

1 Martin R. Galbut, Esq. (#002943)
2 Michaile J. Berg, Esq. (#027166)
3 GALBUT & GALBUT, P.C.
4 2425 East Camelback Road, Suite 1020
5 Phoenix, Arizona 85016
6 Telephone: 602.955.1455
7 Facsimile: 602.955.1585
8 docket@galbutlaw.com

9 Kevin M. Downey, Esq. (D.C. Bar #438547)
10 Ellen E. Oberwetter, Esq. (D.C. Bar #480431)
11 Patrick J. Houlihan, Esq. (D.C. Bar #502396)
12 WILLIAMS & CONNOLLY LLP
13 725 Twelfth Street, N.W.
14 Washington, D.C. 20005
15 Telephone: 202.434.5000
16 Facsimile: 202.434.5029
17 kdowney@wc.com
18 eoberwetter@wc.com
19 phoulihan@wc.com
20 *Admitted Pro Hac Vice*

21 *Attorneys for Defendants Greenberg Traurig LLP and*
22 *Robert and Ellen Kant*

23 **IN THE UNITED STATES DISTRICT COURT**
24 **FOR THE DISTRICT OF ARIZONA**

25 ML SERVICING CO., INC., an Arizona
26 corporation; and ML LIQUIDATING
27 TRUST,

28 Plaintiffs,

vs.

GREENBERG TRAUIG, LLP, *et al*,

Defendants.

Case No. 2:11-cv-00832-DGC

**ANSWER OF DEFENDANT
GREENBERG TRAUIG, LLP**

GENERAL RESPONSES

A. The Complaint contains many averments that constitute opinion and argument regarding legal issues. No response is required to such matters of opinion and argument.

B. Except for the specific allegations or portions of allegations expressly admitted or responded to below, all other allegations, portions of allegations, section titles and headers, and characterizations of facts by Plaintiffs are hereby denied.

GENERAL ALLEGATIONS

1. Admitted that ML Servicing Co., Inc. is a successor in interest to certain interests of the Arizona corporation formerly known as Mortgages, Ltd., as set forth in the First Amended Bankruptcy Plan (the “Plan”) in the Mortgages Ltd. bankruptcy. The remainder of ¶ 1 is denied.

2. Admitted that ML Liquidating Trust is a liquidating trust that is organized under the laws of Arizona and has the relationship with ML Servicing Co., Inc. that is set forth in, *inter alia*, Section 4.4 of the Plan. The remainder of ¶ 2 is denied.

3. Admitted.

4. Admitted, if “authorized” means that the ML Liquidating Trust was assigned the right to Non-Loan Assets as set forth in the Plan, including any claims against outside professionals such as Greenberg Traurig, LLP, that Mortgages Ltd. would have owned before its bankruptcy. Denied as to ML Servicing Co., Inc. The remainder of ¶ 3 is denied.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted that Kant has been practicing law in the State of Arizona for more than 30 years. Because GT is without knowledge or information sufficient to form a belief about what Plaintiffs consider to be “all relevant times,” the remainder of ¶ 8 is denied.

9. Admitted that Kant has been a shareholder at GT since September 1999 and has acted on its behalf. Because GT is without knowledge or information sufficient to form

1 a belief about what Plaintiffs consider to be “all relevant times,” the remainder of ¶ 9 is
2 denied.

3 10. Admitted.

4 11. GT is without knowledge or information sufficient to form a belief about ¶ 11
5 and therefore denies it.

6 12. GT is without knowledge or information sufficient to form a belief about ¶ 12
7 and therefore denies it.

8 13. Denied, due to removal of the case.

9 14. Admitted that only GT entered into a tolling agreement, which speaks for
10 itself. The remainder of ¶ 14 is denied.

11 15. Admitted, except that the involuntary petition for relief was filed under
12 Chapter 7.

13 16. Admitted that Scott Coles created SMC Revocable Trust, and that Mortgages
14 Ltd. was owned at some point or points in time prior to its bankruptcy by SMC Revocable
15 Trust. GT is without knowledge or information sufficient to form a belief as to the
16 remainder of ¶ 16 and therefore denies it.

17 17. Admitted that Coles at some point or points was the trustee of SMC
18 Revocable Trust and that Tom Hirsch was at some point or points designated as the
19 successor trustee for that Trust. The remainder of ¶ 17 is denied.

