros Partners private placements with the Cherrys and to allow time for the receipt of additional information requested by the Receiver's attorney. In particular, documents were subpoenaed from the Cherrys' accountant. (If you will recall, the Cherrys filed with the court an objection to our request for the accountant's information stating that the Receiver was not entitled to such discovery. On November the 9th, the court denied the Cherrys' request and ordered the Cherrys' accountant to provide the requested information on or before November 18th. We await the production of that information and believe that it will contain helpful information to be used to prosecute the investors' claims against the Cherrys.) Consequently, Mr. Krebs and the Receiver have not been able to review to all the information needed to render an informed opinion about the offer.

In the interim, and based upon Redact's statements that some of the member investors would like current information about the proposal, I am sending this notice. Since the proposal is labeled confidential, I will summarize it as follows:

The proposal is contingent on the Cherrys acquiring additional property to farm. The additional property would be purchased at a price that would allow the Cherrys to realize substantial equity in the land in five years. In addition, the Cherrys propose to make additional payments to the seller of the property during this initial five years, which would even further increase the equity. Thereafter, the property could be sold or refinanced allowing the Cherrys to pay the member investors \$2,500,000 in full satisfaction of what is owed. (In essence, the member investors would receive \$2,500,000 of what they are owed and that amount might be made by installment payments starting five years from the date the settlement agreement is approved. It is possible the Cherrys could pay sooner if they elect to do so.) The proceed distribution formula for the sale of the property is that proceeds from the sale of any portion of the land would first go to reducing a proportional amount of the debt owed to the seller of the land. Of the remaining amount, 75% of the balance will go to the member investors to reduce their outstanding debt until 2.5 million has been fully paid. The remaining 25% will go to the Cherrys.

To get the property at issue, the Cherrys say they need to show the seller that the issues between the Cherrys and the member investors have been settled as reflected in an agreement approved by the court.

The member investors would have a junior mortgage on the property subordinate to the seller's mortgage.

The member investors will continue to have a second mortgage on the Cherrys' farm and a subordinate lien on all farm equipment.

The member investors will continue to have the personal guarantees of Jim and Susan Cherry.

The debt, as stated above, will be reduced to an agreed amount of \$2.5 million.

The member investors will release any and all claims that they may have against High Voltage Painting LLC, Cherry Agg Services, LLC, Chris Cherry, Kristi Cherry, Jeff Cherry, and Amy Cherry, including any claim against Jim's one third interest in High Voltage Painting LLC.

The 2015 crop proceeds currently held by the Receiver would be used to satisfy the liens of PHI and Helena, with any remaining amounts paid to the member investors.

All other claims held by the member investors or the Receiver would be released.

The above is a summary of the proposal the Cherrys have sent the Receiver. The Receiver is not recommending acceptance or rejection of the terms. These terms are simply being relayed to the member investors for informational purposes.

If a settlement cannot be reached in the very near future, the Receiver recommends that litigation be brought against the Cherrys via the various loan agreements and other collateral matters. If litigation starts, the Cherrys will most likely file for bankruptcy, which means that the litigation process would become an issue in the Federal Bankruptcy court. The Cherrys' attorney claims that the Cherrys will consider filing cross claims against Veros Partners and, to the extent possible, against the investment groups. However, their attorney has been very vague about what claims his clients actually have.

In conclusion, it is the Receiver's understanding that the member investors in the Veros Cherry Farms, Private placement offerings are in favor of transferring these assets out of the Receivership. The member investors have considered the Receiver's previous correspondence and discussions about the advantages of leaving these investments in the Receivership to allow the Receiver to pursue claims against the Cherrys, but, nevertheless, wish to proceed without the involvement of the Receivership. The member investors also acknowledge that their Cherry Farms investments are in serious financial trouble and that payments to the member investors regarding the Cherry Farms private placement are delinquent.

Thus, I request that each investor notify me in writing whether you approve of the plan to transfer the Cherry Farms Private Placements out of the Receivership. An email response will be sufficient notice and a husband and wife may respond together in one email if you wish.

I need each and every investor to respond to me and state whether you do or do not approve of this transfer. If I do not receive a response from you by November 28, 2016, I will presume that you object to the transfer.

If anyone has questions or comments regarding the above, or any other matter, please do not hesitate to contact me.

Sincerely,

William E Wendling, Jr.

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

**ORDER APPROVING RECEIVER’S MOTION TO TRANSFER VEROS
CHERRY FARMS LLC 2014, \$1,750,000 LINE OF CREDIT LOAN TO INVESTMENT
MEMBERS**

WHEREAS this matter has come before this Court upon the Receiver’s Motion to Transfer Private Placement, requesting approval of the transfer of the Veros Cherry Farms LLC 2014, \$1,750,000 Line of Credit Loan assets to the Investment Members, and authorizing the Receiver to sign all documents necessary to facilitate the transfer of Veros Cherry Farms LLC 2014, \$1,750,000 Line of Credit Loan;

WHEREAS the Court finds that the Receiver has complied with his duties and obligations as set forth in the Agreed Order Appointing Receiver as to this Private Placement; and,

WHEREAS, the Court finds that the Receiver's proposed transfer of the Veros Cherry Farms LLC 2014, \$1,750,000 Line of Credit Loan assets to the Investment Members is reasonable; and,

WHEREAS, the Court further finds that no funds having been received or moved through the Veros Cherry Farms Receivership bank account;

IT IS THEREFORE ORDERED THAT:

The Receiver's Motion for Authority to Transfer the Veros Cherry Farms LLC 2014, \$1,750,000 Line of Credit Loan is hereby approved. The Receiver is authorized to execute all documents necessary, including a release, to facilitate the transfer of this Private Placement's assets.

Dated: _____

Honorable Jane Magnus-Stinson, Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

Distribution:

All ECF-registered counsel of record via email generated by the court's ECF system