WILLIAM A. MILLER, PLLC
Attorney No. 011622
8170 N. 86th Place, Suite 202
Scottsdale, Arizona 85258
Telephone: 480-948-3095
Facsimile: 480-948-3137
Email: bmiller@williamamillerpllc.com
Attorney for Plaintiff

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In Re: Mortgages, Ltd., Debtor.	Case No. **2:08-bk-07465-RJH** Chapter 11
VICTIMS RECOVERY, L.L.C., an Arizona limited liability company, Plaintiff, vs. GREENBERG TRAURIG LLP, a New York limited liability partnership; *et al.*, Defendants.	Adversary Proc. No. **2:10-ap-01214-RJH** **PLAINTIFF'S MOTION FOR REMAND**

This action that Plaintiff, Victims Recovery, L.L.C. ("VR"), filed in the Arizona Superior Court for Maricopa County, should be remanded to that court pursuant to 28 U.S.C. §§ 1447(c), 1452(b), or § 1334(c) for four basic reasons:

(1) this Court lacks subject-matter jurisdiction of VR's post-confirmation action because it does not have a "close nexus to" the Bankruptcy proceedings of the Debtor, Mortgages Ltd. ("MLtd")—resolution of the claims in VR's action does not turn on the interpretation or application of the confirmed First Amended Plan of Reorganization ("the Plan");

(2) the Plan expressly and unambiguously gives VR the right to bring its claims against these Defendants outside of the bankruptcy arena and VR's successful recovery against them will not impact or preclude the

Liquidating Trustee from bringing its own claims against any of these Defendants;

(3) equitable factors overwhelmingly favor remand; and

(4) remand would be appropriate and consistent with this Court's prior remand of the same type of state-court action in these bankruptcy proceedings in *Goldblatt v. Mortgages Ltd. Securities, LLC (In re Mortgages, Ltd.)*, Adversary No. 2:09-ap-00713-RJH.

For these reasons, VR moves to remand its action to the Arizona Superior Court. VR's motion is further supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL BACKGROUND

MLtd's bankruptcy case began on June 20, 2008, and this Court confirmed the Plan (Dk. No. 1532) on May 20, 2009. In its confirmation order (Dk. No. 1755), the Court approved and established the Liquidating Trust, appointed the Liquidating Trustee to administer it and as a representative of MLtd and its bankruptcy estate, and designated ML Manager, LLC, as the successor to and representative of MLtd and its bankruptcy estate. On June 1, 2010, more than a year post confirmation, VR filed its action in Maricopa County Superior Court (*Victims Recovery, LLC v. Greenberg Traurig, LLP, et al.*, Case No. CV2010-052188).

VR's Complaint alleges six claims, all of which are state-law claims: (1) common law and statutory fraud against all Defendants; (2) professional negligence against Defendants Mayer Hoffman McCann, P.C. ("MHM"), CBIZ, Inc. ("CBIZ"), CBIZ MHM, LLC ("CBIZ MHM"), Charles McLane ("McLane") and his wife, and Joel Kramer ("Kramer") and his wife (collectively, the "MHM Defendants"), and Defendants Greenberg Traurig LLP ("GT"), Robert Kant ("Kant") and his wife, and Jeffrey Verbin ("Verbin") (collectively, "the GT Defendants"); (3) aiding and abetting MLtd and its owner Scott Cole's breaches of contract against all Defendants; (4) aiding and abetting MLtd's bad faith against all Defendants; (5) aiding and abetting MLtd's breaches of fiduciary duty against all Defendants; and (6) civil conspiracy against all Defendants.

Summonses and copies of the Complaint were served on GT, MHM and CBIZ MHM on June 3, 2010. CBIZ was served on June 9, 2010. Counsel for the GT Defendants and counsel for the MHM Defendants stipulated to the acceptance of service for Verbin, Kant and his wife, McLane and his wife, and Kramer and his wife on June 17, 2010. Denning and his wife were served on July 5, 2010, and Newman and his wife were served on July 28, 2010. Attempts to personally serve Olson and his wife have been unsuccessful to date.

