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23 *Attorneys for Defendants*  
24 *Mayer Hoffman McCann P.C.,*  
25 *CBIZ, Inc., and CBIZ MHM, LLC*

26 **IN THE UNITED STATES DISTRICT COURT**  
27 **THE DISTRICT OF ARIZONA**

28 ML LIQUIDATING TRUST, as  
successor-in-interest to Mortgages Ltd.,

Plaintiff,

v.

MAYER HOFFMAN MCCANN P.C., a  
Missouri professional corporation; CBIZ,  
Inc., a Delaware corporation; CBIZ MHM,  
LLC, an Ohio limited liability company,

Defendants.

Case No. CV 10-2019-PHX-RRB

**MOTION FOR LEAVE TO FILE SUR-  
REPLY OF DEFENDANTS MAYER  
HOFFMAN MCCANN P.C., CBIZ, INC.,  
AND CBIZ MHM, LLC**

1 Defendants Mayer Hoffman McCann P.C., CBIZ, Inc., and CBIZ MHM, LLC  
2 (collectively “Defendants”) hereby respectfully move for leave to file their Sur-Reply to  
3 the Reply in Support of Its Motion to Remand to State Court of Plaintiff ML Liquidating  
4 Trust (“Trust”). A copy of the Sur-Reply is attached as Exhibit 1. In the Trust’s Reply in  
5 Support of Its Motion to Remand to State Court (Doc. 41 (hereinafter “Reply”)), the  
6 Trust for the first time raises an argument regarding the citizenship of trusts for the  
7 purposes of diversity jurisdiction. Because this argument was not made in the Trust’s  
8 initial motion to remand, Defendants should be granted an opportunity to respond.

9 This motion is supported by the following Memorandum of Points and  
10 Authorities.

### 11 MEMORANDUM OF POINTS AND AUTHORITIES

#### 12 **I. FACTUAL AND PROCEDURAL BACKGROUND**

13 On September 21, 2010, Defendants removed this case to federal court. (Doc. 1,  
14 Notice of Removal.) The Trust filed its Motion to Remand to State Court on November  
15 19, 2010. (Doc. 33 (hereinafter “Mot. to Remand”).) In its Motion to Remand, the Trust  
16 did not dispute the allegations concerning the Trust’s citizenship in Defendants’ Notice of  
17 Removal. (*See generally* Mot. to Remand at 15-17.) Defendants filed their Response to  
18 the Trust’s Motion to Remand on December 22, 2010. (Doc. 35.) Three weeks later, on  
19 January 14, 2011, the Trust filed its Reply in Support of Its Motion to Remand to State  
20 Court. (Doc. 41, (hereinafter “Reply”).) Instead of limiting its Reply to those arguments  
21 set forth in Defendants’ Response, the Trust argued for the first time that this Court  
22 should look to both the citizenship of Trust beneficiaries and the Trustee, rather than the  
23 Trustee alone, in determining the citizenship of the Trust. (Reply at 9-11.)

#### 24 **II. ARGUMENT AND AUTHORITIES**

25 Courts generally do not consider new legal arguments raised for the first time in a  
26 reply brief, in part, because the opposing party “has not been given the opportunity to  
27 respond.” *Lentini v. Cal. Ctr. for the Arts, Escondido*, 370 F.3d 837, 843 n.6 (9th Cir.  
28

1 2004); *see also* *MJG Enters., Inc. v. Cloyd*, No. 10-0086-PHX-MHM, 2010 WL  
2 3842222, at \*6 n.1 (D. Ariz. Sept. 27, 2010) (citing *Cedano-Viera v. Ashcroft*, 324 F.3d  
3 1062, 1066 n.5 (9th Cir. 2003); *Burlington N. & Santa Fe Ry. Co. v. Vaughn*, 509 F.3d  
4 1085, 1093 n.3 (9th Cir. 2007); *United States v. Wright*, 215 F.3d 1020, 1030 n.3 (9th  
5 Cir. 2000) (declining to consider an argument raised for the first time in reply brief). In  
6 its Reply, the Trust improperly raises new issues regarding the citizenship of trusts. The  
7 Trust never previously disputed its state of citizenship referenced in Defendants' Notice  
8 of Removal. Allowing the Trust to engage in this unfair tactic deprives Defendants of the  
9 opportunity "to show that the new theory lacks legal . . . support." *Sophanthavong v.*  
10 *Palmateer*, 365 F.3d 726, 737 (9th Cir. 2004). To cure this defect, Defendants  
11 respectfully request leave to file the attached Sur-Reply.

