

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
) No. 1:15-cv-00659-JMS-MJD
vs.)
)
VEROS FARM LOAN HOLDING LLC, TOBIN J.)
SENEFELD, FARMGROWCAP LLC, PINCAP LLC,)
and PIN FINANCIAL LLC,)
)
Defendants.)

ORDER

The United States Securities and Exchange Commission (“SEC”) initiated this action against Veros Partners, Inc. (“Veros”), an SEC-registered investment advisor, three individuals who performed work by or on behalf of Veros, and several entities that issued securities through Veros. On May 1, 2015, the Court entered an Order appointing William Wendling, Jr. to serve as the Receiver over Defendants Veros Farm Loan Holding LLC (“VFLH”), FarmGrowCap LLC (“FarmGrowCap”), PinCap LLC (“PinCap”), and all private offerings where Veros controlled investor funds (the “Private Offerings”). [[Filing No. 34](#).] Since that time, the Receiver has filed fee applications on a quarterly basis, and most recently filed his Seventh Quarterly Fee Application (the “Fee Application”). [[Filing No. 357](#).] For the first time, a group of investors (the “Interested Investors”) have objected to the Receiver’s Fee Application. [[Filing No. 361](#) (Investors’ Statement on and Objection to Receiver’s Seventh Quarterly Fee Application)]. The Objection is now ripe for the Court’s review and decision.

**I.
DISCUSSION**

In his Fee Application, the Receiver sets forth details regarding the \$176,051.08 he seeks, which includes:

- \$110,970.41 for the Receiver’s services – consisting of \$110,855.00 in fees and \$115.41 in costs and expenses;
- \$18,499.07 for the Receiver’s counsel’s services – consisting of \$18,317.50 in fees and \$181.57 in costs and expenses;
- \$39,081.70 for accounting services – consisting of \$25,045.40 in fees and \$121.96 in expenses for Blue & Co., and \$13,749.34 in fees and \$165.00 in expenses for its affiliate, Aliign;
- \$3,729.90 for the Receiver’s Oregon counsel’s services; and
- \$3,770.00 for the Receiver’s bankruptcy counsel’s services.

[[Filing No. 357 at 1-2.](#)] The Fee Application is thirty pages, and includes detailed explanations of the fees and costs the Receiver seeks.

In their Objection, the Interested Investors raise seven issues either with the Fee Application or with the Receiver’s distribution plan going forward: (1) that “the three-phase loan distribution methodology will result in costs and delay” and “[g]iven that the Receiver seems to now favor claw backs through accounting, this process should not cost much in additional fees and should be expedited”; (2) that “the Investors have now waited up to 20 months for a return of any funds recovered in relation to many of their investments,” this delay precludes “the use of those funds by those individuals for personal, business or investment purposes,” and so the Receivership should be wound down as quickly as possible; (3) the Interested Investors would like more information regarding the Receiver’s statement in the Fee Application that “the SEC requested the Receiver consent to monetary judgments against numerous of the entities in Receivership”; (4) the Receiver should “account for how the 2% holdback from each and every Veros Private Placement

transferred out of the Receivership was spent,” and “it is unclear why the management fees redirected from Veros Farm Loans to the Receiver were insufficient to pay the Receiver’s expenses or where these ‘held back’ funds ultimately went”; (5) the Receiver should provide information regarding whether any funds were, or are likely to be, collected from the SEC’s settlements with former Defendants Matthew Haab and Jeffrey Risinger, where those amounts are held, and how they will be distributed to investors; (6) the Receiver should provide an accounting of any funds paid from private placements that had positive balances to cover any Receivership fees or expenses for different investments that did not have positive balances, and should explain how investors from the positive balance private placements will be repaid for funds used to cover expenses unrelated to that placement; and (7) the Receivership should be concluded as soon as the Receiver issues 2016 tax documentation and concludes any open affairs, which should be completed by April 15, 2017 at a cost considerably less than \$450,000. [\[Filing No. 361 at 2-4.\]](#)

