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4 DALE C. SCHIAN, #010445

MICHAEL R. WALKER, #003484

Attorneys for FTI Consulting, Inc.

6 **UNITED STATES BANKRUPTCY COURT**

7 **DISTRICT OF ARIZONA**

8 In re:

9 MORTGAGES LTD.,

10 Debtor.

No. 2-08-bk-07465-RJH

CHAPTER 11

**REPLY AND RESPONSE TO ML
MANAGER'S**

**(1) REPLY IN SUPPORT OF ITS
EMERGENCY MOTION FOR ORDER
CONTINUING DEADLINES AND
HEARING IN FTI FEE APPLICATION,**

**(2) RESPONSE TO FTI'S CROSS MOTION
IN LIMINE TO PRECLUDE WITNESSES
AND EXHIBITS NOT PROPERLY
IDENTIFIED,
and**

**(3) MOTION PURSUANT TO LOCAL RULE
9072-2 FOR ASSIGNMENT TO ADR**

DATE: December 8, 2009

TIME: 10:00 a.m.

LOCATION: 230 North First Avenue

Phoenix, Arizona

Courtroom 603, 6th Floor

22 FTI Consulting, Inc. ("FTI"), by and through its duly authorized undersigned counsel,
23 submits its reply and response to *ML Manager's (1) Reply in Support of its Emergency Motion for Order*
24 *Continuing Deadlines and Hearing in FTI Fee Application, (2) Response to FTI's Cross Motion in*
25 *Limine to Preclude Witnesses and Exhibits Not Properly Identified, and (3) Motion Pursuant to Local*
26 *Rule 9072-2 for Assignment to ADR* (the "Reply"). Based upon the Reply, FTI submits as follows:

1 1. The facts as set forth in the *Response to ML Manager's Emergency Motion for*
2 *Order Continuing Deadlines and Hearing in FTI Fee Application, the Joinder of the Liquidating Trust*
3 *and Radical Bunny, and ML Manager's Supplement to the Motion and Cross-Motion in Limine to*
4 *Preclude Witnesses and Exhibits Not Properly Identified* (the "Response") [DE 2486] and *Certification*
5 *of Counsel Pursuant to Rule 9013-1(e)* [DE 2484] are not controverted by ML Manager.

6 2. The objectors claim to be unprepared for trial. *See Reply* at 2:3-13.

7 3. The objectors felt no obligation to disclose witnesses, exhibits or expert testimony
8 in response to discovery requests.

9 4. The objectors identify neither any supplementation nor verification of their
10 discovery responses. The only supplementation received to identify the substance of any witnesses
11 testimony resulted in Edward McDonough's deposition being cancelled. *See Reply* at 6:4 and Exhibit
12 "A" hereto.

13 5. The objectors believe that it is appropriate to refuse to cooperate in discovery as
14 long as they identify witnesses and exhibits in the joint pretrial statement. *See Reply* at 3:19-20.

15 6. The objectors believe that their counsel's involvement in other matters justifies
16 their lack of preparation in this matter. *See Reply* at 5.

17 7. FTI has fully and timely complied with the only discovery request that it received.
18 [DE 2495].

19 8. The objectors' response to every issue is to delay the trial and payment to the
20 prejudice of FTI.

21 9. The objectors have yet to make an offer of payment to FTI, ignored FTI's request
22 to submit this matter to Alternative Dispute Resolution, *see Exhibit "B"* hereto, and now ask the Court to
23 order the one thing that FTI said it was unwilling to do: that being, to delay the trial in this matter so
24 that it may be submitted to Alternative Dispute Resolution.

25 WHEREFORE, FTI respectfully requests that the motions of ML Manager be denied and
26 that FTI's cross-motion be granted.

1 DATED this 7th day of December, 2009.

2 SCHIAN WALKER, P.L.C.

3
4 By /s/ DALE C. SCHIAN, #010445
5 Dale C. Schian
6 Michael R. Walker
7 Attorneys for FTI Consulting, Inc.

