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8 Attorneys for ML Liquidating Trust  
9 as Plaintiff in certain Superior Court Litigation

10 **IN THE UNITED STATES BANKRUPTCY COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 In re  
13 MORTGAGES, LTD.,

14 Chapter 11

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

16 **MOTION OF ML LIQUIDATING TRUSTEE**  
17 **FOR ORDER AUTHORIZING LIMITED AND**  
18 **CONFIDENTIAL DISCLOSURE AND USE IN**  
19 **SUPERIOR COURT LITIGATION OF**  
20 **DOCUMENTS PRODUCED BY HEBETS &**  
21 **MAGUIRE AND SHELLEY HARTSUIKER**  
22 **UNDER PROTECTIVE ORDER ENTERED**  
23 **JANUARY 27, 2010**

24 Debtor.

25 Matt Hartley, as successor Liquidating Trustee of the ML Liquidating Trust  
26 ("Liquidating Trustee"), through undersigned counsel, moves the Court, pursuant to 11  
27 U.S.C. §107(b)(2) and (c)(1), Fed. R. Bank. P. 9018, and the "Protective Order Re: Production  
28 of Documents by Hebets & Maguire, LLC and Shelley Hartsuiker Pursuant to Court Order"  
entered herein on January 27, 2010 (the "**ML Protective Order**," DE #2617), for an order  
authorizing the Liquidating Trustee to use and disclose to defendants in litigation pending in  
Maricopa County Superior Court, captioned *ML Servicing Co., et al., v. Francine Coles, et al.*,  
cause nos. CV2011-011666 and CV2011-005890 (Consolidated) (the "**Superior Court**  
**Case**"), subject to a protective order maintaining their confidentiality, documents produced to

1 the Liquidating Trustee pursuant to the ML Protective Order. The parties to the Superior  
2 Court Case are concurrently submitting a stipulated protective order to the Superior Court  
3 which fully protects the confidentiality of confidential information. This motion is supported  
4 by the following memorandum and the attachments hereto.

## 5 MEMORANDUM

### 6 **I. Background.**

7 1. The order for relief was entered in this case on June 24, 2008 (DE #36).

8 2. The Official Committee of Investors' First Amended Plan of Reorganization  
9 Dated March 12, 2009 ("**Plan**," DE #1532) was confirmed by this Court's Order entered May  
10 20, 2009 (DE #1755).

11 3. The Liquidating Trust was created, and the Liquidating Trustee was appointed,  
12 pursuant to the Plan, and is authorized thereunder, among other things, to pursue collection of  
13 assets of the bankruptcy estate. In that capacity the Liquidating Trust (along with the  
14 reorganized debtor, ML Servicing Co., Inc.), retained the law firm of Stinson Morrison Hecker  
15 LLP as counsel and filed the Superior Court Case, which seeks to avoid certain transfers to,  
16 and recover certain assets from, members of the family of Scott Coles (the deceased principal  
17 of Debtor Mortgages Ltd.), and certain trusts for the benefit of family members (the  
18 "**Defendants**").<sup>1</sup>

### 19 **II. The ML Protective Order**

20 4. On November 10, 2009, in proceedings unrelated to the Superior Court Case, the  
21 Court granted the Liquidating Trustee's Rule 2004 applications for production of documents  
22

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23 <sup>1</sup> The named Defendants in the consolidated proceedings are Francine Coles,  
24 Individually, and as Co-Trustee for the Coles Children's Irrevocable Trust and as Conservator  
25 for Z.A. Coles and S.B. Coles, Minors; Haley Brooke Coles, an Individual; Bankers Trust  
26 Company of South Dakota, as Co-Trustee for the Coles Children's Irrevocable Trust; Thomas  
27 Hirsch, as Trustee for Francine Coles Irrevocable Trust; and Ashley Coles, Individually and in  
28 her capacity as Trustee of the Ashley M. Coles Family Trust.

1 from Hebets & Maguire, LLC, and Shelley Hartsuiker (collectively, "**H&M**") (DE ## 2392  
2 and 2393).

