

Laurie A. Cayton (USB #4557)

Peter J. Kuhn (USB #3820)

John T. Morgan (USB #3839)

UNITED STATES DEPARTMENT OF JUSTICE

Office of the United States Trustee

Washington Federal Bank Building

405 South Main Street, Suite 300

Salt Lake City, UT 84111

Telephone: (801) 524-3031

Facsimile: (801) 524-5628

Email: Laurie.Cayton@usdoj.gov

Peter.J.Kuhn@usdoj.gov

John.T.Morgan@usdoj.gov

Attorneys for Patrick S. Layng, United States Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

In re:

THE FALLS EVENT CENTER LLC,

Debtor.

Bankruptcy Case No. 18-25116 RKM

(Chapter 11)

Chief Judge R. Kimball Mosier

**UNITED STATES TRUSTEE'S MOTION FOR ORDER TO APPOINT A CHAPTER
11 TRUSTEE AND APPROVE STIPULATION OF UNITED STATES TRUSTEE,
DEBTOR AND UNSECURED CREDITORS' COMMITTEE AND
MEMORANDUM IN SUPPORT**

The United States Trustee, by and through Counsel, and pursuant to 11 U.S.C. § 1104(a) hereby moves this Court, with the stipulation of the Debtor and the Unsecured Creditors' Committee, for an Order to Appoint a Chapter 11 Trustee. For the reasons set forth below, the court should grant this requested relief.

RECITALS

1. This Court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and venue is proper pursuant to 28 U.S.C. § 1409.
2. This Motion is made pursuant to 11 U.S.C. § 1104(a), Rules 9013 and 9014 of the Federal Rules of Bankruptcy Procedure, and Local Rule 9013-1.
3. The United States Trustee has standing to bring this Motion under 11 U.S.C. §§ 307 and 1104(a), and pursuant to the United States Trustee’s authority to supervise the administration of bankruptcy cases under 28 U.S.C. § 586(a)(3).
4. The relief sought is based upon this Motion and Memorandum, the records and files in the case and the Stipulation of the Debtor and the Unsecured Creditors’ Committee, a copy of which is attached hereto as Exhibit “A” (hereinafter “Stipulation”).

STATEMENT OF FACTS

5. The debtor, The Falls Event Center LLC, (“the debtor”) commenced this case by filing a voluntary petition for relief under Chapter 11 on July 11, 2018.
6. The debtor is a Utah limited liability company with its principal office in West Jordan, Utah.
7. As of the Petition Date, the debtor operated eight event centers located in five states. Various wholly owned subsidiaries of the debtor own the real property where the event centers were built. Other wholly owned subsidiaries of the debtor own 13 parcels of vacant land that were acquired with the intention of building and operating additional event centers.

8. The debtor does not currently have a functional board of managers or governing body, other than the appointed Chief Financial Officer and Manager, Gil A. Miller, with authority to make decisions for the debtor or review and direct the actions of Miller.
9. There is therefore no properly constituted representation of ownership interests to direct the management of the debtor.
10. The appointment of a Chapter 11 Trustee removes any concern that any manager or board of members of the debtor, no matter how qualified and how far removed from prior management, will act in a disinterested manner to serve the best interests of creditors and the estate and/or properly investigate and pursue Chapter 5 and other claims against prior managers and other insiders.
11. The United States Trustee, the debtor, and the Unsecured Creditors' Committee believe it is in the best interests of creditors and the estate to appoint a Chapter 11 Trustee. See attached Stipulation.

ARGUMENT

I. CAUSE EXISTS FOR THE APPOINTMENT OF A CHAPTER 11 TRUSTEE

11 U.S.C. § 1104(a) provides that the court shall order the appointment of a trustee

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee

-

(2) if such appointment is in the interest of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

A) Appointment of a Chapter 11 Trustee is in the Best Interest of Creditors and Parties in Interest

The United States Trustee is not presently contending that cause exists to appoint a Chapter 11 trustee pursuant to 11 U.S.C. §1104(a)(1). Under section 1104(a)(2), however, the Court need not find that any of the “for cause” factors set forth in section 1104(a)(1) as a predicate to ordering the appointment of a trustee; it is sufficient that the appointment be in the best interest of creditors. *Oklahoma Refining Co. v. Blaine (In re Oklahoma Ref. Co.)*, 838 F.2d 1133 (10th Cir. 1988). The current status of the Case as set forth in the Statement of Facts herein and in the Stipulation attached hereto are evidence that the best interests of creditors in this case will be served by appointment of a chapter 11 trustee.

