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8 Attorneys for ML Manager LLC

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

11 In re  
12 MORTGAGES LTD.,  
13 Debtor.

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

**RESPONSE TO MOTION FOR ENTRY OF  
AN ORDER COMPELLING ML MANAGER  
LLC TO (1) DISBURSE UNDISPUTED  
FUNDS, AND (2) RESOLVE ITS CONFLICT  
OF INTEREST WITH RESPECT TO THE  
PROCEEDS OF THE MK I AND MK II  
LOANS**

**Hearing Date: March 14, 2011  
Hearing Time: 11:00 a.m.**

19  
20 ML Manager LLC (“ML Manager”), as the manager for all the Loan LLCs and the  
21 MP Funds and the agent for all of the Pass-Through Investors, hereby files this Response  
22 to the “Motion For Entry of an Order Compelling ML Manager LLC to (1) Disburse  
23 Undisputed Funds, and (2) Resolve its Conflict of Interest With Respect to the Proceeds  
24 of the MK I and MK II Loans” (Docket No. 3430) filed by certain Rev Op Investors (the  
25 “Motion”). Many of the alleged movants lack standing to pursue this Motion. To the  
26 extent that it seeks to establish a breach of fiduciary duty claim, it is procedurally

1 improper. As has been repeatedly found by several different courts, ML Manager is  
2 fulfilling its obligations and duties to all investors. Finally, ML Manager has resolved the  
3 conflict and is implementing the procedure to resolve the dispute between investors in the  
4 MK Custom Loan which was represented to Judge Case and this Court. As such, the  
5 Motion lacks merit on virtually every level and should be denied.

6 Contrary to the allegations in the Motion, ML Manager has not failed to distribute  
7 funds. As it has informed counsel for the Rev Ops and Mr. Hawkins on several occasions,  
8 it is in the process, which is extremely complicated, of updating the Allocation Model  
9 numbers and is preparing for a Third Distribution.

10 In addition, contrary to the allegations, ML Manager has not failed to resolve the  
11 MK I and MK II conflict. As it has informed counsel for QC MK Custom, it is  
12 implementing the procedures represented to the Court and the parties. Indeed, this Motion  
13 is ironic because the QC MK Custom has objected to, attempted to delay, and otherwise  
14 complicated the process at every turn. The sale closed in October 2011 and ML Manager  
15 escrowed the proceeds as set forth in the sale orders and sent a copy of the closing  
16 statement from the escrow company to QC MK Customs' counsel. ML Manager has  
17 obtained a separate business person in each of the MK I and MK II loans as the business  
18 representatives. Each has engaged independent counsel or is in the final stage of engaging  
19 independent counsel so they can proceed with mediation and if not successful then they  
20 can litigate the dispute. Judge Case's Order Dismissing the Adversary Proceeding in the  
21 QC MK Custom case was not final until February 6, 2012 when Judge Case denied the  
22 QC MK Custom's Motion to Reconsider. In other words, as recently as a few weeks ago  
23 QC MK Custom was arguing in Court that ML Manager didn't have authority to and  
24 could not represent the interest of QC MK Custom in any such dispute. QC MK Custom  
25 has now appealed Judge Case's Orders. Despite the lack of finality of that Order and  
26 dismissal of the Adversary in Judge Case's Court, ML Manager has been proceeding as it

1 represented to the Court.

2 Finally, contrary to the conclusory arguments of counsel, ML Manager has not  
3 failed to comply with the Plan. ML Manager asserts that it is appropriately performing  
4 and fulfilling its responsibilities and duties and exercising its best business judgment in a  
5 manner consistent with its fiduciary responsibilities to all investors including the Rev Op  
6 Investors. ML Manager is already implementing the Plan as it should and does not need to  
7 be compelled in any manner to take any different or additional actions.

8 Accordingly, ML Manager requests that the Court deny the Motion.

9 **1. SOME MOVANTS LACK STANDING.**

10 The Motion identifies various clients of Bryan Cave as “Rev Op Investors” and  
11 purports to request all the relief requested in the Motion for each of the so-called “Rev Op  
12 Investors.” Of course, the so-called “Rev Op Investors” identified in the Motion are only  
13 a small fraction of those investors who participated in the Rev Op Program. Moreover,  
14 they do not all have standing to bring all of the claims asserted. As to the MKI and MK II  
15 relief requested, the only Rev Op Investor in that loan is Mr. Hawkins’ entity, Queen  
16 Creek XVIII LLC, or its alleged successor QC MK Custom Residential LLC (“QC MK  
17 Custom”), so it would be the only investor with standing to seek any such relief. The other  
18 Rev Op Investors have no standing to seek such relief as they are not in the MKI or MK II  
19 loan.

20 Next, it is undersigned counsel’s understanding that Mr. Sternberg has not been  
21 represented by Bryan Cave in anything other than the litigation over the Motion for  
22 Clarification filed in the fall of 2009 and that he has been representing himself or his  
23 entity as he has done through the negotiations and closing of the Citrus and Northern sales  
24 which closed January 20, 2012. In fact, Mr. Sternberg is not entitled to receive any  
25 distribution of the sale proceeds from the Citrus and Northern sales because he received  
26 title to certain property under the sale order for his fractional interest in the rest of the

1 properties. As such, to the extent Bryan Cave does represent him in this Motion then Mr.  
2 Sternberg has no standing to be a part of this Motion.<sup>1</sup>

3 Further, without checking on the investments of each of the Rev Op Investors, it is  
4 not clear if all of them are in the 10 loans for which sales have closed and the proceeds are  
5 being held pending the update of the Allocation Model. If they are not in any such loan  
6 then they too do not have standing to bring the Motion. However, ML Manager does  
7 acknowledge, without checking each loan, that some of the Rev Op Investors, such as  
8 some of Mr. Hawkins' entities, are in some of the loans that ML Manager is in the process  
9 of distributing so to that extent there may be standing by some, but not all, of the  
10 purported movants, to pursue the Motion . ML Manager reserves its arguments but for the  
11 purposes of responding to this Motion will acknowledge that some Rev Op Investors will  
12 be entitled to proceeds in this Third Distribution.

