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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA, SANTA ROSA DIVISION

In re:	Case No. 24-10545
LEFEVER MATTSON, a California corporation, et al. ²	(Jointly Administered)
Debtors.	Chapter 11
_____ /	Case No. 24-10715 (CN)

¹ The Opposing Creditors consist of Ruth Tillman; Robert Dean Rhoads, individually and as Trustee of the Robert Donald Rhoads Living Trust; Dolores Rhoads, individually and as Trustee of the Dolores Irene Rhoads Living Trust; Elaine Lockwood; Sylvia Vreeland; Ward Pitman and Anne Pitman, as Trustees of the Ward and Anne Pitman Trust; Randall Roth, individually and as Trustee of the Randall D. Roth and Diane L. Roth Revocable Living Trust; Gregory Poulos; Kay Poulos; Donald Hicks, individually and as Trustee of the Hicks Living Trust; Kimberlie Hicks, as Trustee of the Hicks Living Trust; Corey Anderson and Ute Anderson, as Trustees of the Corey and Ute Anderson Living Trust; Daniel Wallen and Maria Wallen, as Trustees of the Wallen Family Trust; David Ciappara and Irene Ciappara, as Trustees of the David and Irene Ciappara Living Trust; Vitas Alekna and Dalia Alekna, as Trustees of the Vitas Alekna and Dalia Alekna 2002 Revocable Trust; Nancy Sloan, as Trustee of the Nancy M. Sloan Revocable Trust; Daniel Dowell, individually; and Peter S. Strickland, as Trustee of the Peter S. Strickland Trust (hereinafter referred to, collectively, as the "Opposing Creditors").

² The last four digits of LeFever Mattson's tax identification number are 7537. Due to the large number of debtor entities in these chapter 11 cases, a complete list of the Debtors and the last 27 four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://veritaglobal.net/LM>. The address for service on the Debtors is 6359 Auburn Blvd., Suite B, Citrus Heights, CA 95621.

In re:

KS MATTSON PARTNERS, LP,

Debtors.

Chapter 11

**RESPONSE AND OPPOSITION OF
OPPOSING CREDITORS TO MOTION
FOR SUBSTANTIVE
CONSOLIDATION OF DEBTORS
LEFEVER MATTSON AND KS
MATTSON PARTNERS, LP**

Date: July 25, 2025
Time: 11:00 AM
Ctrm: 1300 Clay Street, Room 215
Oakland, CA 94612
Video Conference

INTRODUCTION

The Opposing Creditors³ oppose the Motion of the Official Committee of Unsecured Creditors (the “Committee”) for Substantive Consolidation of Debtors LeFever Mattson (“LFM”) and KS Mattson Partners, LP (“KSMP”) and for Related Relief (collectively, the “Motion”) because it is premature and unsupported by evidence. Thus, the Motion should be denied without prejudice, with leave to refile at a time that is at least beyond (i) the August 8, 2025 deadline currently set for the filing of KSMP’s⁴ Statement of Financial Affairs and Statement of Assets and Liabilities and any non-governmental claims bar date that is eventually set, and (ii) the deadlines for the filing of Kenneth Mattson’s similar financial disclosures and statements and the filing of any non-governmental claims, once they are set.

The investigation into LFM is ongoing, and new, material information continues to emerge regarding its financial affairs and its relationship with KSMP. Further, while the Committee has indicated that it intends to seek substantive consolidation of LFM with the other LFM Debtors, it has not yet done so. KSMP itself is in the very earliest stages of its chapter 11 bankruptcy proceeding—it has not yet filed its Statement of Financial Affairs and Statement of Assets and Liabilities, and the non-governmental claims bar date has not yet been set, meaning KSMP’s financial picture and the number and size of the claims KSMP is facing are entirely unclear. Finally, Kenneth Mattson (“Mattson”) will become a chapter 11 debtor in possession on or about September 2, 2025, so no deadlines for the filing of his initial financial statements and disclosures, or any non-governmental claims, have been set in that matter. Because of the close relationship between KSMP and Mattson, the Opposing Creditors expect that substantive consolidation of, at minimum, KSMP and Mattson will be sought, something the Motion does not address.