3 5. H&M asserted that the responsive documents were confidential information of  
4 H&M and included confidential information about Scott Coles. To address this concern, on  
5 January 6, 2010, the Liquidating Trustee and H&M entered into a Stipulated Motion for  
6 Protective Order re: Production of Documents by Hebets & Maguire, LLC and Shelley  
7 Hartsuiker Pursuant to Court Order (DE #2569), and the Court thereupon entered the ML  
8 Protective Order. H&M proceeded to produce to the Liquidating Trustee documents subject to  
9 the ML Protective Order, and the Liquidating Trustee is currently in possession of those  
10 documents (the "**Confidential Information**").

11 6. The ML Protective Order provides that the Confidential Information will be used  
12 "solely for purposes of these proceedings, including any adversary proceedings that may be  
13 filed in the future..." but also provides that

14 ...nothing contained herein to the contrary shall limit or waive the Liquidating Trustee's  
15 right to request the Court's authorization to allow the disclosure and/or use of any  
16 information or documentation produced in accordance with the 2004 Examination  
Orders for the purposes of any existing or future judicial proceedings.

17 Id. at ¶5.

### 18 **III. Discovery of Confidential Information in the State Court Case**

19 7. Defendants in the State Court Case have requested production of, among other  
20 things, confidential material including the Confidential Information produced by H&M to the  
21 Liquidating Trustee under the ML Protective Order.

22 8. The parties in the State Court Case intend to exchange certain confidential  
23 information, and pursuant to Rule 26(c) of the Arizona Rules of Civil Procedure, Plaintiffs and  
24 Defendants have filed a Joint Motion and Stipulation for Entry of Protective Order and have  
25 lodged an agreed form of order granting the motion, copies of which are attached hereto as  
26 **Exhibits 1 and 2**, respectively, which are here incorporated by this reference (collectively, the  
27  
28

1 **"Joint Motion")**. The protections provided under the parties' agreement are consistent with  
2 the protections in the ML Protective Order, and include maintaining the confidentiality of  
3 information, restricting its use to parties expressly covered by the agreement, requiring new  
4 parties or expert witnesses to agree to be bound by the agreement before they have access to  
5 confidential information, and requiring the return or destruction of confidential information to  
6 the disclosing party when the case is finally concluded. *See* Exhibit 2.

7 9. Notwithstanding the parties' agreement as embodied in the Joint Motion, the  
8 Liquidating Trustee believes that the ML Protective Order by its terms requires a separate  
9 order of this Court, after notice to H&M and opportunity for a hearing, before the Liquidating  
10 Trust will be authorized to disclose or use the Confidential Information in the State Court  
11 Case.

12 10. The Liquidating Trustee has no objection to producing the Confidential  
13 Information for use in the State Court Case, subject to the terms of the Joint Motion.

14 11. Counsel for the Liquidating Trustee has contacted counsel for H&M to request  
15 its consent to the use of Confidential Information. For timing reasons, this motion is being  
16 filed prior to a response from H&M counsel.

17 **IV. Argument**

18 The Court is authorized under 11 U.S.C. §107(b)(2) and (c)(1), and Fed. R. Bank. P.  
19 9018, to make any order which justice requires to protect any entity against disclosure of  
20 "scandalous or defamatory" matter, and to protect any individual against disclosure of  
21 personally identifiable information. The Court has already ordered in the ML Protective Order  
22 that the Confidential Information be protected, and the Liquidating Trust has complied and  
23 will continue to comply with that order.

24 This motion does not seek a modification of the ML Protective Order, but requests that  
25 the Confidential Information previously disclosed by H&M, including confidential  
26 information about Scott Coles, be used and disclosed by the Liquidating Trustee in the State  
27  
28

1 Court Case to Mr. Coles' family members, the trustees of their trusts, and identified other  
2 persons, all of whom will be bound by a separate and extensive protective order.

3 The Confidential Information appears to the Liquidating Trustee to be discoverable, and  
4 likely remains independently available to the Defendants by means of subpoena to H&M.  
5 However, to avoid cumbersome and unnecessary additional discovery, and the necessity for  
6 yet another protective order covering a second production of the same material, the  
7 Liquidating Trustee believes it would be in the interests of justice, and in the best interests of  
8 all parties, for this Court to authorize him to use and disclose the Confidential Information  
9 subject to the parties' agreement in the Joint Motion.