### 12 **III. CONCLUSION**

13 For the foregoing reasons, Defendants respectfully move for leave to file the  
14 attached Sur-Reply.  
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1 DATED: January 24, 2011

Respectfully submitted,

2 By: /s/ Katherine V. Brown

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22 *Attorneys for Defendants*  
23 *Mayer Hoffman McCann P.C., CBIZ, Inc., and*  
24 *CBIZ MHM, LLC*  
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**CERTIFICATE OF SERVICE**

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I hereby certify that on January 24, 2011, I electronically filed the foregoing Joint Motion to Dismiss Complaint with the Clerk of the Court using the CM-ECF system and served the following parties by U.S. mail:

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Christopher A. Caserta  
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*Counsel for ML Liquidating Trust*

/s/ Katherine V. Brown

# **EXHIBIT 1**

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*Mayer Hoffman McCann P.C.,*  
*CBIZ, Inc., and CBIZ MHM, LLC*

**IN THE UNITED STATES DISTRICT COURT  
THE DISTRICT OF ARIZONA**

ML LIQUIDATING TRUST, as  
successor-in-interest to Mortgages Ltd.,  
  
Plaintiff,  
  
v.  
  
MAYER HOFFMAN MCCANN P.C., a  
Missouri professional corporation; CBIZ,  
Inc., a Delaware corporation; CBIZ MHM,  
LLC, an Ohio limited liability company,  
  
Defendants.

Case No. CV 10-2019-PHX-RRB

**DEFENDANTS MAYER HOFFMAN  
MCCANN P.C., CBIZ, INC., AND CBIZ  
MHM, LLC'S SUR-REPLY TO  
PLAINTIFF'S REPLY IN SUPPORT OF  
ITS MOTION TO REMAND**

1 In its Reply in Support of Its Motion to Remand to State Court (Doc. 41  
2 (hereinafter “Reply”)), Plaintiff ML Liquidating Trust (“Trust”) raises an entirely new  
3 diversity-jurisdiction argument in response to the Opposition of Mayer Hoffman McCann  
4 P.C., CBIZ, Inc., and CBIZ MHM, LLC (collectively “Defendants”). Probably because  
5 its original argument concerning *Defendants’* citizenship advocated for a test expressly  
6 overruled by *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010), the Trust’s Reply now makes  
7 an argument concerning *its* citizenship. Specifically, the Trust contends that the  
8 citizenship of a trust is not measured by the citizenship of its trustee, but rather by “the  
9 citizenship of *both* the trustee and beneficiaries.” (Reply at 10.) The Trust makes this  
10 claim based on a decision from the Third Circuit, while relegating to a footnote the  
11 contrary holding of the Ninth Circuit and ignoring numerous decisions from courts within  
12 and outside the Ninth Circuit. The Trust’s argument must fail.

13 **I. THE NINTH CIRCUIT, NUMEROUS DISTRICT COURTS WITHIN THE NINTH**  
14 **CIRCUIT, AND THE MAJORITY OF OTHER CIRCUIT COURTS ALL AGREE**  
15 **THAT A TRUST TAKES THE CITIZENSHIP OF ITS TRUSTEE ONLY.**

