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10	IN THE UNITED STATES BANKRUPTCY COURT	
11	FOR THE DISTRICT OF ARIZONA	
12	In re	Chapter 11
13	MORTGAGES LTD.,	Case No. 2:08-bk-07465-RJH
14 15	Debtor.	ML MANAGER'S REPLY TO ROBERT FURST'S RESPONSE TO MOTION TO APPROVE SETTLEMENT WITH MORTGAGES LTD 401K PLAN
16		Hearing Date: December 11, 2012
17	Hearing Time: 11:00 a.m.	
18	Robert G. Furst has filed a response to the Motion to Approve Settlement with	
19	Mortgages Ltd 401(k) Plan. It is unclear in what capacity Mr. Furst has filed his	
20	Response. ¹ More important, Mr. Furst's Response shows, at best, one (distorted) side of	
21	the disputed facts and arguments that led the parties to the bargaining table and ultimately	
22	this settlement, but does not remotely address both sides of the disputed facts. Mr. Furst's	
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24	¹ Mr. Furst has often improperly appeared on behalf of his own Retirement Plan, which was an investor with Mortgages Ltd. His prior appearances have been improper because	
25	he was not acting as a licensed attorney representing a separate entity. It is unclear whom Mr. Furst purports to represent. It is unclear if Mr. Furst is attempting to represent	
26	himself with regard to this Response, or another entity, and it is unclear in what capacity he claims an interest that gives him standing to file a Response.	
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conclusion is correct. The Court should approve this settlement. But his analysis is hopelessly one-sided, distorted and often wrong. Fortunately, none of that matters in connection with the question pending before the Court, which is simply whether this settlement should be approved.

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THE SETTLEMENT IS A NEGOTIATED COMPROMISE ARISING OUT OF NUMEROUS DISPUTED FACTS.

ML Manager agrees with Mr. Furst's conclusion that the Court should approve the
pending settlement, but the distorted and one-sided explanation of the facts fail to
accurately or adequately explain why the parties engaged in the litigation or why this
heavily negotiated settlement agreement was reached. Simply stated, there are clearly two
sides to this dispute.

Furst asserts that this settlement is not a compromise of claims. 12 Furst is categorically wrong. Of course, if only one side of the evidence and arguments is 13 14 examined and if it is assumed that one side will prevail on every single disputed issue, then it is difficult to understand why a settlement is necessary. In other words, if a party 15 ignores the complexity and legitimacy of the issues presented, then the fantasy 16 constructed to address only a few issues may not match reality.² It is simply disingenuous 17 in the context of analyzing the merits of a settlement proposal to ignore every single 18 19 competing fact or argument. Yet, that is what Furst does.

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In this case, there were extremely strong facts that support the position that ML
Manager took. Judge Jones recognized this when he found:

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00043401

²² Furst's repeated personal attacks against Cathy Reece are inappropriate and are based on false or distorted statements and arguments. These personal attacks are obviously motivated by the numerous instances where the Court has rejected Furst's desperate attempts to modify or thwart the Confirmed Plan where ML Manager, through Ms. Reece's representation, has opposed Furst's attempts. Significantly, the personal attacks against Ms. Reece have no relevance with regard to the current issues before the Court. As such, ML Manager simply notes that these personal attacks are irrelevant and it rejects all such arguments and reserves the right to assert any claim, argument, defense or cause of action as may be justified at the applicable time.

The Confirmation Plan defined "Investors" as "all persons holding fractional or participating interests in the ML Loans ... excluding the Debtor." [] The Plan is therefore probably an Investor under the Confirmation Plan by virtue of its 2 3 interests in eight ML Loans. 2:11-ap-02053-RJH, Document 43-13 Filed 02/24/12, page 4 of 7.³ There was and is 4 substantial evidence to support ML Manager's position that the loans in which the 401(k) 5 Plan had an interest were indeed "ML Loans." See e.g., ML Manager's Statement of 6 Facts filed in Support of its Motion for Summary Judgment. 2:11-ap-02053-RJH, 7 Document 43 Filed 02/24/2012. For example, the 401(k) Plan was a creditor listed in 8 Schedule F of the Debtor's Schedules. The 401(k) Plan's Existing Investor Account 9 Agreement was also listed in its Schedules. All of the 401(k) Plan Loans were listed in 10 Schedule G2 as being managed by and subject to the servicing of the Debtor. There was a 11 proof of claim filed by the 401(k) Plan. The 401(k) Plan executed an Existing Investor 12 Account Agreement. The Debtor held the original Notes and Deeds of Trust at issue. 13 There were issues litigated during the bankruptcy by the Debtor purportedly acting as the 14 agent for the 401(k) Plan. The 401(k) Plan's trustee testified during the course of the 15 bankruptcy under questioning by Mr. Furst, that the Debtor made the loans at issue and 16 that the 401(k) Plan was merely an investor. Most importantly, the 401(k) Plan's 17 ownership of the Notes and Deeds of Trust were questioned during the bankruptcy and 18 resolved by the Confirmed Plan. See id. As a result, ML Manager, on behalf of the other 19 investors was also asserting quantum meriut claims because the 401(k) Plan received the 20 same benefit as the other investors with regard to the ownership of the Notes and Deeds of 21 Trust, and argued that the 401(k) Plan should bear the same proportionate burden as the 22 other investors. These and many other facts clearly supported ML Manager's claims in 23 this case. 24

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Indeed, the 401(k) Plan moved to reconsider this statement. Judge Jones stated: "Plaintiffs argue that this statement is incorrect, because the Plan's loans were not ML Loans. The Court denies the motion." Id. at p. 5.

1 Whether these facts were undisputed, strong or determinative is irrelevant for 2 purposes of this Motion. Suffice it to say that there was a hotly contested litigation matter 3 Both parties vigorously asserted their respective positions. pending. ML Manager 4 understands that there were some facts that supported its position and that the 401(k) Plan 5 was asserting that there were other facts that supported the 401(k) Plan's position. In fact, perhaps one of the few things the parties could agree on during the negotiation of this 6 7 settlement was that both sides felt strongly in the legitimacy of their position. Indeed, during the initial mediation session with US Magistrate Duncan, he commented that there 8 9 appeared to be numerous disputed facts. Ultimately, a recognition of the significant 10 disputes between the parties and the likely costs that were going to be incurred in 11 litigating these issues led to the compromise that is before the Court.

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II. THE COURT SHOULD APPROVE THE SETTLEMENT.

DATED: December 10, 2012.

The settlement before the Court is not a windfall for any party. It is the simply the result of a long, heavily negotiated and long fought dispute between two well-represented parties. Both parties come to this settlement at arms-length and in good faith. The settlement is a carefully crafted balance of the competing interests that both sides could finally agree to. For this reason, it should be approved.

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By <u>s/ Keith L. Hendricks</u> Keith L. Hendricks Attorneys for ML Manager LLC

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