20 18. Admitted that Mortgages Ltd. so represented, but otherwise GT is without
21 knowledge or information sufficient to form a belief as to the remainder of ¶ 18 and
22 therefore denies it.

23 19. Admitted that Mortgages Ltd. so represented, but otherwise GT is without
24 knowledge or information sufficient to form a belief as to the remainder of ¶ 19 and
25 therefore denies it.

26 20. GT is without knowledge or information sufficient to form a belief about ¶ 20
27 and therefore denies it.

28

1 21. GT is without knowledge or information sufficient to form a belief that the
2 entity Mortgages Ltd., rather than Mortgages Ltd. Securities, offered investment
3 opportunities to investors, and therefore denies ¶ 21.

4 22. GT is without knowledge or information sufficient to form a belief that the
5 entity Mortgages Ltd., rather than Mortgages Ltd. Securities, offered investment
6 opportunities to investors, and therefore denies ¶ 22.

7 23. GT is without knowledge or information sufficient to form a belief about ¶ 23
8 and therefore denies it.

9 24. GT is without knowledge or information sufficient to form a belief about ¶ 24
10 and therefore denies it.

11 25. Denied.

12 26. Admitted that, as of 2005, Radical Bunny did make direct loans to Mortgages
13 Ltd. GT is without knowledge or information sufficient to form a belief as to the remainder
14 of ¶ 26 and therefore denies it.

15 27. GT is without knowledge or information sufficient to form a belief about ¶ 27
16 and therefore denies it.

17 28. GT is without knowledge or information sufficient to form a belief about ¶ 28
18 and therefore denies it.

19 29. GT is without knowledge or information sufficient to form a belief about ¶ 29
20 and therefore denies it.

21 30. GT is without knowledge or information sufficient to form a belief about ¶ 30
22 and therefore denies it.

23 31. GT is without knowledge or information sufficient to form a belief about ¶ 31
24 and therefore denies it.

25 32. GT is without knowledge or information sufficient to form a belief about ¶ 32
26 and therefore denies it.

27 33. GT is without knowledge or information sufficient to form a belief about ¶ 33
28 and therefore denies it.

1 34. GT is without knowledge or information sufficient to form a belief about ¶ 34
2 and therefore denies it.

3 35. Admitted that Mortgages Ltd. originated some loans that included delayed
4 funding terms. GT is without knowledge or information sufficient to form a belief as to the
5 remainder of ¶ 35 and therefore denies it.

6 36. Admitted that in 2006, Mortgages Ltd. received indications that some of its
7 borrowers were at risk of defaulting on their loans. The remainder of ¶ 36 is denied.

8 37. GT is without knowledge or information sufficient to form a belief about ¶ 37
9 and therefore denies it.

10 38. GT is without knowledge or information sufficient to form a belief about ¶ 38
11 and therefore denies it.

12 39. GT is without knowledge or information sufficient to form a belief about ¶ 39
13 and therefore denies it.

14 40. GT is without knowledge or information sufficient to form a belief about ¶ 40
15 and therefore denies it.

16 41. GT is without knowledge or information sufficient to form a belief about ¶ 41
17 and therefore denies it.

18 42. Admitted that Scott Coles committed suicide on or about June 2, 2008. The
19 remainder of ¶ 42 is denied.

20 43. Denied.

21 44. Denied that GT owes money to Plaintiffs. GT is without knowledge or
22 information sufficient to form a belief as to the remainder of ¶ 44 and therefore denies it.

23 45. Admitted that in 2006, Mortgages Ltd. became a client of GT after
24 approaching Bob Kant. The remainder of ¶ 45 is denied.

25 46. Admitted that securities advice on Mortgages Ltd. Securities' securities
26 offerings, including advice on Offering Memoranda, were within the scope of GT's
27 representation of Mortgages Ltd. Admitted that Kant was the primary shareholder at GT
28

1 who provided such advice on the Mortgages Ltd. Securities offerings. The remainder of ¶
2 46 is denied.

3 47. GT is without knowledge or information sufficient to form a belief about what
4 Mortgages Ltd. expected and relied upon. GT endeavored to provide Mortgages Ltd. with
5 professionally reasonable and appropriate legal advice on issues for which Mortgages Ltd.
6 sought advice. Denied that GT was tasked with ensuring Mortgages Ltd.'s compliance with
7 all applicable securities laws. The remainder of ¶ 47 is denied.