16 The Trust relies exclusively on out-of-circuit, non-binding precedent to support its  
17 position that the Court must look to trust beneficiaries to determine the trust’s citizenship.  
18 (*Id.* at 9-11 (citing *Emerald Investors Trust v. Gaunt Parsippany Partners*, 492 F.3d 192,  
19 201 (3d Cir. 2007).) Its reason for doing so is obvious. The Ninth Circuit has  
20 unequivocally stated that “[a] trust has the citizenship of its trustee or trustees” for  
21 diversity jurisdiction. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899  
22 (9th Cir. 2006). In *Johnson*, an LLC removed to federal court a suit by an Alaskan  
23 citizen. *Id.* at 896. To determine the LLC’s citizenship for diversity purposes, the Court  
24 looked to all its members. One such member was a trust. Since the trust’s “sole trustee  
25 [was] a bank incorporated in Delaware with its principal place of business in Minnesota,”  
26 the Court found that diversity jurisdiction existed in the Alaskan citizen’s suit. *Id.* at 899.  
27 Notably, because the court established the rule that a “trust has the citizenship of its  
28 trustee,” *id.*, it made no reference to the citizenship of the trust’s beneficiaries, as would



1 have been necessary if it thought that their citizenship controlled. *Id.* *Johnson*—a  
2 binding precedent—ends the matter.

3 Yet the Trust relegates *Johnson* to a footnote. The footnote leads with the bare  
4 assertion that, in *Johnson*, “citizenship of the trust . . . was not directly at issue.” (Reply  
5 at 11 n.11.) It fails to explain why that is. Because a *trust*, not a *trustee*, was the member  
6 of the LLC defendant, the trust’s citizenship controlled for whether diversity existed. If  
7 this Court were to agree with the Trust, then, it would establish the rule that a trust takes  
8 the citizenship only of the trustee for suits brought against an LLC in which the trust is a  
9 member, but that the trust’s citizenship suddenly expands to include its beneficiaries if  
10 the suit is brought against the trust itself. But no reason exists (and the Trust has not  
11 offered any) for treating those situations differently.

12 The Trust’s other attempt to distinguish *Johnson* is no attempt at all. It argues that  
13 *Johnson* was wrongly decided by criticizing *Johnson*’s citation of *Navarro Savings*  
14 *Association v. Lee*, 446 U.S. 458 (1980). (Reply at 11 n.11 (citing *PDP La Mesa, LLC v.*  
15 *LaSalle Med. Office Fund II*, No. 10cv1536 DMS (RBB), 2010 WL 3988598 (S.D. Cal.  
16 Oct. 12, 2010).) There is a reason the Trust musters only one case within the Ninth  
17 Circuit to support its view. Whether right or wrong, *Johnson* is a published Ninth Circuit  
18 decision that this Court must follow. That is evidenced by the many decisions in the  
19 Ninth Circuit that have felt compelled to follow it. As one court put it, “[i]n the Ninth  
20 Circuit, ‘[a] trust has the citizenship of its trustee or trustees.’” *Adare v. Genaxa Corp.*,  
21 No. 08-330-BLW, 2009 WL 482292, at \*3 (D. Idaho Feb. 24, 2009) (quoting *Johnson*,  
22 437 F.3d at 899); see *Boren Found. v. HHH Inv. Trust*, 295 F. App’x 151, 152 (9th Cir.  
23 2008); *Evans & Vertin, LLC v. Canyon Holdings, LLC*, No. 10-123-M-DWM, 2011 WL  
24 52421, at \*1 (D. Mont. Jan. 5, 2011); *HSBC Bank USA, NA v. Valencia*, No. 09-CV-  
25 1260-OWW-JLT, 2010 WL 546721, at \*5 n.2 (E.D. Cal. Feb. 10, 2010); *Evolution*  
26 *Capital Mgmt., LLC v. Mayus*, No. 06-00494 SOM-KSC, 2007 WL 1771581, at \*2 (D.  
27 Haw. June 18, 2007).

