

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
Lexington Division

In re:

Lexington Blue, Inc.,

Debtor.

Case No. 25-50863
Chapter 11

**United States Trustee's Objection to the Debtor's First Day Motion
for Interim and Final Order Establishing Limited Notice Procedures
for Matters Affecting Counterparties to Executory Contracts and
Establishing a Master Mailing List or, Alternatively, Motion to
Continue Hearing**

Paul A. Randolph, the Acting United States Trustee (the "United States Trustee"), hereby objects to the Debtor's First Day Motion for Interim and Final Order Establishing Notice Procedures for Matters Affecting Counterparties to Executory Contracts and Establishing a Master Mailing List (the "Motion to Limit Notice") (ECF No. 13). Alternatively, the United States Trustee requests that this Court continue the hearing presently set to consider the Motion to Limit Notice from June 26, 2025, for a period of at least 21-30 days to a date suitable for the Court. In support, the United States Trustee states as follows:

Notice of Hearing

Please take notice that this Motion will be heard by the Court on June 26, 2025, at 9:00 a.m. in the Second Floor Courtroom, U.S. Bankruptcy Court, 100 East Vine Street, Lexington, KY 40507.

I. Motion Background.

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. § 1409. This matter is a core proceeding.

2. The United States Trustee has standing to file and prosecute this Objection pursuant to 11 U.S.C. §§ 307.

3. As a preliminary matter, the United States Trustee incorporates and references the facts and arguments within the United States Trustee's Objection to the Debtor's Motion for Entry of an Interim and Final Order Authorizing the Filing of the Consumer Mailing List Under Seal Pursuant to Fed. R. Bankr. P. 9037(f) (the "Objection to Seal Creditors"). ECF No. 31.¹ If the Court rules in the United States Trustee's Favor on the Objection to Seal Creditors, the Motion to Limit Notice is moot and must be denied.

4. In summary, the Motion to Limit Notice, among other things, requests the Court to alter the notice provided to creditors in numerous ways, including the following:

- a. Provide notice of bankruptcy court filings to 263 Debtor customers identified as the "LB Customers" via an online portal, as opposed to traditional mail notice.

¹ A copy of the Objection to Seal Creditors is attached hereto as Exhibit A.

- b. Provide the LB Customers only with a Debtor-created summary of the bankruptcy case.
- c. Seal access to the list of the Debtor's creditors for other parties in interest.

II. The Motion to Limit Notice Seeks to Improperly Limit Notice to Email Only.

5. The Motion to Limit Notice will “serve the LB Customers with the first day motions by mass email . . . to the emails that [Debtor] currently has on file.” ECF No. 13, ¶¶ 13, 17. Only LB Customers, where the Debtor does not have a valid email address, will receive traditional mail notice. *Id.* ¶ 15. Later in the case, even when case timelines are much less strained, the Debtor still intends to notify the LB Customers of matters altering their rights, including the potential assignment of their roofing contracts, via email only. *Id.*

6. Federal Rule of Bankruptcy Procedure 2002(g), unless an exception applies, requires that “notice must be *mailed* to the address shown on the list of creditors or schedule of liabilities.” (emphasis added). The LB Customers rights are impacted by the first-day motions, and they will similarly have their rights significantly altered by any future motion to sell and assign their respective roofing contract.

7. Attorneys that practice before this court, as well as certain other parties, often execute an agreement with the Court that specifically authorizes electronic notice. The LB Customers have not executed similar

agreements. The LB Customers must receive physical notice of all pleadings at their current physical address, particularly in the critical early weeks of this case and regarding matters which may impact their rights and pecuniary interests.

