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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], Debtors in Possession	Case No. 24-10545 (Jointly Administered) Chapter 11 **FANNIE MAE'S OBJECTION TO AMENDED DISCLOSURE STATEMENT IN SUPPORT OF SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION** Date: November 18, 2025 Time: 11:00 AM Room: 215

[1] 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 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.

Fannie Mae ("***Fannie Mae***") files this objection (the "***Objection***") to the adequacy of the *Amended Disclosure Statement in Support of First Amended Joint Chapter 11 Plan of Liquidation* [Dkt. No. 2567] (the "***Disclosure Statement***"). In support of this Objection, Fannie Mae respectfully states as follows:

I. PRELIMINARY STATEMENT

Fannie Mae is a secured creditor and holder of a market-rate loan, secured by an income-generating property, to a distinct, single-purpose Debtor. The loan was made on commercial terms, in good faith, and without any knowledge of any fraud, wrongdoing, or other misconduct by the Debtors or their management—and there is no suggestion in the Committee's investigative report to the contrary. During these cases, the Debtor has marketed the property securing Fannie Mae's loan for prices far exceeding the secured debt, demonstrating that Fannie Mae was, at all times, protected by its security interests and the value of its collateral and not dependent upon the generalized business activity of the Debtor or its role—if any—in any alleged alleged Ponzi scheme or other business operation of the Debtor's affiliates. If any such Ponzi scheme exists, Fannie Mae is not an "investor" in it.

The Disclosure Statement makes no claim that Fannie Mae participated in, had knowledge of, or benefitted from the Debtors' alleged Ponzi scheme. Nevertheless, while not revealed in the Disclosure Statement, the Committee apparently intends to pursue claims against Fannie Mae—as though it were one of the "winners" in a Ponzi scheme from whom recoveries might be sought for the benefit of the "losers" in that scheme. Such claims, which Fannie Mae understands are based entirely on a superficial reading of a recent Ninth Circuit decision, are meritless and Fannie Mae is prepared to address those claims in the context of a properly commenced adversary proceeding. Yet the Disclosure Statement appears to suggest a process that could deny Fannie Mae its due process rights, short-circuiting the protections afforded by an adversary proceeding.

While the Disclosure Statement describes the Committee's intent to seek a Ponzi-scheme determination at the confirmation hearing with respect to the Plan's treatment of "Investor" claims, the Disclosure Statement ***utterly fails to disclose*** the intended use of that determination against

Fannie Mae or other secured creditors to diminish the "Allowed Secured Claims" that the Plan otherwise disingenuously proposes to pay in full. Indeed, the Disclosure Statement describes at length how the Ponzi-scheme finding would impact *Investor* claims, but there is not a single mention of the potential use of that finding against secured creditors. The Disclosure Statement's silence regarding the treatment of secured creditors suggests that the requested Ponzi-scheme determination is for the benefit of Investors at the expense of secured creditors. The Committee, however, has declined to confirm that reading of the Disclosure Statement and Plan, which prompted Fannie Mae's concern and this objection.

If the Committee intends to utilize the requested Ponzi-scheme finding in subsequent litigation against Fannie Mae, at a minimum the Disclosure Statement must be amended to properly disclose to Fannie Mae and other creditors precisely what the Committee intends to do and what the risks are to Plan feasibility in light of the Committee's reliance on such an untested legal theory. The Court should therefore decline to approve the Disclosure Statement as violative of Fannie Mae's due-process rights. The Committee acknowledges that it has spent more than a year investigating the purported Ponzi scheme, reviewing millions of pages of documents and interviewing dozens of witnesses; the investigation has cost millions of dollars. Fannie Mae should not be required to litigate the expansive and factually complex Ponzi-scheme determination in the truncated confirmation process; due process requires that Fannie Mae be presented the procedural protections of an adversary proceeding or other formal litigation, including sufficient time to conduct discovery and prepare for trial, before any factual determinations should bind Fannie Mae.

II. BACKGROUND

A. FHFA as Conservator

Congress chartered Fannie Mae to facilitate the nationwide secondary residential mortgage market. See 12 U.S.C. § 1451. The Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110- 289, 122 Stat. 2654 (codified as 12 U.S.C. § 4511 et seq.), established the Federal Housing Finance Agency ("FHFA" or "Conservator") as Fannie Mae's primary regulator.