1 In any event, *Johnson* established the correct rule. “[T]he reasoning of the  
2 majority of the Circuit Courts of Appeal” agrees with it. *Gen. Ret. Sys. of the City of*  
3 *Detroit v. UBS AG*, No. 10-CV-13920, 2010 WL 5296957, at \*4 (E.D. Mich. Dec. 20,  
4 2010). In fact, the Second, Fifth, Sixth, and Seventh Circuits have adopted the same  
5 position. See *E.R. Squibb & Sons, Inc. v. Accident & Cas. Ins. Co.*, 160 F.3d 925, 931  
6 (2d Cir. 1998) (“the Supreme Court has deemed the citizenship of the trustees to be  
7 determinative” for “trusts”); *Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 & n.6 (5th  
8 Cir. 2009) (“appropriate tests for citizenship” of trust “is that of its trustee”); *Homfeld II,*  
9 *LLC v. Comair Holdings, Inc.*, 53 F. App’x. 731, 732 (6th Cir. 2002) (“[A] business trust  
10 has the citizenship of its trustees.”); *May Dep’t Stores Co. v. Fed. Ins. Co.*, 305 F.3d 597,  
11 599 (7th Cir. 2002) (holding that “for diversity purposes a trust is a citizen of whatever  
12 state the trustee is a citizen of.”) (Posner, J.); *Grede v. Bank of New York Mellon*, 598  
13 F.3d 899, 901 (7th Cir. 2010) (Easterbrook, J.) (noting “that a trust’s citizenship is that of  
14 the trustee, rather than the beneficiaries, for the purpose of 28 U.S.C. § 1332(a)”).

15 Likewise, several district courts have recently held that the citizenship of a trust  
16 depends exclusively on the citizenship of its trustees. See, e.g., *Gen. Ret. Sys.*, 2010 WL  
17 5296957, at \*4 (noting that “regardless of who the named plaintiff is, the trustee is the  
18 one with the authority to hold, manage and dispose of assets, as well as make decisions  
19 on behalf of the trust, and is therefore the real party to the action”); *Arthur L.*  
20 *Christoffersen Irrevocable Trust v. Yellow Book USA, Inc.*, No. 06-CV-79-LRR, 2006  
21 WL 2925655, at \*1 (N.D. Iowa Oct. 11, 2006) (“A trust has the citizenship of its trustee  
22 or trustees.”) (internal quotation marks omitted); *Logan v. Hit or Miss, LLC*, No. 07-  
23 1116, 2009 WL 1035018, at \*2 (W.D. La. Apr. 15, 2009) (“For diversity purposes, the  
24 citizenship of a trust is determined by the citizenship of each of its trustees.”) (citing *Bass*  
25 *v. Int’l Broth. of Boilermakers*, 630 F.2d 1058, 1067 (5th Cir. 1980)).

26 This majority position makes sense because, among other reasons, the Supreme  
27 Court has frequently admonished that jurisdictional rules should be as simple as possible.  
28

1 *Hertz*, 130 S. Ct. at 1193 (“Complex jurisdictional tests complicate a case, eating up time  
2 and money as the parties litigate, not the merits of their claims, but which court is the  
3 right court to decide those claims.”). A test for citizenship that examines only the  
4 citizenship of the trustee is considerably simpler than one that looks to the beneficiaries.  
5 A trust may include hundreds or even thousands of beneficiaries; requiring the parties to  
6 track down the citizenship of these people will be a costly and time consuming endeavor.  
7 In addition, a rule that always hinges on the trustee’s citizenship “discourag[es] forum  
8 shopping.” *Gen. Ret. Sys.*, 2010 WL 5296957, at \*4. Under the Trust’s view, by  
9 contrast, “plaintiffs . . . can decide whether to sue in the name of the trust or the trustees”  
10 to obtain their favored forum. *Id.* at \*4. Indeed, unlike this suit, the ML Liquidating  
11 Trust’s trustee has brought numerous other federal suits on behalf of the Trust *in his own*  
12 *name* rather than the name of the Trust. *See, e.g., O’Halloran v. Paletz (In re Mortgages*  
13 *Ltd.)*, No. 2:10-ap-01094-RJH (D. Ariz. Bankr.) (attached as Ex. A). The Court,  
14 therefore, should reject the Trust’s new argument.

## 15 **II. EQUITABLE REMAND IS NOT AVAILABLE WHEN DIVERSITY EXISTS.**

16 In addition to its new argument concerning its citizenship, the Trust cites a pair of  
17 new cases to support its claim that a federal court has the power to equitably remand suits  
18 over which diversity jurisdiction exists. (Reply at 7.) But the Trust mischaracterizes  
19 those two cases to make it appear as if courts have “exercise[d] their equitable remand  
20 powers . . . even . . . where an action is also removed on diversity or federal question  
21 grounds.” (*Id.*) The cases actually illustrate that courts have *no* such power because the  
22 courts went out of their way to conclude that no federal jurisdiction existed *other than*  
23 *bankruptcy jurisdiction* before determining whether to equitably remand on the basis of  
24 their equitable-remand power.

