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**
TOBIN J. SENEFELD, et al.	
Defendants,	
and	
PIN FINANCIAL LLC,	
Relief Defendant.	

PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR DEFAULT
JUDGMENT AGAINST RELIEF DEFENDANT PIN FINANCIAL LLC

Plaintiff United States Securities and Exchange Commission ("SEC" or "Plaintiff") submits this memorandum in support of its Motion for Default Judgment Against Relief Defendant Pin Financial LLC ("Pin Financial"). [Filing No. 483.] The SEC asks this Court to enter final judgment against Pin Financial ordering disgorgement of $9,000 plus prejudgment interest of $273.05. In support of the Motion for Default Judgment Against Relief Defendant Pin Financial ("Motion"), the SEC has filed the Declaration of Craig McShane Regarding Pin Financial. [Filing No. 484.]

I. PROCEDURAL HISTORY

The SEC filed this case on April 22, 2015, alleging that the defendants violated the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act") by engaging in a fraudulent scheme that raised at least $15 million from at least 80 investors. [Filing No. 1.] Pin Financial, through defendant PinCap LLC ("PinCap"), received at least $9,000 in ill-gotten gains. [Filing No.484.] Pin Financial has no legitimate claim to these ill-gotten proceeds. Thus, as a relief defendant, Pin Financial should be ordered to disgorge these amounts along with prejudgment interest thereon.

On April 22, 2015, the SEC filed, along with its Complaint: (1) Plaintiff's *Ex Parte* Motion for a Temporary Restraining Order, Asset Freeze and Other Relief and (2) Memorandum in Support of its *Ex Parte* Motion for a Temporary Restraining Order, Asset Freeze, and Other Relief. [Filing Nos. 3 and 8.] On April 23, 2015, the Court entered the Temporary Restraining Order. [Filing No. 12.]

On April 24, 2015, the Complaint and summons were served on Pin Financial through its counsel. [Filing No. 425-1.] On that same date Pin Financial's counsel accepted service. [*Id.*] Pin Financial did not answer or otherwise plead in response to the Complaint.

On May 7, 2015, the Court entered the Preliminary Injunction Order. [Filing No. 48.] On June 11, 2015, the SEC filed its Amended Complaint. [Filing No. 57.]

On September 29, 2017, the SEC filed its Motion for Entry of Default, along with a supporting declaration. [Filing Nos. 425 and 425-1.] The motion was served on Pin Financial. [Filing No. 425.] On October 11, 2017, the clerk entered default against Pin Financial. [Filing No. 434.] Notice of the clerk's entry of default was served on Pin Financial. [Filing No. 434.] The SEC will serve its Motion and this memorandum on Pin Financial.

II. ARGUMENT

A. The SEC Complied With the Procedure for Obtaining a Default Judgment

Obtaining a default judgment pursuant to Federal Rule of Civil Procedure 55 usually is a two-step process. *See In re Catt*, 368 F.3d 789, 793 (7th Cir. 2004); *King v. CM Assoc. Group*, No. 11-7499, 2012 WL 400787, at *1 (N.D. Ill. Feb. 6, 2012); *UMG Recordings, Inc. v. Stewart*, 461 F. Supp. 2d 837, 840-841 (S.D. Ill. 2006). Pursuant to Rule 55, "[f]irst, the party seeking the default judgment must file a motion for entry of default with the Clerk of the Court, showing that the opposing party has failed to answer or otherwise respond to the complaint." *King*, 2012 WL 400787, at *1. "Then, once the default has been entered, the moving party may seek entry of a default judgment against the defaulting party." *Id*. Here, the SEC filed a Motion for Entry of Default. The clerk entered the default on October 11, 2017. [Filing No. 434.] The SEC now seeks entry of a default judgment**.**

B. The Well-Pleaded Allegations of the Amended Complaint Regarding Liability Are Accepted As True.

Upon entry of default, the well-pleaded allegations of the complaint regarding liability are accepted as true. *See, Dundee Cement Co. v. Howard Pipe & Concrete Prods., Inc.*, 722 F.2d 1319, 1323 (7th Cir. 1983); *Federal Trade Comm'n v. 6654916 Canada,* 2010 WL 2925693, *4 (N.D. Ill. July 21, 2010). "Any allegations in the complaint relating to liability are considered true, but allegations going to damages are not." *Domanus v. Lewicki*, 742 F.3d 290, 303 (7th Cir. 2014). A court may award disgorgement and prejudgment interest on a default motion without an evidentiary hearing where the amount claimed is "capable of ascertainment from definite figures contained in the documentary evidence or in detailed affidavits." *United States v. Di Mucci*, 879 F.2d 1488, 1497 (7th Cir. 1989). Accordingly, in this memorandum, the SEC will rely on the allegations in the amended complaint to demonstrate liability. The SEC

will rely on the Declaration of Craig McShane to prove the amount of disgorgement and prejudgment interest. [Filing No. 484.]