13 **2. THE MOTION IS PROCEDURALLY DEFECTIVE.**

14 The Motion is framed as a motion to compel but alleges that ML Manager has  
15 breached its fiduciary duties to the Rev Op Investors numerous times in the Motion. To  
16 the extent that the Rev Op Investors really are asking the Court to determine that ML  
17 Manager has breached its fiduciary duties then the Motion is procedurally defective. Any  
18 breach of fiduciary duty cause of action would need to be brought as an adversary  
19 proceeding and properly served as an adversary proceeding. *See* Fed. R. Bankr. P. 7001;  
20 *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189 (9th Cir. 2011)(“Adversary  
21 proceedings are a species of contested matters governed by Part VII of the Bankruptcy  
22 Rules. *Id.* A matter qualifies as an “adversary proceeding,” as opposed to a “contested  
23 matter,” if it is included in the list given in Bankruptcy Rule 7001. [citation omitted]  
24 Otherwise, it is a ‘contested matter’.”). The Court in *In re Rollins*, 175 B.R. 69, 73

25 \_\_\_\_\_  
26 <sup>1</sup> ML Manager is not in any dispute with Mr. Sternberg that it knows about and thinks that  
the assertion that Mr. Sternberg is a party to the Motion is mistaken.

1 (Bankr. E.D. Cal. 1994), stated:

2 Federal Rule of Bankruptcy Procedure 7001(1) requires that  
3 any proceeding to recover money be brought as an adversary  
4 proceeding. Also, the few cases discussing a trustee's liability  
5 for breach of fiduciary duty and breach of his or her statutory  
6 duties suggest that a complaint rather than motion procedure  
7 must be used. See, e.g., *United States v. Aldrich (In re  
8 Rigden)*, 795 F.2d 727 (9th Cir.1986); *George Benz & Sons  
9 v. Lovett (In re Schwen's, Inc.)*, 20 B.R. 638 (D.Minn.), *aff'd*,  
10 693 F.2d 48 (8th Cir.1982).

11 Furthermore, the Court must afford the parties the essential procedural protections  
12 of an adversary proceeding. See *In re Zale Corp.*, 62 F.3d 746, 763 (5<sup>th</sup> Cir. 1995). As  
13 stated in *Zale Corp.*, “this case demonstrates the ‘difficulties that are apt to arise if the  
14 bankruptcy court too easily permits parties to circumvent the rules governing adversary  
15 proceedings.’” *Id.* at 766 (quoting *Haber Oil*, 12 F.3d at 440). See *In re Munoz*, 287 B.R.  
16 546, 551 (B.A.P. 9th Cir. 2002)(holding that the failure to hold an adversary proceeding  
17 was error). *Ung v. Boni (In re Boni)*, 240 B.R. 381, 385–86 (9th Cir. BAP 1999), is also  
18 instructive. Specifically in *Boni*, the Appellate Panel recognized that an adversary  
19 proceeding provides the parties with certain rights and protections that are not available in  
20 contested motion including formal pleading and a structured pretrial process. *Id.* 240 B.R.  
21 at 385-86. As a result, in *Boni*, the Appellate Panel reversed the Bankruptcy Court’s  
22 decision, holding that the Bankruptcy Court’s determination required an adversary  
23 proceeding. *Id.* at 386-87.

24 In short, these claims, even if they had any validity, would require an adversary.  
25 There, they would be subject to counterclaims and defenses and the due process  
26 protections of civil litigation. If they truly seek such a determination, then ML Manager  
requests that the Court dismiss this Motion and require the Rev Op Investors to follow the  
appropriate procedures. The Rev Op Investors and counsel constantly threaten ML  
Manager with the allegations of breach of duty and threaten to file such a suit. This  
Motion might be their long awaited suit in the guise of a Motion or it might be just

1 another pleading that rattles that sword but seeks something else. If they seek to establish  
2 a breach of fiduciary duty, then the Court should deny the Motion and the Rev Op  
3 Investors should be required to file the appropriate adversary proceeding.

4 **3. ML MANAGER HAS BEEN CARRYING OUT AND IMPLEMENTING**  
5 **THE CONFIRMED PLAN AND FULFILLING ITS DUTIES AND**  
6 **RESPONSIBILITIES TO ALL OF THE INVESTORS.**

7 Without attaching any admissible evidence other than their own demand letter and  
8 through nothing more than conclusory argument of counsel, the Rev Op Investors  
9 repeatedly accuse ML Manager of breaching fiduciary duties. The Rev Op Investors'  
10 argument has been repeatedly rejected by all courts and is factually incorrect.

11 ML Manager in the exercise of its business judgment and consistent with its  
12 fiduciary duties to all investors has worked diligently to be fair to all investors, to  
13 maximize their return of money and to follow the Confirmed Plan, Confirmation Order,  
14 the Loan LLC Operating Agreements, the MP Fund Operating Agreements, the Agency  
15 Agreements, the Interborrower Agreement and the other operative documents. ML  
16 Manager has had major success in the 2½ years since confirmation in obtaining  
17 possession of the properties from the borrowers, in listing and selling properties, in paying  
18 off the principal and interest of the exit financing, in paying off all but \$515,000 of the  
19 exit financing's \$7.5 million Disposition Incentive Payment. and making two distributions  
20 to investors. With closing of the Portales sale on February 28, 2012, ML Manager has  
21 only \$515,000 left of the Disposition Incentive Payment to pay. ML Manager still needs  
22 to use net sales proceeds from the Loan LLC portions of future sales to repay the  
23 Replacement Loans owed to the earlier Loan LLCs that let 70% of their net sale proceeds  
24 be used to pay down the exit financing.