On September 6, 2008, pursuant to HERA, the Director of FHFA placed Fannie Mae into conservatorship, where it remains to this day. See 12 U.S.C. § 4617(a). As Conservator, FHFA succeeded to all of Fannie Mae's rights, titles, powers, privileges, and assets. 12 U.S.C. § 4617(b)(2)(A)(i). FHFA, as Conservator is statutorily empowered to "preserve and conserve [Fannie Mae's] assets and property," to "operate" Fannie Mae, to "perform all [of Fannie Mae's] functions in [Fannie Mae's] name," and to "collect all obligations and money due" Fannie Mae. 12 U.S.C. § 4617(b)(2)(B)(i)-(iv). Congress also mandated that "no court may take any action to restrain or affect the exercise of [FHFA's] powers or functions ... as a conservator." 12 U.S.C. § 4617(f).

B. The Fannie Mae Loan

Debtor Foxtail Pine, LP ("***Foxtail***") owns and operates that certain multifamily property known as Sharis Apartments, located at 453A Fleming Ave. E in Vallejo, California (the "***Property***"), and described with more particularity in the Deed of Trust (as defined below). The Property is encumbered by a Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "***Deed of Trust***") to secure repayment of a Multifamily Note (a "***Note***") dated August 7, 2019 by the Debtor in favor of Greystone Servicing Company LLC. The terms of the loan made under the Note and secured by the Deed of Trust are set forth more fully in that certain Loan Agreement, dated August 7, 2019 between Foxtail and Greystone and certain other loan and security documents executed in connection therewith (such documents, together with the Note, Deed of Trust, and Loan Agreement, collectively, the "***Loan Documents***"). Prior to the Petition Date, the Note, Deed of Trust, and other Loan Documents were assigned to Fannie Mae.

C. The Chapter 11 Cases

On September 12, 2024 (the "***Petition Date***"), the Debtors filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code initiating the above-entitled Chapter 11 Cases.

On October 9, 2024, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the "***Committee***," together with the Debtors the "***Plan Proponents***") [Docket No. 135].

On September 5, 2025, the Debtors and the Committee filed their first Joint Chapter 11 Plan of Liquidation [Dkt No. 2226]. The Debtors filed their First Amended Joint Chapter 11 Plan of Liquidation and amended Disclosure Statement in support of the same on October 15, 2025 (the "***Disclosure Statement***" and the "***Plan***") [Dkt. Nos. 2561, 2567].

III. THE LEGAL STANDARD

Disclosure statements are governed by 11 U.S.C. § 1125(b), which requires a disclosure statement to contain "adequate information" before it can be approved for the solicitation of votes on the accompanying plan. 11 U.S.C. § 1125(b). Adequate information means:

> Information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . . that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan.

11 U.S.C. § 1125(a)(1). If a plan is patently unconfirmable on its face, then the application to approve the disclosure statement must be denied because solicitation of the vote would be futile. *See In re Beyond.com Corp.*, 289 B.R. 138, 140 (Bankr. N.D. Cal. 2003) (collecting cases).

IV. OBJECTION

A. The Disclosure Statement Does Not Provide Adequate Information and Potentially Violates Secured Creditors' Due Process Rights.

1. *Any Ponzi-scheme Finding Should Not Bind Fannie Mae.*

The Disclosure Statement fails to provide adequate information regarding the Plan Proponents' intended treatment of secured creditors, including Fannie Mae. While the Disclosure Statement and Plan describe at length the Plan Proponents' intent to obtain a Ponzi-scheme determination at the confirmation hearing as a predicate to redistributing recoveries among "Investors," there is no discussion of whether (and how) the requested Ponzi-scheme finding might be utilized, if at all, against secured creditors (which, by the Plan's definitions, are not Investors[2]).