1. Defendants' Fraudulent Conduct

The SEC's Amended Complaint against the defendants and the Relief Defendant Pin Financial is straightforward. The SEC filed this case to halt ongoing investment fraud and a Ponzi scheme perpetrated by Defendants Tobin Senefeld, Matthew Haab, Jeffrey Risinger, and several entities that they owned and controlled, namely, Veros Partners, Inc. ("Veros"), Veros Farm Loan Holding LLC ("VFLH"), FarmGrowCap LLC ("FarmGrowCap"), and PinCap LLC ("PinCap") (collectively, the "Defendants"). [*See* Filing No. 57, SEC's Amended Complaint.] The SEC's Amended Complaint alleged, among other things, that the Defendants told investors through private placement memorandums and otherwise that the funds they invested would be used to make 12 to 14 month operating loans to farms (*i.e.* a loan that farmers use to pay for seed, fertilizer, equipment, and similar expenses associated with the farm's operations for a given year). **[**Filing No. 57.] In 2012, 2013, and 2014, investors were offered the chance to invest in these farm loan private offerings. [Filing No. 57 at ¶ 23.] These offerings will be referred to as the 2012 Offerings, 2013 Offering, and 2014 Offering. In each offering, the investors purchased securities. [Filing No. 57 at ¶ 2.]. For both the 2013 Offering and the 2014 Offering, by the end of the 12 to 14 month loan period, the investors were supposed to be repaid all of their principal, plus additional interest. [Filing No. 57 at ¶ 25.] The additional interest typically was around 10% annualized or higher. [*Id*.]

Without disclosure to the investors, the Defendants (1) made approximately $7 million in Ponzi payments to investors in separate, earlier in time offerings and (2) paid hundreds of thousands of dollars in so-called "success" fees and "interest rate spread" fees to PinCap. [Filing

No. 57 at ¶¶ 3, 45-47.] Furthermore, the Defendants failed to disclose to investors that loans in the 2013 Offering included debt from unpaid loans in two 2012 Offerings and loans in the 2014 Offering included debt from unpaid loans in the 2013 Offering and 2012 Offerings. [Filing No. 57 at ¶ 3.]

PinCap is an entity owned by Senefeld, Risinger, and Veros. [Filing No. 57 at ¶ 15.] PinCap was managed by Senefeld, Risinger, and Haab. [*Id.*] PinCap was used by Senefeld, Risinger, and Haab to make the loans to the farms and manage the private offerings. [*Id*.]

Pin Financial is a broker-dealer that was registered with the SEC. [Filing No. 57 at ¶ 16.] PinCap is the owner of Pin Financial. [*Id*.] PinCap transferred fees it received from the offerings to Pin Financial. [Filing No. 57 at ¶ 50.]

2. The Private Placement Memorandums Failed To Disclose Material Facts And Were Misleading

The private placement memorandum for the 2013 Offering ("2013 PPM") advised investors that VFLH would use investor funds to make a loan to PinCap, to be used for three purposes: (a) to fund loans to farmers made by PinCap's subsidiary, FarmGrowCap; (b) to complete PinCap's purchase of Pin Financial; and (c) to provide operating capital for both FarmGrowCap and Pin Cap. [*Id*. at ¶ 35.] The 2013 PPM did not disclose that investor funds would be used to repay investors in the 2012 Offerings or to pay off any farm loans. [Filing No. 57 at ¶ 38.]

The private placement memorandum for the 2014 Offering ("2014 PPM") stated that investor funds would "be used by FarmGrowCap to make farming related loans with maturities of 1 to 13 months" and "deployed to make loans to select farmers." [Filing No. 57 at ¶ 75.] The 2014 PPM further stated that FarmGrowCap would make:

> 13 month or shorter term operating loans to farmers, primarily to support row crop farming (i.e. corn, soybeans), but also to small fruit growers (i.e. blueberries) and other crop producers. FarmGrowCap also makes other farming related loans, such as short-term, highly collateralized bridge loans to provide financing to farmers who have planned land sales, pending conventional bank-type financings, or other circumstances that reasonably require (and support) a gap loan.

[*Id*. at ¶ 76.] The 2014 PPM did not disclose that money from the 2014 Offering would be used to repay investors in the 2013 Offering. [*Id*.] The 2014 PPM also did not disclose that the 2014 operating loans to three farms would include unpaid loan balances from the 2013 Offering of approximately $3 million. [Filing No. 57 at ¶ 90.]

3. Defendants Used Investor Funds To Make Ponzi Payments

The Defendants used money from the 2013 Offering and 2014 Offering to make approximately $7 million in payments to investors in other offerings. [Filing No. 57 at ¶ 3.] For example, between March and November 2013, approximately $2.8 million of investor funds from the bank account established for the 2013 Offering was used to repay investors in the 2012 Offerings [Filing No. 57 at ¶ 40], and between April and September 2014, at least $2 million from the 2014 Offering was used to repay investors in both the 2013 Offering and another offering. [Filing No. 57 at ¶80.] These payments were not disclosed to investors. [*Id*.]