25 As the Court is aware, ML Manager has obtained Court and Loan LLC approval  
26 for and sold 25 properties, has implemented and obtained Court approval of the Allocation  
Model, and has made 2 distributions of sale proceeds to over 1500 investors, including

1 Rev Op Investors. At every step the Court has approved ML Manager’s decisions and  
2 actions as the best exercise of business judgment consistent with its fiduciary  
3 responsibilities. In each of the various sale Orders, this Court has included a finding to  
4 the effect that the sale was supported by the best exercise of business judgment of  
5 MLManager and was consistent with ML Manager’s fiduciary duties and responsibilities.  
6 *See, e.g.*, Docket Nos. 2770, 2887, 2892, 2893, 2976, 3016, 3180, 3274, 3321, 3333,  
7 3351, 3365 and 3396. This finding has also been upheld on appeal each time that it has  
8 been challenged. *See, e.g.*, 2:11-cv-00853-RCJ DE 34 (University & Ash Sale Order  
9 affirmed); 2:11-cv-00200-RCJ DE 40 (First Distribution Order affirmed)(“The bankruptcy  
10 court demanded – and there is no indication that ML Manager has flouted this requirement  
11 – that ROG’s share of the exit financing be ‘fair, equitable and proportional’... There is  
12 also no evidence of bad faith by ML Manager at the expense of ROG, which has been  
13 treated fairly and had expenses allocated to it proportionally, as required by the  
14 bankruptcy court.”).

15 **4. ML MANAGER HAS NOT FAILED TO DISTRIBUTE FUNDS TO THE**  
16 **REV OP INVESTORS.**

17 Contrary to the allegations of the Rev Op Investors, ML Manager has not failed to  
18 distribute funds to the Rev Op Investors nor failed to comply with Section 4.13 of the  
19 Plan.

20 As the Court is aware, in order to begin making distributions of sale proceeds to the  
21 investors, ML Manager asked the Court to approve the Allocation Model which the Court  
22 approved on September 21, 2010. The Rev Op Investors objected to that request and  
23 sought to block all distributions but the Court overruled their objection. ML Manager then  
24 requested and obtained an Order Regarding Distribution of Proceeds on January 20, 2011  
25 (“First Distribution”). The Rev Op Investors objected and the Court overruled their  
26 objection. The Rev Op Investors appealed the January 20, 2011 Distribution Order. The

1 District Court on appeal affirmed this Court's Order on the distribution on November 4,  
2 2011. Rev Op Investors filed a Motion to Alter or Amend the Order which was denied on  
3 February 23, 2012. The Rev Op Investors have appealed the First Distribution decision to  
4 the Ninth Circuit.<sup>2</sup>

5 As the Court is also aware, ML Manager filed a Motion to Authorize a Second  
6 Distribution of Proceeds in Accordance with Allocation Model and to Approve Treatment  
7 of Distribution of Disputed Proceeds ("Second Distribution"). The Rev Op Investors filed  
8 an objection. The Court granted the Motion and signed the Minute Entry on July 19,  
9 2011. The Rev Op Investors appealed the decision. The appeal is pending before the  
10 District Court.

11 ML Manager made the First Distribution in February 2011. Proceeds from 6  
12 loans/sales were distributed to investors in those loans, including Rev Op Investors. Over  
13 1500 investors received money from the First Distribution. The Second Distribution was  
14 made in September 2011. There were proceeds from 9 sales that were distributed to  
15 investors in those loans, including Rev Op Investors. Over 1500 investors received money  
16 from the Second Distribution. ML Manager is in the process of making its Third  
17 Distribution based on another 10 properties which were sold. ML Manager hopes to make  
18 the distribution in March 2012. ML Manager is not going to be filing a motion seeking  
19 approval of the Third Distribution as it believes it is already authorized by the other  
20 Distribution Orders and the various sales orders to make such distributions in the exercise  
21 of its business judgment. Over 1500 investors, including Rev Op Investors will receive  
22 money in the Third Distribution. This Third Distribution is more complicated than the  
23 prior two because, as was disclosed to the Court during the approval of the Allocation  
24 Model, an ongoing true-up process is being implemented to examine the prior and current

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25 <sup>2</sup> It is ironic that the Rev Op Investors now assert that ML Manager is delaying  
26 distributions when they are at the same time appealing to the 9<sup>th</sup> Circuit the denial of their  
argument that all distributions should be blocked.



1 estimates of revenues and expenses and adjust for actual performance. Also included is  
2 calculation of the Replacement Loans.

3 The original Allocation Model was configured in the summer of 2010 based on the  
4 best available estimated information at the time and contemplated that the numbers would  
5 need to be updated with actual numbers from time to time. Since there have been 25 sales  
6 and an additional 18 months of operations that can be updated in the Allocation Model, as  
7 ML Manager previously disclosed to the Court, the implementation of the Allocation  
8 Model was always intended to be a dynamic process adjusting for actual results. ML  
9 Manager is implementing, in the exercise of its business judgment, the adjustments  
10 dictated by actual events and updated future cost estimates to update the numbers in the  
11 Allocation Model before making the Third Distribution. In the Fall of 2011, after the  
12 Second Distribution was made, ML Manager asked Peter Davis and Keith Kenny at  
13 Simon Consulting, who helped prepare the original Allocation Model, to start the process  
14 and work with Mr. Winkleman and his administrative staff on updating the model with  
15 actual sales and expense figures through 2011 and updating the estimates and projections  
16 for future years. That process has been ongoing and the job is no small matter. The Court  
17 may remember the complexity of the model, the level of detail and the thousands of  
18 calculations that need to be done. ML Manager is in what it hopes will be the final quality  
19 control review. Once this is complete then Canyon State Servicing Co., LLC will begin  
20 the process of preparing and reviewing the distribution calculations for the cutting and  
21 issuance of the checks, along with the paperwork that accompanies it. ML Manager hopes  
22 that this will be complete by the end of March. As it always has, ML Manager is acting  
23 reasonably and appropriately as it goes through this process to make sure there are no  
24 errors or miscalculations and that all investors are treated fairly and in a  
25 nondiscriminatory manner.

