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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

In re: )  
)  
) Case No. 05-24164-B-7  
PRECISION FARMING ENTERPRISES, )  
INC., ) Docket Control No. DNL-6  
)  
Debtor(s). ) Date: December 12, 2006  
)  
) Time: 9:30 a.m.

On or after the calendar set forth above, the court issued the following ruling. The official record of the ruling is appended to the minutes of the hearing.

Because the ruling constitutes a "reasoned explanation" of the court's decision under the E-Government Act of 2002 (the "Act"), a copy of the ruling is hereby posted on the court's Internet site, [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov), in a text-searchable format, as required by the Act. However, this posting does not constitute the official record, which is always the ruling appended to the minutes of the hearing.

**DISPOSITION AFTER ORAL ARGUMENT**

This matter was initially set for hearing on November 7, 2006. The matter continued to December 12, 2006 per the stipulation of the parties. The matter came on for final hearing on December 12, 2006, at 9:30 a.m. Appearances are noted on the record. The following constitutes the court's findings of fact and conclusions of law, pursuant to Federal Rule of Bankruptcy Procedure 7052.

As an initial matter, the court addresses the evidentiary objections filed by creditor Stephen S. Edelson ("Edelson") on

1 October 24, 2006 (Dkt. No. 251).

2

3 1) Objections to the declaration of Richard Hanf (Dkt. No.  
4 237):

5 a) the timeliness objection is overruled as moot. The  
6 continuance from November 7, 2006 to December 12, 2006 cured the  
7 defect.

8 b) The hearsay objection is overruled. The statement is not  
9 hearsay because it is not the statement of a declarant other than  
10 the witness. Furthermore, there is no Federal Rule of Evidence  
11 56(e).

12 c) The Rule 608(a) objection is overruled. The statement is  
13 not introduced to attack Mr. Edelson's credibility. It is  
14 introduced to explain the trustee's assessment of Mr. Edelson's  
15 demeanor as a witness.

16 2) Objections to the Declaration of Russell Cunningham (Dkt.  
17 No. 230):

18 a) The hearsay objection is overruled. The statement is not  
19 offered to prove the truth of the matter asserted. It is offered  
20 to explain the trustee's expectation as to the declarant's  
21 testimony.

22 b) The hearsay objection is overruled. The statements are  
23 not offered to prove the truth of the matters asserted. They are  
24 offered to explain the trustee's expectation as to the  
25 declarants' testimony.

26 c) The hearsay objection is overruled. The statement is not  
27 offered to prove the truth of the matter asserted. It is offered

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1 to explain the trustee's expectation as to the declarant's  
2 testimony.

3 d) The hearsay objection is overruled. The statement is not  
4 offered to prove the truth of the matter asserted. It is offered  
5 to explain the trustee's expectation as to the declarant's  
6 testimony.

7 3) Objections to the Motion (Dkt. No. 228):

8 a) The hearsay objection is overruled. The statement is not  
9 offered to prove the truth of the matter asserted. It is offered  
10 to explain the trustee's expectation as to the declarant's  
11 testimony.

12 b) The hearsay objection is overruled. The statement is not  
13 offered to prove the truth of the matter asserted. It is offered  
14 to explain the trustee's expectation as to the declarant's  
15 testimony.

16 c) The hearsay objection is overruled. The statement is not  
17 offered to prove the truth of the matter asserted. It is offered  
18 to explain the trustee's expectation as to the declarant's  
19 testimony.

20 d) The hearsay objection is overruled. The statement is not  
21 offered to prove the truth of the matter asserted. It is offered  
22 to explain the trustee's expectation as to the declarant's  
23 testimony.

24 e) The foundation objection is sustained.

25 f) The hearsay objection is overruled. It is incomplete as  
26 it refers to "the following statement at page 13 paragraph 7" but  
27 no statement is specified.

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1           4) Objections to the Supplemental Declaration of Russell  
2 Cunningham (Dkt. No. 240).

3           a) The hearsay objection is overruled. The statement is not  
4 offered to prove the truth of the matter asserted. It is offered  
5 to explain the trustee's expectation as to the declarant's  
6 testimony.

7           b) The hearsay objection is overruled. The statement is not  
8 offered to prove the truth of the matter asserted. It is offered  
9 to explain the trustee's expectation as to the declarant's  
10 testimony.

11           c) The objection is sustained.

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13           Having resolved the evidentiary objections, the court moves  
14 to the merits of the motion. The motion is granted.

15           The court has great latitude in approving compromise  
16 agreements. In re Woodson, 839 F.2d 610, 620 (9<sup>th</sup> Cir. 1988).  
17 The court is required to consider all factors relevant to a full  
18 and fair assessment of the wisdom of the proposed compromise.  
19 Protective Committee For Independent Stockholders Of TMT Trailer  
20 Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d  
21 1 (1968). The court will not simply approve a compromise  
22 proffered by a party without proper and sufficient evidence  
23 supporting the compromise, even in the absence of objections.

