

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Modesto, California

**April 26, 2018, at 2:00 p.m.**

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|           |                             |   |   |
|-----------|-----------------------------|---|---|
| <b>1.</b> | <b><u>18-90204-E-12</u></b> | <b>LYNN/DONNA PORTER</b><br><b>David Johnston</b> | <b>STATUS CONFERENCE RE: VOLUNTARY<br/>PETITION<br/>3-29-18 [<a href="#">1</a>]</b> |
|-----------|-----------------------------|---|---|

Debtors' Atty: David C. Johnston

Notes:

Debtors' Chapter 12 Status Report filed 4/19/18 [Dckt 17]

**APRIL 26, 2018 STATUS CONFERENCE**

At the Status Conference **XXXXXXXXXXXXXXXXXX**.

**INITIAL STATUS CONFERENCE SUMMARY**

This bankruptcy case was commenced on March 29, 2018. The court notes that Debtor has filed three other recent bankruptcy cases, summarized as follows:

**Chapter 13 Case 17-90808—David C. Johnston, Esq., Counsel for Debtor**

Filed.....October 3, 2017  
Dismissed.....March 28, 2018

Grounds for Dismissal.....The court ordered Debtor to confirm a Chapter 13 Plan by March 6, 2018, or the case would be dismissed. No Chapter 13 Plan was confirmed.

Relief From Stay.....The court granted relief from the automatic stay to Deutsche Bank National Trust Company. The relief is to foreclose on the 4249 Ellenwood Property.

**Chapter 12 Case 16-91155—David C. Johnston, Esq., Counsel for Debtor**

Filed.....December 30, 2016  
Dismissed.....August 16, 2017

Grounds for Dismissal, as stated in the Civil Minutes for the hearing on the Motion to Dismiss the Chapter 12 case:

The current case was filed on December 30, 2016. The Chapter 12 Plan was filed on March 30, 2017, with confirmation denied on May 9, 2017. Order, Dckt. 44. In denying confirmation, the court determined that Debtor in Possession failed to provide the court with credible evidence showing an ability to perform the proposed Plan. Civil Minutes, p. 7; Dckt. 41. The testimony provided by one debtor was merely that persons personal findings of fact and dictating to the court that person's conclusions of law. Id. The court also noted that the expenses asserted to be reasonable as stated on Schedule J appeared to be a fiction, with Debtor purporting to state that the two adults have no home maintenance expenses, no clothing expenses, no medical expenses, no entertainment expenses, no health insurance expenses, and never pays any taxes (including self-employment taxes). Id. at 8.

The court also put into question Debtor's veracity and good faith, stating:

"Debtor and Debtor in Possession appear to be filing and prosecuting a Chapter 12 case and plan built on misinformation, inaccurate, and undisclosed information. Take at face value, Debtor and Debtor in Possession have and know of significantly more income than disclosed - readily having at hand an "extra" \$400 to produce when "caught" by the Chapter 12 Trustee in having underfunded the Chapter 12 Plan. Debtor and Debtor in Possession appear to have whatever "extra" money they need to funnel to the creditor having a lien on Debtor's home.

16-91555; Dckt. 54 at 9.

**Chapter 12 Plan No. 16-90113—David C. Johnston, Esq., Counsel for Debtor**

Filed.....February 16, 2016  
Dismissed.....March 8, 2016

Grounds for Dismissal.....Failure to Timely File Documents

**REVIEW OF SCHEDULES AND  
STATEMENT OF FINANCIAL AFFAIRS**

On Schedule A/B, Debtor lists the following major assets:

|                                 |           |
|---------------------------------|-----------|
| Ellenwood Road Ag Property..... | \$300,000 |
| Deposit Accounts.....           | \$ 13,500 |
| 186 Bee Hives.....              | \$ 27,900 |

Swinger Forklift.....\$ 15,000

Hand Tools, Business Equipment.....\$ 10,000

For secured debt, on Schedule D Debtor's creditors include

Select Portfolio Servicing - Ellenwood Property.....(\$396,244)

ATTN Farm Loan Program - Ellenwood Property.....(\$213,541)

ATTN Farm Loan Program - Bee Hives.....(\$ 27,900)

For income, on Schedule A Debtor lists monthly gross income of \$4,050.00, with only \$100 of withholding for state and federal income taxes, Medicare taxes, and Social Security taxes. On Schedule J, Debtor's stated monthly expenses of \$3,950 exhausts all of Debtor's income.

