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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SANTA ROSA DIVISION

In Re:

LEFEVER MATTSON, a California
 corporation, et al.,

Debtors.

Lead Case No. 24-10545

Jointly Administered

**REPLY IN SUPPORT OF
 APPLICATION TO DESIGNATE
 CREDITOR KS MATTSON
 PARTNERS, LP AS A "PERMITTED
 PARTY" UNDER THE COURT'S
 12/13/24 ORDER**

1 At heart, the issue in this Application is whether LeFever Mattson and the Committee may
2 continue to make accusations and seek relief against Creditor KS Mattson Partners, LP (“KSMP”)
3 while hiding the evidence upon which they purportedly rely in violation of KSMP’s due process
4 and statutory rights. The Fifth Amendment and the Bankruptcy Code say no. For that basic reason,
5 as well as the additional reasons outlined in KSMP’s Application (Dkt 1195) and below, KSMP
6 asks the Court to grant its application to be included as a “Permitted Party” under the Court’s Order
7 (Dkt. 459) (“Order”), and to direct the Claims Agent, Kurtzman Carson Consultants, LLC dba
8 Verita Global, to provide KSMP with copies of the Proofs of Claim and Proofs of Interest filed in
9 in the above-captioned jointly administered cases.

10 **I. Due Process Requires KSMP to Have Access to the Proofs of Claim.**

11 The United States Constitution’s guarantee of due process fully applies to bankruptcy
12 proceedings. *E.g. Mullane v. Central Hanover Bank & Trust Corp.*, 339 U.S. 306, 314-315 (1950)
13 (“An elementary and fundamental requirement of due process in any proceeding which is to be
14 accorded finality is notice ... [which] must be of such nature as reasonably to convey the required
15 information But when notice is a person’s due, process which is a mere gesture is not due
16 process.”) (emphasis added); *In re Brawders*, 503 F.3d 856, 867 (9th Cir. 2007) (In bankruptcy
17 proceedings, “due process requires adequate notice and procedures.”).

18 As explained in the Application, an “important role” of proofs of claims is to provide the
19 very notice required by due process. Dkt. 1195 at 4; *see also In re Barker*, 839 F.3d 1189, 1195
20 (9th Cir. 2016) (“The proof of claim plays the important role of ‘alerting the court, trustee, and
21 other creditors, as well as the debtor, to claims against the estate’ and the creditor’s intention to
22 enforce the claims.”) (quoting *In re Daystar of Cal., Inc.*, 122 B.R. 406, 408 (Bankr. C.D. Cal.
23 1990)); *Adair v. Sherman*, 230 F.3d 890, 896 (7th Cir. 2000) (similar). This notice requirement
24 protects, among other things, KSMP’s statutory right to object or otherwise challenge proofs of
25 claim filed by other putative creditors. 11 U.S.C. § 502(a) (“any party in interest, including a
26 creditor can object to a proof of claim”) (emphasis added).

27 Against this backdrop of KSMP’s constitutional and statutory right to receive adequate
28 notice of the claims of other creditors, how do LeFever Mattson and the Committee respond? By

1 claiming these notice requirements only apply in Chapter 13 cases. Dkt. 1268 at 5 (claiming “*Baker*
2 is inapposite” because it “arose in a chapter 13 case”). LeFever Mattson and the Committee,
3 however, ignore that *Baker* was quoting *Daystar*, which specifically addressed the notice provided
4 by proofs of claim in both Chapters 11 and 7 proceedings. *In re Daystar of Cal., Inc.*, 122 B.R. at
5 408 (“Claimants did not file timely proof of claims during the Chapter 11 or after conversion to
6 Chapter 7.”).

7 Similarly unavailing is LeFever Mattson and the Committee’s attempt to waive away the
8 presumption that proofs of claim are filed publicly. Dkt. 1268 at 5; *see* 11 U.S.C. § 107(a) (A “paper
9 filed in a case under this title and the dockets of a bankruptcy court are public records and open to
10 examination by an entity at reasonable times without charge.”) (emphasis added). The presumption
11 of access by fellow creditors is further reflected in § 107(c), which limits the Court’s ability to
12 override that presumption to protect against identity theft or unlawful injury. 11 U.S.C. § 107(c)(1)
13 (“The bankruptcy court, for cause, may protect an individual ... to the extent the court finds that
14 disclosure of such information would create undue risk of identity theft or other unlawful injury to
15 the individual or the individual’s property.”) (emphasis added). Tellingly, LeFever Mattson and the
16 Committee do not allege that application of the Order to KSMP is justified because of concerns
17 about “risk of identity theft or other unlawful injury to the individual” investor. Instead, LeFever
18 Mattson and the Committee invoke a mistaken and inchoate concern that KSMP might acquire the
19 claims of individuals investors. Dkt. 1268 at 5-6. As explained below, that concern is based on a
20 misstatement of KSMP’s counsel’s statements. Regardless, they have not identified a risk of the
21 type of injury necessary to invoke § 107(c)(1) against KSMP. Instead, their position appears to be
22 that since they allege Mr. Mattson defrauded some investors, KSMP must be prevented from seeing
23 the evidence upon which this fraud allegation is based.

