

This order is SIGNED.

Dated: April 8, 2019



**R. KIMBALL MOSIER
U.S. Bankruptcy Judge**



Prepared and submitted by:

Michael F. Thomson (#9707)
Peggy Hunt (#6060)
John J. Wiest (#11210)
DORSEY & WHITNEY LLP
111 South Main Street, 21st Floor
Salt Lake City, UT 84111-2176
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
Email: thomson.michael@dorsey.com
hunt.peggy@dorsey.com
wiest.john@dorsey.com

Attorneys for Michael F. Thomson, Chapter 11 Trustee of The Falls Event Center LLC

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

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| <p>In re:</p> <p>THE FALLS EVENT CENTER LLC; THE FALLS AT GILBERT, LLC; THE FALLS AT MCMINNVILLE, LLC; THE FALLS AT ST. GEORGE, LLC; THE FALLS OF LITTLETON, LLC; THE FALLS AT FRESNO, LLC; <i>and</i>, THE FALLS AT CLOVIS, LLC;</p> <p>Debtors.</p> | <p>Bankr. Case No. 18-25116 Bankr. Case No. 18-25419 Bankr. Case No. 18-25492 Bankr. Case No. 18-26653 Bankr. Case No. 18-27111 Bankr. Case No. 18-27713 Bankr. Case No. 18-28140</p> <p>Chapter 11</p> <p>The Honorable R. Kimball Mosier</p> |
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**ORDER GRANTING MOTION TO SUBSTANTIVELY CONSOLIDATE THE FALLS
EVENT CENTER LLC WITH DEBTORS THE FALLS AT GILBERT, LLC, THE
FALLS AT ST. GEORGE, LLC, THE FALLS OF LITTLETON, LLC, THE FALLS AT
FRESNO, LLC, AND THE FALLS AT CLOVIS, LLC; *and* NON-DEBTORS THE
FALLS AT CUTTEN ROAD, LLC, THE FALLS AT STONE OAK PARKWAY, LLC,
THE FALLS AT BEAVERTON, LLC, AND THE FALLS AT ROSEVILLE, LLC**

The matter before the Court is the *Chapter 11 Trustee's Motion To Substantively Consolidate The Falls Event Center, LLC with Debtors The Falls at Fresno, LLC, The Falls at Gilbert, LLC, The Falls at McMinnville, LLC, The Falls at St. George, LLC, and The Falls of Littleton, LLC; and Non-Debtors The Falls at Austin Bluffs, LLC, The Falls at Cutten Road, LLC, The Falls at Stone Oak Parkway, LLC, The Falls at Beaverton, LLC, and The Falls at Roseville, LLC* (the "Motion"), filed by Michael F. Thomson, Chapter 11 Trustee (the "Trustee") for The Falls Event Center, LLC (Case No. 18-25116) ("TFEC"), in each of the above-captioned bankruptcy cases. TFEC Docket No. 327; Gilbert Docket No. 32; McMinnville Docket No. 68; St. George Docket No. 35; Littleton Docket No. 24; Fresno Docket No. 24; Clovis Docket No. 20.

Filed concurrently therewith in support of the Motion were: The *Memorandum of Law* [TFEC Docket No. 331; Gilbert Docket No. 33; McMinnville Docket No. 70; St. George Docket No. 36; Littleton Docket No. 25; Fresno Docket No. 26; Clovis Docket No. 21] (the "Memorandum"); the *Declaration of Michael F. Thomson, Chapter 11 Trustee of The Falls Event Center LLC* [TFEC Docket No. 332; Gilbert Docket No. 34; McMinnville Docket No. 71; St. George Docket No. 37; Littleton Docket No. 26; Fresno Docket No. 27; Clovis Docket No. 22] (the "Trustee Declaration"); The *Declaration of Gil A. Miller* [TFEC Docket No. 333; Gilbert Docket No. 35; McMinnville Docket No. 72; St. George Docket No. 38; Littleton Docket

No. 27; Fresno Docket No. 28; Clovis Docket No. 23] (the “Miller Declaration”); and the *Certificate of Service* [TFEC Docket No. 337; Gilbert Docket No. 36; McMinnville Docket No. 73; St. George Docket No. 39; Littleton Docket No. 28; Fresno Docket No. 29; Clovis Docket No. 24] (the “Certificates of Service of Motion Documents”) of the Motion, Memorandum, Trustee Declaration, and Miller Declaration on all parties who have requested ECF notification in each of the above-captioned bankruptcy cases.