On the Statement of Financial Affairs, Question 4, Debtor lists the following gross income for 2018, 2017, and 2016:

2018 (Three Months)

Business Gross Income.....\$15,000

Wage Gross Income.....\$ 2,500

2017

Business Gross Income.....\$39,000

Wages Gross Income.....\$14,141

2016

Business Gross Income.....\$41,701

Wages Gross Income.....\$26,470

2. [17-90320](#)-E-7      **JESUS ALVARADO**  
[17-9014](#)              **RODRIGUEZ**  
**EDMONDS V. SALINAS ET AL**

**CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
12-22-17 [\[26\]](#)**

**Final Ruling:** No appearance at the April 26, 2018 hearing is required.  
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Plaintiff's Atty: Steven S. Altman  
Defendants' Atty: Randall K. Walton

Adv. Filed: 9/21/17  
Answer: Alejandra A. Alvarado 10/31/17 [same document filed twice]  
Joanna Salinas 11/27/17  
Amd. Cmplt. Filed: 12/22/17  
Answer: Joanna Salinas, Alejandra Alvarado 1/3/18  
Jose Juarez, Aline Alvarado 1/3/18

Nature of Action:  
Approval of sale of property of estate and of a co-owner

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|--|
| <b>The Status Conference is continued to 2:00 p.m. on July 12, 2018.</b> |
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#### **APRIL 26, 2018 STATUS CONFERENCE**

The Plaintiff-Trustee filed an updated Status Report on April 3, 2018 (Dckt. 26) advising the court that the parties are proceeding with their settlement. To facilitate that process and allow the parties to consummate the settlement approved by the court, the Status Conference is continued to July 12, 2018.

Notes:

Continued from 2/15/18 to afford the Parties time to implement the Settlement of this Adversary Proceeding approved by the court on 2/1/18.

Plaintiff's Status Report filed 4/3/18 [Dckt 36]

- [illegible]

**Final Ruling:** No appearance at the April 26, 2018 hearing is required.

Debtors' Atty: Edward A. Smith

The bankruptcy case having been converted to one under Chapter 7, **the Status Conference is concluded and removed from the Calendar.**

Notes:

Continued from 1/11/18 to allow for the filing of post-confirmation motions or scheduling of other matters if the plan is not confirmed.

[TBG-9] Motion to Convert Case from Chapter 11 to Chapter 7 filed 2/7/18 [Dckt 175]; Order granting filed 3/12/18 [Dckt 193]

[TBG-8] Order denying Motion to Confirm Plan filed 3/12/18 [Dckt 192]

[TBG-5] Order denying Motion to Use Cash Collateral filed 3/12/18 [Dckt 198]

Chapter 7 Trustee's Report of No Distribution filed 4/19/18

**APRIL 26, 2018 STATUS CONFERENCE**

The court converted this case to one under Chapter 7 pursuant to the motion (Dckt. 175) of the then Debtor in Possession. Order, Dckt. 193. The case having been converted, the Chapter 11 Status Conference is concluded and removed from the Calendar.

4. [17-90981](#)-E-11      **THE LIVING CENTERS OF**      **MOTION FOR RELIEF FROM**  
**MHK-1**      **FRESNO, INC.**      **AUTOMATIC STAY**  
                 **David Johnston**      **4-11-18 [43]**  
**RONALD LOEB, ET AL. VS.**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2018. By the court’s calculation, 15 days’ notice was provided. The court set the hearing for 2:00 p.m. on April 26, 2018. Dckt. 55.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

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**The Motion for Relief from the Automatic Stay is granted.**

Ronald Loeb, Edwin Loeb, Carolyn Radford, and Becky Griffin, as assignees of The Loeb Living Trust (“Movant”) seek relief from the automatic stay with respect to The Living Centers of Fresno, Inc.’s (“Debtor in Possession”) real property commonly known as 4576 E. Shields Avenue, Fresno, California (“Property”). Movant has provided the Declaration of Ronald Loeb to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Ronald Loeb Declaration states that Movant transferred the Property to Debtor in Possession in exchange for a promissory note and deed of trust, securing an obligation of \$540,000.00. The Declaration states that Debtor in Possession failed to pay the obligation when it came due in October 2015 and had made only six monthly payments. The Declaration states that no payments have been made on the obligation since June 2015.

## DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$505,031.23 (including \$412,069.83 secured by Movant's first deed of trust), as stated in the Loeb Declaration and the Proofs of Claim. The value of the Property is determined to be \$380,000.00, as stated in the Loeb Declaration as an admission of a party opponent.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Movant has successfully argued that there is no equity in the Property, but Movant has not presented any argument as to the second element that the Property is not necessary for an effective reorganization. Movant states that Debtor in Possession is not likely to obtain confirmation of a plan of reorganization. That is not the same as arguing that property is specifically not necessary in this case.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant argues that the lack of payment, the general lack of a prospect of an ability to reorganize in Chapter 11, and the failure to pay real property taxes all show that the Property is not necessary, warranting waiving the stay. Those arguments show cause to grant relief from the automatic stay, but they do not demonstrate why the

court should waive the fourteen-day stay as imposed by the Supreme Court. With no real grounds for such relief specified, the court will not grant additional relief.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Ronald Loeb, Edwin Loeb, Carolyn Radford, and Becky Griffin, as assignees of The Loeb Living Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Ronald Loeb, Edwin Loeb, Carolyn Radford, and Becky Griffin, as assignees of The Loeb Living Trust, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the Property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the real property commonly known as 4576 E. Shields Avenue, Fresno, California.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.



5.     [17-90981](#)-E-11     **THE LIVING CENTERS OF**     **CONTINUED STATUS CONFERENCE RE:**  
                                  **FRESNO, INC.**                   **VOLUNTARY PETITION**  
                                  **David Johnston**                   **12-1-17 [1](#)**

Debtor's Atty: David C. Johnston

Notes:

Continued from 1/11/18 to be heard in conjunction with Motion for Relief from Stay.

Operating Reports filed: 2/13/18 [Dec 2017]; 2/14/18; 3/19/18; 4/15/18; 4/15/18 [amd Feb]

**APRIL 26, 2018 STATUS CONFERENCE**

On April 15, 2018, Debtor in Possession filed three monthly operating reports. These reports are summarized as follows:

**Mar 2018 Report, Dckt. 56**

|                               |          |           |
|-------------------------------|----------|-----------|
| Cash Receipts From Sales..... | \$15,917 | \$24,844  |
| Insurance Payments.....       | \$38,221 | \$196,676 |

**Amended Feb 2018 Report, Dckt. 60**

|                               |          |           |
|-------------------------------|----------|-----------|
| Cash Receipts From Sales..... | \$8,927  | \$8,927   |
| Insurance Payments.....       | \$35,393 | \$158,455 |

**Amended January 2018 Report, Dckt. 58**

|                               |          |           |
|-------------------------------|----------|-----------|
| Cash Receipts From Sales..... | \$ -0-   | \$ -0-    |
| Insurance Payments.....       | \$79,991 | \$123,062 |

At the Status Conference, **XXXXXXXXXXXXXXXXXXXX**

**JANUARY 11, 2017 STATUS CONFERENCE**

**STATUS CONFERENCE SUMMARY**

This Chapter 11 case was filed on December 1, 2017. The Schedules and Statement of Financial Affairs were filed on December 19, 2017. The Status Report states that Debtor in Possession is operating as property of the estate two related businesses. The primary business is a 16-bed in-patient drug and alcohol abuse behavior modification program in Fresno, California. This is not a "medical treatment facility." The Estate is also operating an out-patient program in Modesto, California.

Debtor was incorporated in 2014 and purchased the Fresno, California property. The purchase obligation has matured, with Debtor and seller creditor entering into a forbearance agreement for a period, with the seller creditor ultimately setting a foreclosure sale for the Fresno property.

The Status Conference Report discusses problems with Debtor refinancing relating to tax liens asserted against the former president of Debtor. Debtor in Possession intends to file an adversary proceeding to obtain a judicial determination of the extent, validity, and priority of any such tax liens for obligations of the former president of Debtor.

