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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SANTA ROSA DIVISION**

In re:

LeFever Mattson, a California Corporation et
al.,¹

Debtor.

Case No. 24-10545 CN

Chapter 11

Date: September 18, 2024
Time: 2:00 p.m.

**UNITED STATES TRUSTEE’S OMNIBUS OPPOSITION TO DEBTORS’
EMERGENCY FIRST DAY MOTIONS AND RESERVATION OF RIGHTS**

Tracy Hope Davis, United States Trustee for Region 17 (“U.S. Trustee”), by and through
her undersigned counsel, hereby files this *United States Trustee’s Omnibus Opposition to
Debtors’ Emergency First Day Motions and Reservation of Rights* (the “Omnibus Opposition”)

¹ The last four digits of Debtor LeFever Mattson, a California Corporation’s tax identification
number are 7537. Due to the large number of debtor entities in these Chapter 11 Cases, a
complete list of Debtors and the last four digits of their federal tax identification numbers are not
provided herein. A complete list of such information may be obtained on the website of
Debtors’ proposed claims and noticing agent at <https://veritaglobal.net/LM>.



1 in response to the following first-day motions (collectively, the “First Day Motions”)² filed by
2 LeFever Mattson, a California Corporation (“LM”) et al. (“Debtors”):

- 3 • *Motion of Debtors for Entry of an Order (I) Directing the Joint Administration of*
4 *Debtors’ Chapter 11 Cases and (II) Granting Certain Related Relief* (ECF No. 6)
5 (the “Joint Administration Motion”);
- 6 • *Application of Debtors for Order (I) Authorizing the Appointment of Kurtzman*
7 *Carson Consultants, LLC dba Verita Global as Claims and Noticing Agent and*
8 *(II) Granting Related Relief* (ECF No. 7) (the “Claims and Noticing Agent
9 Application”);
- 10 • *Motion of Debtors for Entry of an Order (I) Authorizing Debtors to (A) File*
11 *Consolidated List of Creditors In Lieu of Submitting a Separate Mailing Matrix*
12 *for Each Debtor, (B) File a Consolidated List of Debtors’ Thirty Largest*
13 *Unsecured Creditors; (II) Implementing Certain Procedures for the Notice of*
14 *Commencement; and (III) Granting Related Relief* (ECF No. 9) (the
15 “Consolidation Motion”);
- 16 • *Motion of Debtors for Entry of an Order Extending Time to File Schedules of*
17 *Assets and Liabilities and Statements of Financial Affairs* (ECF No. 10) (the
18 “Time Extension Motion”);
- 19 • *Motion of Debtors for Interim and Final Orders (I) Approving Continued Use of*
20 *Debtors’ Cash Management System and Bank Accounts; (II) Authorizing Debtors*
21 *to Open and Close Bank Accounts; and (III) Authorizing Banks to Honor Certain*
22 *Prepetition Transfers* (ECF No. 13) (the “Cash Management Motion”);
- 23 • *Motion of Debtors for Interim and Final Orders Authorizing Debtors to (A) Pay*
24 *Prepetition Employee Wages, Benefits, and Related Items and (B) Continue*
25 *Certain Employee Compensation and Benefit Programs in the Ordinary Course*
26 (ECF No. 16) (the “Wages Motion”); and
- 27 • *Motion of Debtors for Interim and Final Orders Authorizing Debtors to Use Cash*
28 *Collateral* (ECF No. 17) (the “Cash Collateral Motion”).

² The U.S. Trustee takes no position at this time on the following additional “first day motions”
filed by the Debtors: (i) the motion regarding utility services under 11 U.S.C. § 366 (ECF No.
12); (ii) the motion to maintain insurance programs (ECF No. 14); and (iii) the motion to
authorize payment of certain prepetition taxes and assessments (ECF No. 15). The U.S. Trustee
reserves all rights, including to object to any final relief sought by the Debtors in these motions.

1 The U.S. Trustee's Omnibus Opposition is supported by the following memorandum of
2 points and authorities and any argument that the Court may permit during the hearing.³

3 **I. INTRODUCTION**

4 Debtors' requests for relief in the First Day Motions should be denied, in part or in their
5 entirety, or only limited to emergency relief to permit Debtors to sustain business operations.

