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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re MORTGAGES, LTD., Debtor.	Case No. 2:08-BK-07465-RJH Chapter 11 **LEGAL MEMORANDUM IN SUPPORT OF MOTION TO QUASH BENCH WARRANT** **--AND--** **MOTION FOR LEAVE FROM ORDER DATED JUNE 21, 2011** **--AND--** **MOTION FOR CLARIFICATION**

I. INTRODUCTION

Ron Barness respectfully requests that the Court:

1. Quash the Civil Arrest Bench Warrant signed by this Court on July 26, 2011 (Docket No.3279) (the "Bench Warrant"); and
2. Vacate the order dated June 21, 2011 finding him in contempt. (the "Contempt Order") (Docket No. 3251); and
3. Clarify Mr. Barness' disclosure obligations as regards his other creditors.

Mr. Barness has gone from a simple debtor to a contemnor with a warrant out for his arrest because someone else made a mistake. He finds himself with an unsolvable dilemma despite, in the Court's own language, "nobody here is finding that you did anything wrong." This case started when ML Manager inappropriately, but without any wrong doing on Mr. Barness' part, disbursed over $112,000 to him. Mr. Barness, who undisputedly had no knowledge of the error, spent the

money to pay his legitimate bills. As a result of that conduct, and that conduct alone, he now has a warrant out for his arrest.

At a prior hearing, the overarching theme, both from ML Mangers and the Court was that ordering Mr. Barness to draw against his bank credit to pay ML Manager was appropriate because it simply restored the status quo and put all parties back where they were before the Check was misdelivered. That rationale, however, is fatally flawed and there is no effective way to restore all concerned back to the status they held prior ML Manager's to error.

What has happened to Mr. Barness is not just. What has happened to Mr. Barness is not right. This, Court has the power to set things straight. By this pleading, Mr. Barness asks the Court to do just that.

II. FACTUAL BACKGROUND

Although the Court probably recalls the history of this matter, a few key events bear recitation. This debacle started when, on January 20, 2011, ordered ML Manager to make certain distributions including, specifically, a distribution to the City of Gilbert in lieu of a distribution to Mr. Barness (the "January Order") (Docket No. 3051) . The January Order was never served on Mr. Barness. The January Order, moreover, was not directed to Mr. Barness. Instead the January Order directed that ML Manager take certain actions. ("The Distribution Motion is granted and ML Manager is authorized to make the distributions contemplated therein . . . The proposed distribution of net proceeds from the six Loans . . . to their respective judgment creditors . . . is approved.") (January Order at ¶¶ A and J). For reasons we will probably never know, ML Manager did not do as it was ordered. Instead, ML Manager sent a check for $112,075.31 to Mr. Barness instead of the City of Gilbert (the "Check"). This whole chain of events, therefore, starts with an error by ML Manager. (ML Manager admits that "an error was made." (Transcript of the hearing of June 15, 2011 (Docket 3286) hereinafter "Transcript" at 15:25). ML Manager disregarded the Court's clear instructions on distributions. ML Manager, the proponent of the January Order, clearly knew its obligations—it just failed to fulfill them. If there is a party in contempt of the January Order, it is ML Manager not Mr. Barness.

Mr. Barness received the Check on or about February 22, 2011. Mr. Barness was, at the time, pleasantly surprised. Mr. Barness and his family partnership have a claim in this case in excess of $800,000. Therefore, the Check was, he believed, in partial re-payment of an undisputed,

substantial claim. Furthermore, it is undisputed that Mr. Barness spent the money within a few days generally paying his bills entirely ignorant of ML Manager's error.

Just over a month later, ML Manager realized its mistake and obtained an ex-parte order demanding the return of the Check proceeds (the "March Order") (Docket No. 3126). ("IT IS HEREBY ORDERED that Ron Barness and/or Barness Investment Limited Partnership shall immediately return $112,075.31 that he/it received on February 22, 2011 . . . .") (emphasis added). By that time Mr. Barness could not return that which he no longer had. He had paid bills. Mr. Barness produced his bank statement to ML Manager's attorneys showing the account into which the Check had been deposited. The statements showed conclusively that the account had been drained down to a minimal figure well before service of the March Order.

ML Manager decided that instead of accepting responsibility for its own error, it needed a scapegoat. Mr. Barness did not ask for the Check. He did not demand it. He did not defraud or mislead anyone into sending it to him. Instead all he did was pay legitimate bills with what he honestly and reasonably believed was partial payment on a valid claim.