#### **SUMMARY OF SCHEDULES**

| <b>Real Property Schedule A/B</b> | <b>FMV</b> |  |  |
|-----------------------------------|------------|--|--|
| Unidentified 16 Bed Facility      | \$500,000  |  |  |
|                                   |            |  |  |

| <b>Personal Property Schedule A/B</b> | <b>FMV</b> |  |  |
|---------------------------------------|------------|--|--|
| Bank Accounts                         | \$1,768    |  |  |
| Accounts Receivable                   | \$168,002  |  |  |
| Office Equipment                      | \$10,000   |  |  |
| Furniture, Equipment                  | \$30,000   |  |  |
|                                       |            |  |  |

| <b>Secured Claims Schedule D</b> | <b>TOTAL CLAIM AMOUNT</b> | <b>FMV</b>     | <b>UNSECURED CLAIM PORTION</b> |
|----------------------------------|---------------------------|----------------|--------------------------------|
| Fresno County Tax Collector      | (\$28,153)                | \$500,000      |                                |
| Loeb/Griffin/Radford             | (\$380,000)               | Above Property |                                |
|                                  |                           |                |                                |

| <b>PRIORITY UNSECURED CLAIMS<br/>SCHEDULE E</b> | <b>TOTAL<br/>CLAIM<br/>AMOUNT</b> | <b>PRIORITY</b> | <b>GENERAL<br/>UNSECURED</b> |
|---|-----------------------------------|-----------------|------------------------------|
| California EDD                                  | (\$31,000)                        | (\$20,000)      | (\$11,000)                   |
| Internal Revenue Service                        | (\$40,000)                        | (\$30,000)      | (\$10,000)                   |

| <b>GENERAL UNSECURED CLAIMS<br/>SCHEDULE F</b> |  |  | <b>GENERAL<br/>UNSECURED</b> |
|--|--|--|------------------------------|
| Total  |  |  | (\$15,352)                   |

## **STATEMENT OF FINANCIAL AFFAIRS**

### **Question 1 Income**

|          |           |  |
|----------|-----------|--|
| 2017 YTD | \$667,219 |  |
| 2016     | \$313,364 |  |
| 2015     | \$45,635  |  |
|          |           |  |

### **Question 2 Non-Business Income**

None

### **Question 3 Payments within 90 days**

None

### **Question 4 Payments within one year to insider**

|  |          |  |
|--|----------|--|
| Creditor                                       | Amount   |  |
| Wages and repayment of loan<br>for state taxes | \$35,500 |  |

6. [18-90196](#)-E-11 **BARRENO ENTERPRISES, LLC STATUS CONFERENCE RE: VOLUNTARY  
David Johnston PETITION  
3-26-18 [1]**

Debtor's Atty: David C. Johnson

Notes:

[DCJ-1] Debtor's Application for 14 Additional Days to File New Case Documents filed 4/9/18 [Dckt 13]; Order granting filed 4/10/18 [Dckt 17]

Debtor's Chapter 11 Status Report filed 4/19/18 [Dckt 20]

**APRIL 30, 2018 STATUS CONFERENCE**

## INITIAL STATUS CONFERENCE SUMMARY

This Chapter 11 case was filed on March 26, 2018. The Schedules and Statement of Financial Affairs were filed on April 22, 2018. Debtor does not list any real property assets on Schedule A/B, but does list three real property leases for restaurant locations.

On Schedule D, Debtor lists creditors having a total of \$36,700 in secured claims. Dckt. 22 at 11–12. The California Department of Tax and Fee Administrator is listed as having a priority claim in the amount of \$55,000 and a general unsecured claim of \$10,000. *Id.* at 13. The Internal Revenue Service is listed as having a \$12,000 secured claim. *Id.* at 14.

For unsecured claims, the principals of Debtor are listed as being owed \$201,349. Other significant unsecured claims are: Bank of America, N.A. for \$28,000; Brixton Sherwood Mall, LLC for \$40,858; Dickey's Barbeque Restaurants, Inc. for \$138,133, William Marble for \$550,000, and Verducci Enterprises for \$39,865. The general unsecured claims listed by Debtor on Schedule E/F total \$1,104,364. *Id.* at 13–18.

At the Status Conference ~~XXXXXXXXXXXXXXXXXXXX~~.