6 The U.S. Trustee is in the process of scheduling initial debtor interviews and soliciting creditors
7 for the purpose of forming an official committee of unsecured creditors. The 11 U.S.C. § 341
8 meetings of creditors are anticipated to be held on October 21, 2024. In the best interest of
9 creditors and parties in interest, the Court should either sustain this Omnibus Opposition or
10 adjourn the hearing on the First Day Motions to a later date to allow any creditors committee and
11 other creditors a meaningful opportunity to evaluate them.
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13 After conferring with Debtors' proposed general bankruptcy counsel regarding the
14 proposed First Day Motions, the U.S. Trustee's remaining concerns are discussed in detail
15 herein.
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17 The U.S. Trustee reserves all rights with respect to the First Day Motions, including, but
18 not limited to her right to take any appropriate action under the Bankruptcy Code, the Federal
19 Rules of Bankruptcy Procedure, or the Local Bankruptcy Rules for the U.S. Bankruptcy Court
20 for the Northern District of California.
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24 ³ The U.S. Trustee requests that the Court take judicial notice of the pleadings and documents
25 filed in this case pursuant to Federal Rule of Bankruptcy Procedure 9017 and Federal Rule of
26 Evidence 201. To the extent that the Omnibus Opposition contains factual assertions predicated
27 upon statements made by Debtors, any of their current or former affiliates, agents, attorneys,
28 professionals, officers, directors or employees, the U.S. Trustee submits that such factual
assertions are supported by admissible evidence in the form of admissions of a party opponent
under Federal Rule of Bankruptcy Procedure 9017 and Federal Rule of Evidence 801(d)(2).

1 **B. General Case Background**

2 7. According to the Sharp Declaration, Debtor LM manages a large real estate
3 portfolio. ECF No. 5, ¶ 5. Timothy LeFever and Kenneth W. Mattson each own 50 percent of
4 the equity in LM. *Id.* LM in turn directly or indirectly controls or has ownership interests in 50
5 limited partnerships (collectively, the “LPs”) and eight limited liability companies (collectively,
6 the “LLCs”), almost all of which are now Debtors in the above-captioned voluntary chapter 11
7 cases. *See id.*, ¶¶ 6 & 8. LM invests in real estate primarily through the LLCs and the LPs but
8 also owns a small number of real properties directly. *Id.*, ¶¶ 6, 12. According to Mr. Sharp, this
9 structure has allowed LM to pool capital by selling limited partnership or membership interests
10 to outside investors, while typically reserving an ownership interest for itself as general partner
11 or managing member. *Id.*

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14 8. Mr. Sharp states that LM also has ownership interests in four California
15 corporations: Debtor Home Tax Service of America, Inc., dba LM Property Management (the
16 “Property Manager”), which provides property management services, including to those
17 properties owned by the LPs and the LLCs; Debtor California Investment Properties, a California
18 corporation (a real estate brokerage) (“CIP”); and non-debtors Pineapple Bear, a California
19 corporation (which offers hospitality and catering services), and Harrow Cellars, a California
20 corporation (which operates a winery and related businesses). *Id.*, ¶ 13.

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22 9. Mr. Sharp explains that LM manages a portfolio of more than 200 properties,
23 comprised of commercial, residential, office, and mixed-use real estate, as well as vacant land,
24 located throughout Northern California, primarily in Sonoma, Sacramento, and Solano Counties.
25 *Id.*, ¶ 14. Debtors generate income from the Properties through rents and use the proceeds to
26 fund their operations. *Id.* LM has no employees while Debtors’ Property Manager has 45
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1 employees. *Id.*, ¶ 15. The Property Manager provides property management services through a
2 set of management agreements and holds bank accounts in trust for the LLCs and LPs, for rents
3 and expenses. *Id.*

4 **III. AUTHORITIES & DISCUSSION**

5 **A. Standing**

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7 10. Under 28 U.S.C. § 586(a)(3), the U.S. Trustee is charged with supervising the
8 administration of cases and trustees under the Bankruptcy Code. To enable the U.S. Trustee to
9 carry out that duty, Congress has granted the U.S. Trustee standing to raise and to “appear and be
10 heard on any issue in any case or proceeding” brought under the Bankruptcy Code. 11 U.S.C.
11 § 307. The U.S. Trustee consents to this Court entering final orders in this matter.

12 **B. General Principles of First Day Motions**

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14 11. Four principles for Courts to consider regarding first day motions are:

15 First, the requested relief should be limited to that which is
16 minimally necessary to maintain the existence of the debtor, until
17 such time as the debtor can affect appropriate notice to creditors
18 and parties in interest. In particular, a first day order should avoid
19 substantive rulings that irrevocably determine the rights of parties.

20 Second, first day orders must maintain a level of clarity and
21 simplicity sufficient to allow reasonable confidence that an order
22 will affect no unanticipated or untoward consequences.