For at least these reasons, the Motion is premature, with the Court and creditors lacking sufficient information to make an informed decision on whether all creditors would benefit

³ The Opposing Creditors are listed in footnote 1, *supra*.

⁴ Capitalized terms not otherwise defined herein shall be given the same meaning as ascribed to them in the Motion.

1 from substantive consolidation, while potentially resulting in piecemeal adjudication of the
2 various consolidation motions that are likely to be sought. This Court has also highlighted the
3 potentially premature nature of the Motion and some of the challenges posed by a potential
4 substantive consolidation of debtors at very different stages or their respective bankruptcy
5 proceedings during the hearing held on June 24, 2025, on KSMP's Motion for Entry of an
6 Order (i) Extending Time to File Schedules of Assets and Liabilities, Statement of Financial
7 Affairs and List of Equity Security Holders, and (ii) Suspending the Non-Governmental Bar
8 Date. *See* Response and Opposition of Umpqua Bank to the Motion for Substantive
9 Consolidation ("Umpqua's Opposition"), Ex. A, Doc. No. 1677-1 at 8:11-10:18, *LFM BK*
10 (defined below) (Jul. 1, 2025).

11 The Opposing Creditors respectfully request that this Court deny the Motion without
12 prejudice as indicated above, which would allow the Court, the Opposing Creditors, and all
13 other creditors to make an informed decision on the merits and utility of substantive
14 consolidation, and determine which, if any, of the various Mattson-related debtors should be
15 subject to such substantive consolidation, at the appropriate time.

16 BACKGROUND

17 On September 12, 2024, LFM commenced its chapter 11 case, Case No. 24-10545 (the
18 "*LFM BK*"). On November 24, 2024, LFM filed an Involuntary Petition against KSMP, Case
19 No. 24-10715 (the "*KSMP BK*"). On June 9, 2025, an Order for Relief was entered against
20 KSMP and, as a result, KSMP became a chapter 11 debtor in possession. *See* Motion at 6. On
21 June 24, 2025, the Court entered a Final Order appointing Robbin L. Itkin as the responsible
22 individual for KSMP. *See* Final Order Authorizing Designation of Robbin L. Itkin as
23 Responsible Individual, Doc. No. 172 (the "Final Order"), at 2-4, *KSMP BK* (Jun. 24, 2025).
24 Ms. Itkin remains KSMP's responsible individual. No Schedules, Statement of Financial
25 Affairs or other required documents setting forth the assets and liabilities of the estate of
26 KSMP have been filed to date. Upon application by the debtor, the Court extended the time for
27 KSMP to file its Schedules and Statement of Financial Affairs to August 8, 2025, and set a
28 hearing date on the suspension of the non-governmental bar date for July 18, 2025. *See* Order

1 (I) Extending Time to File Schedules of Assets and Liabilities, Statements of Financial Affairs
2 and List of Equity Security Holders, and (II) Suspending the Non-governmental Bar Date,
3 Doc. No. 173, at 2, *KSMP BK* (Jun. 24, 2025). Based on representations by Ms. Itkin, KSMP
4 is actively “reconstructing [its] books and records.” Umpqua’s Opposition, Ex. A, Doc. No.
5 1677-1 at 6:23.

6 On November 24, 2024, LFM filed an Involuntary Petition against Mattson, Case No.
7 24-10714 (the “*Mattson BK*”). On July 14, 2025, a Consent Order was entered against Mattson
8 and, as a result, Mattson will become a chapter 11 debtor in possession on or about September
9 2, 2025. *See* Order Regarding Consent to Entry of Order for Relief, Doc. No. 118 (the
10 “Consent Order”), at 1, *Mattson BK* (Jul. 14, 2025). Thus, no Schedules, Statement of
11 Financial Affairs or other required documents setting forth the assets and liabilities of Mattson
12 have been filed to date; indeed, no deadlines for the filing of these financial statements and
13 disclosures or non-governmental claims have been set in the *Mattson BK*. In light of the
14 complexity of Mattson’s financial affairs and his interrelationship with several other debtors
15 and their legal actions, it will likely be some time before creditors obtain any significant clarity
16 into Mattson’s true financial condition. However, because of the close relationship between
17 KSMP and Mattson, the Opposing Creditors expect that substantive consolidation of, at
18 minimum, KSMP and Mattson will be sought in the future.