4. PinCap Received "Success Fees" That Were Not Disclosed To Investors

Senefeld and Risinger used PinCap to charge origination fees for seven of the eight farm loans that were funded by the 2013 Offering. [*Id*. at ¶ 43.] These assessments were referred to as "success" fees. [*Id*.] These fees ranged from 1% to 12% of the total amount the farmer was obligated to repay. [*Id*.] These success fees were paid to PinCap out of the bank account for the 2013 Offering, which is the account that held investor money. [*Id*. ¶ 45.] The success fees were paid to PinCap after loan proceeds were disbursed to a farmer, rather than when the farmer

ultimately repaid the loan with interest. [*Id.* at ¶ 45.]

PinCap received over $700,000 in "success" fees from the 2013 Offering. [Filing No. 57 at ¶ 46.] These fees were PinCap's only source of revenue in 2013. [*Id*.] None of the offering materials sent to investors in the 2013 Offering disclosed that PinCap, would be paid "success" fees or "interest rate spread" fees. [*Id*. at ¶ 47.] Haab and Risinger admitted in SEC testimony that the fees were not disclosed to investors – in PPMs or otherwise – before they invested. [*Id*.]

5. PinCap Transferred Money To Pin Financial

Bank accounts in the name of PinCap transferred funds to Pin Financial. [Filing No. 57 at ¶ 50; Filing No. 484 at ¶ 8.] On April 16, 2018, final judgment was entered against PinCap. [Filing No. 482.] PinCap was permanently enjoined from violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. [*Id*.] PinCap was ordered to pay $389,286 in disgorgement and $51,225.37 in prejudgment interest. [*Id*.]

C. Pin Financial as a Relief Defendant Must Disgorge Ill-Gotten Gains

The SEC did not accuse Pin Financial of violating the securities laws. Rather, Pin Financial received money as a result of the Defendants' violations of the securities laws. Accounts in the name of PinCap transferred funds to Pin Financial. [Filing No. 484 at ¶ 8.] For this reason, Pin Financial should be required to disgorge the proceeds it received from PinCap. *SEC v. George*, 426 F.3d 786, 798 (6th Cir. 2005); *SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998); *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187, 191-192 (4th Cir. 2002).

"A relief defendant (sometimes referred to as a nominal defendant) may be joined to aid the recovery of relief and has no ownership interest in the property which is the subject of litigation." *SEC v. George*, 426 F.3d at 798 (citations omitted). "Federal courts may order equitable relief against [a relief defendant] who is not accused of wrongdoing in a securities enforcement action

where that person: (1) has received ill-gotten funds; and (2) does not have a legitimate claim to those funds." *SEC v. George*, 426 F.3d at 798 (quoting *SEC v. Cavanagh*, 155 F.3d at 136). "In short, a nominal defendant is part of a suit only as the holder of assets that must be recovered in order to afford complete relief; no cause of action is asserted against a nominal defendant." *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d at 192.

"[A]mple authority supports the proposition that the broad equitable powers of the federal courts can be employed to recover ill gotten gains for the benefit of the victims of wrongdoing, whether held by the original wrongdoer or by one who has received the proceeds after the wrong." *SEC v. Colello*, 139 F.3d 674, 676 (9th Cir. 1998). It is not necessary for the person holding illegal profits to have done anything wrong for that person to be required to return the profits to their rightful owners. *SEC v. Antar*, 831 F. Supp. 380, 398-403 (D.N.J. 1993).

The SEC seeks $9,000 in disgorgement from Pin Financial because it received ill-gotten gains from PinCap. Pin Financial has no right to the funds.

D. Pin Financial Should Pay Prejudgment Interest

Prejudgment interest is appropriate on the disgorgement amount. *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1476 (2d Cir. 1996); *SEC v. Koenig*, 532 F. Supp. 2d 987, 995 (N.D. Ill. 2007), *aff'd in part, remanded in part*, 557 F.3d 736 (7th Cir. 2009). The prejudgment interest should be calculated at the IRS underpayment rate. *Koenig*, 532 F. Supp. 2d at 995, *aff'd in part, remanded in part*, 557 F.3d 736. The assessment of prejudgment interest assures that a defendant does not profit in any way from illegal activity. *SEC v. Lipson*, 129 F. Supp. 2d 1148, 1159 (N.D. Ill. 2001), *aff'd*, 278 F.3d 656 (7th Cir. 2002). The SEC has calculated prejudgment interest based on the IRS underpayment rate. Prejudgment interest for $9,000 of disgorgement is $273.05. [Filing No. 484

at ¶ 9.] The Court should order Pin Financial to pay $273.05 in prejudgment interest on the ill-gotten gains that it received.

CONCLUSION

For the foregoing reasons, the SEC respectfully requests that the Court enter an order holding Pin Financial liable for $9,000 in disgorgement and $273.05 in prejudgment interest.

Dated: May 2, 2018

Respectfully submitted,

By: **/s/Doressia L. Hutton**

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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2018, I served the foregoing **PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT AGAINST RELIEF DEFENDANT PIN FINANCIAL LLC** on all counsel of record through the Court's ECF filing system.

I hereby certify that I caused a copy of the foregoing **PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT AGAINST RELIEF DEFENDANT PIN FINANCIAL LLC** to be served upon the following entity by email delivery and UPS delivery on May 2, 2018 at the addresses shown:

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***/S/*DORESSIA L. HUTTON**