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10 Counsel for Morley Rosenfield as trustee of
11 Morley Rosenfield, M.D. P.C. Restated Profit
12 Sharing Plan

13 **IN THE UNITED STATES BANKRUPTCY COURT**
14 **FOR THE DISTRICT OF ARIZONA**

15 In re:
16 MORTGAGES LTD.,
17 Debtor.

In Proceedings Under Chapter 11
Case No. 2:08-bk-07465-RJH

**MOTION FOR ENTRY OF AN ORDER
COMPELLING TURNOVER OF FUNDS
BEING IMPROPERLY WITHHELD BY
ML MANAGER, LLC**

Hearing Date: June 30, 2010
Hearing Time: 10:00 a.m.

18 Pursuant to Section 105(a) of the Bankruptcy Code, Morley Rosenfield as trustee of
19 Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan ("Rosenfield"), by and through its
20 duly authorized counsel, hereby files this Motion for entry of an order compelling ML Manager,
21 LLC ("ML Manager") immediately to turn over all proceeds of Loan #7987S2 (the "Loan") that
22 it currently holds or controls and which are owed to Rosenfield and the other owners of the Loan.
23 ML Manager holds no interest in the Loan, and the Loan was not transferred to any Loan LLC
24 created pursuant to the plan of organization confirmed in this case. Despite this, and despite
25 demand, ML Manager has failed and refused to relinquish the proceeds of the Loan, a portion of
26 which is owing to Rosenfield. In support of this Motion, Rosenfield submits as follows:

27 1. In or around April 2002, Debtor sold the Loan to the following investors: (i) an
28 approximate 51% interest to Rosenfield; (ii) an approximate 14% interest to Crimmins Family

1 Revocable Trust; and (iii) an approximate 35% interest to Frank Surdakowski or trust or entity
2 controlled by Mr. Surdakowski (collectively, the “Purchasers”). The Purchasers retained Debtor
3 to service the Loan and receive payments made thereunder, but Debtor retained no ownership
4 interest in the Loan.

5 2. On June 20, 2008, an involuntary Chapter 7 bankruptcy petition was filed against
6 Debtor, which case this Court subsequently converted to a Chapter 11 bankruptcy case.

7 3. On or around March 12, 2009, the Official Investors Committee filed its *First*
8 *Amended Plan of Reorganization Dated March 12, 2009* (the “Plan”) in Debtor’s bankruptcy
9 case, which the Court confirmed as amended by order dated May 20, 2009. The Plan provided
10 for the creation of Loan LLCs to hold various loans originated by Debtor, and allowed investors
11 in the loans the option to transfer their respective interests to the Loan LLCs.

12 4. However, neither the Loan nor the Purchasers’ respective interests in the Loan
13 were transferred to the Loan LLCs under the Plan. Rather, the Purchasers retained the Loan and
14 their respective interests in the Loan, as evidenced by an email sent from counsel for the Official
15 Investors Committee to Tom Crimmins, trustee of the Crimmins Family Revocable Trust. A true
16 and correct copy of the email is attached hereto as Exhibit A.

17 5. After plan confirmation, ML Servicing Co., Inc. (as Debtor’s successor-in-
18 interest) and/or ML Manager continued to service the Loan and collect payment thereunder until
19 maturity. As of March 16, 2010, the Loan had matured, the borrowers thereunder had paid the
20 Loan in full, and ML Manager had received principal and other sums due under the Loan in
21 excess of \$195,000. See Payment Notification attached hereto as Exhibit B and incorporated
22 herein by reference. The proceeds of the Loan are owed to the Purchasers as the owners of the
23 Loan and the holders of any promissory notes related thereto.

24 6. Rosenfield and its counsel have made repeated demand upon ML Manager and its
25 counsel to turn over the proceeds of the Loan to the Purchasers. See, e.g., letter from Morley
26 Rosenfield to ML Manager dated October 19, 2009 attached hereto as Exhibit C and
27 incorporated herein by reference; email correspondence from Morley Rosenfield to counsel for
28 ML Manager dated March 26, 2010 attached hereto as Exhibit D and incorporated herein by

1 reference. Despite such demand, and despite its fiduciary duties to the Purchasers, ML Manager
2 has failed and refused to turn over the proceeds of the Loan to the Purchasers.

3 WHEREFORE, Rosenfield requests that the Court enter an order requiring ML Manager
4 to immediately turnover all proceeds of the Loan in its possession or control to the Purchasers,
5 and enter any other and further relief as may be just and proper under the circumstances of this
6 Chapter 11 case.

7 DATED this ____ day of June, 2010.

8 BRYAN CAVE LLP

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10 By: /s/ BAS, #022721

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17 Sharing Plan

18 COPY of the foregoing served by email
19 this 2nd day of June, 2010 upon:

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28 /s/ Robyn L. Kerns