25 The Trust first cites *Davis v. Life Investors Insurance Co. of America*, 282 B.R.  
26 186, 194 (S.D. Miss. 2002). In *Davis*, the defendant removed on diversity and  
27 bankruptcy grounds. Diversity was based solely on the assertion that the  
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1 “resident/nondiverse defendants sued by plaintiff ... were fraudulently joined.” *Id.* at 187.  
2 The court did *not* exercise its equitable-remand power despite the existence of diversity  
3 jurisdiction. Instead, before even reaching the question of bankruptcy jurisdiction, it  
4 determined that *no* diversity jurisdiction existed. *See id.* at 188 (“Regarding [the  
5 defendant’s] charge of fraudulent joinder, . . . [the defendant] has not sustained its  
6 burden. . . . The question then is whether the court has ‘related to’ bankruptcy  
7 jurisdiction over this case, and if so, whether the case must or should nonetheless be  
8 remanded.”). The Trust also cites *Vig v. Indianapolis Life Insurance Co.*, 336 B.R. 279  
9 (S.D. Miss. 2005). In *Vig*, defendants removed on both federal question and bankruptcy  
10 grounds. *Id.* at 281. The defendants argued that “the court ha[d] federal question  
11 jurisdiction . . . because plaintiffs’ claims [were] preempted by [ERISA].” *Id.* Just as in  
12 *Davis*, prior to addressing its equitable-remand power, the court concluded that “no  
13 reasonable argument exists that plaintiffs’ claims are preempted” and therefore “removal  
14 is not proper on the basis of ERISA preemption.” *Id.* at 283-84. As these cases show, the  
15 Trust’s argument makes little sense. If Defendants removed this case solely on diversity  
16 grounds (as we could have), the Trust makes no claim that the Court would have an  
17 equitable-remand power. It fails to explain why such power should arise over diversity  
18 jurisdiction simply because a notice of removal adds a bankruptcy allegation.

### 19 **III. CONCLUSION**

20 Because the Trust’s trustee is not a citizen of Ohio, Delaware, Kansas, or  
21 Missouri, the Court must deny the Trust’s Motion to Remand.  
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1 DATED: January 24, 2011

Respectfully submitted,

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21 *Of Counsel (admitted pro hac vice)*

22 *Attorneys for Defendants*

23 *Mayer Hoffman McCann P.C., CBIZ, Inc., and*

24 *CBIZ MHM, LLC*

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**CERTIFICATE OF SERVICE**

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I hereby certify that on January 24, 2011, I electronically filed the foregoing Joint Motion to Dismiss Complaint with the Clerk of the Court using the CM-ECF system and served the following parties by U.S. mail:

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Scottsdale, AZ 85251  
*Counsel for ML Liquidating Trust*

/s/ Katherine V. Brown

# **EXHIBIT A**

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7 Attorneys for ML Liquidating Trust

8 **UNITED STATES BANKRUPTCY COURT**

9 **DISTRICT OF ARIZONA**

10 In re

11 MORTGAGES LTD.,

12 Debtor.

13 \_\_\_\_\_  
 14 KEVIN O’HALLORAN, LIQUIDATING  
 TRUSTEE OF THE ML LIQUIDATING  
 TRUST,

15 Plaintiff,

16 vs.