10 This Motion is being served on counsel for H&M and counsel for parties in the State  
11 Court Case. The Liquidating Trustee believes that there are no other parties interested in the  
12 subject matter of this Motion, and requests that the Court find that notice is sufficient under  
13 Fed. R. Bank. P. 9007.

#### 14 CONCLUSION

15 For the foregoing reasons, the Liquidating Trustee requests that the Court enter its order  
16 authorizing the Liquidating Trustee to use and disclose the Confidential Information in the  
17 Superior Court Case, subject to entry of a protective order in the Superior Court Case granting  
18 the Joint Motion, and for such other and further relief to which he may be entitled.

19 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of April, 2012.

20 **STINSON MORRISON HECKER LLP**

21  
22  
23 By: /s/ Christopher Graver

24 Christopher Graver

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26 Phoenix, Arizona 85004-4584

27 Attorneys for ML Liquidating Trust as

28 Plaintiff in the Superior Court Case

1 COPY of the foregoing sent this 13th day  
2 of April, 2012, to:

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/s/ Anne Finch

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# **EXHIBIT 1**

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Attorneys for Plaintiffs

8 **SUPERIOR COURT OF ARIZONA**

9 **MARICOPA COUNTY**

10 ML SERVICING CO., INC., an Arizona  
11 corporation; and ML LIQUIDATING TRUST,

12 Plaintiffs,

13 v.

14 FRANCINE COLES, individually, and as Co-  
Trustee for THE COLES CHILDREN'S  
15 IRREVOCABLE TRUST and as conservator  
for Z.A. COLES and S.B. COLES, minors;  
16 HALEY BROOKE COLES, an individual;  
BANKERS TRUST COMPANY OF SOUTH  
17 DAKOTA, as Co-Trustee for THE COLES  
CHILDREN'S IRREVOCABLE TRUST;  
18 THOMAS HIRSCH, as Trustee for  
FRANCINE COLES IRREVOCABLE  
19 TRUST; JOHN AND JANE DOES 1-30;  
BLACK CORPORATIONS 1-30; WHITE  
20 PARTNERSHIPS 1-30; and GRAY TRUSTS  
1-30,

21 Defendants.  
22

No. CV2011-011666 (Consolidated)  
CV2011-005890

**JOINT MOTION AND  
STIPULATION FOR ENTRY OF  
PROTECTIVE ORDER**

(Assigned to the Honorable Arthur  
Anderson)



1 ML SERVICING Co., INC. and ML  
2 LIQUIDATING TRUST,

3 Plaintiffs,

4 v.

5 ASHLEY COLES, individually and in her  
6 capacity as Trustee of the Ashley M. Coles  
7 Family Trust, *et al.*

8 Defendants.

9 Pursuant to Rule 26(c) of the Arizona Rules of Civil Procedure, Plaintiffs ML Servicing  
10 Co., Inc. and ML Liquidating Trust (collectively "ML") and Francine Coles, Haley Brooke  
11 Coles, Bankers Trust Company of South Dakota, Thomas Hirsch, and Ashley Coles  
12 (collectively, the "Parties") request that the Court enter the proposed Protective Order filed  
13 concurrently with this Joint Motion ("Proposed Protective Order"). The Parties believe that  
14 discovery in the above-captioned action involves the disclosure of confidential information  
15 ("Confidential Information").

16 Some of the Confidential Information involved in this matter is subject to a protective  
17 order in a separate action. There is an ongoing bankruptcy proceeding, captioned *In re*  
18 *Mortgages, Ltd.*, United States Bankruptcy Court for the District of Arizona, Case No. 2:08-  
19 bk-07465, related to the current matter. On January 27, 2010, the Bankruptcy Court entered a  
20 "Protective Order Re: Production of Documents by Hebets & Maguire, LLC and Shelley  
21 Hartsuiker Pursuant to Court Orders" (Dkt. 2617) (the "Bankruptcy Protective Order"). A  
22 copy of the Bankruptcy Protective Order is attached hereto as **Exhibit A**. The parties that  
23 produced documents under the Bankruptcy Protective Order are not parties to this action or to  
24 this Joint Motion and Stipulation. Based on the terms of the Bankruptcy Protective Order, the  
25 Parties believe that the Bankruptcy Court must approve disclosure under the Parties' Proposed  
26 Protective Order of any documents now in the possession of any Party that were originally  
produced subject to the Bankruptcy Protective Order. Therefore, the Parties concurrently are