24 And, of course, the issue here is also not confidentiality. *Contra* Dkt. 1268 at 5 (claiming
25 that *Baker* “provides no guidance for the situation here, where the Court already has ordered that
26 such Proofs of Claim and Proofs of Interest must be given confidentiality protection.”) KSMP has
27 explicitly agreed to be bound by reasonable confidentiality requirements. Dkt. 1195 at 5 (“KSMP
28 and its professionals are ready, willing and able to execute a confidentiality agreement with the

1 Debtors and the Committee consistent with the agreement executed by other Permitted Parties to
2 object the Proofs of Claims and Proofs of Interest, as required by the Joint Motion.”).

3 The Court need not speculate about the prejudice that would arise by denying the
4 application. LeFever Mattson and the Committee have repeatedly sought relief from this Court
5 against KSMP on the basis of what they claim the proofs of claim disclose. Indeed, they do so in
6 the same brief in which they contend that KSMP should not receive these proofs of claim.
7 Specifically, LeFever Mattson and the Committee rely on a declaration of Brad Sharpe in which he
8 makes representations about what “[c]laims filed thus far in the LeFever Mattson Chapter 11 Cases
9 reveal[.]” Dkt. 1268-1 ¶ 4. While it may be convenient for the LeFever Mattson and the Committee
10 to make representations about what evidence “reveals” while denying KSMP a full and fair
11 opportunity to respond by denying it access to that evidence, due process does not allow it.

12 Contrary to LeFever Mattson and the Committee’s accusation, KSMP’s Application does
13 not challenge the Order. Dkt. 1268 at 6-7. Instead, through the Application, KSMP seek standing
14 under the Order as a Permitted Party, which it is authorized to pursue. Dkt. 1195. In doing so,
15 KSMP did, correctly, note that neither the Joint Motion nor the Order explained the impact of
16 withholding proofs of claim from other creditors would have on those creditors statutory and due
17 process rights. Dkt. 1195 at 4 (“But neither the Order nor the Joint Motion provide any basis to
18 depart from the ‘important role’ that a proof of claim has in alerting other creditors of the claims
19 against the estate in this proceeding.”). LeFever Mattson and the Committee misconstrue that
20 sentence as asserting that there was no basis to enter the Order. That is not what that sentence says.
21 While the Order may properly provide certain protections for creditors, it cannot be used in the way
22 the LeFever Mattson and the Committee attempt to use it: to deny notice to other creditors in a way
23 to deprive them of access to evidence and the ability to pursue statutory rights.

24 **II. LeFever Mattson and the Committee Misstate Their Own Exhibits.**

25 LeFever Mattson and the Committee claim that the Court should deprive KSMP of proper
26 notice and the ability to defend itself and pursue its statutory rights because, they allege, KSMP is
27 seeking the information for other purposes. Dkt. 1268 at 5-6. The problem with this position is it
28 relies on a misstatement of what the exhibits actually say. In responding to inquiries from investors,

1 counsel has explained that:

2 Thank you for your inquiry regarding your investments. Your patience is greatly
3 appreciated. ...

4 [W]e have publicly expressed our approach and willingness to find a complete and
5 satisfactory resolution for investors. We have outlined steps we are taking to achieve
6 this goal. Mr. Mattson is interested in finding pathways to acquire investor interests
7 or otherwise liquidate entity assets to disburse proceeds to those investors. This
8 includes offering his own resources, when possible, to do so. We have also agreed
9 to facilitate and participate in mediation for a structured process to allow for
10 resolution of investor concerns.”

11 Dkt. 1268-1 Ex. B (emphasis added). Tellingly, LeFever Mattson and the Committee (in an effort
12 to gin-up controversy) fail to alert the Court that this communication was sent in response to
13 inquiries from investors. And it does not “announce a parallel claims resolution process whereby
14 the Mattson Debtors would liquidate assets to compensate certain of their victims,” (Dkt. 1268 at
15 3), but rather explains that KSMP and Mr. Mattson have been tirelessly seeking to work with
16 LeFever Mattson and the Committee to establish a plan that would actually benefit all investors by
17 liquidating entity assets to compensate investors and resolve investor claims. In Mr. Mattson and
18 KSMP’s view, attempting to use the significant assets of all entities to quickly come up with a
19 global solution is preferable to wasting money and time on needless disputes.