III. THIS COURT SHOULD QUASH THE BENCH WARRANT

A. The Bench Warrant Is Unenforceable for Lack of Service

As set out originally in brief form in the Motion filed by Mr. Barness on July 26, 2011 (Docket No. 3276) the Court should quash the civil arrest warrant for lack of service. The June Order was never served on Mr. Barness. Admittedly, Mr. Barness knew an order had been lodged as ML Manager emailed him a copy at the time of lodging. Mr. Barness had no idea, however, that the Court had signed the June Order until reading the application for the Bench Warrant on July 25, 2011.

It is clear law that a party cannot be in contempt of an order which has not been served on that party. Klein v. Ziegler, 82 B.R. 345 (E.D. Pa. 1988) ([T]he July Order did require defendant to make certain payments, but the bankruptcy judge has found that he was never served with that Order.") Contempt is an extreme remedy which must be used sparing when for which the procedure must be entirely proper. U.S. v. Carter, 333 F. Supp. 1392, 1395 (E.D. Pa. 1971) ("knowledge of an order of the court either actual or by service of notice, before being held in contempt for violation of that order is obviously a basic requirement of due process...."). ML Manager had within its power to serve the June Order after it was signed by the Court so as to put Mr. Barness on notice that the

Court approved its unedited form, content and deadlines. Mr. Barness is not in contempt and cannot be in contempt of an order which has never been properly served upon him.

B. The Bench Warrant Should be Quashed Because it is Impossible for Mr. Barness to Comply

At the evidentiary hearing that Court held in this matter on June 15, 2011 (the "June Hearing") ML Manager elicited testimony from Mr. Barness that he had several credit cards which, carried an open credit balance in excess of the Check. Mr. Barness further testified, under examination from ML Manager's counsel, that he had, in the past, written checks against his Chase Bank credit cards as if drawing on a credit line.[1] During the hearing, Mr. Barness referred to this process as writing "a balance transfer check."

Q. So you have about 160,000 between the Chase and Bank of America?

A. That's right.

Q. And you are able to live by writing what you call balance transfer checks transferring balances from various cards and that's what you use to get you money to live?

A. That plus using the credit cards themselves to charge expenses.

Transcript at 10:10 to 10:17

After the June Hearing, Mr. Barness logged onto his Chase Bank account (the only bank with whom he had balance transfer privileges) and discovered, much to his surprise, that Chase Bank had completely cut off his ability to write balance transfer checks. Mr. Barness did not contact Chase Bank in any way to discourage it or to affect this change in policy. Instead, Chase Bank, on its own or for whatever reasons it chose, cancelled Mr. Barness' balance transfers abilities without any notice to him. Then, in what may not be the final twist to these events recently Mr. Barness received a notification from Chase Bank that his ability to write balance transfer checks had been partially restored. According to Chase Bank, and without regard to the other issues raised in these pleadings, Mr. Barness can draw against one Chase Bank card for a maximum of $25,000.

So, as it stands today, it is impossible for Mr. Barness to comply with the June Order because, although he can write a cash advance check for $25,000, that still leaves him short

[1] Mr. Barness also has a credit card with Bank of America. It does not have cash advance privileges. Moreover, it is, and was, within a de minmus amount of its maximum credit.

$87,000—well short of the amount ordered by the Court and disregarding the other issues raised by these pleadings.

At the June Hearing, the Court ruled that the impossibility defense was, at that time, unavailable because Mr. Barness had the power to draw against his credit cards up to $160,000 and that should shift the burden of ML Manager's error from ML Manager to Chase Bank. ("[I] guess technically maybe a contemnor under the procedure we have here today to pay the debt and that defense [impossibility] cannot be satisfied if the judgment debtor has the ability to borrow funds to pay the debt.") (Transcript at 24:2-24:5) These new circumstances merit new consideration.

The Court should quash the civil arrest warrant as it is impossible for Mr. Barness to pay ML Manager over $112,000.

B. The Court Cannot Order Mr. Barness to Commit Bank Fraud

The Court should quash the Bench Warrant because it seeks to enforce an order which directs Mr. Barness to commit a criminal act. Mr. Barness testified at the June Hearing that he earns approximately $5,000 a month. (Transcript at 13:6-13:9) Further he testified that "for a period of a year or two I didn't have any income." (Transcript at 13:13-13:14). This modest income has not made life easy for Mr. Barness and his family as he still doesn't "have enough income to cover [his] living expenses." (Transcript at 6:15-6:16).