In his reply, the Receiver groups the Interested Investors’ concerns into four categories: (1) a general objection to the fees requested; (2) requests for additional information; (3) requests for accounting as to certain fees; and (4) a demand to terminate the Receivership by April 15, 2017. [\[Filing No. 366 at 1-2.\]](#) As to the first category, the Receiver argues that the Interested Investors do not specifically object to any activity or charge, and 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.” [\[Filing No. 366 at 2.\]](#) Second, the Receiver argues that the Interested Investors’ request for additional information regarding settlements with Mr. Haab and Mr. Risinger is more appropriately directed to the SEC, and notes that only preliminary discussions between the Receiver and the SEC regarding consent judgments have taken place and that “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.” [\[Filing No. 366 at 2.\]](#) Third, as to requests for accounting for certain fees, the Receiver provides specific information regarding the following issues: (a) whether 2% has been withheld from each private placement that has been transferred from the Receivership to date; (b) what has happened to the 2% holdbacks from these private placements; (c) why have the Veros management fees been insufficient to pay the Receivership fees and expenses; and (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. [\[Filing No. 366 at 3-6.\]](#) Finally, the Receiver notes that counsel for the Interested Investors has taken significant time to review documents that are key to winding down the Receivership, and that “these matters and the other matters remaining in the Receivership simply take time.” [\[Filing No. 366 at 6-7.\]](#) He also notes that he has previously informed the Court and the Interested Investors of a plan to wind down the Receivership, and many issues “are unlikely to be completed by the arbitrary date of April 15, 2017.” [\[Filing No. 366 at 7.\]](#) The Receiver states that “[i]n 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.” [\[Filing No. 366 at 8.\]](#)

The SEC also filed a reply to the Interested Investors’ Objection. [\[Filing No. 365.\]](#) It argues that the Interested Investors do not propose a plan to wind down the Receivership, and that “[t]he SEC encourages the [Interested] Investors to take concrete steps, and make appropriate compromises, to help the Receiver complete his work before September, 2017.” [\[Filing No. 365 at 2-3.\]](#) The SEC sets forth certain tasks which cannot be completed by April 15, 2017. [\[Filing No. 365 at 3-4.\]](#) As for the Interested Investors’ request for information regarding the Receiver consenting to monetary judgments for the three corporate defendants, the SEC states that its “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," and that it is in the process of drafting the appropriate documents. [[Filing No. 365 at 4.](#)] Regarding settlements with Mr. Haab and Mr. Risinger, the SEC states that it "intends to file a motion with the Court proposing how those funds should be used, either distributed directly to investors or indirectly benefitting investors by being used to pay Receivership expenses." [[Filing No. 365 at 4.](#)] The SEC argues that the Interested Investors' criticism of the Receiver's fees is unfair, noting that many of the private investments were failed investments, that the Receiver has incurred fees addressing investor demands, and that the Receiver has collected \$14.5 million and has distributed approximately \$5,225,026.03 thus far to investors. [[Filing No. 365 at 5-7.](#)]

The Court agrees with the Receiver that the Interested Investors' concerns fall into four categories: (1) a general objection to the fees requested; (2) requests for additional information; (3) requests for accounting as to certain fees; and (4) a demand to terminate the Receivership by April 15, 2017. It will address each category in turn.

A. General Objection to Fees Requested

The Interested Investors generally object to the fact that the Receiver has received \$1,212,158.58 in fees and costs thus far, and seeks an additional \$176,051.08 through the Fee Application. [[Filing No. 361 at 2.](#)] But they do not identify any specific fees that they object to as unreasonable or unwarranted. Their general objection is not a basis for denying the Receiver's Fee Application.

B. Requests for Additional Information

The Interested Investors request additional information regarding the SEC's request that the Receiver enter into monetary judgments with some of the Receivership entities, and regarding distributing funds from settlements with Mr. Haab and Mr. Risinger. [\[Filing No. 361 at 2-3.\]](#) Both the Receiver and the SEC have provided information relating to these issues in their reply briefs. [\[See Filing No. 365 at 4; Filing No. 366 at 2-3.\]](#) This request for additional information – which appears to now have been provided – does not justify denying the Receiver's Fee Application. The Court requests, however, that the Magistrate Judge confer with the parties to confirm that the information provided has alleviated the Interested Investors' concerns.