26 The Rev Op Investors complain on page 3, lines 14 through 20, of the Motion that

1 they “demanded” a disclosure of ML Manager’s plans in a letter dated December 15, 2011  
2 with respect to the accounting and distribution of the Rev Op funds, stating that ML  
3 Manager “failed to provide any response to the letter or otherwise disclose information  
4 requested therein.” Attached as Exhibit A is a copy of the letter dated December 23, 2011  
5 that was sent to Bryce Suzuki in response to his letter. ML Manager did not fail to provide  
6 a response. In addition, on several occasions the topic has been discussed in face to face  
7 conversations between the clients and counsel. Mr. Hendricks has even offered to meet  
8 face to face with Mr. Hawkins and go through the updated numbers of the Allocation  
9 Model when it is ready. Mr. Hendricks has already met with Mr. Hawkins and/or his  
10 counsel on at least four prior occasions, and the accountants have also met with Mr.  
11 Hawkins as well as other investors who requested on prior occasions. They are prepared  
12 to do so again as often as is reasonably necessary.

13 ML Manager therefore believes that it is acting appropriately in complying with the  
14 Plan and is exercising its best business judgment consistent with its fiduciary duties in  
15 making the Third Distribution.

16 **5. ML MANAGER HAS NOT FAILED TO RESOLVE ITS CONFLICT OF**  
17 **INTEREST REGARDING THE MK I AND MK II DISPUTE.**

18 ML Manager is doing exactly what it told both Judge Case and this Court it would  
19 do concerning the resolution of the dispute between MK I and MK II investors. Despite  
20 the allegations that it has “wholly failed to make any progress toward remedying its  
21 conflict,” ML Manager believes that the process which it has put in place resolves the  
22 conflict and is an appropriate and prudent process so that investors in both loans are  
23 adequately represented. Indeed, this progress is being made at the same time that QC MK  
24 Custom continues to argue that ML Manager is not its agent and does not have authority  
25 to resolve the dispute as it relates to QC MK Custom.

26 Just to complete the procedural setting for the Court, Judge Case entered his ruling

1 in the QC MK Custom bankruptcy on September 13, 2011 where he denied the Debtor's  
2 Motion to Turnover Property and to Reject the Agency Agreement in the administrative  
3 case and granted ML Manager's Motion to Dismiss the Debtor's adversary complaint.  
4 Debtor QC MK Custom filed a Motion to Reconsider the dismissal which was denied on  
5 February 6, 2012. Judge Case's orders did not become final until sometime in February  
6 2012. QC MK Custom has since appealed the decision. No stay pending appeal has been  
7 requested.

8 ML Manager filed Motions to approve the sale in both the Mortgages Ltd. case and  
9 the QC MK Custom case. QC MK Custom filed limited objections in both proceedings.  
10 Hearings were held in both cases and consensual orders were negotiated and entered in  
11 each case. The sale orders were sent to the title company. The sale closed and pursuant to  
12 the sale orders two escrows were set up at North American Title. One was in the amount  
13 of \$511,473 in which QC MK Customs asserts its disputed interest and the other escrow  
14 was in the amount of \$477,000 in which the Loan LLCs assert their disputed interests. A  
15 copy of the Settlement Statement was emailed to QC MK Customs counsel after closing.  
16 Attached as Exhibit B to this Motion is a copy of the Settlement Statement.

17 The conflicts issue was raised at length in the QC MK Custom proceeding both in  
18 the pleadings and at oral argument. There are two transcripts attached to the Motion. One  
19 is for the sale hearing held on the morning of September 13, 2011. The other is for the  
20 afternoon hearing of September 13, 2011 where the Court ruled on the pending Motions.  
21 The parties also discussed it at the oral argument on the Motion to Dismiss which had  
22 been held earlier in the case. Judge Case carefully considered the issue and found that the  
23 conflict was not irreconcilable. He stated "I've noted that what QC MK claims to be an  
24 irreconcilable conflict of interest can be resolved and frankly I fully expect that to be done  
25 based upon the representations of counsel in the hearings this morning." See September  
26 13, 2011, Afternoon Transcript, page 10, lines 15-18.

1 ML Manager explained to the Court that it would escrow the proceeds pending  
2 resolution of the dispute. That has been done. ML Manager also explained to the Court  
3 that it would select a separate business person for each loan that was not involved in the  
4 other loan that could exercise business judgment for the investors in that loan. ML  
5 Manager has done that. ML Manager went through a process to identify interested and  
6 qualified investors to serve in those capacities. ML Manager then conducted interviews  
7 and confirmed the lack of conflicts by those investors. Mr. Vishnu Patel was selected to  
8 represent the interests of the investors in the MK I loan. He is the Chair of the RB  
9 Liquidating Trust LLC which holds about 93% of the MK I loan. Dr. Barry Weiss was  
10 selected to represent the interests of the investors in the MK II loan. He holds interests of  
11 over \$1.5 million in 4 of the 9 MP Funds. The MP Funds hold 80% of the interests in MK  
12 II. ML Manager also explained to the Court that each business person would select  
13 independent counsel to advise and represent him. Neither Fennemore Craig nor Moyes  
14 Sellers and Hendricks would represent them. That has been done for one side and the  
15 other side is in the process of selecting counsel. Mr. Patel has selected Perkins Coie as his  
16 counsel. Dr. Weiss has not selected counsel but is interviewing counsel and should make  
17 his final decision shortly. Needless to say, many law firms have conflicts because of their  
18 involvement in the Mortgages Ltd. bankruptcy and related cases. So finding a law firm  
19 has been an additional challenge. In the meantime, ML Manager has also gathered  
20 information electronically to provide to both sides, such as loan documents for both loans,  
21 investor information, pleadings in the various cases which address this issue, and  
22 depositions of the key witnesses in the Metro Lofts case that had a similar issue. They  
23 may request additional information and ML Manager will provide it upon request. It is  
24 anticipated that both sides will attempt to mediate the dispute before they litigate the  
25 issues in a suit where MK II and its investors sue MK I and its investors, or vice versa.  
26 Ultimately any Major Decisions (such as a settlement) will require a vote by MK I Loan

1 LLC and MK II Loan LLC which will serve as an additional check and balance on the  
2 conflict.

3 As the Court can see, ML Manager has not “wholly failed to make any progress  
4 toward remedying its conflict” and has not “failed to resolve its conflict”. In fact, the  
5 conflict has been resolved and ML Manager is implementing a process that Judge Case  
6 thought was appropriate.