Somehow lost in the June Hearing were federal and state laws prohibiting Mr. Barness from borrowing money from a federally insured institution with the present knowledge that he has no ability to repay. The use of false pretenses or fraud in obtaining money from a federally insured institution is bank fraud. 18 U.S. C. § 1344. Federal law criminalizes as bank fraud a borrower who draws on credit knowing he either had no intent to repay or no ability to repay. U.S. v. Severson, 569 F.3d 683 (7th Cir. 2009) (Borrowing money while knowing insolvent constitutes bank fraud. "If we look at the record, there is no dispute that Severson know he was insolvent. Severson knew his corporate accounts were continually overdrawn." 569 F.3d at 688); U.S. v. Hutchinson, 22 F. 3d 846, 851 (9th Cir. 1993) *abrogated on other grounds* U.S. v. Wells, 117 S.Ct. 921 (1997).

Moreover, knowingly making a false statement to a federally insured institution is a violation of 18 U.S.C. § 1014. ML Manager may argue that silently drawing against the Chase Bank cards does not constitute a representation for purposes of 18 U.S.C. § 1014. Numerous bankruptcy courts, however, have found that when a debtor drawing on a credit card makes an implied representation

that he has the present ability to repay the advance. Breach of this implied promise can constitute "false pretenses, a false representation, or actual fraud" under 11 U.S.C. § 523(a)(2)(A). In re: Hashemi, 164 F.3d 1122 (9th Cir. 1996); In re: Eashai, 87 F.3d 1082 (9th Cir. 1996). See also, In re Jackson, 156 B.R. 316 (M.D. Fla. 1993); In re: Reynolds, 221 B.R. 828 (N.D. Ala. 1998); In re: Arroyo, 205 B.R. 984 (S.D. Fla. 1997). Thus, at least in one part of the federal court system, drawing against a credit card can constitute a representation the borrower has the intent and ability to repay which, if false, subjects the debtor to criminal sanctions.

Arizona also criminalizes the use of false or fraudulent schemes. A.R.S. § 13-2310. Arizona courts have interpreted this statute to prevent the obtaining of money or property from another without making appropriate disclosures. State v. Johnson, 179 Ariz. 375, 880 P.2d 132 (1994) ("The State responds that the need not be an actual misrepresentation or even an omission. We agree." (880 P.2d at 134).

If Mr. Barness does as the Court has ordered (assuming he could), he will owe an additional $112,075.31 to Chase Bank. Mr. Barness does not have the present ability to repay an additional $112,075.31 on the terms imposed by Chase Bank and he has no reasonable prospect that he can pay it at any time in the future. As Mr. Barness testified at the June Hearing, "[t]here are a lot of creditors who I owe a lot of money to, in excess of 30 or 40 million dollar." (Transcript at 6:11-6:12). Ordering Mr. Barness to draw against his Chase Bank credit cards, orders him to commit a criminal act under both federal and state law.

Although the Court's equitable powers are broad, it cannot be argued that those powers include the directing the commission of bank fraud.

C. Restoration of the Status Quo Ante is Impossible

At the June Hearing, ML Manager argued, and the Court expressly adopted the rationale, that forcing Mr. Barness to write balance transfer checks "is not new borrowing. It's simply to put the parties back into the position they were in." (Transcript at 18:13-18:15). The Court then adopted this argument in explaining its order so as to "[i]n effect, put the parties back where they were before the distribution went awry.") (Transcript at 24:13-24:14) This rationale, although superficially attractive, is seriously flawed. There is simply no way for the Court, by force of a warrant, contempt order or otherwise to restore all effected parties, including Chase Bank, to the position they held before the Check was issued in error.

Prior to the collapse of the real estate market in 2008, Mr. Barness was a successful real estate investor and manager. Based upon a long track record of profitable commercial real estate development, Mr. Barness applied for and obtained, over time, credit cards which, collectively, have a limit of approximately $180,000. During the profitable years, Mr. Barness, like many others, used his credit cards to incur bills which he then paid off on a monthly basis. Gradually, the balances on Mr. Barness' credit cards grew. As the economy continued to deteriorate, Mr. Barness was able to service the debt on his credit cards solely because of the interest rate then offered by Chase Bank—rates between 0 and 1.9%. Before his check writing privileges were cancelled, Mr. Barness had taken advantage of Chase's special interest rates on such cash advances because they were extremely low and advantageous. Despite the collapse of his business, Mr. Barness was able to keep his Chase Bank cards current due because his monthly payments ran around $400 per month.