III. The Motion to Limit Notice Seeks to Improperly Frame Bankruptcy Proceedings in a Manner Favorable to the Debtor.

8. The Motion to Limit Notice states that its “online portal” is designed to “[r]educe the burdens placed on LB Customers by eliminating the need for formal legal representation or unnecessary court filings or appearances.” ECF No. 13, ¶ 6. Presumptively, the Debtor will “reduce the burden” on the LB Customers by summarizing, in language that is not approved by the Court, motions, order, and other pleadings filed in the case. The first item the LB Customers will see is not an actual court filing, but instead a Debtor-written summary of that filing. The United States Trustee asserts that the potential harm or confusion for the LB Customers and other parties reviewing the record far outweighs any purported “burden” asserted by the Debtor for the approximate 263 customers.² The Debtor should not be given carte blanche to unilaterally tailor how and what information is presented to the customers, most of whom are lay people.

² This office further asserts that this number of customers is not overly burdensome from a noticing cost perspective when compared to larger consumer customers bankruptcy cases with thousands of customers.

9. For example, the “landing page” identified as Exhibit 1 states that when an LB Customer submits their information, they are affirming that they are “not represented by legal counsel.” ECF No. 13, Ex 1. This language appears to strongly suggest that an LB Customer cannot receive notice of the bankruptcy case unless it is not represented by counsel. The same exhibit also attempts to sign up the LB Customers for additional communications “about [the Debtor’s] products and services, as well as other content that may be of interest to [the LB Customer].” *Id.* A court-approved bankruptcy proceeding is a wholly inappropriate place for the Debtor to attempt to sell future services to customers that have already been significantly harmed by the Debtor’s actions.

10. Similarly, Exhibit 2 provides a Debtor-written summary of a hypothetical future motion, while withholding the actual motion and exhibits behind a hyperlink at the bottom of the message. ECF No. 13, Ex 2. The United States Trustee is significantly concerned by the Debtor’s attempts to miscast the narrative of this case received by the LB Customers, while similarly trying to seal access to these same customers for all other parties.

11. Additionally, the Debtor claims it is a small business debtor under 11 U.S.C. § 101(51D). The United States Trustee is reviewing the validity of this designation. In order to qualify, a debtor must have “noncontingent liquidated secured and unsecured debt . . . of not more than \$3,024,725.” 11

U.S.C. § 101(51D). However, line 5c of the petition lists total debts of \$3,212,441, which is over the debt limit. And while some of these debts are listed as contingent and unliquidated, numerous other debts do not appear with values on the schedules, including GM Financial (POC 1–6). The debts within the Debtor’s schedules also appear incomplete, as the United States Trustee would expect significant claims related to contractors, former employees, and suppliers. And because unsecured creditors’ committees are generally not formed in small business cases, one of the potential guardrails against the Debtor’s misuse of limited notice is currently not applicable. 11 U.S.C. § 1102(a)(3).

IV. It Is Unclear How Non-Debtor Parties Can Contact the Full Creditor List.

12. As noted by the Debtor, the Kentucky Attorney General is currently investigating the Debtor’s prepetition operations. The United States Trustee is also in the process of investigating the Debtor’s operations. Given the state consumer protection history and other elements of the case, this office is considering what actions may be warranted to help protect the integrity of the bankruptcy process and the bankruptcy estate.

13. As filed, the Motion to Limit Notice is unclear as to how a third party could adequately serve any future motion on the Debtor’s creditors. Are parties-in-interest to rely on the Debtor, its “landing page,” and the Debtor’s

potentially self-serving or incomplete pleading summaries to serve motions adverse to the Debtor's interests? The United States Trustee objects.

V. If the Court Denies the Motion to Seal, the Motion to Limit Notice is Effectively Moot

14. The United States Trustee again reiterates its factual statements and legal arguments from his Objection to Seal Creditors. ECF No. 31. The majority of the Motion to Limit Notice creates a complex methodology to provide notice to the LB Customers, primarily because parties-in-interest are unaware of who the LB Customers are. If the Court rules in favor of the United States Trustee on his Objection to Seal Creditors, the Motion to Limit Notice is effectively moot and must be denied.

