

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 REPLY TO INVESTORS’ STATEMENT ON AND OBJECTION TO
RECEIVER’S SEVENTH QUARTERLY FEE APPLICATION**

Comes now Receiver, by counsel, and files his Reply to Investors’ Statement on and Objection to Receiver’s Seventh Quarterly Fee Application [[Filing No. 361](#)] and responds as follows:

Preliminary Statement

On February 28, 2017, certain Investors filed an objection and statement on the Receiver’s Seventh Quarterly Fee Application. [[Filing No. 357](#)]. The Investors’ objections and concerns can essentially be summarized in the following four categories:

1. General Objection as to Fees Requested;
2. Requests for Additional Information;

3. Requests for Accounting as to Certain Fees; and
4. Demand to Terminate the Receivership by April 15, 2017.

The Receiver will respond to each concern of objection separately below.

General Objection as to Fees Requested

Although the Investors have objected generally to the Receiver's fee application and the total fees to date, no specific objection as to any activity or charge is identified. The Receiver acknowledges that all investors must want to maximize the return on what they have learned to be poor investments. However, the Receiver asserts that the time expended and charges set forth in the most recent fee application for the Receiver, staff, his various counsel, accountants and staff, all are appropriate and he stands by his application which he previously certified.

Requests for Additional Information

The requests for additional information on the issue of the Securities and Exchange Commissions' ("SEC"'s) suggestion that the Receiver consent to money judgments against several Receivership entities, as well as a request for information concerning disgorgement relating to SEC settlements with Defendants Haab and Risinger are requests that are best made directly to the SEC. However, the Receiver wants the Court to know that there have been discussions with the SEC in which he has been asked to consent to judgments against several defendants in the case. Those discussions were preliminary. To date; however, the Receiver has no additional or more specific information to provide regarding that issue. Likewise, the SEC has had preliminary discussions with the Receiver about the application of the disgorgement funds, but a definitive plan has not been reached. However, the Receiver is confident that in some form or another the disgorgement funds are going to be available to the receivership to help defray receivership expenses. The Receiver has responded to investors that requested additional information about these two issues with the limited information that he had. The Receiver notes that the SEC, in

response to the Investors' objection, sets forth more information about these issues [[Filing No. 364, at ECF p. 4](#)].

Requests for Accounting as to Certain Fees

The Investors' request further accounting as to certain fees. The requests can be separated into the following questions:

- a. Whether Two Percent (2%) has been withheld from each private placement that has been transferred from the Receivership to date
- b. What has happened to the Two Percent holdbacks from these private placements?
- c. Why have the Veros management fees been insufficient to pay the Receivership fees and expenses?
- d. A request for accounting of the fees from private placements that have been used for Receivership fees and expenses and whether there will be any repayment.

As set forth in the Receiver's Quarterly Reports and Fee Applications, most recently in the Receivers Seventh Interim Report [[Filing No. 354, at ECF p. 11](#)], a Two Percent (2%) holdback was done with the interim distributions for the investors in the Jennings Design LLC and True Blue Berry MGT 2015 Secured Loans private placements. For the Jennings distribution, the hold back was \$24,114.00. On True Blue Berry MGT 2015 the holdback was \$60,314.97. In each instance the 2% hold backs were retained in the separate checking accounts established by the receivership for these two private placements. A portion of those funds have been used to meet unexpected receivership expenses relating to the private placements other than the 2014 FarmGrowCap LLC Private Placement and the 2013 Veros Farm Loan Holding Private Placement ("Other Private Placements"). Specifically, the remaining balance in the Jennings account is

\$3,971.92 and \$37,526.85 remains in the True Blue Berry Management Operating account. (These balances are the approximate amounts if the Seventh Fee Application is approved.) The funds with drawn for these accounts have been used to pay receivership expenses as out lined in the Receiver's Quarterly Reports and Fee applications.