19 The Opposing Creditors are investors in various Mattson-related entities, including
20 investments and interests that were included in LFM’s books and records (the “Known
21 Interests”) and investments and interests that were made in the name of an LFM Debtor, but
22 were not included in LFM’s books and records (referred to as “Phantom Interests” by the
23 Committee, *see* Motion at 9), as evidenced by the proofs of claim and proofs of interest filed
24 by the Opposing Creditors in the *LFM BK*. The Opposing Creditors also invested in various
25 KSMP- or Mattson-related entities that are not debtors in possession in the *LFM BK* and, upon
26 information and belief, have never been, and are not currently, affiliated with LFM (the
27 “KSMP-Only Interests”). Thus, the Opposing Creditors lack sufficient information to
28 determine how each of these various investments would be impacted by substantive

consolidation.

Further, while the Committee seeks to support the Motion with allegations that Mattson ran a Ponzi scheme that implicated both KSMP and LFM, *see, e.g.*, Motion at 1, 17, 20, no Ponzi scheme has yet been established by any court, and there is little evidence in the record demonstrating the scope of any such scheme. Due to the lack of clarity into KSMP's and Mattson's financial status in light of the nascent nature of the *KSMP BK* and the *Mattson BK*, as well as a lack of clarity into whether and to what extent Mattson's fraudulent activity impacted any or all legitimate business activities of LFM, the Opposing Creditors are in no position to make an informed decision on whether substantive consolidation is warranted or what impact substantive consolidation will have on each of the Opposing Creditors, individually, let alone on all creditors as a whole.

SUBSTANTIVE CONSOLIDATION SHOULD BE DENIED

A. Applicable Law.

"[S]ubstantive consolidation should be a rare event, available only in extremely limited and favorable circumstances." *In re Stevenson*, 153 B.R. 52, 53 (Bankr. D. Idaho 1993). "Two broad themes have emerged from substantive consolidation case law: in ordering substantive consolidation, courts must (1) consider whether there is a disregard of corporate formalities and commingling of assets by various entities; and (2) balance the benefits that substantive consolidation would bring against the harms that it would cause. *In re Bonham*, 229 F.3d 750, 765 (9th Cir. 2000) (citation omitted). "Only through a searching review of the record, on a case-by-case basis, can a court ensure that substantive consolidation effects its sole aim: fairness to all creditors." *Id.* (citation omitted).

In short, "substantive consolidation should be used only after it has been determined that all creditors will benefit because untangling is either impossible or so costly as to consume the assets Commingling [of assets between debtors], therefore, can justify substantive consolidation only where 'the time and expense necessary even to attempt to unscramble them [is] so substantial as to threaten the realization of any net assets for all the creditors' . . . , or where no accurate identification and allocation of assets is possible." *In re Augie/Restivo*

1 *Baking Co., Ltd.*, 860 F.2d 515, 519 (2d Cir. 1988) (internal citation omitted).

2 B. The Motion Should Be Denied Because Insufficient Financial Information on the At-
3 Issue Debtors Has Been Developed.