24           Those factors a court considers in its analysis include: (a)  
25 the probability of success in the litigation; (b) the  
26 difficulties, if any, to be encountered in the matter of  
27 collection; (c) the complexity of the litigation involved, and  
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1 the expense, inconvenience and delay necessarily attending it;  
2 and (d) the paramount interest of the creditors and a proper  
3 deference to their reasonable views in the premises. In re A & C  
4 Properties, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986). The party  
5 proposing the compromise has the burden of persuading the  
6 bankruptcy court that the compromise is fair and equitable and  
7 should be approved. Id.

8 Debtor filed a voluntary petition under chapter 11 on April  
9 11, 2005. The debtor and debtor-in-possession voluntarily  
10 converted the case to one under chapter 7 on May 18, 2005,  
11 pursuant to 11 U.S.C. § 1112(a). The Schedules filed by the  
12 debtor disclose the names of several individuals who served in  
13 "key positions" prior to bankruptcy. The Schedules also list  
14 several potential litigation claims against certain of these key  
15 persons, their investment partners and investment funds. The  
16 litigation claims include breach of fiduciary duty, breach of  
17 contract, interference with contract, misrepresentation, fraud  
18 and negligence.

19 The trustee seeks approval of this settlement in the context  
20 of a potential preference action against AMT Capital, Ltd.  
21 ("AMT"). Thomas Delimitros, debtor's chairman of the board from  
22 February 2005 to March 2005, is a founding partner of AMT. AMT  
23 allegedly served as a collateral agent for a group of lenders.  
24 Vika Corporation ("Vika") is among the members of that lender  
25 group. James Lincoln, debtor's chairman of the board from July  
26 2003 to February 2005, is Vika's president. AMT entered into a  
27 transaction with debtor in November 2004 under which it

1 restructured six prior loans (two of which were with AMT; two  
2 with Vika and one each with two individuals: William Rienert and  
3 Raymond Sasso (Sasso was CEO from May 2002 to March 2005)) and  
4 provided additional financing. As a result of the November 2004  
5 transaction, AMT obtained a blanket lien on nearly all of  
6 debtor's assets, whereas before it's collateral was limited to  
7 accounts receivable, inventory and proceeds. AMT contends it  
8 holds a valid secured claim in the amount of \$1,807,869.00. AMT  
9 further argues that \$216,000 currently held in a blocked account  
10 is proceeds from collection of accounts receivables and inventory  
11 sales, and is therefore part of AMT's collateral pursuant to the  
12 security agreement. Vika itself asserts a \$825,000 secured  
13 claim. The trustee contends that the increased security interest  
14 granted to AMT in November 2004 is a preference.

15 This is the trustee's second attempt to obtain approval of a  
16 compromise with these parties. Trustee asserts that since the  
17 court denied his first motion, he has conducted further  
18 investigation into the potential claims against the lender group.  
19 He examined several witnesses including Edelson, William Reinert,  
20 Thomas Delimitros, and Steve Olds, debtor's CPA. He has also  
21 examined the corporation's By-Laws, articles of incorporation,  
22 stock ledgers, director's meeting minutes, audited financial  
23 statements, unaudited balance sheets, claims and all evidence  
24 offered in support of and against the first compromise motion.  
25 The trustee notes in particular that he has found no evidence of  
26 a debt to equity conversion agreement as alleged by Edelson.

27 The compromise for which the trustee seeks approval consists  
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1 of the following:

2 (A) \$257,169 of \$335,805 of cash in the estate will be paid  
3 by trustee to AMT and Vika. The cash in the estate is subject to  
4 the disputed AMT lien. \$60,000 of the cash in the estate will be  
5 retained by the estate for the benefit of creditors other than  
6 the lender group, increasing the funds in the estate free and  
7 clear of liens to approximately \$79,000.

8 (B) AMT will also receive \$29,958 in proceeds from furniture  
9 previously abandoned by the trustee.

10 (C) conditioned on unanimous approval of the Collateral  
11 Group (AMT, Vika, CS Corporation and Reinert Family Trust), AMT  
12 will make distributions in accordance with the provisions of the  
13 underlying collateral agency agreement.

14 (D) trustee retains all right, subject to the disputed  
15 secured claim of attorney Phillip Rhodes, to a \$20,000 bankruptcy  
16 retainer paid to attorney Rhodes.

17 (E) All secured and unsecured claims held by AMT and Vika  
18 (estimated to be \$1,807,069 out of \$2,508.098) will be withdrawn.