8 48. Denied.

9 49. Denied.

10 50. Admitted that, from 2006 through February 11, 2008, GT and Kant advised
11 Mortgages Ltd. on the content of 11 Private Offering Memoranda for offerings of
12 Mortgages Ltd. Securities. The remainder of ¶ 50 is denied.

13 51. Denied.

14 52. Admitted that the first Private Offering Memorandum for a Mortgages Ltd.
15 Securities offering on which GT and Kant advised was issued on or about May 15, 2006.
16 The remainder of ¶ 52 is denied.

17 53. Denied.

18 54. Denied.

19 55. Denied.

20 56. Denied.

21 57. Denied.

22 58. Denied.

23 59. Denied.

24 60. Denied, in part because the disclosures in the May 15, 2006 Private Offering
25 Memorandum were those of Mortgages Ltd. and/or Mortgages Ltd. Securities, not GT and
26 Kant.

27
28

1 61. Denied, in part because the disclosures in the May 15, 2006 Private Offering
2 Memorandum were those of Mortgages Ltd. and/or Mortgages Ltd. Securities, not GT and
3 Kant.

4 62. Denied, in part because the disclosures in the May 15, 2006 Private Offering
5 Memorandum were those of Mortgages Ltd. and/or Mortgages Ltd. Securities, not GT and
6 Kant.

7 63. Admitted that in late 2006 or early 2007, Kant participated in a meeting with
8 some combination of Coles, Hirsch, and possibly others. Admitted that Tom Hirsch was
9 one of the managers of Radical Bunny. The remainder of ¶ 63 is denied.

10 64. Admitted that Hirsch was a certified public accountant who handled at least
11 some aspects of Coles' personal tax issues for some period of time. GT is without
12 knowledge or information sufficient to form a belief as to the remainder of ¶ 64 and
13 therefore denies it.

14 65. Admitted that Hirsch was at some point or points designated as the successor
15 trustee for the SMC Revocable Trust. Admitted that Mortgages Ltd. was owned at some
16 point or points in time prior to its bankruptcy by SMC Revocable Trust. GT is without
17 knowledge or information sufficient to form a belief as to the remainder of ¶ 65 and
18 therefore denies it.

19 66. Admitted that at the meeting in late 2006 or early 2007, the entity Radical
20 Bunny and certain aspects of its fundraising were discussed. GT is without knowledge or
21 information sufficient to form a belief with as to the remainder of ¶ 66 and therefore denies
22 it.

23 67. Denied.

24 68. Denied.

25 69. Denied.

26 70. Denied.

27 71. Denied.

28

1 72. Admitted that, during the meeting in late 2006 or early 2007, based on the
2 description made to him, Kant told Hirsch in substance that the way in which Radical Bunny
3 was raising money appeared to violate the law. The remainder of ¶ 72 is denied.

4 73. Admitted that during the meeting in late 2006 or early 2007, based on the
5 description made to him, Kant told Hirsch in substance that: “when people carefully do
6 offerings, they have private offering memoranda, they have subscription agreements in
7 which they evaluate the sophistication and suitability of their investors, they sell securities
8 through a registered broker/dealer, none of which was happening here.” The remainder of ¶
9 73 is denied.

10 74. Admitted that during the meeting in late 2006 or early 2007, Kant told Hirsch,
11 in substance, that “some day his picture was going to be on the front page of the Arizona
12 Republic, and I didn’t want to see Scott Coles’ picture next to him.” The remainder of ¶ 74
13 is denied.

14 75. Denied.

15 76. Denied.

16 77. Denied.

17 78. Denied.

18 79. Denied.

19 80. Denied.

20 81. Denied.

21 82. Denied.

22 83. Admitted that ER 1.7 of the Arizona Rules of Professional Conduct, along
23 with other authorities, addresses conflicts of interest between current clients as set forth in
24 its text. Denied that ¶ 83 accurately quotes or summarizes ER 1.7. The remainder of ¶ 83 is
25 denied.

26 84. Admitted that, because there was no concurrent representation of Radical
27 Bunny, Kant and GT did not ask Mortgages Ltd. for informed consent confirmed in writing
28 to a concurrent representation of Radical Bunny. The remainder of ¶ 84 is denied.