4 The Committee seeks an order that would substantively impact the Opposing Creditors
5 before they or the Court have sufficient information, whether financial or otherwise, to “ensure
6 that substantive consolidation effects its sole aim: fairness to all creditors.” *Bonham*, 229 F.3d
7 at 765. Indeed, the Court and creditors lack access to the complete financial records of the
8 debtors most intimately involved with the alleged fraudulent activity, making it impossible for
9 the Committee to make the required showing that the benefits that substantive consolidation
10 outweigh the harms. *See Bonham*, 229 F.3d at 765. Accordingly, for at least the following
11 reasons, the Motion should be denied without prejudice, as the Court cannot perform the
12 “case-by-case” analysis that is required. *Id.*

13 *First*, the Motion is premature as to LFM, the at-issue entity whose bankruptcy
14 proceeding has thus far advanced the furthest, as the financial investigation into this entity has
15 not been completed. Indeed, financial information regarding LFM continues to be uncovered,
16 including as recently as just last week. On July 11, 2025, the Committee filed three additional
17 declarations in support of the Motion, along with several exhibits. *See* Declarations of Thomas
18 P. Jeremiassen, Steven W. Golden, and Kristin D. Rivera in Support of the Motion, Doc. Nos.
19 1713, 1715, 1716, *LFM BK* (Jul. 11, 2025) (the “Additional Evidence”). The Additional
20 Evidence totals just under 1,700 pages, giving the Opposing Creditors insufficient time to fully
21 evaluate it. However, the fact that such evidence was revealed *after* the filing of the Motion,
22 and just one week before any creditor oppositions to the Motion were due, highlights the
23 premature nature of the Motion. And there has been no indication from the Committee that its
24 financial investigation into LFM has been completed, or that additional revelations about
25 LFM’s financial status or its relationship to other Mattson-affiliated entities will not continue
26 to emerge in the coming weeks and months.

27 Indeed, the Committee has indicated that it intends to seek substantive consolidation of
28 LFM with the other LFM Debtors, Motion at 1 n.2, but it has not yet done so, and the Motion

1 does not address why substantive consolidation of LFM and KSMP should occur prior to, and
2 without consideration of, substantive consolidation of LFM and the LFM Debtors. In fact, the
3 Committee states that, “it will reserve seeking such global relief until plan confirmation to
4 afford more time to individual Investors to assess their individual rights vis-à-vis their
5 prospective treatment under the plan.” *Id.* The very same reasoning justifies denial of the
6 Motion—if individual creditors require additional time to assess their individual rights as to
7 their prospective treatment under the plan for the LFM Debtors, whose bankruptcy
8 proceedings have advanced beyond a claims bar date and have proceeded in parallel with the
9 *LFM BK*, surely creditors require additional time to assess their rights as to the *KSMP BK*,
10 which has only just begun. At minimum, the fact that a motion for substantive consolidation of
11 LFM with the other LFM Debtors is envisioned by the Committed but not yet sought weighs
12 in favor of denying the Motion without prejudice, to avoid piecemeal consolidation without a
13 full picture of the entities that might ultimately be subject to consolidation.

14 *Second*, the Motion is certainly premature as to KSMP, as it is currently in the process
15 of reconstructing its books and records during the very earliest stages of its bankruptcy
16 proceedings. Umpqua’s Opposition, Ex. A, Doc. No. 1677-1 at 6:23. The Motion is also
17 entirely premature given the potential for substantive consolidation of the Mattson estate with
18 the KSMP estate. Neither the Court nor any creditor has a clear picture of Mattson’s financial
19 situation, given that Mattson will not become a chapter 11 debtor in possession until
20 September 2, 2025. The Committee has not addressed in any substance the impending *Mattson*
21 *BK*, the interrelationship between Mattson estate and creditors and the estates and creditors of
22 LFM or KSMP, or the potential for substantial consolidation of the Mattson estate with those
23 of KSMP and/or LFM. As noted above, because of the close relationship between KSMP and
24 Mattson, the Opposing Creditors expect that substantive consolidation of KSMP and Mattson
25 will be sought at a later date, in which case substantive consolidation of all applicable
26 Mattson-affiliated entities should be determined together, rather than in piecemeal. In short,
27 before substantively impacting all creditors’ claims by consolidating the assets and liabilities
28 of LFM and KSMP into a single pool, the Court and all creditors should be informed as to the

1 assets and liabilities of, including potential claims against, KSMP, as well as the assets and
2 liabilities of any entities for which substantial consolidation reasonably may be sought in the
3 future, such as Mattson or the various LFM-affiliated debtors in possession.

