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7

8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF ARIZONA

10 In re
11 MORTGAGES, LTD.,
12 Debtor.

Chapter 11
2:08-BK-07465-RJH

**APPLICATION FOR AN ORDER TO
SHOW CAUSE WHY RON BARNES
SHOULD NOT BE HELD IN
CONTEMPT OF COURT**

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16 On March 29, 2011, the Court entered its ex-parte order requiring Mr. Barnes
17 and/or the Barnes Investment Limited Partnership (collectively “Barnes”) to return the
18 \$112,075.31 that was erroneously distributed to it on February 22, 2011 [Docket
19 No. 3126]. ML Manager mailed a copy of the order to Mr. Barnes at two separate email
20 addresses and the physical address contained in ML Manager’s records (the same physical
21 address where the check was sent). A copy of the emails indicating this service are
22 attached hereto as Exhibit A. Mr. Barnes has failed to return the funds.¹ Accordingly,
23 ML Manager requests that the Court enter the order attached as Exhibit B requiring
24

25 ¹ The Court’s order also required ML Manager to freeze the Bank of America accounts
26 held by Barnes. Bank of America froze the relevant accounts and informed ML Manager
of that balance of these accounts. Unfortunately, the frozen accounts did not contain the
erroneously distributed funds.

1 Mr. Barness to appear and show cause why he should not be held in contempt of court for
2 failing to return the erroneously distributed funds.

3 The Ninth Circuit has held that, pursuant to 28 U.S.C. § 105 and Rule 9020,
4 Federal Rules of Bankruptcy Procedure, the Bankruptcy Court may hold parties in
5 contempt of court due to a willful failure to obey the Bankruptcy Court's order. *Caldwell*
6 *v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 284 (9th Cir. 1996).
7 Here Barness has willfully ignored the Court's January 20, 2011, Distribution Order as
8 well as the Court's March 29, 2011, Order requiring Barness to return the funds.
9 Accordingly, ML Manager respectfully requests that the Court enter an order requiring
10 Barness to appear and show cause why he should not be held in contempt of Court.²

11 DATED: April 14, 2011

FENNEMORE CRAIG, P.C.

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13 By /s/ Joshua T. Greer

14 Cathy L. Reece
15 Keith L. Hendricks
16 Joshua T. Greer
17 Attorneys for ML Manager LLC

18 E-FILED THIS DATE
19 Copy mailed and e-mailed:

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/s/ L. Carol Smith

2412407

25 ² Recently the Ninth Circuit clarified that an application for an order to show cause fulfills
26 the due process requirements under Rules 9020 and 9014, Federal Rules of Bankruptcy
Procedure. *See, Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186 (9th Cir. 2011).