The GT and the MHM Defendants removed VR's Arizona Superior Court action to this Court pursuant to the Notice of Removal ("NOR") filed on July 2, 2010, citing 28 U.S.C. §§ 1441 and 1452(a) and the District Court's General Order No. 01-15 (which refers all Title 11 cases in this district to the district's bankruptcy judges) as authority. Denning and his wife filed a Notice of Consent to Removal on July 21, 2010. Newman and, of course, Olson and their respective wives have not filed a Notice of Removal and have not consented to removal.

II. WHY THIS CASE SHOULD BE REMANDED

A. This Court lacks subject-matter jurisdiction of VR's claims because they do not arise under Title 11 and are not related to MLtd's Bankruptcy case.

"The burden of establishing federal jurisdiction is on the party seeking removal, and the removal statute is strictly construed against removal jurisdiction." *Prize Frize, Inc. v. Matrix (U.S.), Inc.*167 F.3d 1261, 1265 (9th Cir. 1999); *Schwartz v. FHP Int'l Corp.*, 947 F. Supp. 1354, 1360 (D. Ariz. 1996). Federal courts must reject jurisdiction over and remand removed cases "'if there is any doubt as to the right of removal in the first instance.'" *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996) (quoting *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) ("strong presumption against removal jurisdiction")). Moreover, after a plan of reorganization has been confirmed, as is the case here, federal bankruptcy jurisdiction is much more limited that before a plan has been confirmed. Jurisdiction is limited to an action that has a "close nexus" to the main bankruptcy case, which means that the action and claims must directly affect the interpretation and application of specific plan provisions. *State of Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1194 (9th Cir. 2005); *Goldblatt, supra* at 2.

The statute that Defendants invoke, 28 U.S.C. § 1452(a), provides for removal of a state court claim or cause of action if the district court "has jurisdiction of such claim or cause of action under [28 U.S.C. §] 1334 ...." Accordingly, the basis for federal jurisdiction here is 28 U.S.C. § 1334(b), which provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings **arising under title 11, or arising in or related to cases under title 11**." (Emphasis added). "[T]he analysis is, absent removal, would this Court have had jurisdiction over the claims and courses of action asserted in the Removed Action." *Plowman v. Bedford Fin. Corp. (In re Plowman)*, 218 B.R. 607, 612 (Bankr. N.D. Ala. 1998). There is no question that absent removal, this Court would not have jurisdiction of VR's state-law claims and causes of action.

Ninth Circuit case law belies Defendants' assertion that VR's action "has a close nexus to the ... Plan and continuing proceedings in the bankruptcy case." (NOR ¶ 4).[1] None of VR's claims satisfy the "close nexus" test that the Ninth Circuit adopted from the Third Circuit, and Defendants cannot show that they have "a close nexus to the bankruptcy Plan or proceeding sufficient to uphold bankruptcy court jurisdiction over the matter." *Pegasus Gold* at 1194 (quoting *Binder v. Price Waterhouse & Co. (In re Resorts, Int'l, Inc.)*, 372 F.3d 154, 166-67 (3d Cir. 2004)).

Under this test, the only way to establish a "close nexus" is to show that "the claim must affect an integral aspect of the bankruptcy process." *Resorts Int'l* at 167. Here, there is simply no effect on an integral part of the bankruptcy process. "'Nowhere in [VR's] lawsuit is the bankruptcy court being asked to construe or interpret the confirmed plan or to see that federal bankruptcy laws are complied with ....'" *Id.* at 168 (quoting *Grimes v. Graue (In re*

---

[1] Defendants falsely assert that the standard for determining "related to" jurisdiction is the same regardless of whether the action is pre- or post-confirmation, citing an unpublished opinion, *Lindsey v. Travelers Indem. Co.*, No. CV 06-609-PHXMHM, 2007 WL 841411, *4-5 (D. Ariz. Mar. 16, 2007). However, *Lindsey* was ***not*** a post-confirmation case. Notwithstanding that fact, Judge Murguia clearly explained in that case that in the Ninth Circuit, the stricter *Pegasus Gold* "close nexus" standard is the one required for post-confirmation cases rather than the pre-confirmation standard enunciated in *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984), which the Ninth Circuit adopted in *Fietz v. Great W. Sav. (In re Fietz)*, 852 F.2d 455 (9th Cir. 1988). *Lindsey* at *2.