1 requesting the Bankruptcy Court's approval of disclosure of such documents under the  
2 Proposed Protective Order, and no documents originally produced under the Bankruptcy  
3 Protective Order will be produced under the Proposed Protective Order until Bankruptcy Court  
4 approval has been obtained. Notwithstanding the foregoing, the Parties do not waive their  
5 rights to seek production of such documents directly from the third parties who produced them  
6 under the Bankruptcy Protective Order.

7 The Parties desire to keep the Confidential Information out of the public domain and  
8 out of the hands of third persons not parties to this Lawsuit. Given the Parties' desire to have  
9 the Confidential Information remain confidential, the Parties stipulate and agree that the  
10 proposed Protective Order should be entered by this Court for the mutual protection of the  
11 Parties. The Parties acknowledge the need for a Protective Order, which will: (i) enable the  
12 Parties to have access to documents that they request in preparation of their case; and (ii)  
13 protect Confidential Information from disclosure except as is necessary for the prosecution and  
14 defense of the claims in this case.

15 Accordingly, the Parties request that the court enter the proposed Protective Order filed  
16 concurrently with this Joint Motion.

17 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of April, 2012.

18 **STINSON MORRISON HECKER LLP**

19 By: /s/Alison Pulaski Carter

20 Michael C. Manning  
21 James M. Torre  
22 M. Elizabeth Nillen  
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26 Attorneys for Plaintiffs (CV2011-005890)

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**HINSHAW & CULBERTSON LLP**

/s/ Alison Pulaski Carter on behalf of E.  
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**KERCSMAR & FELTUS PLLC**

/s/Alison Pulaski Carter on behalf of Todd  
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1 ORIGINAL e-filed this 13th day of April, 2012:

2 Clerk of the Court  
3 Maricopa County Superior Court  
4 201 West Jefferson  
5 Phoenix, Arizona 85003

6 COPY delivered via e-filing system this 13th day  
7 of April, 2012 to:

8 The Honorable Arthur Anderson  
9 Maricopa County Superior Court  
10 East Court Building – 511  
11 101 West Jefferson  
12 Phoenix, AZ 85003

13 COPIES of the foregoing mailed this 13<sup>th</sup> day of  
14 April, 2012, to:

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Attorneys for Defendants (CV2011-011666)

23 /s/Lisa Hamilton

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# **EXHIBIT A**

IT IS HEREBY ADJUDGED  
and DECREED this is SO  
ORDERED.

The party obtaining this order is responsible for  
noticing it pursuant to Local Rule 9022-1.

Dated: January 27, 2010



*Randolph J. Haines*

RANDOLPH J. HAINES  
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In Proceedings Under Chapter 11

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

In re:

MORTGAGES, LTD.,

Debtor.

**PROTECTIVE ORDER RE:  
PRODUCTION OF DOCUMENTS  
BY HEBETS & MAGUIRE, LLC AND  
SHELLEY HARTSUIKER PURSUANT  
TO COURT ORDER**

Pursuant to Rules 2004 and 9018 of the Federal Rules of Bankruptcy Procedure and Rules 26(c) and 45(d)(2) of the Federal Rules of Civil Procedure, and based upon the Stipulated Motion of Kevin T. Halloran, as Liquidating Trustee of the ML Liquidating Trust (the "Liquidating Trustee"), and Hebets & Maguire, LLC and Shelley Hartsuiker (hereinafter collectively referred to as "H&M") for Protective Order Re: Production of Documents by Hebets & Maguire, LLC and Shelley Hartsuiker Pursuant to Court Order ("Motion").



1 attorneys and advisors, so long as such attorneys and advisors are provided with a copy of  
2 the Protective Order and agree to be bound by its provisions to keep such information  
3 confidential.