The investors in the Other Private Placements want to know why the Veros management fees have been insufficient to pay all of the Receivership fees and expenses allocated to the Other Private Placements. This is partially due to the fact that MainSource Bank wanted all of the Veros management fees to satisfy a loan it has with certain defendants. However, the Receiver was able to negotiate an agreement with the bank, and approved by the Court, to use half those fees to defray receivership expenses [[Filing No. 239](#)]. Thus, the Receiver has not had the benefit of all the fees. Furthermore, numerous private placements have been unable to pay Veros management fees because they are failing investments and do not have the money to pay the fees or the investors. For example, Cherry Farms, Veros Craft Brew and Stadiumred private placements cannot pay the fees or what they owe investors.

Even combining these Veros management fees with the two percent hold back there are insufficient funds to pay the receivership expenses for the Other Private Placements. Unfortunately, as mentioned above, a significant number of the private placements were discovered to be in disastrous financial condition, which required more attention from the Receiver than what was anticipated. In addition, the Receiver was required to spend time to find a solution to preserve the financial integrity of the partially funded Blue Crop Group private placement. Furthermore, the Receiver's accountants spent significant time rehabilitating the bookkeeping of each of the private placements in order to then verify the accuracy and validity of each to ensure investor funds were appropriately assigned to each operation. These are only a portion of the reasons why the fees allocated to the Other Private Placements are at the current level.

Nevertheless, the Receiver was able to use \$194,181.88 of the Veros Management fees to offset receivership fees relating to the cost associated with the Other Private Placements.

The investors' request for an accounting of all of the private placement fees and what funds, if any, will be available to reimburse Other Private Placement accounts used to pay receivership expenses is understandable. However, as the Court knows, there is an accounting given to the Court every quarter by the Receiver as to what has been collected and what the Receiver intends to pay as it relates to expenses or distributions to the investors [[Filing No. 96, at ECF p. 14](#)], [[Filing No. 146, at ECF p. 18](#)], [[Filing No. 183, at ECF p. 18](#)], [[Filing No. 217, at ECF p. 24](#)], [[Filing No. 254, at ECF p. 29](#)], [[Filing No. 299, at ECF p. 26](#)], and [[Filing No. 357, at ECF p. 25](#)]. The Receiver stated in each of those filings that he was allocating expenses between the Other Private Placements and the farm loan operations as best as possible for that particular quarter (*Id.*), (*Id.*), (*Id.* at p. 19), (*Id.* at p. 25), (*Id.* at pp. 29-30), (*Id.* at pp. 26-27) and (*Id.* at pp. 25-26). Specifically, the Receiver stated "This allocation between accounts is the Receiver's best and fairest calculation of how the fees and expenses for this Application should be paid. At the end of the Receivership, this allocation shall be reviewed and revised if necessary." (*Id.*), (*Id.*), (*Id.*), (*Id.*), (*Id.*), and (*Id.*). Thus, the Receiver has consistently asserted that a reallocation may need to be made as a part of his final accounting to be filed with this Court.

To precisely predict what the final accounting will look like at this time is not possible because the Receiver is still collecting money and will incur further expenses. However, since the receivership is drawing to a close the Receiver can state the following as his plan for the loss allocation and reimbursement to the private placement investors.

The Receiver has paid from private placement funds a total of \$467,778.91 in fees and expenses. Upon review, some of these funds were used to defray expenses relating to the 2014 FarmFrowCap LLC Private Placement and the 2013 Veros Farm Loan Holding Private Placement

and have been reallocated. The Veros management fees of \$194,181.88 reduce the funds taken out of the private placement accounts to \$273,597.03. Presently, as the result of the reallocation, there is a balance of \$121,027.96 in the various receivership private placement checking accounts, which further reduces the out of pocket expenses of the private placement expenses to \$152,596.00. The Receiver anticipates receiving approximately \$5,000 additional Veros fees and disgorgement fees, which will further reduce the private placement out of pocket expenses. For example, if the receiver is given \$100,000 in disgorgement fees to defray receivership private placement expenses the \$52,000 deficit would be allocated among all of the private placements in a manner that treated all equally.