1 85. Denied. Radical Bunny was never a client of Kant or GT.

2 86. Denied.

3 87. Admitted that ER 1.2 of the Arizona Rules of Professional Conduct provides
4 that a “lawyer shall not counsel a client to engage, or assist a client, in conduct that the
5 lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of
6 any proposed course of conduct with a client and may counsel or assist a client to make a
7 good faith effort to determine the validity, scope, meaning or application of the law.” The
8 remainder of ¶ 87 is denied.

9 88. Admitted that ER 1.16 of the Arizona Rules of Professional Conduct provides
10 in part that a “lawyer shall withdraw from the representation of a client if: (1) the
11 representation will result in violation of the Rules of Professional Conduct or other law.”
12 The remainder of ¶ 88 is denied.

13 89. Denied.

14 90. GT is without knowledge or information sufficient to form a belief about ¶ 90
15 and therefore denies it.

16 91. GT is without knowledge or information sufficient to form a belief about ¶ 91
17 and therefore denies it.

18 92. GT is without knowledge or information sufficient to form a belief about ¶ 92
19 and therefore denies it.

20 93. Denied.

21 94. Admitted that Mortgages Ltd. continued to receive millions of dollars in loans
22 from Radical Bunny after the meeting in late 2006 or early 2007. GT is without knowledge
23 or information sufficient to form a belief as to the remainder of ¶ 94 and therefore denies it.

24 95. GT is without knowledge or information sufficient to form a belief about ¶ 95
25 and therefore denies it.

26 96. Denied.

27
28

1 97. Admitted that after the meeting in late 2006 or early 2007, GT and Kant
2 advised Mortgages Ltd. on at least five additional Private Offering Memoranda for offerings
3 by Mortgages Ltd. Securities. The remainder of ¶ 97 is denied.

4 98. Admitted that GT and Kant advised Mortgages Ltd. on a Private Offering
5 Memorandum for Mortgages Ltd. Opportunity Fund MP15 L.L.C., dated March 30, 2007.
6 The remainder of ¶ 98 is denied.

7 99. Admitted that GT and Kant advised Mortgages Ltd. on an amended Private
8 Offering Memorandum for MP122030 L.L.C. (also known as MP11), dated April 12, 2007.
9 The remainder of ¶ 99 is denied.

10 100. Admitted that GT and Kant advised Mortgages Ltd. on a Private Offering
11 Memorandum for Mortgages Ltd. Opportunity Fund MP16 L.L.C., dated November 1,
12 2007. The remainder of ¶ 100 is denied.

13 101. Admitted that GT and Kant advised Mortgages Ltd. on a Private Offering
14 Memorandum for Mortgages Ltd. Opportunity Fund MP17 L.L.C., dated November 2,
15 2007. The remainder of ¶ 101 is denied.

16 102. Admitted that GT and Kant advised Mortgages Ltd. on a Private Offering
17 Memorandum for Value-to-Loan Opportunity Fund 1, L.L.C., dated January 28, 2008. The
18 remainder of ¶ 102 is denied.

19 103. Denied.

20 104. Denied.

21 105. Admitted with respect to the time period after the meeting in late 2006 or early
22 2007, minus the word “additional.” The remainder of ¶ 105 is denied.

23 106. GT is without knowledge or information sufficient to form a belief about ¶
24 106 and therefore denies it.

25 107. GT is without knowledge or information sufficient to form a belief about ¶
26 107 and therefore denies it.

27 108. Denied.

28 109. Denied.

1 110. GT is without knowledge or information sufficient to form a belief about ¶
2 110, in part because it is contradicted by ¶ 38 of the Complaint, and therefore denies it.

3 111. GT is without knowledge or information sufficient to form a belief about ¶
4 111 and therefore denies it.

5 112. Denied.

6 113. Admitted that on or about August 13, 2007, a meeting was held with Kant,
7 Coles, Hirsch, Radical Bunny's lawyers from Quarles & Brady, and possibly others. The
8 remainder of ¶ 113 is denied.

9 114. Admitted that Radical Bunny's securities offerings and their compliance with
10 securities laws was a topic of discussion at the meeting on or about August 13, 2007. GT is
11 without knowledge or information sufficient to form a belief as to the remainder of ¶ 114
12 and therefore denies it.

13 115. Denied.

14 116. Denied.