After the June Hearing, Mr. Barness inquired of Chase Bank what the current rate is on new cash advances. He was told that it is 12% per annum. The minimum monthly payment (including interest and minimum principal) now would be approximately $2200 per month or almost half of the Barness family income. Mr. Barness does not have any reasonable prospect of being able to service the interest, much less pay down the principal accruing at the 12% rate. Default on his obligations to Chase Bank is certain and would be immediate.

Simply put, although drawing against the Chase Bank credit cards is a facially attractive solution, in fact it carries potentially ruinous consequences. Mr. Barness in good faith found the balances on his credit cards in excess of the $112,000. If he draws that much against his credit cards today, he cannot do so in good faith, within any reasonable prospect of servicing the interest on the debt, much less principal repayment. Although all the numbers on the ledger sheet may line up the same, the personal consequences to Mr. Barness of drawing an additional $112,000 are catastrophic. ML Manager's facile argument that "it would put him in exactly the same situation he would have been in had the money been withheld" is belied by the facts. (Transcript at 5:16-5:18). The Bench Warrant should be quashed.

IV. THE COURT SHOULD VACATE THE JUNE ORDER

Pursuant to Bankruptcy Rule 9024, Rule 60, F.R.Civ.P. applies in cases under the Code. Federal Rule 60 allows the Court to grant relief from orders and judgment based upon mistake,

inadvertence, surprise, newly discovered evidence, that a judgment order is void, and any other reasons that justify relief.

While ML Manager may seek to characterize this motion as a collateral attack on the June Order, it is not. The June Order has a continuing effect and the Court must, of course, continue to determine whether Mr. Barness' efforts to comply with the June Order merit punishment. It must continue to decide whether circumstances have changed to make performance impossible. To the extent that the Court views this Motion as one brought under Rule 9024, however, Mr. Barness asks that it grants him relief under such rule and vacate the June Order.

Mr. Barness requests that the Court vacate the June Order in its entirety on the basis and for the reasons set forth in this motion. If the Court is inclined, however, to impose some continuing obligation on Mr. Barness, however, Mr. Barness requests that the Court vacate the June Order and enter a new order clearly setting form the continuing obligations the Court finds rest on Mr. Barness' shoulders.

A. Relief is Appropriate Under Rule 60(b)(1)

Pursuant to Federal Rule 60(b)(1), the Court can grant relief from a final judgment or order due to "mistake, inadvertence, surprise or excusable neglect." Mr. Barness respectfully urges the relief from the June Order is inappropriate under Rule 60(b)(1).

Mr. Barness has, to date, been unrepresented in this matter because he was (and is) broke and has very limited resources. From inception, ML Manager has not asked that he pay $112,075.31, but instead that he "return" that amount.

A. "Mr. Barness has refused to return these funds . . . ML Manager respectfully requests that this Court enter the attached order requiring Barness to return the Funds . . . ." Docket 3124.

B. "Accordingly, ML Manager requests that the Court enter the order attached as Exhibit B requiring Mr. Barness to appear and show cause why he should not be held in contempt of court for failing to return the erroneously distributed funds." Docket 3172

C. "Barness has failed to return the funds." Docket 3243

D. "[The legal issue is] Whether it is legally impossible for Barness to return the Funds." Docket 3243

E. "We're here to present on issue really before you today ant that is whether MR. Barness does have the ability to return the money." Transcript at 4:13 to 4:15.

Mr. Barness correctly read the March Order to require him to "return" the Check proceeds. By the time that March Order was served, however, he did not have hold or control of any Check proceeds. He knew he could not return what he did not have.

To say that Mr. Barness was surprised by the outcome of the June Hearing is an understatement. He was completely taken aback. Facing an order requiring returning property which he undisputedly no longer had, he had no clue that the Court would enter an order "robbing Peter to pay Paul." (Transcript at 24:6-24:8) In addition, he was taken off guard when that the Court ordered him to pay ML Manager regardless of the source of the funds.

