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## UNITED STATES BANKRUPTCY COURT

## DISTRICT OF ARIZONA

In re: No. 2-08-bk-07465-RJH

MORTGAGES LTD., CHAPTER 11

Debtor.

RESPONSE AND MOTION TO STRIKE JOINDER OF RADICAL BUNNY, L.L.C.

DATE: September 17, 2009

TIME: 11:00 a.m.

FTI Consulting, Inc. ("FTI"), by and through its under signed counsel, responds to the

LOCATION: 230 North First Avenue

Phoenix, Arizona

Courtroom 603, 6th Floor

Joinder of G. Grant Lyon, Chapter 11 Trustee for Radical Bunny, L.L.C. ("RBLLC Trustee") to Objection to Motion/Application of FTI Consulting, Inc., as Financial Advisors to the Debtor Filed by Cathy L. Reece of Fennemore Craig on Behalf of ML Manager LLC [DE 2002]. The First and Final Fee Application of FTI Consulting, Inc. as Financial Advisors to the Debtor and Debtor in Possession for Allowance of Compensation and Reimbursement of Expenses (the "Final Fee Application") [DE1896] was filed on July 6, 2009 and notice mailed to all parties entitled to notice on July 7, 2009 as reflected in the Notice of Hearing on First and Final Fee Application of FTI Consulting, Inc. as Financial Advisors to Debtor [DE 1913]. Objections to the Final Fee Application were due on July 21, 2009. Two parties (the Liquidating Trust and ML Manager LLC) filed timely objections to the Final Fee Application. After the deadline for objections, G. Grant Lyon, Chapter 11 Trustee for Radical Bunny, L.L.C. ("Radical Bunny"), filed an untimely joinder in the objection of ML Manager LLC.

A surprising number of joinders have been filed in this case. These joinders have unnecessarily complicated these proceedings, have added substantial expense to this bankruptcy case, and have inefficiently used judicial resources. For example, as the Court will recall, the debtor asserted certain rights against Tempe Land Company, in which other parties joined. Then when the debtor settled with Tempe Land Company, the joining parties decided they wanted to pursue those rights on their own behalf even though the debtor, which had initiated the dispute, had settled. After significant expense and judicial resources had already been spent, the dispute was finally resolved, but only after this Court reminded the joining parties that the bankruptcy filing of Tempe Land Company likely would make prosecution of claims against Tempe Land Company without consequence.

The issue of an untimely joinder was presented directly to the Court and ruled upon in connection with confirmation of the OIC plan. The Mahakian parties did not object to confirmation of the OIC plan, but filed an untimely joinder in other objections that had been filed [DE 1716]. When counsel for the Mahakian parties sought to cross-examine witnesses at the evidentiary plan confirmation hearing, the OIC objected on the basis that the Mahakian parties had not filed a timely objection to confirmation. The Court sustained the OIC's objection and did not permit the Mahakian parties to participate in the presentation of evidence.

WHEREFORE, based upon the Court's prior ruling sustaining the objection of the OIC, it is respectfully submitted that the untimely joinder of Radical Bunny is insufficient to permit Radical Bunny to participate in this contested matter and should be stricken.

RESPECTFULLY SUBMITTED this 16th day of September, 2009.

SCHIAN WALKER, P.L.C.

By /s/ DALE C. SCHIAN, #010445

Dale C. Schian

Michael R. Walker

Attorneys for FTI Consulting, Inc.

1	COPY of the foregoing
2	e-mailed this <u>16th</u> day of September, 2009, to:
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