Haws), 158 B.R. 965, 971 (Bankr. S.D. Tex. 1993). Nor will the outcome of VR's claims "affect the success of Debtor's Plan." *Agri Sys. v. Hartford Insurance Group (In re Agri Sys.)*, No. 04-60069-11, 2007 WL 3094901, *12 (Bankr. D. Mont. Oct. 18, 2007). Moreover, as the Ninth Circuit explained in *Sea Hawk Seafoods, Inc. v. Alaska (In re Valdez Fisheries Dev. Ass'n)*, 439 F.3d 545, 548 (9th Cir. 2006), in post-confirmation cases, the "close nexus" test is met where the "claims asserted that the defendant breached the Reorganization Plan and the outcome of those claims could affect the interpretation and execution of the Plan." Here, VR has not alleged any breach of the Plan; nor could any of its claims affect the Plan's interpretation or execution, as MLtd is not named as a defendant.

Other Ninth Circuit decisions have also construed claims against the debtor's professional advisors, similar to those present here, as failing to establish subject-matter jurisdiction, thereby requiring remand. For example, in *Bethlahmy v. Kuhlman (In re ACI-HDT Supply Co.)*, 205 B.R. 231 (B.A.P. 9th Cir. 1997), the court remanded the plaintiff's state-law claims against a bankruptcy debtor's officers, corporate attorneys, banker and suppliers, who facilitated a Ponzi investment scheme similar to the one described in VR's Complaint, because the plaintiff's claims were not related to the debtor's bankruptcy case. The court concluded that it had no subject-matter jurisdiction and removal was invalid because even though the plaintiffs' complaint contained several allegations about the debtor's conduct, as does VR's complaint, the claims were based solely on state law, they did not directly affect the bankruptcy estate, were not intertwined with bankruptcy issues and arose of out the nondebtor defendants' pre-petition conduct, and none of the defendants were debtors. *Id.* at 235-38. That is precisely the situation here.

In addition to *Bethlahmy*, which also held that the plaintiff's claims were not related to the debtor's bankruptcy case because, *inter alia*, any claims the debtor might have against the defendants were speculative, other Ninth Circuit authority clearly demonstrates that the fact that MLtd (or its successor) is not a party to this action is a, if not the, primary factor for lack of subject-matter jurisdiction of VR's claims. *E.g.*, *Taxel v. Elec. Sports Research (In re Cinematronics, Inc.)*, 916 F.2d 1444, 1450 (9th Cir. 1990); *Vantage Dev. & Mgmt. Corp. v. X-Alpha*

Int'l, Ltd. (In re Kennedy), 48 B.R. 621, 622 (Bankr. D. Ariz. 1985) (denying defendants' motion to vacate remand order because "[n]one of the defendants are bankruptcy debtors ....").

Nevertheless, Defendants state that there is a close nexus because "any recovery by Plaintiff will impact the amount of any recovery available to the Liquidating Trustee against these Defendants, and conversely any recovery by the Liquidating Trustee against these Defendants would impact the amount of any recovery by Plaintiff." (NOR ¶ 5). That, of course, is pure speculation. Even if the Liquidating Trustee also brought bring claims against these Defendants, those claims would necessarily be different from VR's claims; VR's recovery would not afford Defendants any defense or right of set-off and would not impact the Trustee's right of recovery or liability any more than if MLtd were not in bankruptcy.