4  
5 3. Non-Production of Certain Information and Preservation of Right to  
6 Challenge: H&M believes certain documents set forth on the Privilege Log attached  
7 hereto as Exhibit 3, and incorporated herein by this reference, are protected from  
8 production by Arizona Rule of Evidence 408 and A.R.S. § 12-2238. The parties agree that  
9 H&M's current non-production of the documents listed on Exhibit 3 shall not constitute a  
10 violation of the 2004 Examination Orders. The parties further agree that nothing contained  
11 herein shall limit or waive the Liquidating Trustee's right to challenge the privilege  
12 asserted as to any document(s) listed on Exhibit 3 and move the Court for an order  
13 requiring the production of such document(s) at a later date.  
14

15  
16 4. Designation of Confidential Information: At the time H&M produces  
17 documents pursuant to the 2004 Examination Orders, H&M shall designate all information  
18 it deems to be confidential as "Confidential" by (1) placing such designation  
19 conspicuously on the information, in the case of a document; and (2) stating the  
20 designation on the deposition or hearing/trial record, in the case of testimony from a  
21 representative, agent, or employee of H&M.  
22

23 5. Use of Confidential Information: The parties stipulate and agree that they  
24 will use the Confidential Information solely for purposes of these proceedings, including  
25 any adversary proceedings that may be filed in the future. In so stipulating, no party  
26 waives his/her/their rights to request that particularly sensitive documents be sealed and  
27

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1 not be made a part of the public record. Further, no party waives his/her/their rights to  
2 claim privilege pursuant to Rules 26(b)(5) and 45(d)(2) of the Federal Rules of Civil  
3 Procedure. In addition, nothing contained herein to the contrary shall limit or waive the  
4 Liquidating Trustee's right to request the Court's authorization to allow the disclosure  
5 and/or use of any information or documentation produced in accordance with the 2004  
6 Examination Orders for the purposes of any existing or future judicial proceedings.

8           6.     Destruction of Confidential Information: At such time as all of the matters  
9 in the above-captioned pleadings have been concluded, all information produced by H&M  
10 will be either destroyed or returned to H&M. The word "destroyed" means the destruction  
11 of paper documents and any electronic means of storing protected health information  
12 regarding Scott Coles. The parties may retain logs of the information that was received  
13 and destroyed, including any Bates numbers, for purposes of their law firm's document  
14 retention.

17           7.     Challenge to Designation: If any party disputes the designation of any  
18 information hereunder, counsel for that party shall first attempt to resolve the dispute as  
19 required by the Federal Rules of Civil Procedure. If, after good faith efforts to resolve the  
20 dispute have failed, the party challenging the designation may move the Court for a  
21 determination of the propriety of the designation.

23           8.     Expert Witnesses: Any expert witnesses or consultants retained by any  
24 party to these proceedings are to be provided with a copy of this Protective Order and are  
25 bound by its provisions, including but not limited to the requirement that any designated  
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1 Confidential Information produced by H&M be destroyed at such time as all of the matters  
2 in the above-captioned proceedings have been concluded.  
3

4  
5 DATED this \_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
6

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8 \_\_\_\_\_  
9 Honorable Randolph J. Haines  
10 Bankruptcy Judge  
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## **EXHIBIT 2**

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9 **SUPERIOR COURT OF ARIZONA**

10 **MARICOPA COUNTY**

11 ML SERVICING CO., INC., an Arizona  
12 corporation; and ML LIQUIDATING TRUST,  
13 Plaintiffs,

14 v.

15 FRANCINE COLES, individually, and as Co-  
Trustee for THE COLES CHILDREN'S  
16 IRREVOCABLE TRUST and as conservator  
for Z.A. COLES and S.B. COLES, minors;  
17 HALEY BROOKE COLES, an individual;  
BANKERS TRUST COMPANY OF SOUTH  
18 DAKOTA, as Co-Trustee for THE COLES  
CHILDREN'S IRREVOCABLE TRUST;  
19 THOMAS HIRSCH, as Trustee for  
FRANCINE COLES IRREVOCABLE  
20 TRUST; JOHN AND JANE DOES 1-30;  
BLACK CORPORATIONS 1-30; WHITE  
21 PARTNERSHIPS 1-30; and GRAY TRUSTS  
1-30,

22 Defendants.  
23  
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No. CV2011-011666 (Consolidated)  
CV2011-005890

**[PROPOSED] PROTECTIVE ORDER**

(Assigned to the Honorable Arthur  
Anderson)

1 ML SERVICING Co., INC. and ML  
2 LIQUIDATING TRUST,

3 Plaintiffs,

4 v.