4 *Third*, while the Committee seeks to support the Motion with allegations that Mattson
5 operated a Ponzi scheme that implicated both KSMP and LFM, *see, e.g.*, Motion at 1, 17, 20,
6 no Ponzi scheme has been established by any court, and there is no evidence in the record
7 demonstrating the scope of any such scheme. Indeed, the Committee’s evidence in support of
8 these allegations appears to focus on the existence of a single bank account in the name of
9 LFM that was allegedly used by Mattson to perpetuate this scheme. *See* Motion at 2. Yet, it
10 appears that this account was controlled entirely by Mattson and that new investor funds were
11 comingled with “other personal and business funds,” not LFM funds. *See* Motion, Ex. B (the
12 “SEC Complaint”) ¶ 8 (“Mattson commingled new investor funds ***with other personal and***
13 ***business funds in a bank account that he controlled*** and used the commingled funds to make
14 Ponzi-like payments to existing investors.” (emphasis added)). The SEC has cited no findings
15 or made any allegations as to the extent of LFM’s involvement, or that of any of LFM’s
16 executives (other than Mattson), in Mattson’s “Ponzi-like” activities, nor has there been any
17 resolution of the claims asserted in the SEC Complaint. *See generally* SEC Complaint. At
18 most, the SEC has alleged “Ponzi-like” activity related to *some* portion (or portions) of the
19 KSMP and LFM estates, not that the entire businesses constituted Ponzi schemes. *See* SEC
20 Complaint ¶ 1 (emphasis added); *see also id.* ¶¶ 7-8 (“As a result, the investors who purchased
21 the fake interests ... never became actual limited partners or acquired any actual ownership
22 interests, and they never received legitimate distributions. ... Mattson commingled new
23 investor funds with other personal and business funds in a bank account that he controlled and
24 used the commingled funds to make Ponzi-like payments to existing investors.”).

25 Indeed, the Committee admits that this single Mattson-controlled LFM bank account
26 “was not integrated into LFM’s books and records.” Motion at 2. The Committee thus has not
27 come close to establishing, based on the existing record before this Court, that LFM had no
28 legitimate business or that any such Ponzi scheme infiltrated LFM’s entire business. *See*

1 *Winkler v. McCloskey*, 83 F.4th 720, 722 n.1 (9th Cir. 2023) (a Ponzi scheme is a financial
2 fraud that induces investment by promising high returns, but where in fact no legitimate profit-
3 making business opportunity exists).

4 *Fourth*, while the Committee has offered evidence of the cost of untangling the affairs
5 of LFM and KSMP, it has offered no evidence (nor could it, given the early stage of the *KSMP*
6 *BK*) of whether the consolidation of KSMP into LFM would provide the creditors of either
7 LFM or KSMP with a better result than if the two estates were adjudicated separately (i.e., not
8 substantively consolidated). Nor has the Committee indicated what portion of any savings in
9 administrative costs from substantive consolidation would also be achieved if LFM and KSMP
10 were simply administratively consolidated. Namely, the Committee has not weighed the cost
11 of untangling the affairs of LFM and KSMP against the potential benefit to creditors, or some
12 subset thereof, of conducting such an exercise. This is especially true where, as is the case with
13 the Opposing Creditors, creditors variously hold Known Interests (“on book” LFM interests),
14 Phantom Interests (“off book” LFM interests), and KSMP-Only Interests in KSMP entities
15 that, on information and belief, have no affiliation with LFM. Thus, the Committee has not
16 balanced the benefits that substantive consolidation would bring against the harms that it
17 would cause, as required to establish that substantive consolidation is warranted. *Bonham*, 229
18 F.3d at 765.

