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6 **UNITED STATES BANKRUPTCY COURT**

7 **DISTRICT OF ARIZONA**

8 In re:

9 MORTGAGES LTD.,

Debtor.

No. 2-08-bk-07465-RJH

CHAPTER 11

**LIMITED JOINDER AND OBJECTION TO
RADICAL BUNNY, LLC'S: (1) RESPONSE
AND OBJECTION TO LIQUIDATING
TRUST'S MOTION FOR STAY PENDING
APPEAL; AND (2) MOTION TO COMPEL
IMMEDIATE PAYMENT**

DATE: January 12, 2010

TIME: 1:00 p.m.

LOCATION: 230 North First Avenue

Phoenix, Arizona

Courtroom 603, 6th Floor

17 FTI Consulting, Inc. ("**FTI**") files this limited joinder and limited objection to Radical
18 Bunny, L.L.C.'s ("**RBLLC**") (1) *Response and Objection to Liquidating Trust's Motion for Stay Pending*
19 *Appeal; and (2) Motion to Compel Immediate Payment* [DE 2548]. FTI's limited joinder and objection
20 relates only to (2) above since the Court has denied the relief sought in (1) above by the ML Manager,
21 L.L.C. ("**ML Manager**") and Kevin T. O'Halloran, trustee of the ML Liquidating Trust (the
22 "**Liquidating Trustee**").

23 Regarding RBLLC's request to compel immediate payment of its allowed administrative
24 claim for making a substantial contribution to this bankruptcy case [DE 2514], FTI agrees with RBLLC
25 that the Liquidating Trustee has not provided any evidence that it has sufficient funds to pay all
26 administrative claims in full in accordance with Paragraph 14 of the *Order Confirming Investors*

1 *Committee's First Amended Plan of Reorganization Dated March 12, 2009* ("**Confirmation Order**")
2 [DE 1755]. Accordingly, FTI joins RBLLC's request that ML Manager and the ML Liquidating Trustee
3 be compelled to demonstrate to the Court, and all interested parties, that sufficient funds are available to
4 pay all outstanding administrative claims in full.

5 In September 2009, the Liquidating Trustee filed a *Chapter 11 Post-Confirmation Interim*
6 *Report* [DE 2156], noting it "is not presently in compliance with the terms of the confirmed plan of
7 reorganization as a result of the Liquidating Trust's board of directors' decision not to pay the monthly
8 mortgage payments due to Arizona Bank & Trust in August and September 2009." The Liquidating
9 Trustee has not filed any additional post-confirmation reports or any other documents indicating the
10 status of the activities or financial condition of either the Liquidating Trustee or ML Manager since then.
11 Such reports should be filed immediately.

12 FTI also agrees with RBLLC that the Liquidating Trustee's argument that it will suffer
13 irreparable harm if it is required to pay administrative claims through the Exit Financing fails because
14 the same mechanism has been used to pay other administrative claims in this case. Finally, FTI concurs
15 with RBLLC that all administrative claimants whose claims have not been paid in full will be the ones to
16 suffer irreparable harm because disgorgement may not be feasible as time passes and as funds change
17 hands. Therefore, like RBLLC, FTI agrees that ML Manager and the Liquidating Trustee should be
18 compelled to disclose (1) proposed future sales of assets that will allegedly generate funds for the estate;
19 (2) the additional assets that the Liquidating Trustee has alleged are expected to be brought into the
20 estate; and (3) whether the Liquidating Trustee has established reserves requisite to pay all outstanding
21 and pending administrative claims in full.

22 As stated, FTI also has filed this limited objection to the request of the RBLLC to compel
23 immediate payment of its administrative claim. As discussed more fully in FTI's *Motion to Alter or*
24 *Amend Judgment Awarding Radical Bunny, L.L.C.'s Administrative Priority Claim for Substantial*
25 *Contribution and Request for Indicative Ruling Pursuant to Federal Rule of Civil Procedure 62.1*
26 [DE 2557], FTI believes that any order allowing payment to RBLLC must be subject to disgorgement if

1 funds are not available to pay allowed administrative claims in full. Accordingly, all non-final fee
2 orders, including the order establishing the RBLLC administrative claim, should contain disgorgement
3 provisions, unless the Liquidating Trustee and ML Manager make a compelling case that funds exist to
4 pay all allowed and future allowed professional fee claims in full.

5 Second, if RBLLC contends that its administrative claim enjoys some super-priority
6 status because it allowed its collateral to be used to secure the Exit Financing, then FTI cannot join in
7 that request and specifically objects to any such contention. RBLLC has cited no authority for the
8 proposition that its administrative claim is superior to other administrative claims simply because it has
9 pledged certain of its assets to secure the Exit Financing. Other administrative claimants have been
10 waiting for payment, while those claimants who have been paid have specifically agreed to
11 disgorgement if that becomes necessary. RBLLC is not entitled to any better treatment.

12 WHEREFORE, FTI requests that the Court:

13 1. Compel the Liquidating Trustee and ML Manager to immediately file a complete
14 accounting of all financial activities since the Confirmation Order was entered;

15 2. Compel the Liquidating Trustee and ML Manager to demonstrate that sufficient
16 funds exist or are reserved to fully pay all allowed and potentially allowed administrative claims in this
17 case;

18 3. Deny any request of RBLLC to have its administrative claim receive preferred
19 treatment over other administrative claims; and

20 4. Provide any other relief that is just and proper.

21 DATED this 8th day of January, 2010.

22 SCHIAN WALKER, P.L.C.

23
24 By /s/ SCOTT R. GOLDBERG, #015082

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