17 ROBYN P. PALETZ, a single woman; JOHN  
 18 DOE, husband of ROBYN P. PALETZ, if any;  
 and FIRST TRUST COMPANY OF ONAGA,  
 19 CUSTODIAN FBO ROBYN P. PALETZ IRA  
 # XXXXXX7331

20 Defendant(s).

Chapter 11

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

Adversary No. 2:10-ap-01094-RJH

**COMPLAINT TO AVOID PREFERENTIAL  
TRANSFERS/FRAUDULENT  
CONVEYANCES**

23 Kevin O’Halloran, Liquidating Trustee of the ML Liquidating Trust (the “**Liquidating**  
 24 **Trust**”), for the Liquidating Trust’s complaint, states the following:

25 **I. JURISDICTION AND VENUE.**

26 1. This adversary proceeding is brought in connection with the above-captioned  
 27 bankruptcy case, filed on June 20, 2008, under Chapter 11 of Title II, Case No.  
 28 2:08-bk-07465-RJH.

Carson Messinger Elliott Laughlin & Ragan, P.L.L.C.  
 Attorneys At Law  
 3300 North Central Avenue, 19th Floor  
 Phoenix, Arizona 85012



1           2.       This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C.  
2 §§ 157(b)(2)(F) and 1334.

3           3.       This adversary proceeding is brought pursuant to FRBP 6009 and 7001, 11 U.S.C.  
4 §§ 105(a) 323, 502, 541, 547, 548, and 550 and the Confirmed Plan in this case.

5           4.       This Court is the proper venue for this adversary proceeding in accordance with 28  
6 U.S.C. §§ 1408 and 1409.

7           5.       This is a core proceeding under 28 U.S.C. § 157(b)(2)(F).

8       **II.    THE PARTIES.**

9           6.       The Liquidating Trust was created pursuant to the Order Confirming Investors  
10 Committee’s First Amended Plan of Reorganization dated March 12, 2009 (the “**Confirming**  
11 **Order**”) in the above-captioned bankruptcy case.<sup>1</sup> (Docket Entry (“**DE**”) 1755).

12          7.       The Liquidating Trustee was appointed pursuant to the Confirming Order.

13          8.       The Liquidating Trustee is the successor of and the representative of the Estate for  
14 Avoidance Actions relating to the Liquidating Trust.

15          9.       Upon information and belief, Defendant First Trust Company of Onaga Custodian  
16 FBO Robyn P. Paletz IRA #XXXXXXX7331 (“**Defendant Onaga**”) is the custodian for and on  
17 behalf of Robyn P. Paletz IRA account Number XXXXXX7331, and has been named as a  
18 defendant because as custodian, Defendant Onaga was in receipt of payments described below.

19          10.       Upon information and belief, Defendant Robyn P. Paletz (“**Defendant Paletz**”)  
20 signed a Master Agency Agreement and a Mortgages Ltd. Existing Investor Account Agreement,  
21 which provide that federal or state courts sitting in the city of Phoenix shall have jurisdiction.

22          11.       Upon information and belief, Defendant Onaga and/or Defendant Paletz  
23 (hereinafter collectively referred to as “**Defendants**”) transferred money to Debtor, received  
24 payment from Debtor, and sent signed investment documents and other documents to Debtor then  
25 located at 55 East Thomas Road, Phoenix, Arizona.

26          12.       Upon information and belief, Defendants caused each of the events described  
27 above to occur in Maricopa County, Arizona.

28 \_\_\_\_\_  
<sup>1</sup> Capitalized terms not defined herein shall be used as defined in the Confirmed Plan and/or the Bankruptcy Code.

1     **III. BACKGROUND**

2           13. On June 20, 2008, Debtor filed the above captioned proceeding under Chapter 11  
3 of the Bankruptcy Code.

4           14. Upon information and belief, on or about April 22, 2006, Defendant Paletz signed  
5 a Mortgages Ltd. Securities, L.L.C. Account Application (the “**Account Application**”).

6           15. Upon information and belief, the Account Application states that Defendants  
7 “heard about” Debtor through Robert Furst.

8           16. Upon information and belief, on or about June 13, 2006, Defendant Paletz signed a  
9 Master Agency Agreement which named Defendant Onaga as “Beneficiary” and Debtor as  
10 “Agent”.

11           17. Upon information and belief, on or about September 20, 2006, Defendants  
12 transferred \$99,000.00 to Debtor and received an interest in a loan made to Saenz Promotions,  
13 Inc., Loan No. 8082S9, such note was to be due on August 29, 2017 (the “**First Investment**”),  
14 such First Investment was made through a Direction to Purchase, a copy of which is attached  
15 hereto as **Exhibit “A”**.

