

IN THE UNITED STATES DISTRICT COURT  
FOR THE 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, )

JEFFREY B. RISINGER, )

VEROS FARM LOAN HOLDING LLC,) )

TOBIN J. SENEFELD, )

FARMGROWCAP LLC, and )

PINCAP LLC, )

Defendants, )

and )

PIN FINANCIAL LLC, )

Relief Defendant. )

**TOBIN SENEFELD’S MOTION TO STRIKE REFERENCES TO  
MCSHANE AFFIDAVIT**

The SEC has attached the “Declaration of Craig L. McShane Regarding Tobin Senefeld’s Finances,” Doc. 453, to the response in support of its motion for disgorgement, prejudgment interest, and civil penalties, Doc. 455. McShane’s declaration, and the SEC’s use of it to ostensibly show that Senefeld has the financial wherewithal to pay a sizeable civil penalty, is an attempt to mislead the Court.

As Senefeld stated in his response to the SEC's motion for disgorgement, prejudgment interest, and civil penalties, his current income is just under \$45,000 per year.<sup>1</sup>Doc. 448 p. 13. And according to Exhibit 1 to the McShane declaration, between September 3, 2015, and January 18, 2017, Senefeld earned \$40,299.86<sup>2</sup> in income from four sources—Yeager Construction, Feumach Air Airgead, Ltd., Cache River, and Brockway Public House. See Doc. 453-1. Most of those funds (\$26,898.86) were deposited into two accounts owned by Senefeld. *See ibid.*; see also Doc. 455 at ¶ 7.

Senefeld's wife and three children own two companies—Feumach Air Airgead, Ltd. and Field Note. His wife, Mary, owns 49% and his children each own 17%. Doc. 453 at ¶ 9. Senefeld is not an owner of either company, but is an employee of Feumach, where he is essentially responsible for business development. *Id.* ¶ 11.

Without any explanation, McShane and the SEC claim that Senefeld received \$524,412.14 over the same September 3, 2015, to January 18, 2017, time period. Doc. 453 ¶ 14; Doc. 455 p. 18. Without citation to any authority that would allow them to, McShane and the SEC are imputing income generated by Senefeld's wife and children's businesses to him individually. Neither McShane nor the SEC has offered any evidence, or even bothered to argue, that Feumach and Field Note are, in reality, nothing more than alter egos of Senefeld whose revenues should somehow be considered in determining the amount of any civil penalty levied against Senefeld.

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<sup>1</sup> Since filing his response, Mr. Senefeld filed a Chapter 7 Bankruptcy petition, Case No. 17-09215-JMC-7. That filing lists his income as \$5,090.00 before payroll deductions. *See* Exhibit A. Mr. Senefeld also will be happy to provide additional financial information if the Court deems it necessary.

<sup>2</sup> \$13,401 in income from Cache River does not appear on Doc. 453-1 but is included in the \$40,299.86 figure.

The reported decisions on the imposition of civil penalties in enforcement actions seem to agree that one of the factors courts can consider is the defendant's current and future financial condition. See, e.g., *SEC v. Coates*, 137 F.Supp.2d 413, 428-29 (S.D.N.Y. 2001). The undersigned has not found a single decision in which the court has looked to a defendant's family's income to gauge the amount and appropriateness of a civil penalty. McShane and the SEC instead cite a joint income figure, attempt to impute it all to Senefeld, and provide no explanation. For McShane and the SEC to suggest this income is that of Defendant is misleading. For them to impute that income to Senefeld in his individual capacity, when they have no basis to do so, is simply not accurate.

Respectfully submitted,

/s/ Paul L. Jefferson

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically on January 2, 2018. Notice of this filing will be sent to all parties registered to receive such notice by operating of the court's electronic filing system. Parties may access this filing through the court's electronic filing system.

I hereby further certify that I caused a copy of the foregoing to be served by first class U.S. mail, postage prepaid, upon all parties that are not registered to receive notice by operation of the court's electronic filing system at their respective addresses listed in the electronic filing receipt.

*/s/ Paul L. Jefferson* \_\_\_\_\_

Paul L. Jefferson