7 As for the allegation that ML Manager never responded to the December 22, 2011  
8 email “or otherwise provided any information”, that is inaccurate. The Newsletter sent on  
9 December 19, 2011 was to inform the investors that the sale had closed and the funds had  
10 been escrowed until the resolution of the dispute. The Newsletter informed them that ML  
11 Manager had adopted a process to resolve the dispute but did not detail the process. QC  
12 MK Custom’s counsel was already well aware of the process that had been identified in  
13 open Court during the hearings. QC MK Custom is represented by three different law  
14 firms, Bryan Cave, Stinson Morrison Hecker, and Broening Oberg Woods & Wilson. ML  
15 Manager’s counsel have spoken to at least two of the three set of lawyers a couple of  
16 times during the last few months about what has been involved in implementing the  
17 process.

18 WHEREFORE, ML Manager requests that the Court deny the Motion and grant  
19 ML Manager such further relief as is just and proper under the circumstances.

20 DATED: March 5, 2012

21 FENNEMORE CRAIG, P.C.

22 By /s/ Cathy L. Reece  
23 Cathy L. Reece  
24 Attorneys for ML Manager LLC

25 ...

26 ...

...

1 Copy of the foregoing sent this 5th  
2 day of March, 2012 by email to:

3 Robert J. Miller  
4 Bryce A. Suzuki  
5 BRYAN CAVE LLP  
6 Two North Central Ave., Suite 2200  
7 Phoenix, Arizona 85004  
8 [rjmiller@bryancave.com](mailto:rjmiller@bryancave.com)  
9 [bryce.suzuki@bryancave.com](mailto:bryce.suzuki@bryancave.com)

10 /s/ Gidget Kelsey-Bacon

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# EXHIBIT

# A



# MOYES SELLERS & HENDRICKS

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December 23, 2011

Bryce A. Suzuki  
BRYAN CAVE LLP  
One Renaissance Square  
Two North Central Avenue  
Suite 2200  
Phoenix, Arizona 85004  
Email: bryce.suzuki@bryancave.com

Re: Mortgages Limited

Dear Bryce:

Your letter to Cathy Reece has been referred to me for response. Your letter unfortunately continues to boldly assert unfounded and polarizing rhetoric alleging that ML Manager has previously breached and continues to breach fiduciary duties to your clients. It is unfortunate that this rhetoric continues despite the fact that none of the many judges who have heard these baseless allegations, or issued rulings in matters where these allegations have been repeatedly raised, have agreed.

Despite all of the allegations and claims of breach of fiduciary duty that have repeatedly been raised before Judge Haines, he has consistently entered orders to the effect that ML Manager's actions were and are supported by "sound" or "best" business judgment and consistent with ML Manager's fiduciary duties and responsibilities. Specifically, with regard to distributions and the Allocation Model, Judge Haines has ruled:

The treatment set forth in the Allocation Model is consistent with and fulfills ML Manager's duty under the business judgment rule as well as any fiduciary duty and ML Manager's role as contemplated and established by the confirmed Plan."

(1/20/2011 Distribution Motion Order) As you know, this ruling was expressly affirmed by Judge Jones in the 2:11-cv-00200-RCJ Appeal. There, Judge Jones indicated that "there is **no indication** that ML Manager has flouted this requirement – that ROG's share of the exit financing be 'fair, equitable and proportional.'" (Nov. 4 2011 Ruling) (emphasis added). Judge Murgia rejected all of the breach of fiduciary duty claims that



Bryce A. Suzuki  
December 23, 2011  
Page 2

she considered and Judge Case has likewise rejected all of the breach of fiduciary duty claims he considered. Neither have these claims gained traction before any of the other judges who has considered them. While your clients may choose to ignore and disregard all of the consistent adverse rulings to date, their unwillingness to even acknowledge the various courts' prior rulings simply further undermines the credibility of what has become hollow rhetoric.

ML Manager has never callously disregarded any of your clients' or any other investors' rights. ML Manager has been tasked with an incredibly complicated and convoluted task. There are many competing issues and interests. Something your clients refuse to acknowledge. Your clients' conduct has substantially increased the difficulty and complexity of ML Manager's actions, as well as delayed the results and made them extremely more expensive. As such, the arguments you currently advance to garner sympathy ring disingenuous. One is reminded of the story of the young adult being sentenced for the murder of both of his parents but pleads for sympathy from the Court because he is an orphan. Having caused so much delay and additional cost, having argued strongly against almost every sale proposed, having specifically asked the Court to deny and delay distributions to other investors, having filed appeal after appeal, and having tried to disrupt the implementation of the Plan of Reorganization at almost every turn, it is simply disingenuous for your clients to now plead for sympathy and priority so they can receive their money sooner than other investors. Every investor deserves to get as much of their money back as soon as feasible.

ML Manager is not making arbitrary decisions about the timing of disbursements. The process for calculating the "Total Expected Costs", the dynamic or on-going "true-up" of the Allocation Model, and the treatment of 1500 investors is no small matter. As you know and as your clients have been informed, ML Manager made two distributions in 2011 and intends to make the next distribution in early 2012. In order to make the distribution, ML Manager believes it is prudent to update the model with the actual sales and expense figures through 2011. The desirability and need for such periodic updates was contemplated from the start and disclosed to the Court and parties. ML Manager has asked Peter Davis and his firm to do this work and they are in process. Doing the updates and distribution to over 1500 investors is time consuming and complicated. ML Manager anticipates having this process completed in early 2012. As your clients continually ignore, there are many more investors impacted by all of these matters than just your clients. ML Manager cannot treat any of the investors, including your clients, with favoritism. When it makes a distribution, it makes the distribution to all investors involved. This requires substantial professional and administrative time and expense. Nevertheless, ML Manager is working diligently to process such disbursements in a reasonable and cost-effective manner. As you know, ML Manager's Board is made up entirely of investors. They have absolutely no incentive to delay or deny distributions. Indeed, it is against their own self interest to do so. Nevertheless, they must be prudent and deliberate in their decisions, consider the implications for all investors, consider the implications for the on-going true-up process, and many other factors.