[2] See Exhibit A to Joint Chapter 11 Plan, Defined Terms (defining Investor as "a Person or Entity that holds an Investor Claim")

If the Plan Proponents intend to use the requested Ponzi-scheme determination as a preclusive finding in forthcoming litigation against Fannie Mae, the Court should decline to approve the Disclosure Statement because the proposed Plan process would violate Fannie Mae's due process rights. The Ninth Circuit Court of Appeals has held that a Ponzi-scheme determination creates an irrebuttable presumption, in the context of a fraudulent-transfer claim, that a debtor acted with the actual intent to defraud creditors. *See Kirkland v. Rund (In re EPD Inv. Co., LLC)*, 114 F.4th 1148, 1157 (9th Cir. 2024). The presumption would thus arguably establish one element of a potential fraudulent-transfer claim.

Yet as a predicate to recovering alleged fraudulent transfers from Fannie Mae, the Debtors must initiate an adversary proceeding or similar litigation, providing Fannie Mae with the procedural protections, discovery, and litigation schedule commensurate with the litigation's complexity. Fed. R. Bankr. P. 7001(a) (requiring an adversary proceeding "to recover money or property"); (b) (requiring an adversary proceeding "to determine the validity, priority, or extent of a lien or other interest in property"); *see In re Mansaray-Ruffin*, 530 F.3d 230, 237 (3d Cir. 2008) (comparing "contested matters" with adversary proceedings and noting the greater procedural safeguards found within an adversary proceeding). With respect to any Debtor claims against Fannie Mae, the issue of whether the Debtors operated as a Ponzi scheme should therefore be determined in the context of that adversary proceeding, not in a truncated confirmation process.

The Committee has already acknowledged the immense task required to discover and understand the Debtors' prepetition actions, noting that its investigation has included the review of millions of pages of documents. *See, e.g.,* Dkt. No. 2568, PWC Investigation Report, p. 12. While the Committee seems prepared to present its conclusions and underlying evidence to support its Ponzi-scheme allegations at confirmation, Fannie Mae has not had the opportunity, nor motivation, to address the Committee's assertions. Indeed, until approximately one month ago, Fannie Mae had no indication that it was even a litigation target, much less that the Committee intended to assert, without any controlling legal authority, that a secured lender that made an arm's-length, market-based loan secured by income-producing properties with values exceeding the applicable loan

obligations could be subject to claw-back litigation under a Ponzi-scheme theory. If the Committee intends to pursue that tenuous theory, then it should not be permitted to end-run Fannie Mae's due process rights by seeking a binding determination in the context of a confirmation hearing.

The confirmation process is not a proper vehicle for merits adjudication of potential avoidance actions against secured lenders. Notably, the Ninth Circuit's *EPD* decision, upon which the Committee apparently intends to rely in support of its threatened claims against Fannie Mae, emanated from an adversary proceeding that involved a six-day jury trial;[3] the defendants there were afforded the procedural protections that Fannie Mae requests here. The Court should therefore either deny approval of the Disclosure Statement or make clear that any Ponzi-scheme finding obtained at confirmation will not be binding on secured creditors, including Fannie Mae, in any avoidance actions or other litigation.

2. *Any Substantive Consolidation Finding Should Not Bind Fannie Mae.*

The Plan Proponents also seek to have the Debtors' estates substantively consolidated for distribution purposes. As a secured creditor with valid liens in sale proceeds, Fannie Mae's rights against the Debtors would not normally be impaired by the requested substantive consolidation; Fannie Mae's liens would continue in the applicable sale proceeds notwithstanding consolidation.

Fannie Mae, however, might oppose substantive consolidation if the Debtors intend to use that finding to impair Fannie Mae's defenses (or other rights) relating to the Debtors' threatened claw-back litigation. For example, if certain Debtors operated as a Ponzi scheme (which Fannie Mae does not concede), it is possible that not all Debtors operated in that manner, including Fannie Mae's debtor, Foxtail. The Plan Proponents should not be permitted to obtain a substantive consolidation finding for "distribution purposes" and then use that finding to subsequently bootstrap fraudulent-transfer claims against secured lenders, arguing that the consolidated Debtors operated as a Ponzi-scheme (without proving that individual Debtors meet the Ponzi-scheme standards).

[3] *See Kirkland v. Rund (In re EPD Inv. Co., LLC)*, 114 F.4th 1148, 1153 (9th Cir. 2024).