In the Motion, the Trustee seeks to substantively consolidate the following entities with TFEC as of July 11, 2018, the date TFEC filed a petition seeking relief under Chapter 11 of the Bankruptcy Code (the “TFEC Petition Date”): debtor The Falls at Gilbert, LLC (Case No. 18-25419) (“Gilbert”); debtor The Falls at McMinnville, LLC (Case No. 18-25492) (“McMinnville”); debtor The Falls at St. George, LLC (Case No. 18-26653) (“St. George”); debtor The Falls of Littleton, LLC (Case No. 18-27111) (“Littleton”); debtor The Falls at Fresno (Case No. 18-27713) (“Fresno”); debtor The Falls at Clovis (Case No. 18-28140) (“Clovis”); non-debtor The Falls at Austin Bluffs (“Austin Bluffs”); non-debtor The Falls at Cutten Road (“Cutten Road”); non-debtor The Falls at Stone Oak Parkway (“Stone Oak Parkway”); non-debtor The Falls at Beaverton (“Beaverton”); and non-debtor The Falls at Roseville (“Roseville”) (collectively, with TFEC, the “Motion Entities”).

A Notice of Chapter 11 Trustee’s Motion To Substantively Consolidate The Falls Event Center, LLC with Debtors The Falls at Fresno, LLC, The Falls at Gilbert, LLC, The Falls at McMinnville, LLC, The Falls at St. George, LLC, and The Falls of Littleton, LLC; and Non-Debtors The Falls at Austin Bluffs, LLC, The Falls at Cutten Road, LLC, The Falls at Stone Oak Parkway, LLC, The Falls at Beaverton, LLC, and The Falls at Roseville, LLC and Notice of

Hearing (the “Notice”) was filed in each of the above-captioned bankruptcy cases [TFEC Docket No. 335; Gilbert Docket No. 37; McMinnville Docket No. 74; St. George Docket No. 40; Littleton Docket No. 29; Fresno Docket No. 30; Clovis Docket No. 25] and properly served on all creditors, holders of equity interests, and all other parties in interest for each of the Motion Entities, and no further notice is necessary. *See Certificate of Service* [TFEC Docket No. 337; Gilbert Docket No. 45; McMinnville Docket No. 75; St. George Docket No. 41; Littleton Docket No. 34; Fresno Docket No. 31; Clovis Docket No. 26] (the “Certificate of Service of Notice”); *Declaration of Michael F. Thomson Concerning Service of Notice* [TFEC Docket No. 383; Gilbert Docket No. 54; McMinnville Docket No. 91; St. George Docket No. 47; Littleton Docket No. 43; Fresno Docket No. 40; Clovis Docket No. 35] (the “Declaration Concerning Service”).

Two responses to the Motion were filed: an *Objection* [TFEC Docket No. 361] (the “American Objection”), filed by American Savings Life Insurance Co. (“American”), objecting to substantive consolidation of Austin Bluffs with TFEC; and an *Objection* [TFEC Docket No. 362; McMinnville Docket No. 82] and *Second Declaration of John Rasmussen* [TFEC Docket No. 363; McMinnville Docket No. 83] (together, the “Museum Objection”), filed by Evergreen Aviation and Space Museum and the Captain Michael King Smith Educational Institute (the “Museum”), objecting to substantive consolidation of McMinnville with TFEC. No objections were filed as to substantive consolidation of Gilbert, St. George, Littleton, Fresno, Clovis, Cutten Road, Stone Oak Parkway, Beaverton, and Roseville with TFEC, and the Court finds that all parties who were served with the Notice and did not object have consented to the Court exercising jurisdiction over non-debtors Cutten Road, Stone Oak Parkway, Beaverton, and Roseville.

A hearing on the Motion was held on March 18, 2019 (the "Hearing"). Peggy Hunt of Dorsey & Whitney LLP appeared on behalf of the Trustee, who was also present; Ellen E. Ostrow of Holland & Hart appeared on behalf of the Official Committee of Unsecured Creditors of The Falls Event Center LLC; Oren B. Haker and Mark E. Hindley of Stoel Rives LLP appeared on behalf of the Museum; Steven M. Rogers of Rogers & Russell appeared on behalf of American; and Laurie A. Cayton appeared on behalf of the Office of the United States Trustee. At the Hearing, at the request of the Trustee, American, and the Museum, the Court continued consideration of the American Objection, the Museum Objection, and the Motion as it pertains to Austin Bluffs and McMinnville until a later date.