Bryce A. Suzuki  
December 23, 2011  
Page 3

The new demands your clients have made for special treatment are not authorized, required, or even contemplated by the Plan or any Order of the Court. ML Manager has previously accounted for the money it has recovered and distributed, and will continue to do so. There is simply no basis for you to assert that ML Manager owes your clients additional duties simply because they so demand. With regard to the AZ Commercial transaction, the stipulated Order that was agreed to by your clients was that any amounts that your clients dispute would be put into an escrow. That has happened. Lawyers Title is holding the money for the pass-through investors. When the updated figures are available ML Manager will be able to determine what is undisputed and can be distributed to the pass-throughs, including your clients, and what is disputed and must continue to be held. At that point ML Manager will file a motion as to the disputed AZCL proceeds held for your clients and ask the Court to review it as required in the order to resolve the dispute. You and your client will be served with the motion and given time to respond.

Sincerely,

*Keith Hendricks*

Keith Hendricks

KLH/dmn

# **EXHIBIT**

# **B**



# A. Settlement Statement (HUD-1)

Estimated  Final



Type of Loan

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> RHS	3. <input checked="" type="checkbox"/> Conv. Unins.	6. File Number: 21800-11-01520T2	7. Loan Number: 10204966	8. Mortgage Insurance Case Number:
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower:  Chad Miraglia 10645 N. Tatum Blvd Suite 200-680 Phoenix, AZ 85028	E. Name and Address of Seller:  MK II Loan LLC Queen Creek XVII, L.L.C. 14050. 83rd Avenue Suite 180 Peoria, AZ 85381	F. Name and Address of Lender:  P. Mortgage, Inc. 106 E. Manzanita Drive Suite 100 Scottsdale, AZ 85258
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G. Property Location: 6516 N. 64th Place Paradise Valley, AZ 85253 Maricopa County, Arizona Lots 13 & 14 La Place Unit One MCR 221-17	H. Settlement Agent: 86-0511783 North American Title Company 3200 E. Camelback Road Suite 150 Phoenix, AZ 85018 Ph. (602)294-2200 Place of Settlement: 3200 E. Camelback Road Suite 150 Phoenix, AZ 85018	I. Settlement Date:  September 30, 2011
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J. Summary of Borrower's transaction		K. Summary of Seller's transaction	
100. Gross Amount Due from Borrower:		400. Gross Amount Due to Seller:	
101. Contract sales price	2,900,000.00	401. Contract sales price	2,900,000.00
102. Personal property		402. Personal property	
103. Settlement Charges to Borrower (Line 1400)	37,195.53	403.	
104.		404.	
105.		405.	
Adjustments for items paid by Seller in advance		Adjustments for items paid by Seller in advance	
106. Monthly Sewer 09/30/11 to 10/01/11	4.22	406. Monthly Sewer 09/30/11 to 10/01/11	4.22
107. County Taxes 09/30/11 to 01/01/12	4,814.77	407. County Taxes 09/30/11 to 01/01/12	4,814.77
108. HOA Assessments 09/30/11 to 10/01/11	15.56	408. HOA Assessments 09/30/11 to 10/01/11	15.56
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due from Borrower	2,942,030.08	420. Gross Amount Due to Seller	2,904,834.55
200. Amounts Paid by or In Behalf of Borrower		500. Reductions in Amount Due Seller:	
201. Deposit or earnest money	200,000.00	501. Excess deposit (see Instructions)	
202. Principal amount of new loan(s)	1,885,000.00	502. Settlement charges to Seller (Line 1400)	1,473,456.77
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Lender Lump Sum Credit	7,176.00	504. Payoff First Mortgage to Universal SCP 1 LLC	1,148,716.24
205. Buyer's Closing Funds	843,977.08	505. Payoff Second Mortgage	
206.		506.	
207.		507. (Deposit disb. as proceeds)	
208. Seller Paid Owner's Policy	6,052.00	508. Seller Paid Owner's Policy	6,052.00
209.		509.	
Adjustments for items unpaid by Seller		Adjustments for items unpaid by Seller	
210. Monthly Sewer to		510. Monthly Sewer to	
211. County Taxes to		511. County Taxes to	
212. HOA Assessments to		512. HOA Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid by/for Borrower	2,942,205.08	520. Total Reduction Amount Due Seller	2,628,225.01
300. Cash at Settlement from/to Borrower		600. Cash at settlement to/from Seller	
301. Gross amount due from Borrower (line 120)	2,942,030.08	601. Gross amount due to Seller (line 420)	2,904,834.55
302. Less amount paid by/for Borrower (line 220)	( 2,942,205.08)	602. Less reductions due Seller (line 520)	( 2,628,225.01)
303. Cash <input type="checkbox"/> From <input checked="" type="checkbox"/> To Borrower	175.00	603. Cash <input checked="" type="checkbox"/> To <input type="checkbox"/> From Seller	276,609.54

\* Paid outside of closing by borrower(B), seller(S), lender(L), or third-party(T)

TO THE BEST OF MY KNOWLEDGE, THE HUD-1 SETTLEMENT STATEMENT WHICH I HAVE PREPARED IS A TRUE AND ACCURATE ACCOUNT OF THIS TRANSACTION. I HAVE CAUSED OR WILL CAUSE THE FUNDS RECEIVED TO BE DISBURSED IN ACCORDANCE WITH THIS STATEMENT.

North American Title Company  
Settlement Agent

WARNING: IT IS A CRIME TO KNOWINGLY MAKE FALSE STATEMENTS TO THE UNITED STATES ON THIS OR ANY SIMILAR FORM. PENALTIES UPON CONVICTION CAN INCLUDE A FINE AND IMPRISONMENT. FOR DETAILS SEE: TITLE 18 U.S. CODE SECTION 1001 & SECTION 1010.