Mr. Barness was deprived of a meaningful opportunity to seek reconsideration or review of the June Order as a result of surprise, mistake or excusable neglect. Mr. Barness reasonably believed that if he was going to be ordered to take certain action, that he would be notified of his. In this case, the June Order has, to date, never been served upon Mr. Barness. Mr. Barness first learned about it on July 25, 2011 when he read, much to his surprise, an order seeking issuance of the bench warrant. Therefore, Mr. Barness was deprived an opportunity to ask for either reconsideration or present additional evidence or argument because the Order was never served upon him. Mr. Barness respectfully submits that the June Order should be vacated under Rule 60(b) (1).

B. The Court Should Vacate the June Order Under Rule 60(b)(2)

Federal Rule 60(b)(2), incorporated by Bankruptcy Rule 9024, allows the Court to set aside a final order upon presentation of new evidence which was not available at the prior hearing. Unquestionably the change in Chase Bank's position regarding the use of cash advances is new evidence which was not available to Mr. Barness at the prior hearing. He had no idea, prior to the June Hearing, that his ability to write cash advance checks was an issue. Mr. Barness had no idea, additionally, that Chase Bank had changed its cash advance policy with respect to his accounts. Chase Bank's policy change regarding Mr. Barness' accounts is material, additional new evidence which was not available to him at the June Hearing. Accordingly, Mr. Barness requests that the Court vacate the June Order based upon this new evidence.

C. **The Court Should Vacate the June Order Based on Rule 60(b)(6)**

Federal Rule 60(b)(6), incorporated by Bankruptcy Rule 9024, allows the Court to set aside a final judgment or order for any other reason that justifies relief. Mr. Barness submits that the equities of this case compel vacating the June Order.

Seemingly overlooked in the proceedings to date is that this matter originates with someone else's mistake. Mr. Barness did not demand that the Check be mailed to him. Somehow, someone on the ML Manager side overlooked the obligation to the City of Gilbert. As a result of that mistake, and that mistake alone, Mr. Barness is being punished and threatened with arrest.

Respectfully, this case is not about contempt and never should have been about contempt. Mr. Barness has not disobeyed any Court order. He received a check to which he was not entitled. The law provides an easy remedy for such event -- unjust enrichment. ("[E]ssentially he received a windfall . . . " Transcript 5:15; "[T]he distribution to Mr. Barness was essentially a windfall . . ." Transcript at 16:20) The law is no stranger to cases where one party innocently and without fraud receives money to which it is not entitled. Loiselle v. Cosas Management Group, LLC, 224 Ariz. 207, 228 P.3d 943 (Ct. App. 2010) ("Unjust enrichment occurs when one party has and retains money or benefits that in justice and equity belong to another."); see also Title Partners Agency, LLC v. Devisees of the Last Will and Testament of M. Sharon Dorsey, 334 S. W. 3d 584 (Mo. Ct. App. 2011); Toupin v. Laverdier, 729 A. 2d 1286 (R.I. 1999); Juttelstad v. Juttelstad, 714 N.W. 69 (S. Ct. S.D. 2006). In such cases, the law is clear—sue the party receiving the windfall for unjust enrichment or restitution.

ML Manager can have and should have, brought a claim for unjust enrichment. ML Manager has never alleged that Mr. Barness has engaged in any wrongful conduct and indeed the Court found as much.

> THE COURT: And Mr. Barness, as Mr. Hendricks said, nobody here is finding that you did anything wrong and that's not the basis of the ruling. It's really just a matter of priority rights among creditors and those should be restored. And I am sorry for the result . . . and I'm sorry, this result certainly isn't going to help." (Transcript at 24:25-25:10)

That ML Manager successfully parlayed a garden variety unjust enrichment case into a civil contempt and the issuance of a bench warrant is, well, startling.

ML Managers' predicament is clear. Under questioning from the Court, ML Manager had to admit that its mistake in issuing the Check was its own and that it had no effective recourse against others. Understandably, it is desperate to replace the missing money. In its desperation, however, it has persuaded the court to convert this matter from a routine civil dispute into the deprivation of liberty. This case is no different than any other unjust enrichment case or for that matter any general civil debt collection matter. Shockingly, however, a non-represented party now finds himself at risk of deprivation of his liberty for failing to pay a debt. If this Court can hold a debtor in contempt for failure to borrow from A to pay B, then what are the limits on that power? What is to prevent any other civil debtor from facing contempt sanctions for failure to pay under any other judgment or order? The implications are wide-ranging.

