

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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UNITED STATES SECURITIES))
AND EXCHANGE COMMISSION,))
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Plaintiff,))
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v.)	Case No. 1:15-cv-659-JMS-MJD
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VEROS FARM LOAN HOLDING LLC,))
TOBIN J. SENEFELD,))
FARMGROWCAP LLC,))
PINCAP LLC, and))
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Defendants,))
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PIN FINANCIAL LLC,))
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Relief Defendant.))
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**PLAINTIFF’S REPLY TO INVESTORS’ OBJECTION
TO RECEIVER’S SEVENTH QUARTERLY FEE APPLICATION**

Plaintiff United States Securities and Exchange Commission (the “SEC”), for its reply to certain “Investors’ Statement On and Objection To Receiver’s Seventh Quarterly Fee Application” [Filing No. 361], states as follows:

Preliminary Statement

Certain Investors have filed an objection to the Receiver’s Seventh Quarterly Fee Application. [Filing No. 357] However, the Investors do not identify even a single item, task or charge in the Receiver’s fee petition which they claim should not be paid. Instead, the Investors raise several complaints and requests, none of which are related to the Receiver’s latest fee

petition,¹ and conclude with a demand that the Receivership be terminated by April 15, 2017.

[*Id.* at 1-2] However, the Investors' do not offer any evidence that the Receivership has accomplished all of its assigned work, or that what remains could be completed in approximately six (6) weeks. Although both the Receiver and the SEC want the Receivership to be wound down and terminated as soon as practicable, the SEC does not believe that the Receivership can be responsibly terminated by the arbitrary date of April 15, 2017.

A. The Investors Have Not Proposed a Plan to Terminate the Receivership.

The Investors have not proposed a plan for the Receiver, the SEC or to the Court consider as to how the Receivership can be responsibly wound down and terminated by April 15, 2017. They state that they "are willing to work with the Receiver on an ongoing basis to roll any remaining investments out of the Receivership." [Filing No. 361 at 2] However, they do not refer to any Receiver responsibility (aside from the remaining private placements) or suggest who should be responsible for completing that assignment. On February 10, 2017, the Receiver filed a Seventh Interim Report which contained a Summary of Receiver's Potential Plan to Wind Down Receivership. [Filing No. 354] The Receiver stated that the Receivership can be terminated in approximately August or September of 2017. [Filing No. 354 at 10] The Receiver also stated that "the Receiver is more than willing to work with the parties and the investors to consider and implement, if appropriate, alternative plans to close the Receivership sooner." [*Id.*] The SEC encourages the Investors to take concrete steps, and make appropriate compromises, to

¹ The Investors' first two points relate to the Receiver's motion to make an interim distribution, which the Court recently granted. [See Filing No. 359] The Investors make two requests for the Receiver to expedite the interim distribution process: expedite any clawbacks and distribute the rest of the funds recovered by the Receiver to investors. [Filing No. 361 at 2-3] The Receiver is already working on this interim distribution, which may include clawbacks, but the distribution of any remaining funds should be addressed by separate motion(s).

help the Receiver complete his work before September, 2017. However, the Receivership should not be terminated until its work is accomplished.

B. There Is Work Which Cannot Be Completed By April 15, 2017.

The Investors contend that the Receiver should complete his work and terminate the Receivership by April 17, 2017. [Filing No. 361 at 4] This is not realistic. The Receiver's Wind Down Plan identifies a number of projects that need to be completed, and estimated that they all could be completed within the next 6 to 8 months. [See Filing No. 354 at 3-10] Below is a chart of outstanding tasks:

NECESSARY TASK	ANTICIPATED COMPLETION
Final collections for VFLH LLC and FarmGrowCap LLC	6-8 months
Preparation of tax returns for VFLH, FarmGrowCap and other private placement investments	6-8 months
Disposition of PinCap LLC	6-8 months
Entry of final judgments against VFLH, FarmGrowCap, PinCap and Pin Financial	Less than 6 months, actual timing determined by the SEC
Transfer of Stadiumred	Pending -- awaiting investor signature
Transfer of Cherry Farms LLC 2011 Loan	Pending -- awaiting review of documents by investors' counsel
Transfer of Cherry Farms LLC 2012 Restructuring Loan	Pending -- awaiting review of documents by investors' counsel
Transfer of Cherry Farms LLC 2013 Restructuring Loan	Pending -- awaiting review of documents by investors' counsel
Transfer of Cherry Farms LLC 2014 Restructuring Loan	Pending -- awaiting review of documents by investors' counsel
Transfer of BlueCrop Group	Pending -- awaiting review of documents by investors' counsel
Transfer of Veros Craft Bew I	TBD
Transfer of Veros Craft Bew II	TBD
Transfer of Veros Craft Bew III	TBD
Petition to Modify Requirement for Qualified Settlement Funds in connection with tax reporting	Filed with the Court in the near future
Complete \$3,000,000 interim distribution to FGC investors	April 17, 2017 (60 days from Court's recent Order)
Complete Remaining Distribution to FGC investors	TBD
File Necessary Pleadings to Terminate Receivership	After completion or transfer of the above tasks

As demonstrated by the above chart, the Receiver is working diligently to wind down and terminate the Receivership. The SEC also wants the Receivership to be responsibly wound down as soon as possible. However, there are a number of complicated issues remaining that will require more than six (6) weeks to complete. Even with the Investors' active assistance, it is not realistic to expect the Receiver to accomplish all of this work in less than 6 weeks.