23 Third, first day orders are not a device to change the procedural
24 and substantive rights that the Bankruptcy Code and Rules have
25 established. In particular, first day orders should provide no
26 substitute for the procedural and substantive protections of the plan
27 confirmation process.

28 Fourth, no first day order should violate or disregard the
substantive rights of parties, in ways not expressly authorized by
the Bankruptcy Code.

See In re The Colad Group, Inc., 324 B.R. 208, 213–14 (Bankr. W.D.N.Y. 2005).

1 12. Accordingly, the relief sought in most of the First Day Motions should be denied
2 or granted only on an interim basis, with a final hearing set so the U.S. Trustee, creditors, and
3 parties in interest with pecuniary interests can review and respond to the final relief sought,
4 preferably after the schedules and statements are filed and the meetings of creditors are held.

5 **C. The Joint Administration Motion [ECF No. 6]**

6 13. The Joint Administration Motion seeks the entry of an order directing the joint
7 administration of Debtors' cases and the consolidation thereof for procedural purposes. ECF No.
8 6 at 2. However, both the motion and proposed order fail to provide for the filing of separate
9 schedules, statements, and operating reports by each Debtor, or indicate that each Debtor will
10 maintain a separate claims register through their proposed administrative agent. *See id.*
11
12 *generally.*

13 14. Debtors' proposed general bankruptcy counsel has informed the U.S. Trustee that
14 Debtors will file separate schedules, statements, and operating reports along with maintaining
15 separate claims registers through the proposed administrative agent. The U.S. Trustee requests
16 that the proposed order include a provision consistent with this representation.
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19 15. The U.S. Trustee reserves all rights regarding any currently unknown Rule
20 1015(b) conflicts of interest that may warrant revisiting joint administration of the cases as they
21 proceed under chapter 11.

22 **D. The Claims and Noticing Agent Application [ECF No. 7]**

23 16. The Claims and Noticing Agent Application seeks the appointment of Kurtzman
24 Carson Consultants, LLC dba Verita Global as the claims and noticing agent for Debtors' cases.
25 ECF No. 7 at 2.
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1 17. The Claims and Noticing Agent Application does not state whether Debtors have
2 sought review and approval by the Court Clerk’s office. *See id. generally.* The U.S. Trustee
3 expects that Debtors have or will seek this review and approval.

4 18. The associated engagement agreement provides for a postpetition evergreen
5 retainer. ECF No. 7, Ex. 1, § II.G. The U.S. Trustee requests that this retainer be disallowed to
6 avoid disparate treatment from other estate professionals and service providers in these cases.
7 Debtors’ proposed general bankruptcy counsel has informed the U.S. Trustee that the proposed
8 administrative agent has agreed not to receive any postpetition retainer.

9 19. Debtors have also agreed to include a provision in the proposed order providing
10 that “notwithstanding anything contained in this order or the associated engagement agreement
11 to the contrary, Debtors shall be required to employ the Claims and Noticing Agent under a
12 separate Section 327(a) application, and seek approval of fees and reimbursement of expenses
13 pursuant to 11 U.S.C. §§ 330 or 331, as applicable, for services that fall outside the scope of 28
14 U.S.C. § 156(c).”

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17 **E. The Consolidation Motion [ECF No. 9]**

18 20. The Consolidation Motion seeks authorization to file a consolidated list of
19 Debtors’ thirty largest unsecured creditors. *See* ECF No. 9 at 2. The U.S. Trustee objects to this
20 request. The disclosure of each Debtors’ list of twenty largest unsecured creditors is required by
21 Rule 1007(d) and critical to the appointment of an official committee of unsecured creditors that
22 assures adequate representation of all Debtors’ creditors. *See* 11 U.S.C. § 1102(a). Contrary to
23 Debtors’ assertion, a consolidated list of Debtors’ thirty largest creditors will hinder, not aid, the
24 U.S. Trustee’s efforts to communicate with creditors as part of the committee solicitation and
25 formation process. *See* ECF No. 9 at 5.
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1 **F. The Time Extension Motion [ECF No. 10]**

2 21. The Time Extension Motion requests an extension to October 28, 2024 for
3 Debtors to file their required schedules and statements. ECF No. 10 at 4. This date is 44 days
4 after the Petition Date, and one week prior to the anticipated meeting of creditors on October 21,
5 2024 (the latest date on which the meeting could be set under Rule 2003(a)).

6 22. Although the U.S. Trustee concurs that Debtors have established sufficient cause
7 for a reasonable extension, the U.S. Trustee requests that Debtors be ordered to file their
8 schedules and statements by at least Monday, October 14, 2024 to ensure meaningful initial
9 debtor interviews and meetings for creditors for interested parties.