19 *Finally*, these issues are compounded by the fact that much of the evidence upon which
20 the Motion relies is likely be inadmissible in any potential evidentiary proceeding. As another
21 creditor, Umpqua Bank, made clear in its opposition to the Motion, it plans to “object to the
22 offered ‘evidence’ being admitted” at any evidentiary hearing. *See* Umpqua’s Opposition at 6,
23 *LFM BK* (Jul. 1, 2025). And while the Opposing Creditors have not had the opportunity to
24 complete their review of the Additional Evidence that was recently submitted to the Court, it
25 appears unlikely that the Additional Evidence contains enough admissible evidence to allow
26 the Committee to adequately support the relief sought in the Motion given the early stage and
27 complex nature of the various, interdependent bankruptcy proceedings at play.

28 The Motion should not be granted before the type of admissible evidence appropriate

1 and necessary for demonstrating the need for substantive consolidation has been developed.
2 As courts have noted, while “[s]ubstantive consolidation of cases involving two or more
3 separate estates is sometimes appropriate,” *In re Stevenson*, 153 B.R. at 53, where “the effect
4 of any [substantive] consolidation . . . is not fully known,” *id.* at 54, substantive “consolidation
5 [] is untimely,” *id.* Given the “rare” and “extreme[]” nature of substantive consolidation, *see*
6 *id.* at 53, and the lack of information on and clarity into the financial status, including assets
7 and liabilities, of the two debtors alleged to have directly engaged in a “Ponzi-like” scheme,
8 *see* SEC Complaint ¶¶ 1, the Motion is clearly premature and threatens to prejudice many
9 creditors, including those with Known Interests, Phantom Interests and KSMP-Only Interests,
10 or some combination thereof.

11 Without access to the financial records that would allow the Opposing Creditors to
12 understand whether and to what extent KSMP is a solvent entity, whether and to what extent
13 Mattson’s “Ponzi-like” activity pervaded LFM’s legitimate business, and whether the cost of
14 untangling the financial activities, assets, and liabilities of LFM and KSMP outweighs the
15 potential benefits to creditors, they and other creditors are unable to make an informed
16 decision on the merits of the Motion. For example, those Opposing Creditors who hold
17 Phantom Interests are being asked to agree that any corporate formalities of LFM and KSMP
18 should be dissolved, and that any assets of these two entities should be combined, without
19 understanding if such corporate formalities or combination of assets ever existed and, if so, to
20 what extent; nor can they determine given the information available whether they would
21 benefit from substantive consolidation. Those Opposing Creditors that hold both Known
22 Interests and Phantom Interests are likewise being forced to make a choice that may increase
23 the value of one interest over the other before having the information necessary to know how
24 this choice will impact either set of interests. And Opposing Creditors that hold KSMP-Only
25 Interests cannot determine if substantive consolidation would reduce their recoveries by
26 allowing investors in unaffiliated LFM entities to have access to KSMP’s assets. Taking the
27 “rare” and “extreme[]” step of substantive consolidation, *In re Stevenson*, 153 B.R. at 53, that
28 the Motion seeks, before being able to determine how creditors will be substantively impacted,

cannot achieve the “fairness to all creditors” that the Court must find to grant the Motion.
Bonham, 229 F.3d at 765.

CONCLUSION

Due to the lack of clarity into KSMP’s and Mattson’s financial status in light of the nascent nature of the *KSMP BK* and the *Mattson BK*, the lack of clarity as to the full scope of entities for which substantive consolidation may be sought, and the lack of clarity into whether and to what extent Mattson’s fraudulent activity impacted any legitimate business activities of LFM, creditors are in no position to make an informed decision on whether substantive consolidation is warranted or what impact substantive consolidation will have on each of them, individually, let alone all creditors as a whole. Based upon the foregoing, the Opposing Creditors respectfully request that the Motion be denied without prejudice.

LAW OFFICE OF MICHAEL C. FALLON

DATED: July 18, 2025

By: /s/ Michael C. Fallon
MICHAEL C. FALLON

and

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