5 ASHLEY COLES, individually and in her  
6 capacity as Trustee of the Ashley M. Coles  
Family Trust, *et al.*

7 Defendants.

8 Having considered the Parties' Joint Motion and Stipulation for Entry of  
9 Protective Order, and for good cause appearing,

10 **IT IS HEREBY ORDERED** that the following Protective Order shall govern  
11 the proceedings in this matter:

12 **PROTECTIVE ORDER**

13 1. Confidential Information:

14 a. In the course of this proceeding, the parties are likely to exchange  
15 documents and information that they deem to be proprietary or confidential ("Confidential  
16 Information"). The Confidential Information may include documents originally from third  
17 parties that are already subject to a protective order, entitled "Protective Order Re: Production  
18 of Documents by Hebets & Maguire, LLC and Shelley Hartsuiker Pursuant to Court Orders"  
19 and dated January 27, 2010, entered in a related bankruptcy proceeding, captioned *In re*  
20 *Mortgages, Ltd.*, United States Bankruptcy Court for the District of Arizona, Case No. 2:08-  
21 bk-07465 (the "Bankruptcy Protective Order"); provided, however, that no documents  
22 produced in the bankruptcy proceeding under the Bankruptcy Protective Order shall be  
23 disclosed under this Order absent the Bankruptcy Court's prior approval of such disclosure.  
24 Notwithstanding the foregoing, nothing in this Order shall prevent any party from seeking  
25 production of such documents directly from the third parties who produced them under the  
Bankruptcy Protective Order.

1           b. Any party disclosing information (the "Disclosing Party") to another party  
2 in this action (the "Receiving Party") by any means, including Ariz.R.Civ P. 26.1 disclosures,  
3 deposition testimony, deposition exhibits, responses to interrogatories, responses to requests  
4 for admission, responses to requests for production of documents or things, or informally, may  
5 designate the information as Confidential in accordance with Paragraph 2 below.

6           c. The sum, substance, or contents of Confidential Information, as well as  
7 all notes, abstracts, summaries, and memoranda containing or incorporating Confidential  
8 Information shall be treated as Confidential Information and shall not be disclosed or made  
9 accessible to anyone other than those persons who qualify to receive such information under  
10 this Order.

11           d. Confidential Information shall cease to be Confidential for purposes of  
12 this Order if it is or becomes generally available to the public from a source that is not  
13 prohibited from disclosing such information by a legal, contractual or fiduciary obligation.

14           2. Designation of Confidential Information. Any party or third party disclosing  
15 Confidential Information shall designate the information as Confidential Information in the  
16 following manner:

17           a. All documents and items produced that contain any Confidential  
18 Information shall be labeled "Confidential". This label shall be placed on every page of each  
19 document so designated.

20           3. Testimony taken at depositions, conferences, hearings or trial and exhibits (not  
21 previously designated as "Confidential") used in depositions, conferences, hearings or trial  
22 may be designated as "Confidential" by making a statement to that effect on the record during  
23 the course of the deposition or other proceeding. Whenever such a designation is made during  
24 a deposition or other proceeding, the transcripts and designated exhibits shall be deemed  
25 Confidential Information. Arrangements shall be made with the court reporter taking and  
26 transcribing the proceedings to separately bind such portions of the transcript containing  
information designated as "Confidential" and to label such portions appropriately.

1           4.     Experts. "Expert" means any person retained or specifically employed by any  
2 party in anticipation of this litigation or preparation for trial, whether or not the person is  
3 expected to be called as a witness at trial.

4           5.     Restrictions on Disclosure of Confidential Information.