16           18. Upon information and belief, on or about March 28, 2007, Defendants transferred  
17 \$44,789.43 to Debtor and received an additional interest in the First Investment.

18           19. Upon information and belief, Defendants received regular payments of principal  
19 and interest on the First Investment from November 7, 2006, until May 5, 2008.

20           20. Upon information and belief, on or about August 12, 2007, Defendant Paletz  
21 signed the Mortgages Ltd. Existing Investor Account Agreement, a copy of which is attached as  
22 **Exhibit “B”** (the “**Existing Investor Account Agreement**”).

23           21. Upon information and belief, in the Existing Investor Account Agreement,  
24 Defendant Paletz warranted and represented that Defendant Paletz was an “accredited investors”  
25 as defined in Rule 501(a) of the Securities Act of 1933, as amended.

26           22. Upon information and belief, at some time during 2007, Debtor ceased honoring  
27 investor redemption requests.

28     ///

1           23.    Upon information and belief, on February 6, 2008, Defendant Onaga requested a  
2 full redemption on the First Investment, a copy of such redemption request is attached hereto as  
3 **Exhibit “C”**.

4           24.    Upon information and belief, on or about February 12, 2008, Defendant Paletz  
5 received a letter from Debtor which stated:

6                   “Should you have submitted a redemption request, please know that Mortgages  
7 Ltd. Securities has entered your sell order into its system and will process your  
8 request in the order received.”

9           Such letter is attached hereto as **Exhibit “D”**.

10           25.    Upon information and belief, on or about February 20, 2008, Defendants  
11 transferred \$99,000.00 to Debtor and received an interest in a loan made to SOJAC I, LLC, Loan  
12 No. 857106 (the **“Second Investment”**).

13           26.    Upon information and belief, on or about April 30, 2008, Debtor Paletz emailed  
14 Sheila Touhey, then Managing Director of Debtor, a copy of which is attached hereto as **Exhibit**  
15 **“E”** (the **“Email”**).

16           27.    Upon information and belief, the Email stated:

17                   “It is my specific intention NOT to grant Mortgages Ltd. any discretion to modify  
18 or extend loans in which I am a participant. Therefore, I do not want to sign a  
19 new Subscription Agreement.

20                   With respect to any loans which were modified or extended without my consent,  
21 please cash me out of these loans as soon as possible. Please confirm this action  
22 on your behalf.”

23           28.    Upon information and belief, on or about April 30, 2008, Defendant Paletz  
24 received an email from Sheila Touhey, a copy of which is included in **Exhibit “E”** (the **“Reply**  
25 **Email”**).

26           29.    Upon information and belief, the Reply Email stated:

27                   “I have noted the account that you have chosen not to sign the new Investor  
28 Subscription Agreement. Basically we will not be able to accept new funds from  
you on a go forward basis. Loan modifications are done to complete many of the  
projects as to not jeopardize investor principal. Borrowers are making payments  
and interest is being paid on the majority of our loan inventory.

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Until such time as we receive a loan payoff, we will return principal from a loan to an investor. We cannot provide a time period for such payoffs. We are working extremely hard to get many of these projects funded, completed and at the stage where a pay off (sic) can occur. As stated in various letters sent by Scott Coles, liquidity in our arena is limited. When the banks start lending again in (sic) when we will see liquidity.”

30. Upon information and belief, Defendants received the following payments from Debtor, and/or its related entities and cashed the same:

<u>Date</u>	<u>Check Number</u>	<u>Amount</u>
03/25/2008	008031	\$99,000.00
05/23/2008	008081	<u>\$132,673.32</u>
Total		<u>\$231,673.32</u>

31. Upon information and belief each of the payments described in paragraph 30 made to Defendants were not made from investment loan payoffs.

32. Upon information and belief, only seven Investors received a complete redemption of their investment account within 90 days before the Petition Date.

33. Upon information and belief, Defendants were one of the seven Investors who received a complete redemption of their investment account within 90 days before the Petition Date.