VI. The Motion to Limit Notice is an Attempt by the Debtor to Improperly Frame Case Pleadings for the LB Customers and Must be Denied

15. The United States Trustee views the Motion to Limit Notice as an attempt by the Debtor to inappropriately control or limit the information received by the LB Customers. The LB Customers can only be contacted by the Debtor, will receive notice of court filings only by email, and will be directed to a "landing page" with a Debtor-dictated summary of case pleadings. This is a wholly inappropriate procedure meant to keep the LB Customers in the dark and will, at a minimum, cause confusion and dissuade creditor participation. "Sunlight is the most powerful of all disinfectants."

New York Times v. Sullivan, 376 U.S. 254, 305 (1964). The Motion to Limit Notice must be denied.

WHEREFORE, the United States Trustee respectfully requests that the Motion to Limit Notice be DENIED or, alternatively, that the Court postpone the hearing for at least 21-30 days to a date convenient for the Court so parties may ascertain more information about the case.

Dated: June 24, 2025.

Paul A. Randolph
Acting United States Trustee

By: /s/ Bradley M. Nerderman
Tim Ruppel
Assistant U.S. Trustee
Bradley M. Nerderman
Trial Attorney
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100 E. Vine St., Suite 500
Lexington, KY 40507
(859) 233-2822

Certificate of Service

I certify that on June 24, 2025, I served a copy of the foregoing via ECF noticing upon all parties registered to receive notice electronically.

/s/ Bradley M. Nerderman
Bradley M. Nerderman

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
Lexington Division

In re:

Lexington Blue, Inc.,

Debtor.

Case No. 25-50863
Chapter 11

**United States Trustee's Objection to the Debtor's Motion for Entry of
an Interim and Final Order Authorizing the Filing of the Consumer
Mailing List Under Seal Pursuant to Fed. R. Bankr. P. 9037(f)**

Paul A. Randolph, Acting United States Trustee, hereby objects to the Debtor's Motion for Entry of an Interim and Final Order Authorizing the Filing of the Consumer Mailing List Under Seal Pursuant to Fed. R. Bankr. P. 9037(f) (the "Motion to Seal") (ECF No. 8), and in support states as follows:

Notice of Hearing

Please take notice that this Motion will be heard by the Court on June 26, 2025 at 9:00 a.m. in the Second Floor Courtroom, U.S. Bankruptcy Court, 100 East Vine Street, Lexington, KY 40507.

I. Motion Background

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. § 1409. This matter is a core proceeding.
2. The United States Trustee has standing to bring this Motion pursuant to 11 U.S.C. §§ 307.

3. The Motion to Seal seeks to completely seal the creditor matrix for at least 263 customers where the Debtor took a downpayment on a roof repair but failed to complete the work. In the overwhelming majority of bankruptcy cases, a debtor's schedule E/F discloses the names and addresses of all creditors. In fact, schedule E/F specifically requires each debtor to list a creditor's "name and mailing address."

II. Bankruptcy Court's Zealously Protect the Public's Right to Open and Complete Information

4. Section 107 of the Bankruptcy Code provides that, unless an exception applies, "a paper filed in a [bankruptcy case] and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge." The ability of the general public to review and monitor bankruptcy proceedings is "rooted in the public's First Amendment right to know about the administration of justice." *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 26 (2d Cir. 1994). And this public policy is of "special importance in the bankruptcy arena, as unrestricted access to judicial records fosters confidence among creditors regarding the fairness of the bankruptcy system." *In re Motors Liquidation Co.*, 561 B.R. at 41; *In re Stone*, 587 B.R. 678, 681 (Bankr. S.D. Ohio 2018).