8 COPY of the foregoing
9 e-mailed this 7th day
10 of December, 2009, to:

11 Cathy L. Reece, Esq.
12 Keith L. Hendricks, Esq.
13 Gerald L. Shelley, Esq.
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19 khendric@fclaw.com
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24 6909 East Main Street
25 Scottsdale, Arizona 85251
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mdorval@stradley.com

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5 Attorneys for Kevin O'Halloran, Trustee
6 of ML Liquidating Trust
7 wsj@mjlegal.com

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 /s/ DEBBI STEPHENS

132482v2

EXHIBIT "A"

Dale Schian

From: Dale Schian
Sent: Friday, December 04, 2009 8:48 AM
To: HENDRICKS, KEITH; Michael Walker
Cc: GREER, JOSH; REECE, CATHY; SHELLEY, GERALD; MO'Mara@STRADLEY.COM; TFreeman@dmylphx.com; Edward M. McDonough (emcdonough@alvarezandmarsal.com)
Subject: RE: Ed McDonough's Deposition
Importance: High

Keith: Based upon the subjects identified for Ed's testimony, we are cancelling his deposition. We do not believe topics 1-4 and 7-9 are relevant to the issues to be tried. Items 5 & 6 are opinion testimony and we will object to any attempt to use his prior expert testimony at trial.

We will call you to see if we can start Nechelle earlier today to see if we can get her deposition concluded.

Dale

From: HENDRICKS, KEITH [mailto:KHENDRIC@FCLAW.com]
Sent: Thursday, December 03, 2009 7:12 PM
To: Michael Walker; Dale Schian
Cc: GREER, JOSH; REECE, CATHY; SHELLEY, GERALD; MO'Mara@STRADLEY.COM; TFreeman@dmylphx.com
Subject: Re: Ed McDonough's Deposition

Michael,

I missed one.

9. The amount that Ed had included in his projections pre-confirmation for professional fees and why.

----- Original Message -----

From: HENDRICKS, KEITH
To: 'mwalker@swazlaw.com' <mwalker@swazlaw.com>; 'dschian@swazlaw.com' <dschian@swazlaw.com>
Cc: GREER, JOSH; REECE, CATHY; SHELLEY, GERALD; 'MO'Mara@STRADLEY.COM' <MO'Mara@STRADLEY.COM>; 'TFreeman@dmylphx.com' <TFreeman@dmylphx.com>; SHELLEY, GERALD
Sent: Thu Dec 03 18:36:55 2009
Subject: Ed McDonough's Deposition

Michael,

As we agreed, here are the topics where we intend to seek testimony from Ed during the hearing. As I committed to you, we will file a supplementary discovery response identifying these areas as his anticipated testimony.

1. Alvarez's staffing of the case and the reasons therefore.
2. Some mathematical analysis of FTI's fee application (nothing that involves opinion, just his crunching of some numbers in the fee application)
3. Factual testimony as to the negotiations with the exit financier that led to a reduction in financing costs.
4. Factual issues regarding the negotiations and iterations of the Debtor's plans and the OIC plan.
5. The critique Ed previously provided of FTI's preference analysis. It is anticipated that this will be consistent with the testimony presented during the confirmation hearing.
6. The critique Ed previously provided of the accrual and debtor's proposed treatment of default interest etc (what Ed previously referred to as funny money). It is anticipated that this will be consistent with the testimony presented during the confirmation hearing.
7. Foundation for and explanation of Alvarez's fee application.
8. Foundation for and brief explanation of the ballot report and which classes voted to support the OIC plan. It is anticipated that this will be a substantially condensed version, but consistent with the testimony presented during the confirmation hearing.

Keith

FENNEMORE CRAIG

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EXHIBIT "B"



COMPLEX LITIGATION & BANKRUPTCY

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Dale C. Schian
dschian@swazlaw.com

November 5, 2009

Via E-Mail Only [creece@fclaw.com]

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DeConcini, McDonald, Yetwin & Lacy, P.C.
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Scottsdale, Arizona 85251

Re: FTI Consulting, Inc. Fee Application

Dear Cathy, Mark and Tony:

We had discussed the possibility of either a settlement conference or mediation in connection with the above-referenced matter. Excluding the week of Thanksgiving and the week that the joint pretrial statement is due, that leaves us with the next two weeks and the week before trial. If the goal is to avoid the attorneys' fees and costs associated with preparing this matter for trial, then waiting until the week before trial is not very effective to accomplish that goal; however, that leaves us only with the next two weeks. As you know, we are pressing forward to prepare this matter for trial, but would welcome the opportunity to sit down and see if this matter can be settled, provided that does not delay the ultimate resolution of this matter.

Sincerely,

Dale C. Schian

DCS:dls

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