#### **IV. COUNT 1 – AVOIDANCE OF PREFERENTIAL TRANSFERS - 11 U.S.C. § 547**

34. The Liquidating Trust restates and realleges the allegations contained in paragraphs 1 to 33, as though fully set forth herein.

35. Each of the payments described in paragraph 30 (the “**Payments**”) were made to Defendants within 90 days before the Petition Date.

36. Each of the Payments made to Defendants were transfers of interest in Debtor’s property to or for the benefit of Defendants.

37. Each of the Payments made to Defendants were transfers for or on account of an antecedent debt owed by Debtor before the transfers were made.

38. Each of the Payments made to Defendants were made while Debtor was insolvent.

1           39. The effect of the Payments made to Defendants was to enable Defendants to  
2 receive more than Defendants would normally receive if the transfers had not been made.

3           40. The effect of the Payments made to Defendants was to enable Defendants to  
4 receive more than they would normally receive if Defendants received a payment under Chapter 7  
5 of the Bankruptcy Code.

6           41. The effect of the Payments made to Defendants enabled Defendants to receive  
7 more than they would normally receive if Defendants received payment of such debt to the extent  
8 provided by the provisions of the Bankruptcy Code.

9           42. The Payments made to Defendants constitute avoidable transfers under  
10 Bankruptcy Code § 547(b) and, in accordance with Bankruptcy Code § 550(a), the Liquidating  
11 Trust may recover the amount of the Payments from Defendants, plus interest from the date of  
12 this complaint.

13 **V. COUNT II – AVOIDANCE OF FRAUDULENT CONVEYANCES - 11 U.S.C. § 548**

14           43. The Liquidating Trust restates and realleges the allegations contained in  
15 paragraphs 1 to 42, as though fully set forth herein.

16           44. The Payments were made without any consideration, or insufficient consideration  
17 received by Debtor.

18           45. Debtor received little or no value, or a less than reasonably equivalent value, in  
19 exchange for the Payments.

20           46. The Payments made to Defendants were made when Debtor was insolvent.

21           47. Alternatively, the effect of the Payments rendered Debtor insolvent at the time the  
22 Payments were made.

23           48. The Payments made to Defendants were made when Debtor was engaged in  
24 business or a transaction, or about to engage in business or a transaction, for which any of  
25 Debtor's remaining property was an unreasonably small capital.

26           49. The Payments made to Defendants were made at a time that Debtor intended to  
27 incur, or Debtor or Defendants believed that Debtor would incur, debts that would be beyond  
28 Debtor's ability to pay as such debts matured.

1           50.     Additionally, or alternatively, the Payments made to Defendants were made with  
2 the intent to hinder, delay or defraud creditors of this estate.

3           WHEREFORE, the Liquidating Trust requests the Court enter a judgment against  
4 Defendant Robyn P. Paletz, a single woman, and Defendant First Trust Company of Onaga,  
5 Custodian FBO Robyn P. Paletz IRA #XXXXXX7331, as follows:

6           1.     For an Order avoiding as a preference the payments described in paragraph 30  
7 herein in the total amount of \$231,673.32;

8           2.     For an Order avoiding as a fraudulent conveyance the payments described in  
9 paragraph 30 herein in the total amount of \$231,673.32;

10          3.     For judgment jointly and severally against Defendant Robyn P. Paletz, a single  
11 woman, and Defendant First Trust Company of Onaga, Custodian FBO Robyn P. Paletz IRA  
12 #XXXXXX7331, in an amount not less than \$231,673.32.

13          4.     For attorneys' fees and costs incurred herein; and

14          5.     For such other and further relief as the Court deems just and proper.

15          Dated this 17th Day of June, 2010.

16  
17                           **CARSON MESSINGER ELLIOTT  
                                    LAUGHLIN & RAGAN, P.L.L.C.**

18                           /s/ Daniel L. Hulsizer (022509)  
19                           Michael P. Anthony  
20                           Daniel L. Hulsizer  
                              Matthew H. Mason  
                              Attorneys for ML Liquidating Trust

Carson Messinger Elliott Laughlin & Ragan, P.L.L.C.  
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Phoenix, Arizona 85012

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