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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.

Case No. 24-10545 CN (Lead Case)

(Jointly Administered)

Chapter 11

In re

KS MATTSON PARTNERS, LP,
 Debtor.

**OBJECTION OF KEYBANK NATIONAL
 ASSOCIATION TO AMENDED JOINT
 MOTION OF DEBTORS AND OFFICIAL
 COMMITTEE OF UNSECURED
 CREDITORS FOR AN ORDER
 (I) APPROVING THE PLAN SUMMARY
 AND DISCLOSURE STATEMENT;
 (II) SCHEDULING HEARING ON
 CONFIRMATION OF PLAN AND
 APPROVING THE FORM AND MANNER**

¹ As special servicer to U.S. Bank National Association, as Trustee, for the benefit of Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2019-SB62; U.S. Bank National Association, as trustee for the registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2022-SB96; U.S. Bank National Association, as trustee for the registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2019-SB64; U.S. Bank Trust Company, National Association, as trustee for the registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2022-SB103; and Computershare Trust Company, National Association, as trustee for the registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2022-SB102. *See* Proofs of Claim 1414, 1415, 1522, 1526, 1532, 1547, 1557, and 1562.



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**OF SERVICE OF THE HEARING
NOTICE; (III) ESTABLISHING
PROCEDURES FOR THE
SOLICITATION AND TABULATION FO
VOTES ON PLAN; (IV) THE
ESTIMATION OF INVESTOR CLAIMS
AND INTERESTS SOLELY FOR
VOTING PURPOSES; AND
(V) APPROVING RELATED MATTERS**

Hearing Date:

Date: November 19, 2025
Time: 1:00 p.m. (Pacific time)
Place: United States Bankruptcy Court
1300 Clay Street, Courtroom 215
Oakland, CA 94612

Judge: Honorable Charles Novack

I. INTRODUCTION²

KeyBank is the special servicer for seven CMBS loans. Each loan is secured by a separate deed of trust and assignment of rents against a specific multi-family real property in Northern California. Each loan was made to a specific SPE Debtor/borrower/trustor under the loan documents. Payments on each loan were, from the Bank's understanding, paid directly from rents deposited by tenants into that particular SPE Debtor/borrower/trustor's rent account.

Sales of three such properties have closed, and the Bank is informed that the remaining four properties are in various stages of being marketed and sold.

But now, the Secured Lenders have been told that (a) they are on a list of targets for claw-back actions to recover all non-principal prepetition loan payments, and (b) such actions will be brought on behalf of the Investors based on an irrebuttable Ponzi scheme finding and the Ninth Circuit case of *In re EPD Inv. Co., LLC*, 114 F.4th 1148 (9th Cir. 2024).

The Disclosure Statement doesn't provide much detail about these claw-back actions. The Committee's counsel has circulated redlines of the Disclosure Statement to the Secured Lenders' counsel, which—in addition to changes to secured creditor classes—refer to an “Exhibit F,” which will list the subclasses in which the Secured Lenders' claims will be classified.

But Exhibit F hasn't been circulated or filed yet.³

More information is needed for the Secured Lenders to decide how to proceed.

² KeyBank National Association (“KeyBank” or the “Bank”) objects to the *Amended Joint Motion of Debtors and Official Committee of Unsecured Creditors for an Order (I) Approving the Plan Summary and Amended Disclosure Statement; (II) Scheduling Hearing on Confirmation of Plan and Approving the Form and Manner of Service of the Hearing Notice; (III) Establishing Procedures for the Solicitation and Tabulation of Votes on Plan; (IV) Establishing Procedures for the Estimation of Investor Claims Solely For Voting Purposes; and (V) Approving Related Matters* (“Motion”) (Dkt. 2569) filed by LeFever Mattson, a California corporation, (“LFM”), its affiliated debtors and debtors in possession (collectively with LFM, the “LFM Debtors”), and KS Mattson Partners, LP (“KSMP” and together with the LFM Debtors, the “Debtors”), and the Official Committee of Unsecured Creditors (the “Committee” and together with the Debtors, the “Plan Proponents”), which was appointed in these chapter 11 cases to represent the interests of unsecured creditors and investors of the Debtors.

The Motion seeks approval of, among other things, the *Plan Summary for Investors* (“Plan Summary”) (Dkt. 2569, Exh. A) relating to the *First Amended Joint Chapter 11 Plan of Liquidation* (the “Plan”) (Dkt. 2561) and the *Disclosure Statement in Support of the First Amended Joint Chapter 11 Plan of Liquidation* (the “Disclosure Statement”) (Dkt. 2567) of the Debtors proposed by the Debtors and the Committee.