C. The Investors' Request for Information from the SEC

The Investors also request additional information relating to the SEC's request that the Receiver consent to monetary judgments on behalf of the three corporate defendants which it controls: *i.e.*, Veros Farm Loan Holding LLC, PinCap LLC, and FarmGrowCap LLC. [Filing No. 361 at 3] The SEC's purpose is not to force these companies to pay money to the government. To the contrary, the SEC's purpose in obtaining judgments against these entities is to provide a basis to ensure that the Receiver is in the best position to defend his distribution of funds to investors over the claims of these companies' other creditors. The SEC is drafting these documents to present to the Receiver in the near future, and they must also be filed with and approved by the Court.

In addition, the Investors complain that "[t]he Receiver's filings make no mention of any disgorgement from or relating to the Security (sic) and Exchange Commission's settlements with Defendants Haab and Risinger or any future disgorgement from Defendant Senefeld." [*Id.* at 3] The Receiver's filings do not describe the SEC's intentions because he does not have the authority to speak for the SEC in this matter. However, once all of Matthew Haab's settlement funds have been received by the SEC, the SEC intends to file a motion with the Court proposing that those funds should be used, either distributed directly to investors or indirectly benefitting investors by being used to pay Receivership expenses. .

D. The Investors' Criticisms of the Receiver's Fees Is Unfair.

The Investors also complain about the amount of fees incurred and paid to date by the Receiver, contending that they are “disproportionately high” and “outweigh any ongoing benefit to investors.” [Filing No. 361 at 2] This criticism is unfounded. The Receiver was tasked with investigating, and managing Veros Farm Loan Holding LLC, FarmGrowCap LLC, PinCap LLC, and 26 private investments. He also had certain responsibilities relating to Veros Partners, Inc., both before and after its dissolution, and has communicated regularly and at times extensively with investors. The Receiver has done remarkably well in investigating all of the private offerings, identifying the ones in trouble, managing all of the private offerings, transitioning many to the investors, and obtaining substantial recoveries on behalf of investors. The Receiver has diligently and efficiently performed his work, and accounted to the Court and investors honestly for the time and resources required to do so.

(1) A Number Of The Private Investments Were Failed Investments

At the time the Receiver was appointed, unbeknownst to the SEC, the Receiver, or the investors, a number of the private investments already were in dire financial trouble. Apparently, little or none of this information had been provided to investors. The Receivership has had to incur fees, including forensic accounting fees, in investigating and dealing with these issues.

As the Receiver has previously informed the Court and the investors, all six of the private placements involving Cherry Farms are in default, and the loans had inferior and insufficient security. [Filing No. 357 at 5] Staduimred was in default. [*Id.* at 37] Veros Craft Brew I, II, and III are were failed investments. [*Id.* at ECF p. 38] Because the scope of these problems with the other private investments was unknown to the SEC, the Court and investors, and the

Defendants could not be permitted to continue managing those investments, the Receiver was appointed to investigate and address these issues as needed. The Receiver cannot be blamed for the fact that a number of the private investments were financially troubled, or had already failed.

(2) The Receiver Has Incurred Fees Addressing Investor Demands

The SEC understands that all investors want a quick resolution of this matter, at the least cost to themselves. However, the investors may not appreciate how the demands of certain investors have delayed these proceedings and increased the costs to all investors.

For example, on October 21, 2016, certain investors filed a Motion to Stay and Objection to Interim Distribution Methodology. [Filing No. 284] The motion to stay did not acknowledge that the Receiver previously had given all investors notice of his intentions to make an interim distribution, and explained his proposed methodology, and that the Court already had approved the Receiver's proposal to begin the distribution process.

After the filing of that motion, the Receiver met with several of the objecting investors and their attorney. [Filing No. 354 at 40] There were a number of telephone calls after the meeting. [*Id.*] After Williams Farm filed for bankruptcy, the objecting investors withdrew their motion to stay. The Receiver continued meeting with the objecting investors and their counsel in an attempt to resolve the matter. [*Id.* at 41] On December 7, 2016, the objecting investors filed Investors' Amended Motion to Stay and Objection to Interim Distribution Methodology. [Filing No. 312]

The Receiver had to respond to the Investors' motion, including having the accountant employed by the Receiver to work to understand the investors' proposed methodology and compare it to the Receiver's proposed methodology. In addition, the Receiver and his counsel

also had to prepare for and participate in the hearing requested by the investors. All of these activities and the associated fees were necessitated by the Investors' actions.

The SEC is also aware of other many other demands for meetings, information, responses to emails and communications to investor groups, which have been made on the Receiver by certain investors. Each of these demands, whether warranted or not, has required the Receiver to expend time and effort in responding, and has caused the Receivership to incur additional fees. Yet the Investors' repeated complaints about the Receiver's fees demonstrate no awareness that their demands for special consideration, attention and communication have increased the cost of the Receivership and cost themselves and other investors both time and money. .

(3) The Receiver's Efforts In This Case Have Benefitted Investors.

The investors in VFLH and FarmGrowCap were defrauded. The investors in certain other private placement have suffered losses on their investments. Under these unfortunate and difficult circumstances, the Receiver has collected approximately \$14.5 million and has distributed approximately \$5,225,026.03 to investors. [Filing No. 354 at ECF 11] The Receiver is in the process of completing the remaining tasks, and will wind down his efforts within the next six (6) months. It will not serve the investors' interests to prematurely terminate the Receivership by the arbitrary date of April 15, 2017.

Conclusion

For all of the foregoing reasons, Plaintiff Securities and Exchange Commission respectfully requests that the Court overrule the Investors' objection, deny the Investors' Request to Terminate the Receivership by April 15, 2017, and approve the Receiver's Seventh Quarterly Fee Application.

Dated: March 7, 2017

Respectfully submitted,

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