10 **G. The Cash Management Motion [ECF No. 13]**

11 23. The Cash Management Motion seeks authorization for the continued use of
12 Debtors' current cash management system, which includes the use of 54 bank accounts
13 maintained by the Property Manager (*i.e.*, Debtor Home Tax Service of America, Inc., dba LM
14 Property Management). *See* ECF No. 13 *generally*. Debtors are in the process of closing two
15 accounts that are not with U.S. Trustee Authorized Depositories for the Northern District of
16 California (*i.e.*, California Bank of Commerce, N.A. and First Bank). *Id.* at 4. However, the
17 Cash Management Motion does not indicate whether the remaining 52 prepetition trust accounts,
18 which are with various U.S. Trustee Authorized Depositories for the Northern District of
19 California, will be redesignated as debtor-in-possession ("DIP") accounts. *See id. generally*.

20 24. Section 345(a) requires a trustee or debtor-in-possession to deposit or invest
21 money of the estate so that it will result in the "maximum reasonable net return . . . [while]
22 taking into account the safety of such deposit or investment." *See* 11 U.S.C. § 345(a). Section
23 345(b) requires that estate funds be deposited or invested to ensure that the funds are protected
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1 for the benefit of creditors. *See* 11 U.S.C. § 345(b). Compliance with the U.S. Trustee’s
2 Guidelines ensures that banks can identify bank accounts for debtors-in-possession, that the
3 accounts are following the requirements of 11 U.S.C. § 345(b), and that all post-petition monies
4 received by a debtor will be readily identifiable and accounted for during the pendency of a
5 case.⁵

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7 25. The U.S. Trustee objects to the Cash Management Motion to the extent that
8 Debtors do not seek to redesignate the remaining 52 trust accounts as DIP accounts and requests
9 that Debtors provide proof that the accounts have been redesignated as DIP accounts by no later
10 than the final hearing on the Cash Management Motion.

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12 26. If Debtors are unwilling or unable to redesignate the DIP accounts and the
13 Court is otherwise inclined to approve the Cash Management Motion, the order should: (i)
14 require Debtors to institute a system to regularly “sweep” funds exceeding FDIC limits from
15 the non-DIP accounts (notwithstanding being U.S. Trustee Authorized Depositories for the
16 Northern District of California) into DIP accounts at U.S. Trustee Authorized Depositories for
17 the Northern District of California, and (ii) prohibit Debtors from opening new accounts unless
18 such accounts are DIP accounts at U.S. Trustee Authorized Depositories for the Northern
19 District of California.
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25 ⁵ The United States Trustee is mindful that some courts have concluded that guidelines
26 established by the United States Trustee do not have the force and effect of law. *See, e.g., In re*
27 *Young*, 205 B.R. 894, 897 (Bankr. W.D. Tenn. 1997); *In re Lani Bird, Inc.*, 113 B.R. 672, 673
28 (Bankr. D. Hawaii 1990); *In re Gold Standard Baking, Inc.*, 179 B.R. 98, 105-06 (Bankr. N.D.
Ill. 1995); *In re Johnson*, 106 B.R. 623, 624-25 (Bankr. D. Neb. 1989). As a result, “if the court
is to require debtors to comply with particular provisions of the U.S.T.’s Guidelines, it must be
for a reason independent of the Guidelines themselves.” *Johnson*, 106 B.R. at 624.

1 **H. The Wages Motion [ECF No. 16]**

2 27. The Wage Motion seeks authority to pay prepetition wages, other accrued benefits
3 and compensation, and certain benefit-related payments. *See* ECF No. 16 at 2. However,
4 Debtors did not file a list identifying the employees, their job titles, the prepetition compensation
5 owed, the cash value of accrued benefits, and the amounts proposed to be paid under the Wages
6 Motion. *See id. generally*. This information would allow the Court, any official committee of
7 unsecured creditors, other creditors, and parties in interest to assess whether the proposed
8 recipients of the prepetition debt payments are entitled to priority under Sections 507(a)(4) and
9 507(a)(5).
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11 28. If Debtors are not ordered to file this information with the Court, the U.S. Trustee
12 requests that Debtors be ordered to provide the information to the Court and any official
13 committee of unsecured creditors for review prior to any final relief being entered.
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15 29. The U.S. Trustee takes no position regarding the payment of (i) prepetition claims
16 of Debtors' non-insider employees that are entitled to priority under Sections 507(a)(4) and
17 507(a)(5), or (ii) the associated payroll taxes, deductions, and withholdings, provided these
18 amounts do not exceed the applicable statutory caps. However, the U.S. Trustee opposes any
19 payments on claims that are not entitled to priority status or do not comply with 11 U.S.C.
20 § 503(c).
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22 30. The U.S. Trustee requests that Debtors include a provision in any proposed order
23 indicating that no Section 503(c) payments are contemplated or being authorized under the
24 Wages Motion. Relief under Section 503(c), if any, should be requested by separate motion on
25 regular notice.
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1 **I. The Cash Collateral Motion [ECF No. 17]**

2 31. The Cash Collateral Motion seeks authority to use the cash collateral of certain
3 Debtors' secured lenders. *See* ECF No. 17 at 2.