THIS IS TO CERTIFY THAT THIS IS A TRUE, FULL AND COMPLETE COPY OF THE ORIGINAL.

NORTH AMERICAN TITLE COMPANY

The Public Reporting Burden for this collection of information is estimated to average 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

L. Settlement Charges				Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Real Estate Broker Fees	\$ 174,000.00				
<i>Division of commission (line 700) as follows:</i>					
701. \$ 87,000.00 to Russ Lyon Sotheby's International Realty					
87,000.00 to HomeSmart					
703. Commission paid at settlement					174,000.00
704.					
705.					
<b>800. Items Payable in Connection with Loan</b>					
801. Our origination charge	\$20,060.00	(from GFE #1)			
802. Your credit or charge (points) for the specific interest rate chosen	\$	(from GFE #2)			
803. Your adjusted origination charges		(from GFE #A)	20,060.00		
804. Appraisal fee to Streetlinks Murcor		(from GFE #3)	775.00		
805. Credit Report to Advantage Credit of CO		(from GFE #3)	60.50		
806. Tax service to		(from GFE #3)			
807. Flood certification to Corelogic Flood		(from GFE #3)	16.00		
808. 2nd Appraisal Fee to Broad Street Valuations		(from GFE #3)	1,000.00		
809. Credit Refresh to Advantage Credit		(from GFE #3)	21.00		
810.		(from GFE #3)			
811.		(from GFE #3)			
<b>900. Items Required by Lender to Be Paid in Advance</b>					
901. Daily interest charges from 09/30/11 to 10/01/11 1 @ \$222.534700/day		(from GFE #10)	222.53		
902. Mortgage insurance premium for months to		(from GFE #3)			
903. Homeowner's insurance for 1.0 years to Firemans Fund Insurance Company		(from GFE #11) 0020006758	4,095.00		
904. Flood Insurance 1.0 years to		(from GFE #11)			
905.		(from GFE #11)			
<b>1000. Reserves Deposited with Lender</b>					
1001. Initial deposit for your escrow account		(from GFE #9)			
1002. Homeowner's insurance months @ \$ per month	\$				
1003. Mortgage insurance months @ \$ per month	\$				
1004. Property taxes months @ \$ per month **	\$				
1005.		**			
Monthly Sewer months @ \$ per month	\$				
Flood Insurance months @ \$ per month	\$				
1008.	\$				
1009. Aggregate Adjustment	\$				
<b>1100. Title Charges</b>					
1101. Title services and lender's title insurance		(from GFE #4)	4,166.00	150.00	
1102. Settlement or closing fee to North American Title Company	\$ 1,504.00				1,504.00
1103. Owner's title insurance to NAT and NATIC		(from GFE #5)	6,052.00		
1104. Lender's title insurance to NAT and NATIC	\$ 2,562.00				
1105. Lender's title policy limit \$ 1,885,000.00					
1106. Owner's title policy limit \$ 2,900,000.00					
1107. Agent's portion of the total title insurance premium to North American Title Company	\$ 7,752.60				
1108. Underwriter's portion of the total title insurance premium to NATIC	\$ 861.40				
1109.	\$				
1110.	\$				
1111.	\$				
1112.	\$				
1113.	\$				
<b>1200. Government Recording and Transfer Charges</b>					
1201. Government recording charges to North American Title Company		(from GFE #7)	27.50		
1202. Deed \$ 27.50 Mortgage \$ Releases \$ 27.50					27.50
1203. Transfer taxes		(from GFE #8)			
1204. City/County tax/stamps \$	\$				
1205. State tax/stamps \$	\$				
1206. Recording Fees Recorder's Office					
1207.					
<b>1300. Additional Settlement Charges</b>					
1301. Required services that you can shop for		(from GFE #6)			
	\$				
1303. Home Warranty	\$	Declined			
1304. 2011 Taxes (047) to Maricopa County Treasurer	\$	174-60-047			1,202.12
1305. See addit'l disb. exhibit to	\$		700.00		1,278,933.89
1306. 2011 Taxes (048) to Maricopa County Treasurer	\$	174-60-048			17,639.26
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)			37,195.53		1,473,456.77

POCb = Paid Outside of Closing by Buyer  
POCs = Paid Outside of Closing by Seller

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
<b>Charges That Cannot Increase</b>			
	HUD-1 Line Number		
Our origination charge	# 801	20,060.00	20,060.00
adjusted origination charges	# 803	20,060.00	20,060.00
<b>Charges That in Total Cannot Increase More than 10%</b>			
Government recording charges	#1201	27.50	27.50
Appraisal fee	# 804	775.00	775.00
Credit report	# 805	60.50	60.50
Flood certification	# 807	16.00	16.00
2nd Appraisal Fee	# 808	1,000.00	1,000.00
Credit Refresh	# 809	21.00	21.00
<b>Total</b>		1,900.00	1,900.00
Increase between GFE and HUD-1 Charges		\$ 0.00 or	0.00%

Charges That Can Change		Good Faith Estimate	HUD-1
Daily interest charges	# 901	438.98	445.07
Homeowner's insurance	# 903	5,284.00	5,284.00
Owner's title insurance to NAT and NATIC	#1103	6,052.00	4,095.00
Title services and lender's title insurance	#1101	4,341.00	4,166.00