CONCLUSION

WHEREFORE, the United States Trustee requests that the Court grant the U.S. Trustee’s Motion to Appoint a Chapter 11 Trustee under either 11 U.S.C. § 1104(a), or for such other and further relief as the Court deems necessary and appropriate.

DATED: November 1, 2018

Respectfully submitted,

/s/
Laurie A. Cayton
Peter J. Kuhn
John T. Morgan
Attorneys for the United States Trustee,
Patrick S. Layng

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on November 1, 2018, I caused a true and correct copy of the foregoing **UNITED STATES TRUSTEE’S MOTION FOR THE APPOINTMENT OF A CHAPTER 11 TRUSTEE AND MEMORANDUM IN SUPPORT THEREOF** to be electronically filed with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF System as noted below:

- James W. Anderson jwa@clydesnow.com, jritchie@clydesnow.com
- David P. Billings dbillings@fabianvancott.com, jwinger@fabianvancott.com, mdewitt@fabianvancott.com
- Oren Buchanan Haker oren.haker@stoel.com, jennifer.lowes@stoel.com, daniel.kubitz@stoel.com, alyssa.petroff@stoel.com
- Mark E. Hindley mehindley@stoel.com, rnoss@stoel.com, slcdocket@stoel.com
- Michael R. Johnson mjohnson@rqn.com, docket@rqn.com, dburton@rqn.com
- David H. Leigh dleigh@rqn.com, dburton@rqn.com, docket@rqn.com
- Ralph R. Mabey rmabey@kmclaw.com
- Adelaide Maudsley amaudsley@kmclaw.com, tslaughter@kmclaw.com
- Elaine A. Monson emonson@rqn.com, docket@rqn.com, pbrown@rqn.com
- Ellen E Ostrow eeostrow@hollandhart.com, intaketeam@hollandhart.com, lahansen@hollandhart.com
- Chad Rasmussen chad@alpinalegal.com, contact@alpinalegal.com
- Mark S. Swan mark@swanlaw.net
- Richard C. Terry richard@tjblawyers.com, cbcecf@yahoo.com
- Brent D. Wride bwride@rqn.com, docket@rqn.com, pbrown@rqn.com

Further, I certify that I caused copies of the **UNITED STATES TRUSTEE’S MOTION FOR THE APPOINTMENT OF A CHAPTER 11 TRUSTEE** to be forwarded via U.S. Mail, first class, postage prepaid and properly addressed to all persons as listed on the appointment and to the following:

The Falls Event Center LLC
9067 South 1300 West, Suite 301
West Jordan, UT 84088

Richard N. Bauer
1789 Bella Lago Drive
Clermont, FL 34711-4634

Albert B Clark
696 East 1220 North
Orem, UT 84097

Alan C. Hochheiser
Maurice Wutscher LLP
2000 Auburn Drive, Suite 200
One Chagrin Highlands
Beachwood, OH 44122

Richard W. Johnston
6855 S. Havana St. #275
Centennial, CO 80112-3813

Gil Miller
Rocky Mountain Advisory
215 South State Street Ste 550
Salt Lake City, UT 84111

State of Oregon
Department of Revenue
955 Center St NE
Salem, OR 97301-2555

/s/

Lindsey Huston

Laurie A. Cayton (USB #4557)
UNITED STATES DEPARTMENT OF JUSTICE
Office of the United States Trustee
Washington Federal Bank Building
405 South Main Street, Suite 300
Salt Lake City, UT 84111
Telephone: (801) 524-3031
Facsimile: (801) 524-5628
Email: Laurie.Cayton@usdoj.gov

Attorney for Patrick S. Layng, United States Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

In re: THE FALLS EVENT CENTER LLC, Debtor.	Bankruptcy Case No. 18-25116 RKM (Chapter 11) Chief Judge R. Kimball Mosier
---	--