15 117. Admitted that, based on the description to him, Kant considered Radical
16 Bunny's methods for raising money from the offer and sale of securities to be a serious
17 problem for Radical Bunny. The remainder of ¶ 117 is denied.

18 118. Admitted that, during the meeting on or about August 13, 2007, Kant told
19 Hirsch words to the effect of "they put people in jail for this" and/or "some day you're
20 going to jail for this if you don't stop." The remainder of ¶ 118 is denied.

21 119. Admitted that, based on the description made to him, during the meeting on or
22 about August 13, 2007, Kant conveyed to Hirsch his concern that Radical Bunny may have
23 been conducting an unregistered securities offering. The remainder of ¶ 119 is denied.

24 120. Admitted that, based on the description made to him, during the meeting on or
25 about August 13, 2007, Kant conveyed to Hirsch his understanding that Radical Bunny was
26 not using registered securities representatives. The remainder of ¶ 120 is denied.

27
28

1 21. Admitted that, based on the description made to him, during the meeting on or
2 about August 13, 2007, Kant conveyed to Hirsch his understanding that Radical Bunny did
3 not use disclosure documents with its investors. The remainder of ¶ 121 is denied.

4 22. Denied.

5 23. Admitted that GT and Kant did not advise Mortgages Ltd. that it needed to
6 make disclosures about the securities compliance issues of Radical Bunny, a third party, to
7 investors in Mortgages Ltd. Securities' real estate offerings. The remainder of ¶ 123 is
8 denied.

9 24. Admitted that Radical Bunny raised funds from investors after August 13,
10 2007. GT is without knowledge or information sufficient to form a belief as to the
11 remainder of ¶ 124 and therefore denies it.

12 25. Admitted that GT and Kant knew that Mortgages Ltd. continued to have a
13 business relationship with Radical Bunny for some period of time after August 13, 2007.
14 The remainder of ¶ 125 is denied.

15 26. Admitted that Kant advised Mortgages Ltd. on the content of three or more
16 Private Offering Memoranda for offerings of Mortgages Ltd. Securities after August 13,
17 2007. The remainder of ¶ 126 is denied.

18 27. Admitted that between the meeting in late 2006 and early 2007, and the
19 meeting on or about August 13, 2007, Kant had discussions with attorneys at Quarles &
20 Brady regarding Radical Bunny's compliance with securities laws and possible ways
21 Radical Bunny might address any violations. The remainder of ¶ 127 is denied.

22 28. Admitted that in or about September and October 2007 Kant drafted versions
23 of an Offering Memorandum that Radical Bunny's attorneys might use as a starting point
24 with Radical Bunny. The remainder of ¶ 128 is denied.

25 29. Denied.

26 30. Admitted that Kant drafted a template offering memorandum for Radical
27 Bunny's attorneys to use with Radical Bunny, with a date of September 17, 2007, with RBI,
28 L.L.C. identified as the offeror. The remainder of ¶ 130 is denied.

1 131. Admitted that Kant prepared an additional draft of a template offering
2 memorandum for Radical Bunny's attorneys to use with Radical Bunny, with a date of
3 October 26, 2007, with Baby Bunny, L.L.C. identified as the offeror. The remainder of ¶
4 131 is denied.

5 132. Denied.

6 133. Admitted that GT billed Mortgages Ltd. for time spent in drafting a template
7 offering memorandum for Radical Bunny's attorneys to use with Radical Bunny. The
8 remainder of ¶ 133 is denied.

9 134. Admitted that Kant testified that the template offering memorandum for
10 Radical Bunny was prepared "as a first draft for Radical Bunny's lawyers to use after, you
11 know, their review and whatever changes they thought were appropriate, but as an attempt
12 to do an offering in a way that did not violate the law." The remainder of ¶ 134 is denied.

13 135. Denied.

14 136. Admitted that Radical Bunny provided comments to Kant and Mortgages Ltd.
15 on a template offering memorandum that Kant had drafted for Radical Bunny's lawyers at
16 Quarles & Brady to use with Radical Bunny. GT is without knowledge or information
17 sufficient to form a belief as to the remainder of ¶ 136 and therefore denies it.

18 137. Denied.

19 138. Denied.

20 139. Denied.

21 140. Denied.

22 141. Denied.