19 (F) Trustee will release all claims, known or unknown,  
20 against AMT (including its officers, directors, agents and  
21 affiliates, including Thomas Delimtros and Patrick Rivelli), Vika  
22 (including its officers, directors, agents and affiliates,  
23 including James Lincoln), William Reinert, and Kristin Martinez.

24 At the hearing on the matter, AMT and Vika proposed and  
25 trustee accepted a modification to the settlement. The  
26 modification provides that all remaining accounts receivable will  
27 remain in the estate and any net recovery from collection of  
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1 those accounts receivable will be divided as follows: 30% to AMT  
2 and VIKA, and 70% to the estate. The court does not find that  
3 the modification requires additional notice to creditors as it is  
4 a positive adjustment benefitting the estate.

5 A&C factor (a) weighs in favor of the compromise. More than  
6 one piece of potential litigation is at issue here. First is the  
7 potential preference claim against AMT, as collateral agent for  
8 the Collateral Group. The trustee also proposes to waive on  
9 behalf of the estate the other alleged litigation claims  
10 enumerated above. No party herein has stated that success on the  
11 merits is assured or even more than likely. The trustee clearly  
12 questions the merits of the litigation claims. Edelson provided  
13 an untimely declaration from attorney Paul Cass, which  
14 declaration constitutes an unauthorized sur-reply. The Cass  
15 declaration states that attorney Cass will prosecute certain  
16 litigation claims if, and only if, the bankruptcy case is  
17 dismissed or the claims are abandoned, and it further opines that  
18 the claims have a "reasonable likelihood" of success. How  
19 attorney Cass came to his conclusion regarding reasonable  
20 likelihood of success is not explained. One thing is not  
21 disputed - that the issues involved are particularly complex and  
22 the potential defendants, AMT and Vika, have stated that they  
23 would vigorously defend against any such suit. There is  
24 substantial evidence on both sides of each issue, some of which  
25 is clearly conflicting. Based on the foregoing, the court finds  
26 that success on the merits has not been shown to be likely and  
27 the first factor favors the compromise.

1           A&C factor (b) weighs against the compromise. Neither party  
2 considers collection to be in issue.

3           A&C factor (c) clearly weighs in favor of the compromise.  
4 All parties concede that the litigation is complex. In addition  
5 to the sheer number of legal theories proposed, some of those  
6 involve complicated legal and factual issues of corporate  
7 governance. Furthermore, the motion indicates that the estate  
8 lacks funds with which to hire counsel at an hourly rate and no  
9 attorney has agreed to represent the estate on a contingency  
10 basis. The trustee consulted with two of his own choices,  
11 including trustee's counsel's firm, and the Damrell firm proposed  
12 by Edelson. The estate lacks sufficient funds with which to fund  
13 the costs of litigation even were contingency counsel available  
14 to the estate. Debtor and Edelson's suggestion that it use the  
15 funds in the blocked account is unpersuasive and unsupported by  
16 authority. The debtor and Edelson presume success by their  
17 suggestion. Those funds are AMT and Vika's cash collateral and  
18 there is no requirement that they consent to such use. The  
19 estate appears to have no unencumbered assets that it could use  
20 to provide adequate protection for such use. Nor is it likely  
21 that the trustee could surcharge the AMT and Vika collateral  
22 under 11 U.S.C. § 506(c) because that section requires a showing  
23 of a benefit to AMT and Vika, and no such showing has been, nor  
24 likely could be, made. Finally, the compromise will conclude  
25 litigation now which otherwise would likely persist for years.  
26 Both Edelson and AMT/Vika have firmly entrenched positions. It  
27 is nearly certain that whichever party did not prevail at trial  
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1 would appeal the result. It would not be surprising if both  
2 parties appealed the results. Given the venom present on both  
3 sides of the potential litigation, this factor alone may be  
4 sufficient to satisfy the A & C Properties standards.

5 A&C factor (d) also weighs in favor of the compromise. Both  
6 the debtor and Edelson assert repeatedly in their oppositions  
7 that they believe there to only be \$699,556 in "valid unsecured  
8 claims" based on Edelson's "knowledge of the debtor's affairs"  
9 and his review of the claims register. Based on that analysis,  
10 Edelson asserts that he holds approximately 90% of the claims in  
11 this case. Edelson's belief is irrelevant and his analysis is  
12 flawed. He has improperly eliminated the AMT and Vika claims in  
13 reaching his conclusion. The court takes judicial notice  
14 pursuant to Federal Rule of Evidence 201 that as of the date of  
15 this hearing, December 12, 2006, no objections to the claims of  
16 AMT or Vika appear on the court's docket. Therefore pursuant to  
17 Federal Rule of Bankruptcy Procedure 3001(f), those claims  
18 "constitute prima facie evidence of the validity and amount of  
19 the claim(s)." Further, pursuant to 11 U.S.C. § 502(a), the AMT  
20 and Vika claims are allowed. Edelson's self-serving and  
21 unilateral attempt to exclude them from the analysis of the  
22 proposed compromise necessarily fails.