The Court has considered: (a) the Motion; (b) the Memorandum; (c) the Trustee Declaration; (d) the Miller Declaration; (e) the Notice; (f) the Certificate of Service of Motion Documents; (g) the Certificate of Service of Notice; (h) the Declaration Concerning Service; (i) the evidence presented at the Hearing; (h) the representations made on the record at the hearing; and (i) applicable law. Based thereon, and for the reasons set forth on the record and in the *Findings of Fact and Conclusions of Law* filed concurrently with this Order, to be separately entered by the Court pursuant to Federal Rule of Bankruptcy Procedure 7052,

IT IS HEREBY ORDERED THAT:

- (1) The Motion is **GRANTED** as to TFEC, Gilbert, St. George, Littleton, Fresno, Clovis, Cutten Road, Stone Oak Parkway, Beaverton, and Roseville (collectively, the "Consolidated Parties");
- (2) The Consolidated Parties are **SUBSTANTIVELY CONSOLIDATED** as of the TFEC Petition Date;

- (3) All further filings for the Consolidated Parties shall be filed in TFEC's bankruptcy case, Case No. 18-25116;
- (4) The Hearing on the Motion as it pertains to Austin Bluffs is **CONTINUED** until April 17, 2019; and
- (5) The Hearing on the Motion as it pertains to McMinnville is **CONTINUED** until May 6, 2019.

----- (End of Order) -----

Certificate of Notice Page 7 of 7
United States Bankruptcy Court
District of Utah

In re:
The Falls at Clovis LLC
Debtor

Case No. 18-28140-RKM
Chapter 11

CERTIFICATE OF NOTICE

District/off: 1088-2

User: gci
Form ID: pdfor1

Page 1 of 1
Total Noticed: 6

Date Rcvd: Apr 08, 2019

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Apr 10, 2019.

- 11140350 +Abey Baraghoshi, Trustee of the, Baraghoshi Family Trust, 3102 E. Timber Crest Cove, Sandy, UT 84093-5512
11140351 +Fresno County Tax Collector, 2281 Tulare St. - RM. 105, P.O. Box 1192, Fresno, CA 93715-1192
11241171 +Fresno County Tax Collector, POB 1192, Fresno CA 93715-1192
11140352 +The Falls Event Center LLC, 9067 South 1300 West, West Jordan, UT 84088-5582

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

- 11223818 E-mail/Text: BKBNCNotices@ftb.ca.gov Apr 09 2019 01:57:08 Franchise Tax Board, Bankruptcy Section MS A340, P.O. Box 2952, Sacramento CA 95812-2952
11166519 E-mail/Text: thomson.michael@dorsey.com Apr 09 2019 01:56:46 Michael F. Thomson, Dorsey & Whitney LLP, 111 South Main Street, 21st Floor, Salt Lake City, UT 84111-2176
TOTAL: 2

***** BYPASSED RECIPIENTS *****

NONE. TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Apr 10, 2019

Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on April 8, 2019 at the address(es) listed below:

- Armand J. Howell on behalf of Creditor Abey Baraghoshi, Trustee of the Baraghoshi Family Trust Dated Feb 19, 03 armand@hwmlawfirm.com, meghan@hwmlawfirm.com; armandh@ecf.courtdrive.com
Brian J. Porter on behalf of Creditor Abey Baraghoshi, Trustee of the Baraghoshi Family Trust Dated Feb 19, 03 brian@hwmlawfirm.com
Ellen E Ostrow on behalf of Creditor Committee Official Committee of Unsecured Creditors of The Falls Event Center, LLC eeostrow@hollandhart.com, intaketeteam@hollandhart.com; lahansen@hollandhart.com
Jessica G. McKinlay on behalf of Interested Party Michael F. Thomson mckinlay.jessica@dorsey.com, Segovia.Maria@dorsey.com
Laurie A. Cayton tr on behalf of U.S. Trustee United States Trustee laurie.cayton@usdoj.gov, James.Gee@usdoj.gov; Lindsey.Huston@usdoj.gov; Suzanne.Verhaal@usdoj.gov
Mary Margaret Hunt on behalf of Interested Party Michael F. Thomson hunt.peggy@dorsey.com, long.candy@dorsey.com
Megan K Baker on behalf of Interested Party Michael F. Thomson baker.megan@dorsey.com, long.candy@dorsey.com
Michael F. Thomson on behalf of Interested Party Michael F. Thomson thomson.michael@dorsey.com, montoya.michelle@dorsey.com; ventrello.ashley@dorsey.com
Michael F. Thomson tr on behalf of Interested Party Michael F. Thomson thomson.michael@dorsey.com, UT17@ecfcbis.com; montoya.michelle@dorsey.com
United States Trustee USTPRegion19.SK.ECF@usdoj.gov

TOTAL: 10