5. While there are statutory exceptions to the general rule that information contained within a bankruptcy case is public, "Courts have

zealously upheld the public's right to access and narrowly construed the exceptions." *In re Anthracite Cap., Inc.*, 492 B.R. 162, 176 (Bankr. S.D.N.Y. 2013). The belief that information "might conceivably or possibly fall within a protected category is not sufficient to seal documents." *Id.*

6. Because the baseline standard is that information filed within a bankruptcy case is public, the party seeking to seal certain information "bears the high burden of proof." *In re Stone*, 587 B.R. 678, 682 (Bankr. S.D. Ohio 2018). Additionally, if otherwise public bankruptcy information should be concealed, like a Social Security number, limited redaction is greatly preferred to the wholesale sealing of a document. *Id.*

7. The Motion to Seal seeks to prevent the disclosure of 263 individual creditor names and addresses, information that is routinely and without issue disclosed in hundreds or thousands of bankruptcy cases filed each year in the Eastern District of Kentucky. This is the exact same information contained within every phonebook in America, as well as what can be easily accessed from the Property Value Administration for each respective county. Additionally, Local Rule 1007-2 requires that a bankruptcy petition "must be accompanied by a separate mailing list containing the name, address, and zip code of all entities to be notified of the case including those listed in Schedules D – H."

8. While asking this Court for the extraordinary relief of sealing access to the majority of the Debtor's creditors, the Motion to Seal cites to § 107(c)(1) which provides that "the bankruptcy court, for cause, may protect an individual . . . to the extent that the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury." The Motion to Seal does not contain an explanation of why the disclosure of customer names and addresses creates a risk of identity theft or other harm.

9. The mere threat of harm is not sufficient to justify the sealing of otherwise public information. *United States v. Continental Airlines, Inc. (In re Continental Airlines, Inc.)*, 150 B.R. 334, 340–41 (D. Del. 1993) (refusing to seal documents based on "nothing more than the mere possibility" that they contained defamatory information); *In re Analytical Systems, Inc.*, 83 B.R. 833, 836 (Bankr. N.D. Ga. 1987) (stating that "possible embarrassment" to a party "is not a sufficient basis to justify sealing court records in the face of the express and important policy of public access to court records").

10. The party seeking to seal records must provide evidence of the harm to creditors, and more than conclusory statements are needed. *See, e.g., Republic of the Philippines*, 949 F.2d 653, 663 (3d Cir. 1991); *Joy v. North*, 692 F.2d 880, 894 (2d Cir. 1982); *Publicker Indus. V. Cohen*, 733 F.2d 1059, 1071–73 (3d Cir. 1984) (court must make "specific findings" as sealing cannot

be based on speculation). The Debtor has not met the “high burden” that creditors will be harmed by the release of their name and address.

11. The United States Trustee is also concerned that sealing individual creditor names creates an “exception that swallows the rule,” as the justification present in the current case to completely seal the creditor matrix as it pertains to individual creditors could be made in essentially every case. Such an outcome is in direct conflict with the foundational bankruptcy policy favoring transparency, as well as making Local Rule 1007–2 meaningless.

12. The Debtor also attempts to justify the sealing of the creditor list because “[r]edaction of the mailing list is impractical due to the size and nature of the list.” ECF No. 8, ¶ 10. However, the convenience granted to the party requesting the wholesale sealing of a document does not override the public’s interest in open access to bankruptcy records. *In re Stone*, 587 B.R. 678 (Bankr. S.D. Ohio) (“[T]his Court concludes that it will not approve a process by which [creditor] is permitted to permanently restrict access to its proofs of claim filed in the bankruptcy cases in this district without providing redacted versions on the record”).

WHEREFORE, the United States Trustee respectfully requests that the Motion to Seal be DENIED.

Dated: June 24, 2025

Paul A. Randolph
Acting United States Trustee

By: /s/ Bradley M. Nerderman
Tim Ruppel
Assistant U.S. Trustee
Bradley M. Nerderman
Trial Attorney
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I certify that on June 24, 2025, I served a copy of the foregoing via ECF noticing upon all parties registered to receive notice electronically.

/s/ Bradley M. Nerderman
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