23 The court's claims register is in a state of confusion.  
24 Edelson has purchased post-petition certain claims filed by  
25 others. However, his June 6, 2006 claim fails to state that it  
26 amends or replaces any of the earlier claims. There are  
27 approximately \$2,811,524.09 in filed claims of which \$1,807,069  
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1 in claims are held by AMT and Vika. Both of those creditors,  
2 holding a combined 64% of filed claims, support the compromise.  
3 The amount of Edelson's claim is in dispute. The trustee has  
4 separately objected to the claim on various theories, and  
5 therefore his claim is no longer "deemed" allowed. 11 U.S.C. §  
6 502(a). The amount of his claim, and those controlled by him is  
7 also in flux as he has continued to purchase claims filed by  
8 others post-petition. Edelson's opposition indicates that he  
9 holds unsecured claims totaling \$623,101. Adding that to the  
10 priority unsecured and secured aspects of his filed claim results  
11 in claims totaling \$814,826.00: approximately 29% of filed  
12 claims. That number may be higher based on post-opposition  
13 claims purchased but the court has no evidence thereof. Four  
14 other minor creditors have signed nearly identical declarations  
15 prepared by debtor's counsel opposing the settlement. The court  
16 gives little weight to these four declarations as there is no  
17 evidence surrounding how they were obtained, whether they  
18 received independent legal advice, or whether their opposition is  
19 informed or merely the product of one-sided discussions with  
20 Edelson. The balance of claims have not weighed in at all.

21 The majority of claims favor the compromise. Debtor's  
22 opposition, a virtual copy of Edelson's, is entitled to little or  
23 no weight as it is the creditors' interests that are paramount.  
24 Edelson's opposition, standing alone, is not persuasive. He very  
25 clearly has an emotional, as well as financial, interest in this  
26 company as one of its founders. He apparently believes that his  
27 company failed because of the nefarious conduct of others.

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1 However, this company was never profitable. Counsel's  
2 discussions regarding start-up companies, rounds of investment,  
3 etc., do not alter that fact. It is possible that the company  
4 failed because the investors and lenders chose to stop funding it  
5 when its profit outlook did not improve. Much of the balance of  
6 Edelson's opposition is unnecessary and unhelpful hyperbole.

7 The trustee's additional investigation has satisfied the  
8 court's earlier concerns. He examined several witnesses  
9 including Edelson, William Reinert, Thomas Delimitros, and Steve  
10 Olds, debtor's CPA. He has also examined the corporation's By-  
11 Laws, articles of incorporation, stock ledgers, director's  
12 meeting minutes, audited financial statements, unaudited balance  
13 sheets, claims and all evidence offered in support of and against  
14 the first compromise motion. Edelson's argument that trustee  
15 should have done more is not persuasive. Edelson's due process  
16 arguments are without merit. The trustee's motion is  
17 comprehensive. A copy of the settlement agreement is attached.  
18 The additional preference claims referenced in the opposition are  
19 the very preference claims being compromised here.

20 Edelson makes much of the trustee's refusal to abandon the  
21 litigation to the debtor. That argument lacks any merit because  
22 this asset could not be abandoned under 11 U.S.C. § 554. There  
23 is no evidence that the potential litigation claim is burdensome.  
24 Nor is the litigation of "inconsequential value and benefit to  
25 the estate." To the contrary, the estate will receive a benefit  
26 by compromising the matter. This argument is simply Edelson's  
27 attempt to obtain the litigation that he values so highly for  
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1 nothing. Edelson's attempt to incorporate his entire dismissal  
2 motion is improper and is denied. Elsewhere on the December 12,  
3 2006 calendar, the court denied that motion for lack of cause.  
4 It need not address those issues again here. Finally, the court  
5 notes that Edelson's attempt to introduce the concept of  
6 equitable subordination under 11 U.S.C. § 510(c) is also  
7 improper. The section specifically requires notice and a  
8 hearing, which protection was not afforded the creditors here.  
9 Nor would the court be inclined to grant such relief on the  
10 sparse record presently before the court. Edelson had 20 months,  
11 the time since this case was filed, to bring such a motion before  
12 the court. Raising it in the eleventh hour in an opposition to  
13 this compromise motion is improper.

14 On the whole, the A&C factors favor the approval of the  
15 compromise.

16 Accordingly, the court finds that the trustee has carried  
17 his burden of persuading the court that the proposed compromise  
18 is fair and equitable, and the motion is granted.

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