STIPULATION BETWEEN THE DEBTOR, THE COMMITTEE AND THE UNITED STATES TRUSTEE TO THE APPOINTMENT OF A CHAPTER 11 TRUSTEE

The United States Trustee, The Falls Event Center LLC (“the Debtor”), and the Official Committee of Unsecured Creditors (“the Committee”) by and through their undersigned counsel, hereby stipulate, agree and jointly move as follows:

1. The Falls Event Center, LLC filed a Chapter 11 petition for relief on July 18, 2018.
2. On July 27, 2018, the United States Trustee filed a Motion for the Appointment of a Chapter 11 Trustee under 11 U.S.C. §§ 1104(e), 1104(a)(1) and 1104(a)(2).
3. On September 4, 2018, Gil A. Miller was employed as the Chief Restructuring Officer.
4. On September 14, 2018, Brooks Pickering stepped down as a manager of the Debtor and appointed Gil A. Miller as the sole manager of the Debtor.

5. The United States Trustee withdrew his Motion for the Appointment of a Chapter 11 Trustee on September 20, 2018, based, in part, upon the removal of Mr. Pickering and the appointment of Mr. Miller.
6. During the hearing on the Motion to Dismiss held on October 3, 2018 and at the status conference held on October 24, 2018, the Court raised concerns about the authority of any manager to act on behalf of the Debtor and the ability of any manager or board of members of the Debtor, no matter how qualified and how far removed from prior management, to act in a disinterested manner to serve the best interests of the estate. The Court also raised concerns about the ability of any manager or board of members, no matter how qualified and how far removed from prior management, to properly investigate and pursue Chapter 5 and other claims against prior managers and other insiders.
7. To resolve these concerns, the Debtor, the United States Trustee and the Committee stipulate, agree and consent to the appointment of a Chapter 11 Trustee, effective upon order of the Court approving the stipulation and upon selection of a Chapter 11 Trustee by the United States Trustee, with such appointment to be pursuant to 11 U.S.C. § 1104(a)(2) on grounds that the appointment of a trustee is in the interests of creditors and the estate.
8. Notwithstanding and without affecting the other provisions of this Stipulation, the Debtor expressly denies any and all allegations for cause, except only that based upon the Court's stated concerns the Debtor concedes and stipulates that the appointment of a trustee is in the interests of creditors. Specifically, the Debtor denies that "cause" exists

to appoint a trustee on the grounds stated in the Motion to Appoint a Chapter 11 Trustee under §§ 1104(a)(1) or 1104(e) or on any other grounds.

9. Further, the United States Trustee will follow his protocol of obtaining input from the Debtor, the Committee and any other party in interest who wishes to participate in the process as to whom shall be selected by the United States Trustee as Chapter 11 Trustee in the Case. The Committee and the United States Trustee have determined, and hereby state, that the terms and conditions of this Stipulation are in the best interests of creditors and the estate, including resolving any remaining issues regarding authority and the substantial savings in costs and attorneys' fees to be realized by avoiding any potential contested evidentiary hearing and the substantial time and efforts that would be expended by the estate's professionals (including both the attorneys for the Committee and the attorneys for the Debtor) in participating in depositions and other discovery, preparing for a contested evidentiary hearing and participating in a trial, on the merits, of any the Motion to Appoint a Chapter 11 Trustee.

WHEREFORE, the Debtor, the Committee and the United States Trustee respectfully pray that the Court enter an Order consistent with this Stipulation, and that the Court grant such other and further relief as is just and equitable.

DATED: November 1, 2018.

RAY, QUINNEY AND NEBEKER

/s/*
Michael R. Johnson
Attorney for debtor-in-possession,
The Falls Event Center LLC
* electronic signature authorized via email

OFFICE OF THE UNITED STATES TRUSTEE

_____/s/_____
Laurie A. Cayton
Attorney for the United States Trustee
Patrick S. Layng

HOLLAND AND HART

_____/s/*_____
Ellen E. Ostrow
Attorney for the Official Committee
of Unsecured Creditors
* electronic signature authorized via email