Notably, the Plan Proponents seek an express finding that substantive consolidation does not impact, among other rights, the *Debtors'* anticipated avoidance actions against secured lenders:

> The contemplated substantive consolidation also will not: (i) affect the separate legal existence of the Debtors and KSMP Investment Entities for purposes other than implementation of the Plan pursuant to its terms, including without limitation the ability of the Plan Recovery Trustee to bring any Plan Recovery Trust Action in the name of an individual Debtor or KSMP Investment Entity; (ii) impair, prejudice, or otherwise affect any individual Debtor's or KSMP Investment Entity's Causes of Action, including Avoidance Actions, against any Person that vest in the Plan Recovery Trust; (iii) constitute or give rise to any defense, counterclaim, or right of netting or setoff with respect to any Cause of Action vesting in the Plan Recovery Trust that could not have been asserted against the consolidated Debtors and KSMP Investment Entities; . . . .

Second Amended Disclosure Statement, p. 26.

The Plan should similarly provide that substantive consolidation shall not impair or otherwise affect Fannie Mae's defenses, counterclaims, or any other rights that Fannie Mae might assert in any estate-related litigation. Absent that express reservation of Fannie Mae's rights, the Court should not approve the Disclosure Statement.

3. *Secured Lenders Should Not Be Required to Bear the Expense of Litigating the Ponzi-scheme and Substantive Consolidation Findings at Confirmation.*

As noted above, the Court should decline to approve the Disclosure Statement unless the Plan Proponents make clear that any Ponzi-scheme finding and any substantive-consolidation determination will not bind Fannie Mae for purposes of any litigation that the Debtors may assert. Putting aside the due process concerns, Fannie Mae (and other secured lenders) should not be forced to bear the burden and expense of litigating these extraordinarily fact-intensive issues at confirmation (or otherwise). As the Court is aware, the adversary rules permit defendants to avoid the tremendous costs of discovery and pretrial litigation by addressing legal infirmities in a plaintiff's claims through a motion to dismiss. Fannie Mae should not be denied that procedural protection and be forced to litigate, at confirmation, factual disputes that likely would not be reached in an adversary proceeding.

While the Disclosure Statement fails to disclose anywhere the Committee's plan to bring avoidance actions against secured creditors, the Committee's counsel has expressed at hearings in these cases that its anticipated claw-back litigation is based upon a superficial reading of the Ninth Circuit's decision in *Kirkland v. Rund (In re EPD Inv. Co., LLC)*, 114 F.4th 1148 (9th Cir. 2024) ("***EPD***"). In that case, a jury instruction had directed jurors that "lenders are investors for purposes of a Ponzi scheme," *see Id.* at 1156, which the Committee now reimagines to mean that third party secured lenders—and not merely those individuals who participate in a Ponzi scheme via debt instruments versus equity instruments—fall into the category of Ponzi-scheme victims from whom amounts may be recovered to even up the recoveries of "winners" and "losers." The "lenders" in *EPD* were merely investors by another form. In fact, EPD filed a general denial in state-court litigation asserting that the lenders' funds "were an investment, rather than a loan that required repayment." *Id.* at 1161, n.8. And the Ninth Circuit noted that a reasonable lender would have understood that the promised above-market returns were investments because they were subject to risk and depended in part on the success of the underlying business. *Id.*

This is a novel and, indeed, unprecedented interpretation of existing law, and the Disclosure Statement makes no disclosure either of this untested theory or the risks to plan feasibility should the Committee's theory fail as Fannie Mae expects. In reality, *EPD* merely recognizes that Ponzi-scheme investors cannot avoid liability by characterizing their investments as loans. There is no suggestion in *EPD* that a secured lender like Fannie Mae, that made a market-rate loan on commercial terms, secured by income-generating properties with values far exceeding the debt, could be characterized as a Ponzi-scheme participant and subject to claw-back litigation.

In the context of a properly commenced adversary proceeding, Fannie Mae would have the opportunity to seek dismissal of such a legally deficient claim at the outset, without subjecting itself to the immense economic burden that would attend expansive discovery necessary to address underlying fact issues relating to the purported Ponzi scheme and substantive consolidation. Secured creditors should not be compelled to incur the substantial burdens of defending against these theories until this Court adjudicates their legal viability in the correct procedural posture and on an

appropriate record. The Plan Proponents should not be permitted to deny Fannie Mae those procedural protections by forcing litigation of those issues, on an expedited and truncated basis, in the context of confirmation.

