

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.

**RECEIVER’S MOTION FOR AUTHORITY TO TRANSFER
THE ENTITY, VEROS CHERRY FARMS LLC INDIVIDUAL LOANS
BY 2014 AND 2015 INVESTORS TO INVESTMENT MEMBERS**

William E. Wendling, Jr., the Receiver herein, by counsel, respectfully seeks the Court’s authority to transfer the entity Veros Cherry Farms LLC Individual Loans by 2014 and 2015 Investors 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 Individual Loans 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 Individual Loans by 2014 and 2015 Investors. 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 Individual Loans by 2014 and 2015 Investors, 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. Although payments were due for some investors on October 21, 2014, April 30, 2015, and on October 31, 2015, the Cherrys did not meet their obligations to make those payments.

11. 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](#).

12. 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.

13. 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.

14. 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.

15. 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 Individual Loans by 2014 and 2015 Investors assets to the Investment Members and authorizing the Receiver to execute all documents necessary to facilitate the transfer of this entity, 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: apointexter@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 the Entity Veros Cherry Farms Individual Loans by 2014 and 2015 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
Altman, Poindexter & Wyatt LLC
75 Executive Drive, Suite G
Carmel, IN 46032
Telephone: (317) 350-1000
Fax: (844) 840-3461
Email: apointexter@apwlawyer.com

EXHIBIT A

CPAs / ADVISORS



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 Individual Loans by 2014/2015 Investor Members*

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 Individual Loans by 2014/2015 Investor Members (“Cherry Farms Individual Loans” 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 Individual Loans by 2014/2015 Investor Members - \$1,628,428.50

Investment Overview:

- Overview of Private Placement:
In addition to various other private placements, Cherry Farms, LLC entered into various promissory agreements with individual investors.

The documentation produced in connection with this Private Placement were very limited in nature, and as such the specific purpose of the proceeds raised were unable to be identified.

- Date of Private Placement Memorandum – Range from April 2012 through March 2015
- Timing and Time Horizon: As noted the in the various promissory notes (between Cherry Farms, LLC and the individual investor) the loans were short-term in nature, mostly ranging between two (2) and six (6) months in duration.
- Proceeds Raised - \$1,628,428.50
- Expected Return - 15.0% as set forth in the individual promissory notes with investors.
- Recourse: the notes and all amounts due shall be secured by a lien upon all machinery and equipment now owned by Cherry Farms, LLC and all machinery and equipment acquired after the effective date of the note. In addition to the machinery and equipment lien, the borrowers, guarantee full and punctual payment and satisfaction of the indebtedness of Cherry Farms, LLC to investors, and the performance and discharge of all obligations under the note and related documents, to the extent not fulfilled by Cherry Farms, LLC.
- Advisory/Management Fee: Based on the limited documentation provided, it does not appear as though a management fee was charged on the individual loans.
- Investors Noted (some investors have multiple tranches of investment):
 - Redact [REDACTED]
 - [REDACTED]
 - [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.

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- 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. Based on information produced (Veros Partners spreadsheets), it appears the following payments were made to investors:

Investor	Repayment
Redact Re	\$25,750.00
Redact Red	31,594.68
Redact Red	132,026.96
Redact Re	132,026.96
Redact Re	-
Redac Red	136,770.22
Reda Red	107,342.47
Redact Red	133,863.01
Redact Red	-
Redact Red	-
Redact Reda	-
Redact Red	51,910.96
Redact Reda	-
Redact Re	-
Redact Red	-
Redact Re	-
Redact Red	-
Reda Red	-
Reda Red	-
Total	\$751,285.26

- Align 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 Align 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 Align perform a high-level accounting analysis to ensure there are no material issues identified. In performance of this analysis, while Align 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.

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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.

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 Individual Loans by 2014/2015 Investor Members.

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.

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.

**ORDER APPROVING RECEIVER’S MOTION TO TRANSFER VEROS
CHERRY FARMS LLC INDIVIDUAL LOANS BY 2014 AND 2015 INVESTORS
TO INVESTMENT MEMBERS**

WHEREAS this matter has come before this Court upon the Receiver’s Motion to Transfer, requesting approval of the transfer of the Veros Cherry Farms LLC Individual Loans by 2014 and 2015 Investors to Investment Members, and authorizing the Receiver to sign all documents necessary to facilitate the transfer of Veros Cherry Farms LLC Individual Loans by 2014 and 2015 Investors;

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 Individual Loans by 2014 and 2015 Investors to 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 Individual Loans by 2014 and 2015 Investors to Investment Members is hereby approved. The Receiver is authorized to execute all documents necessary, including a release, to facilitate the transfer of this entity'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