23 142. Admitted that in 2008, Mortgages Ltd. paid GT \$250,000 as a retainer for
24 work on Mortgages Ltd.'s bankruptcy proceeding, in addition to other amounts that
25 Mortgages Ltd. had previously paid to GT for legal fees. GT is without knowledge or
26 information sufficient to form a belief as to the remainder of ¶ 142 and therefore denies it.

27 143. GT is without knowledge or information sufficient to form a belief about ¶
28 143 and therefore denies it.

1 144. GT is without knowledge or information sufficient to form a belief about ¶
2 144 and therefore denies it.

3 145. Denied.

4 146. Admitted that in 2008 Furst raised issues about Mortgages Ltd.'s practices
5 with members of Mortgages Ltd.'s senior management. GT is without knowledge or
6 information sufficient to form a belief as to the remainder ¶ 146 and therefore denies it.

7 147. Denied.

8 148. Admitted that on or about April 1, 2008, Furst sent an e-mail to an individual
9 within Mortgages Ltd. in which identified issues he said needed to be addressed, including,
10 but not limited to, "Mortgages Ltd./Radical Bunny securities issues." GT is without
11 knowledge or information sufficient to form a belief as to the remainder of ¶ 148 and
12 therefore denies it.

13 149. Admitted that on or about April 8, 2008, Kant and another attorney from GT
14 met with Furst and Furst's counsel to discuss various issues. GT is without knowledge or
15 information sufficient to form a belief as to the remainder of ¶ 149 and therefore denies it.

16 150. Denied.

17 151. Admitted.

18 152. Admitted that U-5 forms are required to be truthful and filed in good faith.
19 The remainder of ¶ 152 is denied.

20 153. Admitted that GT provided legal advice with respect to the U-5 form that was
21 filed in connection with Furst's termination. The remainder of ¶ 153 is denied.

22 154. Admitted that the U-5 form identified Furst's failure to provide specific
23 information about issues that he had raised, Furst's not being "well suited to continue
24 working for" Mortgages Ltd. Securities, and Furst's misrepresentation of his credential to
25 Mortgages Ltd. Securities as reasons for his termination. The remainder of ¶ 154 is denied.

26 155. Denied.

27 156. Denied.

28 157. Denied.

1 158. Denied.

2 159. Denied.

3 160. GT is without knowledge or information sufficient to form a belief about ¶
4 160 and therefore denies it.

5 161. Admitted.

6 162. Admitted that GT and Kant advised Mortgages Ltd. on the content of 11
7 Private Offering Memoranda for offerings of Mortgages Ltd. Securities, Inc. The remainder
8 of ¶ 162 is denied.

9 163. Denied.

10 164. Denied.

11 165. Denied.

12 166. Denied.

13 167. Denied.

14 168. Denied.

15 169. Denied.

16 170. Denied.

17 171. Denied.

18 172. Denied.

19 173. Admitted that the Private Offering Memoranda did not include an express
20 discussion of Mortgages Ltd.'s extension of maturity dates for particular loans. The
21 remainder of ¶ 173 is denied.

22 174. Admitted that the Private Offering Memoranda did not include a discussion of
23 any purchase by Scott Coles of non-performing loans. The remainder of ¶ 174 is denied.

24 175. Admitted that the Private Offering Memoranda did not include a discussion of
25 any trend in the size and volume of Mortgages Ltd.'s loans. The remainder of ¶ 175 is
26 denied.

27 176. Denied.

28 177. Denied.

1 178. Denied.

2 179. Admitted that the disclosures in each of the Private Offering Memoranda of
3 the risks associated with the real estate investments that investors might be making were
4 generally consistent with each other. The remainder of ¶ 179 is denied.

5 180. Admitted.

6 181. Admitted that Mortgages Ltd. and Mortgages Ltd. Securities were affiliated
7 and that they had the agency relationship set forth in their placement agreement. GT it
8 without knowledge or information sufficient to form a belief as to the remainder of ¶ 181
9 and therefore denies it.

10 182. GT is without knowledge or information sufficient to form a belief about ¶
11 182 and therefore denies it.

12 183. Admitted.

13 184. Admitted.

14 185. Denied.

15 186. Admitted that at some point in time, based on descriptions made to him, Kant
16 believed that Radical Bunny might be in violation of one or more Arizona securities laws.
17 The remainder of ¶ 186 is denied.