5           a.     Confidential Information disclosed by a Disclosing Party and designated  
6 "Confidential" may be disclosed by the Receiving Party only to the following persons (the  
7 "Qualified Person[s]"):

8                 i.     Outside counsel of record for any party to this matter, including all  
9 attorneys of the counsel's law firm and all paralegal assistants, stenographic and clerical  
10 employees operating under the direct supervision of such attorneys;

11                 ii.    Court personnel, including stenographic reporters and certified videotape  
12 operators, engaged in those proceedings that are a necessary incident to the trial or preparation  
13 of this action for trial;

14                 iii.   Experts whom the attorneys deem necessary to review the Confidential  
15 Information for the prosecution or defense of this lawsuit may be shown documents designated  
16 "Confidential" provided that Expert executes a copy of the accompanying statement (**Exhibit**  
17 **A**) stating that such person has read this Order, agrees to be bound by all of its terms and  
18 conditions, and agrees to be subject to this Court's jurisdiction;

19                 iv.    A deponent at a deposition and a witness at a hearing may be shown  
20 documents designated "Confidential" provided that the document indicates that the deponent  
21 or witness previously had access to the document;

22                 v.     Parties to this lawsuit may be shown documents designated  
23 "Confidential" for purposes of this litigation provided that the documents designated as  
24 "Confidential" (1) may not be copied or reproduced in any manner except as necessary for the  
25 prosecution or defense of this lawsuit, and (2) may not be removed from the attorney's office  
26 except as necessary for the prosecution or defense of this lawsuit. Parties shall not further  
disclose such Confidential Information except as authorized by this Order.

1           6.     Restrictions on Use of Confidential Information. All Confidential Information  
2 produced during discovery may be used solely for purposes of this litigation. Confidential  
3 information may also be used by a Receiving Party to comply with legal obligations, but if  
4 such compliance requires the disclosure of Confidential Information to a third party who is not  
5 a Qualified Person, the party who seeks to disclose such information shall provide reasonable  
6 advance notice of such intended disclosure to the party who designated the information as  
7 Confidential Information. If the Disclosing Party provides written objection to such disclosure  
8 of Confidential Information, the Receiving Party shall not disclose the Confidential  
9 Information absent Court approval. Confidential Information produced during discovery shall  
10 not otherwise be disclosed to or made accessible to any person who is not a Qualified Person  
11 without a Court order or the prior written consent of the party or other person originally  
12 designating the material as Confidential Information.

13           7.     Filing. In filing material with the Court, in pretrial proceedings, counsel will file  
14 under seal only those specific documents designated "Confidential." If responses to discovery  
15 requests are filed with the Court and have been designated as Confidential Information,  
16 counsel will file the responses under seal.

17           8.     Objection to Designation of Confidential Information. If any party believes that  
18 a document designated or sought to be designated "Confidential" by the Disclosing Party does  
19 not warrant that designation, it will first make a good faith effort to resolve such dispute with  
20 opposing counsel. In the event that the dispute cannot be resolved within ten (10) business  
21 days (unless the parties stipulate to further extension), the party opposing the confidentiality  
22 designation may apply to the Court for an order declaring that the document is not  
23 confidential. Until such order is entered, the document will be treated as designated by the  
24 Disclosing Party.

25           9.     No Waiver of Applicable Privileges. This Protective Order does not waive any  
26 applicable any common law or statutory attorney-client privilege, work-product immunity, or  
any other privilege or immunity that would otherwise attach to such information or objections



1 unrelated to the purported confidential nature of a document that might otherwise be  
2 interposed during the course of discovery. Upon the assertion of a claim of privilege or  
3 immunity as to information that has already been produced, the party who has received the  
4 information shall promptly return it without a further showing from the party asserting the  
5 inadvertent production. In appropriate circumstances, however, the inadvertently-producing  
6 party will need to describe the materials on a privilege log.

7 10. No Loss of Confidential Designation. No document marked "Confidential" will  
8 lose such status under this Order as the result of the use of such document in any hearing, trial,  
9 or other Court proceeding in this action, provided that such use is consistent with the terms of  
10 this Order.