This matter, unfortunate as it, has nothing to do with disobedience, punishment or contempt. Instead it is solely a creditor pursuing a claim for unjust enrichment. If Mr. Barness had stolen money, defrauded ML Manager; or engaged in any misconduct, contempt sanctions might be appropriate. That it has gotten to the stage of a bench warrant is disturbing. ("I want to emphasize here we're not asserting fraud, culpable intentional misconduct." Transcript at 14:4 to 14:5")

Mr. Barness readily admits that this case could be different. For instance, if at the time Mr. Barness was served with the March Order a balance remained in his account, he would have had an obligation to return it or, be subject to contempt upon failure to do so. Similarly, if Mr. Barness had received instead of money an item of tangible personal property, such as a painting, and failed to return it, then he would be subject to contempt. This dispute, however, is nothing more than run of the mill debt collection case far distant from any serious misconduct required to steer it into contempt.

ML Manager admits we have no debtor's prison, but that is, however, exactly what it seeks for a debtor who has done nothing wrong. ML Manager seeks to arrest someone who has admittedly engaged in no misconduct. At the end of the day, Mr. Barness is just a blameless man who finds himself in dire circumstances. Through no fault of his own he is now facing a deprivation of his liberty to cure another's error.

Critically all of this has occurred without ML Manager offering any legal support for the proposition that a court can order a debtor to borrow from A, with no prospect of repayment, and given the money to B. The Court asked:

> THE COURT: And do you have any authority that basically what Mr. Barness questioned and that is when you're dealing with the defense of impossibility to a contempt action that I guess from your perspective it would be that the defense of impossibility does not apply if the judgment debtor can borrow money to pay it.
>
> MR. HENDRICKS: It's not impossible and I think we cited to the case and we can provide a brief on what the standard for impossibility is with the case law is you'd have to prove that it is impossible. That there is no money available. My personal involvement with this the Court would have some familiar --
>
> THE COURT: Well, I understand that generally the defense of impossibility means you got to prove it's impossible. But the case you cite doesn't really deal with no, it's possible because he could borrow it, is that correct?
>
> MR. HENDRICKS: That case doesn't.
>
> Transcript at 18:16 to 19:19

There are many cases on contempt and impossibility. Mr. Barness cannot find one compelling payment under these circumstances. It is true that courts have gone to great lengths to enforce criminal restitution orders or to compel payments from fraudsters. On the facts of this case, the record is devoid of legal support for ML Manager's position.

Respectfully, the Court should vacate the June Order. Mr. Barness, unrepresented as he was, has not ever had a chance to seek either reconsideration or redress on this order. If, the Court is unconvinced, Mr. Barness requests the Court then enter a new order taking into account the change in circumstances regarding Chase Bank and addressing the additional arguments and evidence. A man's liberty is at stake over events in which his done nothing wrong. Relief is appropriate in the interest of justice.

V. THE COURT SHOULD CLARIFY MR BARNESS' OBLIGATIONS UNDER THE JUNE ORDER

As is set forth more fully above, Mr. Barness cannot draw cash advances against his credit cards under his current circumstances without committing bank fraud. Mr. Barness can reduce, or perhaps eliminate, this risk by informing Chase Bank of his current circumstances. That he has no

reasonable prospect of repayment and that he is drawing under threat of contempt, are facts which, undoubtedly, Chase Bank would find material. If, after this disclosure, Chase Bank still permits a cash advance, then so be it.

Mr. Barness has scrupulously avoided contact or communication with Chase Bank for fear of inducing a self-created impossibility. Mr. Barness wants no argument from ML Manager that his inability to obtain cash advances is due, to any degree, to his conduct. As a result, has made no attempt to contact either Chase Bank or Bank of America. That leaves Mr. Barness, however, in an impossible situation. If he does not tell Chase Bank of his purposes, he commits fraud; if he tells Chase Bank about these circumstances, he faces contempt.

The June Order does not address, in any degree, this dilemma and the necessity that Mr. Barness only borrow under non-fraudulent circumstances. Mr. Barness requests, however, that the Court clarify its June Order regarding this issue and direct him to either withhold the information from Chase Bank, or, alternatively, give him permission to notify it of these events. If the Court allows disclosure and Chase Bank will not lend, then his contempt should be discharged. If the Court orders non-disclosure, then, at a minimum ML Manager and its officers should indemnify Mr. Barness from the resulting fraud claim.

DATED this 1st day of August, 2011.

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