However, the Receivership is ongoing and the above are not final numbers. They are offered only for insight and benchmarking purposes. The final accounting is the proper time and place with respect to both final fee and expense numbers, as well as disgorgement information for the Receiver to formulate and seek court approval of a plan to reallocate or reimburse private placement accounts for the fees and expenses paid to date.

Demand to Terminate Receivership by April 15, 2017

The investors' suggestion that the Receivership should terminate on April 15, 2017, is arbitrary and regrettably short sighted. The Receiver is perfectly happy for this Receivership to wind down and terminate at the earliest possible date. This fact has previously been made known to the counsel for the very investors filing this objection. The simple facts are that the remaining matters take time and are not fully in the control of the Receiver. By way of example, an order was entered on January 23, 2017, approving the Receiver's Motion for Authority to Transfer Private Placement Stadiumred to Investor Members [[Filing No. 332](#)]. The final signature on the transfer documents to facilitate that transfer was not obtained until Friday March 10, 2017, nearly 90 days later, after counsel for the investors was provided with the documents. On January 27,

2017, this Court entered various orders approving the transfer of various Cherry Farm Loans to the investors [[Filing No. 341](#)], [[Filing No. 342](#)], [[Filing No. 343](#)], [[Filing No. 344](#)], and [[Filing No. 345](#)]. Although counsel for the investors filing this objection had previously been in many discussions on the transfer of the Cherry Farm Loans over the course of months, after having been sent the transfer documents for review on February 8 and 15, 2017, he thereafter indicated he had not reviewed them as he had not yet been retained for that matter. Thereafter a single investor asked for and was provided the transfer documents on February 16, 2017. On March 13, 2017, a response requesting a meeting for the following week was received. Thus, six weeks following the Court's order, the Cherry Farm Loans transfer is not yet complete. Finally, with regard to the transfer of Blue Crop Group LLC, the Receiver was involved in negotiations for this transfer for months before the motion was even filed [[Filing No. 355](#)]. Additionally, on March 13, 2017, contact was finally made by an investor counsel to begin dialogue and the process of the transfer. though the transfer was approved February 13, 2017, no transfer documentation has yet been provided to the Receiver by investors or counsel to complete the transfer. The Receiver does not point these out to be critical. Quite to the contrary, the point is that these matters and the other matters remaining in the Receivership simply take time. Even when investors agree, the seemingly simple process of obtaining signatures from a multitude of investors and others can be a time-consuming process.

In addition, the Receiver previously informed the Court and investors of the Receiver's plan for winding down the Receivership [[Filing No. 354, at ECF pp. 3-10](#)]. The various matters to be addressed and steps to be taken were numerous enough to take up nearly eight full pages (*Id.*). The Receiver has obviously been working on the plan since filing the same and has completed or at least initiated several steps. However, many others remain and are unlikely to be completed by the arbitrary date of April 15, 2017.

In the event the investors have a specific plan or task in mind that can expedite the completion and termination of the Receivership, the Receiver will gratefully consider the same.

Conclusion

In summary, no specific objection pertaining to the Receiver's Seventh Quarterly Fee Application was articulated in the investors' objection. The requests for information were best directed at the SEC and in fact have been responded to at least in part by the SEC's reply. The request for accounting as to fees requested information that was in part already set forth in each of the various fee applications and are otherwise premature. Finally, the request for termination of the Receivership on April 15, 2017, is arbitrary and regrettably unrealistic.

WHEREFORE, Receiver, by counsel, respectfully requests that the Court deny the Investors' Objection to Receivers Seventh Quarterly Fee Application and for all other relief just and proper in the premises.

Respectfully submitted,

By s/Anne Hensley Poindexter

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Certificate of Service

I hereby certify that on March 14, 2017, a copy of the foregoing ***Receiver's Reply to Investors' Statement on and Objection to Receivers Seventh Quarterly Fee Application*** 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

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