4 32. The U.S. Trustee objects to the Cash Collateral Motion because it does not
5 specify the amount of cash collateral to be used, the amount of expenses to be paid, or the period
6 of authorized use. *See* ECF No. 17 *generally*. Rule 4001(b)(1)(B) requires a motion for
7 authority to use cash collateral to include: (i) the name of each entity with an interest in the cash
8 collateral; (ii) the purposes for the use of the cash collateral; (iii) the material terms, including
9 duration, of the use of the cash collateral; and (iv) any liens, cash payments, or other adequate
10 protection that will be provided to each entity with an interest in the cash collateral or, if no
11 additional adequate protection is proposed, an explanation of why each entity's interest is
12 adequately protected. The Court's *Guidelines for Cash Collateral and Financing Motions and*
13 *Stipulations* (the "Court's Guidelines") require the same information be included in the
14 introductory statement for any cash collateral motion. While Debtors included a proposed
15 budget with the Sharp Declaration, Rule 4001(b)(1)(B) and the Court's Guidelines require that
16 those material provisions be included in the motion. *See* ECF No. 5, Ex. 4. Furthermore, the
17 Cash Collateral Motion and proposed budget should specify the aggregate amounts of cash
18 collateral requested to be used, the aggregate expenses to be paid, and the period of authorized
19 use.
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24 33. The U.S. Trustee also objects to the "opt-out" procedure proposed in the Cash
25 Collateral Motion. Section 363(c)(2) limits a debtor's use of cash collateral to where: (i) each
26 entity that has an interest in such cash collateral consents; or (ii) the court, after notice and a
27 hearing, authorizes such use in accordance with the provisions of Section 363. *See Freightliner*
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1 *Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368 (9th Cir. 1987).

2 If a debtor seeks authorization to use cash collateral under Section 363(c)(2)(B), rather than
3 seeking the consent of a secured creditor under Section 363(c)(2)(A), the bankruptcy court “shall
4 prohibit or condition such use, sale, or lease as is necessary to provide adequate protection” for
5 the secured creditor’s interest. 11 U.S.C. § 363(e); *see also In re Blackwood Associates, L.P.*
6 153 F.3d 61, 67 (2d Cir. 1998); *In re Scottsdale Medical Pavilion*, 159 B.R. 295, 302 (B.A.P. 9th
7 Cir. 1993), *aff’d* (9th Cir. 1995) 52 F.3d 244 (“[u]nder § 363(e), in all cases the debtor must
8 provide adequate protection of the creditor’s interest as a condition of using cash collateral”); *In*
9 *re Corporate Colocation, Inc.*, 2022 WL 840806, at *2 (Bankr. C.D. Cal., Mar. 21, 2022)
10 (“[a]bsent affirmative express consent, the [d]ebtors “may not use” cash collateral absent the
11 Court’s determination that the use is “in accordance with the provisions” of section 363—that is,
12 that the secured creditor’s interest in the cash collateral is adequately protected.”)

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15 34. The Cash Collateral Motion provides that an “Accepting Lender” includes
16 creditors who have not given notice that they do not want to be treated as an Accepting Lender.
17 *See* ECF No. 17 at 8. The Cash Collateral Motion further provides that “although consent cannot
18 be implied by a secured creditor’s failure to object ... each Lender can cause the Debtors to
19 immediately cease using its Cash Collateral.” *Id.* These “opt-out” provisions are contrary to the
20 Bankruptcy Code and may dissuade creditors from opposing the Cash Collateral Motion on the
21 basis they are not adequately protected. Therefore, the Cash Collateral Motion should be denied.

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IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the U.S. Trustee respectfully requests that the Court deny the First Day Motions, in part or in their entirety, as set forth herein and grant such other relief as the Court deems warranted under the circumstances.

Dated: September 18, 2024

TRACY HOPE DAVIS
UNITED STATES TRUSTEE

By: /s/ Jared A. Day
Jared A. Day
Trial Attorney for United States Trustee