#### Loan Terms

Your initial loan amount is	\$ 1,885,000.00
Your loan term is	30.00 years
Your initial interest rate is	4.2500 %
Your initial monthly amount owed for principal, interest and any mortgage insurance is	\$ 9,273.07 Includes <input checked="" type="checkbox"/> Principal <input checked="" type="checkbox"/> Interest <input type="checkbox"/> Mortgage Insurance
Can your interest rate rise?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes, it can rise to a maximum of 9.25000%. The first change will be on 10/01/2021 and can change again every 12 months after 10/01/2021. Every change date, your interest rate can increase or decrease by 2.00000%. Over the life of the loan, your interest rate is guaranteed to never be lower than 2.25000% or higher than 9.25000%.
Even if you make payments on time, can your loan balance rise?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of \$Unknown.
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes, the first increase can be on 11/01/2021 and the monthly amount owed can rise to \$13,715.15. The maximum it can ever rise to is \$13,715.15.
Does your loan have a prepayment penalty?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, your maximum prepayment penalty is \$ _____.
Does your loan have a balloon payment?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, you have a balloon payment of \$ _____ due in _____ years on _____.
Total monthly amount owed including escrow account payments	<input checked="" type="checkbox"/> You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. <input type="checkbox"/> You have an additional monthly escrow payment of \$N/A that results in a total initial monthly amount owed of \$N/A. This includes principal, interest, any mortgage insurance and any items checked below: <input type="checkbox"/> Property taxes <input type="checkbox"/> Homeowner's insurance <input type="checkbox"/> Flood insurance <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

**HUD-1 Addendum**

**Borrower(s):** Chad Miraglia, a married man as his sole and separate property  
10645 N. Tatum Blvd Suite 200-680  
Phoenix, AZ 85028

**Seller(s):** MK II Loan LLC, an Arizona limited liability company  
14050. 83rd Avenue Suite 180  
Peoria, AZ 85381

Queen Creek XVII, L.L.C., an Arizona limited liability company  
14050. 83rd Avenue Suite 180  
Peoria, AZ 85381

**Lender:** V.I.P. Mortgage, Inc.  
**Settlement Agent:** North American Title Company  
(602)294-2200  
**Place of Settlement:** 3200 E. Camelback Road Suite 150  
Phoenix, AZ 85018  
**Settlement Date:** September 30, 2011  
**Property Location:** 6516 N. 64th Place  
Paradise Valley, AZ 85253  
Maricopa County, Arizona  
Lots 13 & 14 La Place Unit One  
MCR 221-17

**Additional Disbursements**

Payee/Description	Note/Ref No.	Borrower	Seller
Maricopa County Treasurer 2008 Taxes (047)	174-60-047		3,393.62
Maricopa County Treasurer 2009 Taxes (047)	174-60-047		2,849.34
Maricopa County Treasurer 2010 Taxes (047)	174-60-047		1,686.16
Maricopa County Treasurer 2008 Taxes (048)	174-60-048		35,724.61
Maricopa County Treasurer 2009 Taxes (048)	174-60-048		40,307.26
Maricopa County Treasurer 2010 Taxes (048)	174-60-048		23,237.43
R&R Property Management HOA Transfer & Disclosure Fees			640.00
La Place Unit One HOA Balance Due Lot 13			3,271.50
La Place Unit One HOA Balance Due Lot 14			2,504.00
La Place Unit One HOA 4th Quarter Dues		700.00	
ML Manager, LLC Expense Reimbursement MKII			138,531.23
ML Manager LLC Expense Reimbursement QC-MK			7,934.36
Fennemore Craig Legal Services			30,381.38
in Escrow Holdback Proceeds (QC MK)			511,473.00
in Escrow Holdback Proceeds (MKI & MKII)			477,000.00
<b>Total Additional Disbursements shown on Line 1305</b>		<b>\$ 700.00</b>	<b>\$ 1,278,933.89</b>

**Seller Loan Payoff Details**

**Payoff First Mortgage** to Universal SCP 1 LLC

Principal Balance As of \_\_\_\_\_ days @ \_\_\_\_\_ Per Diem

Total Interest \_\_\_\_\_

**Total Loan Payoff** 1,148,716.24

**WARNING:** It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

21800-11-01520T2

**Adjusted Origination Charge Details**

<b>Origination Charge</b>		
Document Preparation Fee	1120213 AZ	110.00
to Schwartz & Associates		
Origination Fee		18,850.00
to V.I.P. Mortgage, Inc.		
Processing Fee		450.00
to V.I.P. Mortgage, Inc.		
Underwriting Fee		650.00
to V.I.P. Mortgage, Inc.		
	<b>Total</b>	<b>\$ 20,060.00</b>

Origination Credit/Charge (points) for the specific interest rate chosen

Total \$ \_\_\_\_\_

Adjusted Origination Charges \$ 20,060.00

**Title Services and Lender's Title Insurance Details**

	BORROWER	SELLER
Courier Fee & Overnight Delivery	65.00	
to North American Title Company		
E Doc & Holdback	35.00	150.00
to North American Title Company		
Escrow Fee	1,504.00	
to North American Title Company		
Lender's title insurance	2,562.00	
to NAT and NATIC		
	<b>Total</b>	<b>\$ 150.00</b>
	<b>\$ 4,166.00</b>	<b>\$ 150.00</b>

**Settlement or Closing Fee Details**

\*borrower portion also shown above in Title Services and Lender's Title Insurance Details

	BORROWER	SELLER
Escrow Fee	1,504.00	1,504.00
to North American Title Company		
	<b>Total</b>	<b>\$ 1,504.00</b>
	<b>\$ 1,504.00</b>	<b>\$ 1,504.00</b>

**Owner's Title Insurance**

	BORROWER	SELLER
Owner's Policy Premium	6,052.00	
to NAT and NATIC		
	<b>Total</b>	<b>\$ 0.00</b>
	<b>\$ 6,052.00</b>	<b>\$ 0.00</b>

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<b>Lender's Title Insurance</b>		<b>BORROWER</b>	<b>SELLER</b>
<i>*fees also shown above in Title Services and Lender's Title Insurance Details</i>			
Lender's Policy Premium to NAT and NATIC		2,412.00	
Lender's Endorsement Charges		150.00	
Endorsement	Endorsement Charge		
ALTA 5 / CLTA 115.2 - PUD	50.00		
ALTA 6 / CLTA 111.5	50.00		
ALTA 8.1 - Environmental	50.00		
	<b>Total</b>	<b>\$ 2,562.00</b>	<b>\$ 0.00</b>

NOTE: This document is not part of the HUD-1 Settlement Statement and is for informational purposes only.

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.