11 11. Inadvertent Non-Designation. The failure of a party to designate information  
12 produced in discovery as Confidential Information at the time of its production shall not  
13 preclude that party from later designating the information as Confidential by promptly  
14 notifying counsel of record of that designation, provided, however, that the disclosure of such  
15 document by any other party prior to such later designation shall not be deemed a violation of  
16 this Order. The failure of any party to challenge the designation of information as  
17 Confidential Information at the time of its disclosure shall not be deemed a waiver of the right  
18 to challenge the propriety of such designation at a later time.

19 12. No Limit on Rendering Legal Advice. Nothing in this Order will prevent or  
20 otherwise restrict counsel from rendering advice to their clients and relying generally on  
21 examination of stamped Confidential documents; provided, however, that in rendering such  
22 advice, counsel will not make specific disclosure of any document designated as  
23 "Confidential" except pursuant to the procedures set forth in this Order.

24 13. New Parties. In the event additional individuals or entities become parties to this  
25 litigation, they shall not have access to, nor shall any existing party produce to them, any  
26 confidential documents until the newly added parties, by counsel, have signed and filed a

1 stipulation agreeing to be bound by this Order or until a further order is entered permitting  
2 them to have access to such documents.

3 14. Scope of Order. Any non-party to this action who shall be called upon to make  
4 discovery or to provide depositions or other testimony shall be entitled to avail itself of the  
5 provisions and protections of this Order only with the written consent of the party seeking such  
6 discovery and the signing of an agreement to be bound to this Order, and, by doing so,  
7 assumes the duties and obligations imposed by this Order.

8 15. Termination of Action. Upon the final determination of this action, whether by  
9 trial, appeal, settlement or other disposition as to which all appeals have been exhausted and  
10 no further appeals are possible, counsel of record for each party who has received any  
11 Confidential Information produced in discovery in this action shall assemble and return to the  
12 Disclosing Party such confidential materials, including copies that are in the possession of any  
13 Qualified Persons and all copies retained on computer takes, diskettes or other electronic  
14 media, within thirty (30) days of the final determination. At the option of the counsel of  
15 record for each party that received Confidential Information, the material and information may  
16 be destroyed in lieu of returning them to the Disclosing Party as long as counsel of record  
17 certify in writing that all such materials and information have been destroyed. In the event that  
18 the Receiving Party elects to return confidential material that is subject to the Bankruptcy  
19 Protection Order, the Disclosing Party shall destroy the material or information pursuant to the  
20 terms of the Bankruptcy Protection Order. The word "destroyed" means the destruction of  
21 paper documents and any electronic means of storing such information or material. The  
22 parties may retain logs of information that was received and destroyed, including any Bates  
23 numbers, for purposes of their law firm's document retention. Notwithstanding the foregoing,  
24 (a) materials constituting the work product of counsel of record that contain Confidential  
25 Information obtained from any other party, (b) copies of documents filed with the Court under  
26 seal, and (c) deposition transcripts and exhibits may be retained by counsel of record so long  
as the Confidential Information is kept confidential.



1 **EXHIBIT A**

2 1. I, \_\_\_\_\_, have read the Protective Order entered in *ML*  
3 *Servicing Co, Inc. et al. v. Coles et al.*, Maricopa County Superior Court, Case No. CV2011-  
4 011666, and agree to be bound by its terms with respect to any documents, materials, or  
5 information designated or marked "Confidential" that are furnished to me.

6 2. I agree: (i) not to disclose to anyone any documents, materials, or information  
7 marked "Confidential" other than as permitted by the Protective Order and (ii) not to make  
8 copies of any documents, materials, or information marked "Confidential" furnished to me  
9 except as permitted by the Protective Order.

10 3. I agree to destroy all documents or materials designated as "Confidential" within  
11 thirty (30) days after final determination of this action, whether by trial, appeal, settlement or  
12 other disposition as to which all appeals have been exhausted and no further appeals are  
13 possible. The word "destroyed" means the destruction of paper documents and any electronic  
14 means of storing such information or material.

15 4. I consent to venue and jurisdiction in the Superior Court of Arizona in Maricopa  
16 County, Arizona with regard to any proceedings to enforce the terms of the Protective Order.

17 \_\_\_\_\_  
Signature

Date