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8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF ARIZONA

10 In re

11 MORTGAGES LTD.,

12 Debtor.

Chapter 11

Case No. 2:08-bk-07465-RJH

**ML MANAGER LLC'S OBJECTION TO
PROOF OF CLAIM NUMBER 238-1
FILED BY SOJAC I, LLC**

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15 ML Manager LLC, pursuant to 11 U.S.C. §§ 502 (a) and 502(c) and Federal Rule
16 of Bankruptcy Procedure 3007(a) and the Investors Committee's First Amended Plan of
17 Reorganization which was confirmed by the Court in this case, hereby objects to proof of
18 claim number 238-1 filed by SOJAC I LLC, and all amendments and supplements thereto,
19 ("Claim and Claimant"). Claimant asserts a Claim against Mortgages Ltd. and may assert
20 offset rights against amounts they owe pursuant to promissory notes and deeds of trust to
21 the holders of the notes and deeds of trust for which ML Manager LLC is the agent and/or
22 the manager. This proof of claim may have been resolved and settled in the bankruptcy
23 pursuant to the 9019 Motion however in an abundance of caution ML Manager files this
24 objection to preserve the ability to object in the event this impression is mistaken.

25 JURISDICTION AND VENUE

26 1. This Court has jurisdiction to hear this Omnibus Objection pursuant to 28
27 U.S.C. §§ 157 and 1334. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This
28 is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B).

1 2. The statutory predicate for the relief requested herein is 11 U.S.C. §§ 501
2 and 502, and Bankruptcy Rule 3007.

3 **I. OBJECTION TO CLAIMS**

4 **A. General Overview of Objections to Proof of Claims**

5 Section 502 of the Bankruptcy Code provides the general procedural mechanism
6 for a debtor or a party-in-interest to object to a creditor’s claim or interest. *See* 11 U.S.C.
7 § 502(a). Bankruptcy Rule 3001 provides that “[a] proof of claim executed and filed in
8 accordance with [the Bankruptcy Rules] shall constitute prima facie evidence of the
9 validity and amount of the claim.” *See* Fed.R.Bankr.P. 3001(f). This is true even if the
10 proof of claim is executed by the creditor’s attorney rather than the creditor or a principal
11 of the creditor. *See Garner v. Shier (In re Garner)*, 246 B.R. 617, 622 (9th Cir. B.A.P.
12 2000). As such, failure of a debtor or party-in-interest to object would result in such proof
13 of claim being deemed allowed. *See* 11 U.S.C. § 502(a); *Irvine-Pacific Commercial Ins.*
14 *Brokers, Inc. v. Adams (In re Irvine-Pacific Commercial Ins. Brokers, Inc.)*, 228 B.R. 245,
15 246 (9th Cir. B.A.P. 1998).

16 Upon an objection by a debtor or party-in-interest, however, the Court, “after
17 notice and a hearing, shall determine the amount of such claim in lawful currency of the
18 United States as of the date of the filing of the petition, and shall allow such claim in such
19 amount, except to the extent that . . . such claim is unenforceable against the debtor and
20 property of the debtor, under any agreement or applicable law” *See* 11 U.S.C.
21 § 502(b)(1). Basic claim objection procedure requires that an objection to claim be in
22 writing and be filed. *See* Fed.R.Bankr.P. 3007. Bankruptcy Rule 3007(a) provides:

23 An objection to the allowance of a claim shall be in writing
24 and filed. A copy of the objection with notice of the hearing
25 thereon shall be mailed or otherwise delivered to the claimant,
 the debtor or debtor in possession and the trustee at least 30
 days prior to the hearing.

26 *See* Fed.R.Bankr.P. 3007(a). Additionally, an objecting party must present sufficient
27 evidence and “show facts tending to defeat the claim by probative force equal to the
28 allegations of the proofs of claim themselves.” *Wright v. Holm (In re Holm)*, 931 F.2d

1 620, 623 (9th Cir. 1991); *Abbate v. U.S. (In re Abbate)*, 187 B.R. 9, 12 (D. Nev. 1995).
2 The evidence must be such that “if believed would refute at least one of the allegations
3 that is essential to the claim’s legal sufficiency.” *See Lundell v. Anchor Constr.*
4 *Specialist, Inc. (In re Lundell)*, 223 F.3d 1035, 1040 n.2 (9th Cir. 2000).

5 A “properly filed” proof of claim, as proscribed by the Judicial Conference in
6 Official Form 10, consists of “(1) a creditor’s name and address, (2) basis for claim, (3)
7 date debt incurred, (4) amount of claim, (5) classification of claim, and (6) supporting
8 documents.” *In re Armstrong*, 320 B.R. 97, 104 (Bankr. N.D. Tex. 2005) (citations
9 omitted). The documentation required by Bankruptcy Rule 3001 and Official Form 10
10 allows the debtor to have enough information to fully determine whether or not a valid
11 claim in the proper amount has been filed. *Id.* at 104-05. If the proof of claim lacks
12 *prima facie* validity, objections that raise a factual or legal ground will likely prevail
13 absent an adequate response by the claimant. *See Campbell v. Verizon Wireless S-CA (In*
14 *re Campbell)*, 336 B.R. 430, 436 (9th Cir. B.A.P. 2005).

15 **B. Claim and Claimant**

16 The Claimant asserted that they hold claims for damages against Mortgages Ltd.
17 arising from the Mortgage Ltd. Loan made to SOJAC I LLC. They also may assert rights
18 of offset. Their proof of claim do not specify the actions, conduct, precise legal theory or
19 the basis for the claim. The proof of claim is bare bones and are insufficient to establish
20 any of the required elements. The liability and damage amounts are contingent and
21 unliquidated. The stated bases for the Claim are so insufficient that ML Manager is at a
22 loss to respond and adequately defend against such Claim.

23 Even if the Claimant has any Claim, a fact and legal conclusion that ML Manager
24 disputes, any such claim would be only an unsecured claim under Class 11A or Class 11G
25 of the Plan to be paid in the future by the ML Liquidating Trust. To the extent the
26 Claimant asserts rights of offset against the obligations owed, which ML Manager
27 disputes, such rights must be assert in against the appropriate parties and in the
28 appropriate proceeding.

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C. The Claimant Owes the Note Holders Money Based Upon the Notes and Agreements

There is no explanation even proffered of how the Claimant's claim equal or exceed the amount that they owe, and clearly no explanation of how their claim if any could be offset against the obligations they owe. In short, there is nothing in the proof of claim or documentation filed with the Court that demonstrates Claimant holds such claim.

II. CONCLUSION

This Court should hold an evidentiary hearing, grant the Objection and deny any claim asserted by the Claimant.

DATED: October 13, 2009

FENNEMORE CRAIG, P.C.

By /s/ Cathy L. Reece
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