C. Requests for Accounting as to Certain Fees

The Interested Investors ask for information regarding the Receivers' accounting for the 2% holdback from Veros private placements transferred out of the Receivership, and for funds paid from investments that had positive balances to cover Receivership fees or expenses for investments that did not have positive balances. [\[Filing No. 361 at 3.\]](#) Again, the Receiver has provided this information in his reply brief, and has explained that the expense allocations for each quarter are detailed in the Receiver's previous fee applications, that the allocations are the Receiver's "best and fairest calculation," and that "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." [\[Filing No. 366 at 3-6.\]](#) The Interested Investors' request for more information regarding this issue does not warrant denial of the Receiver's Fee Application. As with the Interested Investors' request for additional information regarding entering into judgments and the SEC's settlements with Mr. Haab and Mr. Risinger, however, the Court requests that the Magistrate Judge confer with the parties to confirm that the information provided has addressed the Interested Investors' concerns.

D. Demand to Terminate the Receivership by April 15, 2017

The Interested Investors have criticized the time that it has taken the Receiver to wind down the Receivership. [[Filing No. 361 at 4.](#)] Similar to their general objection to the Receiver's fees, however, they do not set forth specific examples of matters that should have been resolved earlier than they ultimately were or will be. The Court shares the Interested Investors' concerns regarding winding down the Receivership efficiently, but finds the April 15, 2017 deadline arbitrary and unrealistic. At the Court's request, the Receiver provided a summary of his plan to wind down the Receivership. [[Filing No. 354 at 3-10.](#)] The Interested Investors do not criticize any specific parts of this proposed plan, instead simply asserting that they "submit that [wind down of the Receivership] may be accomplished on or before April 15, 2017...." [[Filing No. 361 at 4.](#)] The Court finds that the Interested Investors have not shown that the Receivership can and should be wound down by April 15, 2017, nor that the Receiver's proposed plan for winding down the Receivership is flawed or unreasonable.

**II.
CONCLUSION**

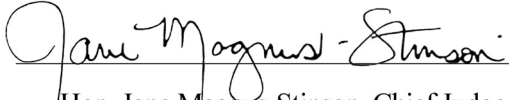
The Interested Investors have not presented any meritorious grounds for denying the Receiver's Fee Application, and the Court **APPROVES** the Fee Application. [[Filing No. 357.](#)] Specifically, the Court:

- Finds that the fees and expenses set forth in the Fee Application are reasonable, and **APPROVES** the Fee Application in the amount of \$176,051.08; and
- Finds that the Receiver's proposed allocation for payment of fees and expenses for the Fee Application is reasonable, and **APPROVES** the following allocation set forth in the Fee Application: \$113,584.08 from the Receiver's FarmGrowCap account, and the balance of \$62,467.00 from funds held within the Receivership Private Placement bank accounts, namely: True Blue Operating (\$6,233.50), Jennings Design (\$6,233.50), and the Receiver's General Private Placement Account #6065 (\$50,000.00).

The Court shares the Interested Investors' concerns regarding winding down the Receivership as soon as possible, while incurring the smallest amount of Receivership fees and expenses. The Court finds, however, that the Receiver shares these concerns and is working diligently toward that end. The Court notes that the Interested Investors' recent practice of raising issues through Court filings, while certainly permitted, increases the Receiver's costs, and the Court encourages the Interested Investors to provide specific suggestions and to work with the Receiver toward resolving any issues either informally or with the assistance of the Magistrate Judge. Accordingly, the Court requests that the Magistrate Judge schedule an issues conference with the Interested Investors, the SEC, and the Receiver to attempt to:

- resolve any outstanding issues and exchange of information;
- develop a mutually agreeable plan for the wind down of the receivership; and
- clarify the status of the remaining defendant parties for trial.

Date: March 17, 2017


Hon. Jane Magnus-Stinson, Chief Judge
United States District Court
Southern District of Indiana

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