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8 **SUPERIOR COURT OF ARIZONA**

9 **MARICOPA COUNTY**

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

12 Plaintiffs,)

13 v.)

14 GERALD K. SMITH, as Trustee for)
THE COLES CHILDREN'S TRUST;)
15 HALEY BROOKE COLES, an)
individual; FRANCINE COLES,)
16 individually and as conservator for Z.A.)
COLES and S.B. COLES, minors;)
17 JOHN AND JANE DOES 1-30; BLACK)
CORPORATIONS 1-30; WHITE)
18 PARTNERSHIPS 1-30; and GRAY)
TRUSTS 1-30,)

19 Defendants.)
20)
21)

No.

CV2011-005890

**MOTION TO DESIGNATE CASE AS
COMPLEX**

22 Pursuant to Rule 8(i) of the Arizona Rules of Civil Procedure, Plaintiffs ML Servicing
23 Co., Inc. and ML Liquidating Trust (collectively the "Plaintiffs") respectfully request that the
24 Court designate this action as a Complex Civil Case. This Motion is supported by the

1 accompanying Certification that is filed contemporaneously herewith.

2 This is a complex case involving claims to recover life insurance proceeds from life
3 insurance policies that were purchased with money that was wrongfully diverted from
4 Mortgages, Ltd. Numerous policies were purchased and the proceeds of those policies are
5 believed to be approximately \$60 million. However, Plaintiffs do not know the exact amount
6 of the proceeds that the Defendants have received. The case is expected to involve complex
7 legal issues, third-party discovery, and a substantial amount of damages. For all of those
8 reasons, it would be beneficial to the parties if this case is designated as a complex civil case.

9 Rule 8(i)(2) provides:

10 In deciding whether a civil action is a complex case under subdivision (a), the
11 court shall consider the following factors:

12 (A) Numerous pretrial motions raising difficult or novel legal issues that will be
time-consuming to resolve;

13 (B) Management of a large number of witnesses or a substantial amount of
14 documentary evidence;

15 (C) Management of a large number of separately represented parties;

16 (D) Coordination with related actions pending in one or more courts in other
17 counties, states or countries, or in a federal court;

18 (E) Substantial postjudgment judicial supervision;

19 (F) The case would benefit from permanent assignment to a judge who would
have acquired a substantial body of knowledge in a specific area of the law

20 (G) Inherently complex legal issues;

21 (H) Factors justifying the expeditious resolution of an otherwise complex
22 dispute;

23 (I) Any other factor which in the interests of justice warrants a complex
24 designation or as otherwise required to serve the interests of justice.

25 Most of those factors are present in this case, which is why this case should be

1 designated a Complex Civil Case. First, Plaintiffs anticipate that this case will involve
2 multiple pre-trial motions concerning legal issues and issues pertaining to discovery and
3 disclosure. Because of the nature of the claims asserted in this action and the amount of
4 damages at stake, it is anticipated that the case will be highly contentious and zealously
5 litigated by all of the parties.

6 Second, the case may involve a substantial amount of documentary evidence, including
7 third-party witnesses and third-party discovery.

8 Third, because of the contentious nature of this case and the complexity of some of the
9 issues, it would be very beneficial to have this case permanently assigned to the same judge
10 who would become familiar with the parties and the key facts of the case. Plaintiffs and their
11 counsel believe that having the case permanently assigned to a single judge would help the
12 parties adjudicate this action as efficiently as possible.

13 Finally, there is at least one related cases that has been filed in courts in Arizona by
14 groups of ML's investors against the Defendants in this case in which similar claims have been
15 asserted. Plaintiffs believe that the possible coordination of discovery and other issues with
16 that action may be beneficial and appropriate.

17 Clearly, many of the factors the Court is to consider when determining whether a case
18 warrants the Complex designation will be present in this action. Accordingly, Plaintiffs
19 respectfully requests that the Court designate this case as a Complex Civil Case. For the
20 Court's convenience, a proposed form of order has been simultaneously submitted herewith.
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1 RESPECTFULLY SUBMITTED this 28th day of March, 2011.

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3 **STINSON MORRISON HECKER LLP**

4 By: 

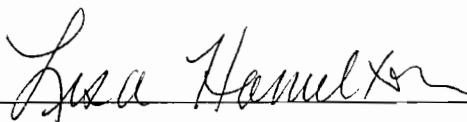
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10 Attorneys for Plaintiff

11 ORIGINAL filed this 28th day of March,
12 2011:

13 Clerk of the Court
14 Maricopa County Superior Court
15 101/201 West Jefferson
16 Phoenix, Arizona 85003

17 COPY of the foregoing hand-delivered
18 this 27th day of March, 2011, to:

19 The Honorable Norman J. Davis
20 Presiding Judge
21 125 West Washington, OCH - 5th Floor
22 Phoenix, Arizona 85003

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