20 Thus, KSMP does not seek access to proofs of claim “as a litigation tactic as well as fodder
21 for [its] proposed extrajudicial [sic], selective [sic] asset distribution” (nor has it admitted to such
22 a purpose). Dkt. 1268 at 5. Of course, such concerns are easily addressed by a confidentiality
23 agreement that limits use of information derived from proofs of claim. But since that does not
24 seemingly achieve LeFever Mattson and the Committee’s goal of hamstringing KSMP’s defense
25 or forcing KSMP into bankruptcy on LeFever Mattson and the Committee’s terms, it is rejected out
26 of hand.

27 **III. KSMP’s Notice to the Investors Is Reasonable Under the Circumstances.**

28 Lefever Mattson and the Committee claim that KSMP has not provided sufficient notice to
the “entire universe” of investors in accordance with the Bar Date Order to become a Permitted
Party: KSMP “need[s] to provide notice to the entire universe of Investors—more than 600
individuals and entities asserting approximately 1,700 investments—by April 23, 2025. KSMP

1 admittedly does not have the contact information necessary to do so, or it would not have needed
2 to file the Application.” Dkt. 1268 at 7-8 (emphasis added). Thus, LeFever Mattson and the
3 Committee oppose the Application on the grounds that it fails to give notice to people who could
4 only be identified for notification after the Application has been approved—rendering it redundant.
5 This scenario exemplifies a Catch-22.

6 The “validity of any method of notice turns on its reasonableness in the circumstances:
7 Where conditions do not make it practical to give notice reasonably certain to inform those affected,
8 the [United States Supreme] Court held that the form chosen must not be substantially less likely
9 to bring home notice than any other substitute feasible and customary in the circumstances.” *In re*
10 *Jewelart, Inc.*, 71 B.R. 968, 972 (Bankr. C.D. Cal. 1987) (emphasis added). KSMP provided notice
11 to the Debtor, the Official Committee of Creditors and all parties listed for notice on the claims
12 agent’s website including the claims agent itself.

13 The notice that KSMP provided to parties in interest was what was the most reasonable
14 under the circumstances, as KSMP provided more than sufficient notice to all the parties that it has
15 information for. The application and the notice were not just mailed to the parties included on the
16 notice list but were additionally included on the claims agent website. All parties in this “entire
17 universe” have filed a proof of claim or proof of interest in this case, consequently they are familiar
18 with the claims agent website as that is where they had to file those claims. If there is any party that
19 has not received notice directly through the mail, they have received notice through the claims
20 agent website.¹ Notice to the claim’s agent, which is the party with initial and unrestricted access
21 to the claims filed in the case should be sufficient notice to all the creditors and investors that have
22 been restricted from public access. KSMP’s notice was the most reasonable under the
23 circumstances and the notice provided is not substantially less likely to bring home notice than the
24 customary form of notice because the information is provided on the claims agent’s website and all
25 parties in the “entire universe” of this case are familiar with that website.

26 For these reasons and the reasons set forth in the Application, the Court should grant
27 KSMP’s application to be included as a “Permitted Party” under the Court’s Order (Dkt. 459)

28

¹ Any person can go to the claims agent website and view any filing in this case for free.

1 (“Order”), and to direct the Claims Agent, Kurtzman Carson Consultants, LLC dba Verita Global,
2 to provide KSMP with copies of the Proofs of Claim and Proofs of Interest filed in in the above-
3 captioned procedurally consolidated case.

4
5 Dated: April 17, 2025

FENNEMORE LLP

7 By: /s/ James P. Hill

8 Micheline Nadeau Fairbank

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10 Thiele R. Dunaway

11 James P. Hill

12 John M. McHugh

13 Attorneys for KS Mattson Partners,
14 LP and Kenneth W. Mattson
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CERTIFICATE OF SERVICE

I, Linda Gubba-Reiner, declare:

I am a citizen of the United States and am employed in the County of Alameda. I am over the age of 18 years and not a party to the within-entitled action. My business address is 600 B Street, Suite 1700, San Diego, California, 92101.

On the date set forth below I caused to be served the following document(s):

**REPLY IN SUPPORT OF APPLICATION TO DESIGNATE CREDITOR KS
MATTSON PARTNERS, LP AS A "PERMITTED PARTY" UNDER THE COURT'S
12/13/24 ORDER**

on each party listed below in the following manner:

- ☐ BY FIRST CLASS MAIL: by placing said document(s) in a sealed envelope with postage fully prepaid, in a United States mail box at Oakland, California, addressed as set forth below.
- ☐ BY PERSONAL SERVICE: by causing to be delivered by reputable messenger service said document(s) addressed as set forth below.
- ☐ BY ELECTRONIC MAIL: by transmitting via email said document(s) to the email address set forth below.
- ☒ (ECF): Pursuant to controlling General Orders and LBR, the foregoing document(s) will be served by the court via Notice of Electronic Filing ("NEF") and hyperlink to the document(s). On the date set forth below, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the list of parties to receive NEF transmission at the email addresses stated below:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 17, 2025, at San Diego, California.

/s/ Linda Gubba-Reiner
Linda Gubba-Reiner