B. To the Extent Fannie Mae's Collateral is Sold Prior to Confirmation, The Plan Proponents Seek to Disenfranchise Fannie Mae.

Although no sale of Fannie Mae's collateral has yet occurred, it remains a possibility that such a sale may occur between the filing of this Objection and the hearing on plan confirmation. Indeed, Fannie Mae has been asked to provide a payoff statement for that purpose. In the event that a sale of Fannie Mae's collateral does occur, the Plan Proponents contend that Fannie Mae should not be classified as a creditor, nor be permitted to vote on the Plan.[4] The Disclosure Statement asserts that, should Fannie Mae's collateral be sold prior to confirmation, Fannie Mae and similarly situated secured creditors will not be entitled to vote because their Class 3 claims have been "paid in full," even as the Plan Proponents signal their intent to recover loan payments made to Fannie Mae and other secured creditors as avoidable transfers. As a threshold matter, the Plan Proponents are simply incorrect. Even if the currently outstanding amounts are paid, Fannie Mae holds a secured claim for its attorney's fees and other expenses that it continues to incur to address Fannie Mae's treatment under the Plan and the Committee's threatened litigation. *See* Loan Agreement, § 4.02(g).

Moreover, in light of the Plan Proponents' *sub rosa* plans to assert Ponzi-scheme and other legal theories that may absolutely impact Fannie Mae as a potential defendant, the Plan Proponents should not be able to disenfranchise Fannie Mae from its right to vote on a Plan that otherwise seeks to implement legal strategies directly adverse to Fannie Mae's own interests.

C. The Plan is Patently Unconfirmable.

If a plan is unconfirmable as a matter of law, a bankruptcy court should deny approval of the disclosure statement. *See In re Arnold*, 471 B.R. 578, 586 (Bankr. C.D. Cal. 2012) (quoting *In re Silberkraus*, 253 B.R. 890, 899 (Bankr. C.D. Cal. 2000)); *see also* 7 Alan N. Resnick & Henry J.

[4] *See* Amended Disclosure Statement, footnote 7.

Sommer, Collier on Bankruptcy ¶ 1125.03[4] at 1125-23 (16th ed. 2011) ("most courts will not approve a disclosure statement if the underlying plan is clearly unconfirmable on its face") (citations omitted). Here, the Plan as articulated by Plan Proponents violates the absolute priority rule and is unconfirmable.

The absolute priority rule prohibits "the bankruptcy court from approving a plan that gives the holder of a claim anything at all unless all objecting classes senior to him have been paid in full." *In re Perez*, 30 F.3d 1209, 1214 (9th Cir. 1994). While neither the Plan nor the Plan Proponents' intentions are clear, Fannie Mae understands that the Plan Proponents seek to ultimately recover contractually required loan payments from secured lenders and redistribute those funds to, among others, the Debtors' investors and equity holders. Even if the Debtors were successful in recovering alleged fraudulent transfers from secured creditors, those creditors would be entitled to assert claims for the recovered funds under Bankruptcy Code section 502(h). 11 U.S.C. § 502(h). And those claims, while potentially unsecured, should be entitled to priority of distribution ahead of the Debtors' investors and equity holders. Indeed, absent substantive consolidation, unsecured claims (including section 502(h) claims) against individual debtors should be paid in full before any funds are distributed to corporate parents or equity holders. Here, it is unclear—because the Disclosure Statement is entirely silent on this point—whether the Plan Proponents intend to redistribute potential recoveries from secured creditors to investors and equity holders; if so, the Plan violates the absolute priority rule, and the Court should decline to approve the Disclosure Statement.

WHEREFORE, Fannie Mae respectfully requests that for the reasons set forth above, the Court enter an order denying the Debtors' request for approval of the Disclosure Statement and grant Fannie Mae such other and further relief as is appropriate.

Dated: November 12, 2025. REED SMITH LLP

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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.

/s/ Marsha A. Houston
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