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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re:)
9) Case No. 05-24164-B-7
10 PRECISION FARMING ENTERPRISES,)
11 INC.,) Docket Control No. KSR-2
12 Debtor(s).) Date: December 12, 2006
Time: 9:30 a.m.

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

15 Because the ruling constitutes a "reasoned explanation" of
16 the court's decision under the E-Government Act of 2002 (the
17 "Act"), a copy of the ruling is hereby posted on the court's
Internet site, www.caeb.uscourts.gov, in a text-searchable
18 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.

19 **DISPOSITION AFTER ORAL ARGUMENT**

20 This matter came on for hearing on December 12, 2006, at
21 9:30 a.m. Appearances are noted on the record. The following
22 constitutes the court's findings of fact and conclusions of law,
23 pursuant to Federal Rule of Bankruptcy Procedure 7052.

24 Neither the respondent within the time for opposition nor
25 the movant within the time for reply has filed a separate
26 statement identifying each disputed material factual issue
27 relating to the motion. Accordingly, both movant and respondent
28 have consented to the resolution of the motion and all disputed

1 material factual issues pursuant to FRCivP 43(e). LBR 9014-
2 1(f)(1)(ii) and (iii).

3 The motion is denied.

4 As an initial matter, the court notes that the declaration
5 of Stephen Edelson (Dkt. No. 319), the amended notice of hearing
6 (Dkt No. 324), and the certificate of service for the amended
7 notice of hearing (Dkt. No. 325) are all unsigned. The
8 certificate of service lacks any signature. The other two
9 documents, which were filed electronically, were not signed in
10 accordance with Local Bankruptcy Rule 9004-1(c)(1). Because the
11 declaration of Mr. Edelson is unsigned, there is no competent
12 evidence in support of the motion.

13 Even had the declaration been signed, the motion would still
14 be denied. The movant has failed to establish cause to dismiss
15 this chapter 7 case. In fact, movant fails to even mention the
16 dismissal statute for chapter 7 anywhere in the motion. See LBR
17 9014-1(d)(5). None of the three enumerated forms of cause in
18 Section 707(a) is present. Movant argues in his reply that he
19 has pled an unreasonable delay that is prejudicial to creditors.
20 Parsing together various parts of the motion, the court can piece
21 together such an argument. The court should not have to sift
22 through counsel's pleadings to discern the relief requested. As
23 so construed, that argument fails. Oral argument disclosed that
24 collection efforts regarding the accounts receivable have been
25 ongoing in this case. At movant's suggestion, William Reinert
26 was authorized by the trustee and AMT, which holds a security
27 interest in the A/R's, to begin the process of collecting the
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1 outstanding accounts. Thus, allegations in the motion that "the
2 Trustee has taken no action whatsoever to collect more than
3 \$200,000.00 in trade debt owed to debtor" are misleading at best.
4 The trustee has not personally collected the accounts receivable,
5 but he did consent to a third party doing so on the estate's
6 behalf. Furthermore, some of the delay in this case is
7 attributable to movant himself. He sought and was granted time
8 to locate special litigation counsel. Those efforts were
9 ultimately unsuccessful. Why is not relevant to this motion.
10 What is relevant is that those efforts took time. The court
11 finds no unreasonable delay that is prejudicial to creditors.

12 Because none of the forms of cause enumerated in the statute
13 is present, the court applies a two part test:

14 First, we must consider whether the circumstances
15 asserted to constitute "cause" are "contemplated by
16 any specific Code provision applicable to Chapter 7
17 petitions." [citation]. If the asserted "cause" is
18 contemplated by a specific Code provision, then it
19 does not constitute "cause" under § 707(a).
[citation]. If, however, the asserted "cause" is
not contemplated by a specific Code provision, then
we must further consider whether the circumstances
asserted otherwise meet the criteria for "cause" for
dismissal under § 707(a).

20 Sherman v. S.E.C. (In re Sherman), 441 F.3d 794, 813 (9th Cir.
21 2006).

22 The allegations of trustee misconduct, even if proven true,
23 are not cause to dismiss because the remedy for such misconduct
24 is found in Section 324.

25 More importantly, the court finds that creditors as a whole
26 would be prejudiced by dismissal of the bankruptcy case at this
27 late date. Movant admitted at the hearing that pending
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1 preference actions would be lost. Movant's proposal to alleviate
2 the prejudice (recovery through state law fraudulent transfer
3 actions) falls short. Because the creditor pool as a whole would
4 be prejudiced by dismissal at this juncture, the motion cannot be
5 granted. In re Barnes, 275 B.R. 889, 893 (Bankr. E.D. Cal.
6 2002) (J. McManus).