Again, *Bethlahmy* is dispositive. Paraphrasing *Bethlahmy*'s reasoning:

> VR's state law action seeks recovery of damages against the defendants for their conduct in promoting [and facilitating MLtd's fraud]. As [neither MLtd nor the Liquidating Trustee] is ... a party to this action, it would not be bound by the outcome under principles of res judicata and collateral estoppel. In sum, we conclude that there is no "related to" jurisdiction in this instance.

205 B.R. at 238. In addition, because of the prohibition against double recovery, any recovery by VR would reduce MLtd's (or its successor's) liability to VR.

Defendants' reliance on certain provisions of the Plan to support their argument about how VR's claims will affect the administration of the Plan is clearly misplaced and disingenuous. Contrary to Defendants' obvious misreading of those provisions, the simple fact is that the Plan expressly allows MLtd's Revolving Opportunity ("RevOp") Loan Program investors, including those who comprise VR, to bring these claims against these particular Defendants. The Plan states: "The beneficiaries have ***not*** assigned their ***individual, independent, direct or personal claims against third parties*** to the Liquidating Trust ***and may pursue such claims or causes of action directly against such third parties***." (Plan § 6.12 (emphasis added)). The Plan's definition of "Beneficiaries" includes "Class 11 Creditors," which are the RevOp investors. (*Id.* § 3.6 and Ex. H § 1(f)). And, the contemplated or "target" defendants or third parties referred to in the Plan specifically include GT and MHM. (*Id.* Ex. 1). Thus, no interpretation

of the Plan is necessary to conclude that VR's RevOp investors have the right to sue the GT, MHM and the other Defendants—those provisions of the Plan mean exactly what they say.

Defendants' reliance on the cooperation provision included in § 6.12 of the Plan is even more misplaced and disingenuous. That provision gives the Liquidating Trust ***the option*** to cooperate with the beneficiaries (the RevOp investors) in pursuing such claims. It does not require such cooperation and by no stretch of plain English does it mean that the beneficiaries cannot bring such claims without applying or interpreting the Plan unless the Trust elects to cooperate with them. Likewise, Defendants' reference to a potential "dispute" about whether the Plan prohibits the 18 RevOp investors from assigning their claims to VR, which they did solely for the purposes of combining efforts and reducing the cost of litigation, is nothing more than a red herring. Defendants have not cited any provision of the Plan that prohibits such an assignment, and there is none. Regardless, that is not an issue that has anything to do with bankruptcy subject-matter jurisdiction. Moreover, even if those 18 RevOp investors are prohibited from assigning their claims to VR, that matter can easily be resolved by their rescinding their assignments and amending the Complaint to name themselves as individual plaintiffs in place of VR, which they will do if necessary.

As for Defendants' reference to the Plan's provision about this Court's continuing jurisdiction, again, *Resorts, Int'l., Inc.* is dispositive:

> ***Where a court lacks subject matter jurisdiction over a dispute, the parties cannot create it by agreement even in a plan of reorganization.*** *In re Continental Airlines, Inc.*, 236 B.R. 318, 323 (Bankr. D. Del. 1999), *aff'd*, 2000 WL 1425751 (D. Del. September 12, 2000), *aff'd*, 279 F.3d 226 (3rd Cir. 2002). Similarly, ***if a court lacks jurisdiction over a dispute, it cannot create that jurisdiction by simply stating it has jurisdiction in a confirmation or other order.*** *Id.*; *accord United States Trustee v. Gryphon at the Stone Mansion*, 216 B.R. 764, 769 (W.D. Pa. 1997) ("***A retention of jurisdiction provision within a confirmed plan does not grant a bankruptcy court jurisdiction.***"), *aff'd*, 166 F.3d 552 (3d Cir. 1999). ***If there is no jurisdiction under 28 U.S.C. § 1334 or 28 U.S.C. § 157, <u>retention of jurisdiction provisions in a plan of reorganization or trust agreement are fundamentally irrelevant</u>.***

372 F.3d at 161 (emphasis added).

Finally, Defendants erroneously assert that VR's action "raises both core and non-core

issues." (NOR ¶ 14). A "core" proceeding or issue is one that arises under Title 11. 28 U.S.C.A. § 157(b)(2). Under 28 U.S.C.A. § 157(b)(4), a "noncore" proceeding or issue is one "that does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy." *Bethlahmy*, 205 B.R. at 237; *accord Security Farms v. International Bhd. of Teamsters*, 124 F.3d 999, 1008 (9th Cir. 1997) ("Actions that do not depend on bankruptcy laws for their existence and that could proceed in another court are considered 'non-core.'").