18 187. Denied.

19 188. Denied.

20 189. Denied.

21 190. Denied.

22 191. Denied.

23 192. Denied.

24 193. Denied.

25 194. Denied.

26 195. Denied.

27 196. Denied.

28 197. Denied.

- 1 198. Denied.
- 2 199. Denied.
- 3 200. Denied.
- 4 201. GT incorporates by reference its responses to paragraphs 1 through 200.
- 5 202. Denied.
- 6 203. Denied.
- 7 204. Admitted that GT and Kant owed a duty of care to Mortgages Ltd. The
8 remainder of ¶ 204 is denied.
- 9 205. Denied.
- 10 206. Admitted that GT and Kant owed a duty of care to Mortgages Ltd. The
11 remainder of ¶ 206 is denied.
- 12 207. Admitted that GT and Kant owed a duty of care to Mortgages Ltd. The
13 remainder of ¶ 207 is denied.
- 14 208. Admitted that GT and Kant owed a duty of care to Mortgages Ltd. The
15 remainder of ¶ 208 is denied.
- 16 209. Denied.
- 17 210. Admitted that GT and Kant owed a duty of care to Mortgages Ltd. The
18 remainder of ¶ 210 is denied.
- 19 211. Denied.
- 20 212. Admitted that GT and Kant owed a duty of care to Mortgages Ltd. The
21 remainder of ¶ 212 is denied.
- 22 213. Denied.
- 23 214. Admitted that GT and Kant owed a duty of care to Mortgages Ltd. The
24 remainder of ¶ 214 is denied.
- 25 215. Denied.
- 26 216. Denied.
- 27 217. Denied.
- 28 218. Denied.

1 219. GT is without knowledge or information sufficient to form a belief about ¶
2 219 and therefore denies it.

3 220. Denied.

4 221. Denied.

5 222. GT incorporates by reference their responses to paragraphs 1 through 221.

6 223. Paragraph 223 contains a statement of law to which no response is required.
7 To the extent ¶ 223 requires a response, admitted that GT and Kant owed ML certain
8 fiduciary duties and denied as to the remainder.

9 224. Paragraph 224 contains a statement of the law to which no response is
10 required. To the extent ¶ 224 requires a response, it is not an accurate summary of the law
11 and is denied.

12 225. Denied.

13 226. Denied.

14 227. Denied.

15 228. Denied.

16 229. Denied.

17 230. Denied.

18 231. Denied.

19 232. Denied.

20 233. Denied.

21 234. Denied.

22 235. Denied.

23 236. Denied.

24 **GREENBERG TRAUIG LLP'S AFFIRMATIVE DEFENSES**

25 237. ML Servicing lacks standing to bring this lawsuit and its claims are subject to
26 dismissal on that basis.

27 238. Recovery is barred on the basis of *in pari delicto*, because, among other
28 reasons: Mortgages Ltd. was privy to far more information about its own business

1 operations, financial condition, and relationship with Radical Bunny than Defendants; Scott
2 Coles did not disclose to Defendants information known to him; Mortgages Ltd. was well
3 aware of what disclosures were and were not in the Private Offering Memoranda and
4 whether the POMs were truthful; Mortgages Ltd. Securities and its agents made numerous
5 direct representations to investors to which Defendants were not a party, and which
6 investors have claimed were false; the Mortgages Ltd. entities, not Defendants, had
7 possession of information as to whether its investors were accredited; the Mortgages Ltd.
8 entities entered into agreements and understandings with Radical Bunny to which
9 Defendants were not party; Mortgages Ltd. failed to stop increasing its alleged debt load;
10 and Mortgages Ltd. disregarded legal advice from Defendants.

11 239. Recovery is barred on the basis of comparative fault because, among other
12 reasons: Mortgages Ltd. was privy to far more information about its own business
13 operations, financial condition, and relationship with Radical Bunny than Defendants; Scott
14 Coles did not disclose information known only to him; Mortgages Ltd. was well aware of
15 what disclosures were and were not in the Private Offering Memoranda and whether the
16 POMs were truthful; Mortgages Ltd. Securities and its agents made numerous direct
17 representations to investors to which Defendants were not a party, and which investors have
18 claimed were false; the Mortgages Ltd. entities, not Defendants, had possession of
19 information as to whether its investors were accredited; the Mortgages Ltd. entities entered
20 into agreements and understandings with Radical Bunny to which Defendants were not
21 party; Mortgages Ltd. failed to stop increasing its alleged debt load; Mortgages Ltd. was
22 responsible for its own borrowing, lending, and investor fund-raising practices; and
23 Mortgages Ltd. disregarded legal advice from Defendants.