³ The Bank reserves its rights to respond to any further amended disclosure statement.

1 **II. ARGUMENT**

2 **A. The Disclosure Statement should clarify how claw-back actions are defined.**

3 The Disclosure Statement should clarify whether the claw-back actions are “Avoidance
4 Actions,” “Contributed Claims,” or something else. If the claw-back actions come within the
5 definition of Contributed Claims, then the Disclosure Statement should explain how the Plan
6 Recovery Trustee has standing to prosecute such claims. *See Smith v. Arthur Andersen LLP*, 421
7 F.3d 989, 1002 (9th Cir. 2005) (providing that a bankruptcy trustee does not have standing to
8 prosecute the claims of the estate’s creditors, but rather it may only maintain an action on behalf of
9 the debtor) (citations omitted).

10 **B. If the Secured Lenders lose the claw-back actions and have to return**
11 **prepetition loan payments, how does the Plan treat their § 502(h) claims?**

12 Section 502(d) provides that any claim of a transferee who received an avoidable transfer
13 is disallowed *until* the transferee returns the property or pays the amount due. So, if the Plan
14 Recovery Trust wins and recovers from a Secured Lender, § 502(d) no longer bars that lender’s
15 claim. At that point, § 502(h) becomes comes into play: it provides that a claim arising from the
16 recovery of property under § 550 “shall be determined, and shall be allowed or disallowed, the
17 same as if such claim had arisen before the date of the filing of the petition.” In other words, a
18 lender whose prepetition transfers are avoided and then recovered under § 550 would receive a
19 § 502(h) claim for the amount returned. Such claim would retain the claim status that the lender
20 held on the petition date. *See In re Laizure*, 548 F.3d 693, 697 (9th Cir. 2008) (citation omitted).

21 But the Plan doesn’t provide for such § 502(h) claims. Instead, it states that the Plan
22 Recovery Trustee isn’t required to make distributions “unless and until such Holder has paid the
23 Net Prepetition Investor Recovery, or such portion thereof as agreed to as a compromise and
24 settlement, to the Plan Recovery Trust or until any Plan Recovery Trust Action seeking recovery
25 of the Net Prepetition Investor Recovery is disallowed in its entirety by a Final Order.” Plan at
26 § 7.1. But the term “Net Prepetition Investor Recovery” is limited to “Investors” only—i.e., those
27 holding Investor Claims, **not Secured Lenders**. *See* Plan at 51 of 60 (defining “Investor”).

28 So, how does the Plan intend to deal with *Secured Lenders’* § 502(h) claims?

1 **C. If the Secured Lenders win, how does the Plan deal with their fee claims?**

2 Likewise, if the Secured Lenders win in defending the claw-back actions, how does the
3 Plan propose to deal with their fee claims?

4 Do the Plan Proponents consider these claims to arise prepetition, within the fair
5 contemplation of the parties and the fee-clauses in their prepetition loan documents? *See In re*
6 *SNTL Corp.*, 571 F.3d 826, 839 (9th Cir. 2009) (citation omitted).

7 Or are these fee claims considered postpetition claims? Either way, the Disclosure
8 Statement should explain how these claims are being treated.

9 **D. If the Plan is disallowing these claims, an opportunity to respond is needed.**

10 The Plan appears to effectively disallow any claim for “fees ... from and after the Petition
11 Date.” Plan at 45 of 60 (defining “Allowed Claim” as not including, for any purpose, fees on such
12 Claim after the Petition Date).

13 If so, then the Disclosure Statement should explain the basis for such disallowance and
14 permit the Secured Lenders an opportunity to respond. *See In re Dynamic Brokers, Inc.*, 293 B.R.
15 489, 497 (B.A.P. 9th Cir. 2003) (“[C]onsiderations of due process mandate great caution and
16 require that the creditor receive specific notice (not buried in a disclosure statement or plan
17 provision) of at least the quality of specificity, and be afforded the same opportunity to litigate
18 one-on-one, as would be provided with a straightforward claim objection under Rule 3007.”).

19 **E. How does the Plan intend to deal with § 510(b) mandatory subordination?**

20 The Plan is described as a “single pot plan” that pools all the assets (including Avoidance
21 Actions and Contributed Claims) of, among others, the to-be-substantively consolidated Debtors.
22 The Plan provides that the Plan Recovery Trustee will make distributions of the proceeds of such
23 Trust Recovery Assets pursuant to a Plan Recovery Trust Waterfall. The first tranche of the
24 waterfall is designated for distributions, on a pro rata basis, to Allowed Trade Claims (if they
25 object), but also to Investor Claims.

26 The Plan doesn’t appear to propose any distributions to Secured Lenders on account of
27 their § 502(h) claims or their fee claims. If the Plan does propose to treat such claims in the
28 waterfall, the Disclosure Statement should specify the priority level that such claims will be paid.

1 Section 510(b) provides that “For the purpose of distribution under this title, a claim
2 arising from ... sale of a security of the debtor or of an affiliate of the debtor, for damages arising
3 from the purchase or sale of such a security ... shall be subordinated to all claims or interests that
4 are senior to or equal the claim or interest represented by such security....” Section 510(b)
5 “mandates the subordination of damages claims arising from the purchase or sale of a security.”
6 *Am. Broad. Sys., Inc. v. Nugent (In re Betacom of Phx., Inc.)*, 240 F.3d 823, 827 (9th Cir. 2001)
7 (citation and internal quotation marks omitted). The purpose of § 510(b) is to ensure that creditors
8 are paid before investors who bargained for, not just the potential upside, but also the risk of loss.
9 *See Racusin v. Am. Wagering, Inc. (In re Am. Wagering, Inc.)*, 493 F.3d 1067, 1071–72 (9th Cir.
10 2007) (citations omitted). The Ninth Circuit has interpreted the scope of § 510(b) broadly. *See*
11 *Pensco Tr. Co. v. Tristar Esperanza Props., LLC (In re Tristar Esperanza Props., LLC)*, 782 F.3d
12 492, 495 (9th Cir. 2015). Accordingly, a claim “arises from” the purchase or sale of securities if it
13 shares a sufficient “nexus or causal relationship” with the purchase or sale of securities. *Id.* at 497
14 (citation omitted).

15 Here, the Investor Claims and Contributed Claims are, at least in part, damages claims for
16 torts arising from the Investors’ purchase of securities of the Debtors. *See, generally*, Notice of
17 Filing Joint Investigation Report and Summary of Global Settlement (Dkt. 2568). The Plan defines
18 an “Investor Claim” as any Claim (as defined under § 101(5)) arising from or relating to an
19 “Investment,” which the Plan defines, in pertinent part, as any investment or investment product
20 offered by any Debtor that was styled, marketed, or sold as partnership interests in limited
21 partnerships. *See* Plan at 51 of 60. Such limited partnership interests constitute “securities” under
22 the non-exclusive definition in the Code. *See* 11 U.S.C. § 101(49)(A)(xiii).

23 Similarly, Contributed Claims, which include Causes of Action related to the marketing,
24 sale, and issuance of any investments related to the Debtors, appear to also constitute “securities.”
25 *See* Plan at 47 of 60.

26 Accordingly, any distributions from the Plan Recovery Trust to Investors on account of
27 such claims must be subordinated to “all claims or interests that are senior to or equal the claim or
28 interest represented by such security.” 11 U.S.C. § 510(b). In other words, in order to comply with

§ 510(b), the Recovery Plan Trust would need to subordinate Investor recoveries to those of all other creditors—including the Secured Lenders’ § 502(h) claims and/or fee-claims.

So, if the Plan proposes to alter the absolute priority rule or § 510(b) with respect to the Plan Recovery Trust, then the Disclosure Statement should disclose that fact and the basis for such alteration of priorities.

F. What impact will substantive consolidation have on the “triggering creditor”?

Finally, does the substantive consolidation proposed in the Plan purport to merge the Debtors’ estates and/or have retroactive effect such that the Plan Recovery Trustee may use a creditor of one Debtor as the “triggering creditor” of other Debtors for purposes of claw-back litigation under § 544(b)?

If so, the Disclosure Statement should say so.

III. CONCLUSION

The Plan Proponents should amend the Disclosure Statement to disclose additional information sufficient to allow the Secured Lenders to decide how to vote on the Plan, what discovery they may need to conduct, what experts they need to hire, and what other actions they need to take in order to protect and defend their positions and interests.

DATED: November 12, 2025

FRANDZEL ROBINS BLOOM & CSATO, L.C.

By: /s/ Gerrick M. Warrington

GERRICK M. WARRINGTON

Attorneys for KeyBank National Association

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing notice to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all parties on the NEF list.

By: /s/ Annette Chase
Annette Chase