24 240. Any damage, loss, or liability sustained by Plaintiffs must be reduced,
25 diminished, and/or eliminated in proportion to the wrongful or negligent conduct of entities
26 or individuals other than Defendants under the principles of equitable allocation,
27 recoupment, set-off, equitable estoppel, proportionate responsibility, and comparative fault;
28 including the conduct of Mortgages Ltd. and/or Mortgages Ltd. Securities personnel;

1 borrowers of Mortgages Ltd.; investors in Mortgages Ltd. Securities' offerings; Radical
2 Bunny and its principals; and/or other outside professionals to Mortgages Ltd.

3 241. The claims alleged in the Complaint fail because Defendants did not
4 proximately cause or contribute to any damage, loss, or injury allegedly sustained by
5 Plaintiffs, including because Plaintiffs' borrowing, lending, and business decisions; the
6 tightening of the credit markets; and the downturn in the real estate market caused any
7 claimed damages.

8 242. Any damage, loss, or injury sustained by Plaintiffs was directly and
9 proximately caused in whole or in part by the conduct or fault of persons or entities other
10 than Defendants, including Mortgages Ltd. and/or Mortgages Ltd. Securities personnel;
11 borrowers of Mortgages Ltd.; Radical Bunny and its principals; and/or other outside
12 professionals to Mortgages Ltd.

13 243. The claims alleged in the Complaint fail because the acts and practices of
14 persons or entities not associated with Defendants constitute intervening or superseding
15 causes of the alleged damage, loss, or injury, if any, suffered by Plaintiffs, including acts
16 and practices of Mortgages Ltd. and/or Mortgages Ltd. Securities personnel; borrowers of
17 Mortgages Ltd.; Radical Bunny and its principals; and/or other outside professionals to
18 Mortgages Ltd.

19 244. The claims alleged in the Complaint fail because Plaintiffs are estopped from
20 claiming injury, loss, or damage, if they had any, because they failed and refused to make
21 reasonable efforts to mitigate such injury, loss, or damage. Such failure to mitigate includes
22 the failure of Mortgages Ltd. to stop increasing its alleged insolvency; the failure of
23 Mortgages Ltd. and its successor entities to maximize recoveries on outstanding loans;
24 Mortgages Ltd.'s failure to accept legal advice from counsel; Plaintiffs' waste of assets in
25 the bankruptcy case; and Plaintiffs' failure to make claims against other individuals and
26 entities who contributed to the alleged insolvency.

27 245. The claims alleged in the Complaint are barred, in whole or in part, because in
28 rendering services to Mortgages Ltd. and Mortgages Ltd. Securities, Defendants reasonably

1 relied upon representations of and information provided by those entities and others,
2 including Mortgages Ltd. and/or Mortgages Ltd. Securities; and/or other outside
3 professionals to Mortgages Ltd.

4 246. Defendant reserves the right to assert all applicable defenses once the precise
5 nature of the relevant circumstances or events is determined through discovery.

6 Wherefore, Defendant GT requests that the Court:

- 7 1. Deny the relief sought by Plaintiffs and dismiss the Complaint.
- 8 2. Order such other relief as the Court finds just and proper.

9 Respectfully submitted,

10 **GALBUT & GALBUT, P.C.**

11 By: /s/ Martin R. Galbut

12 Martin R. Galbut, Esq.

13 Michaile J. Berg, Esq.

14 **WILLIAMS & CONNOLLY LLP**

15 By: /s/ Ellen E. Oberwetter

16 Kevin M. Downey, Esq.

17 Ellen E. Oberwetter, Esq.

18 Patrick J. Houlihan, Esq.

19 *Attorneys for the GT Defendants*

20 Dated: May 2, 2011

21
22 **NOTICE OF ELECTRONIC FILING**

23 I hereby certify that on May 2, 2011, I electronically filed the foregoing with the
24 Clerk of Court for filing and uploading to the CM/ECF system which will send notification
25 of such filing to all parties of record.

26
27 /s/ N. Sunshine Nye