"Core" proceedings or issues involve such matters as actions by or against the estate, allowance or disallowance of claims against the estate, the automatic stay, preferences, dischargability, validity of liens, sale, lease, use and liquidation of the debtor's property, and confirmations of plans, 28 U.S.C.A. § 157(b)(2), *i.e.*, those matters that "would ... have no existence outside of the bankruptcy case." *Bethlahmy*, 205 B.R. at 235. Clearly, VR's action is not a core proceeding because none of its claims fall into any of those categories and do not arise under Title 11 or invoke any substantive right under bankruptcy law.

Likewise, none of VR's claims, which by judicial definition are "noncore," are "related to" claims because as discussed above, they are independent, state-law claims and are based on the discrete wrongful acts and omissions of the Defendants, who are third parties and are not bankruptcy debtors or parties to MLtd's bankruptcy, and their adjudication does not require application or interpretation of the Plan.

B. Even if subject-matter jurisdiction exists, equitable grounds favor remand.

Again, assuming *arguendo* that Defendants could sustain their burden of establishing subject-matter jurisdiction, this Court still can and should remand this case under 28 U.S.C. § 1452(b), which provides, "The court to which [a] claim or cause of action [subject to jurisdiction under § 1334] is removed may remand such claim or cause of action on any equitable ground." In other words, "even if [this Court] ha[s] subject matter jurisdiction over [VR's] [c]laims under section 1334, equity and the interests of justice would compel it to remand the ... [c]laims to state court." *Tig Ins. Co. v. Smolker (In re Tig Ins. Co.)*, 264 B.R. 661, 667 (Bankr. C.D. Cal. 2001).

"This 'any equitable ground' remand standard is an unusually broad grant of authority[,]" *McCarthy v. Prince (In re McCarthy*, 230 B.R. 414, 417 (B.A.P. 9th Cir. 1999), and "subsumes both the usual considerations of fairness, economy, and common sense and ... the procedural and jurisdictional grounds for granting a motion to remand." *Chambers v. Marathon Home Loans (In re Marathon Home Loans)*, 96 B.R. 296, 300 (E.D. Cal. 1988). In deciding whether to exercise this broad grant of authority to remand a case to state court under equitable grounds, courts generally consider up to fourteen factors:

> (1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention; (2) extent to which state law issues predominate over bankruptcy issues; (3) difficult or unsettled nature of applicable law; (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding; (5) jurisdictional basis, if any, other than § 1334; (6) degree of relatedness or remoteness of proceeding to main bankruptcy case; (7) the substance rather than the form of an asserted core proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court; (9) the burden on the bankruptcy court's docket; (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11) the existence of a right to a jury trial; (12) the presence in the proceeding of nondebtor parties; (13) comity; and (14) the possibility of prejudice to other parties in the action.

Pacific Inv. Mgmt. Co. v. OCM Opportunities Fund III, L.P. (In re Enron Corp.), 296 B.R. 505, 508 n.2 (C.D. Cal. 2003); *accord Maya, LLC v. Cytodyn of New Mexico, Inc. (In re Cytodyn of New Mexico, Inc.)*, 374 B.R. 733, 739 (Bankr. C.D. Cal. 2007).

Every one of these 14 factors favors remand of VR's action: (1) lack of any significant effect on the administration of the estate; (2) predominance of state law issues; (3) lack of difficult or unsettled nature of applicable law; (4) at least two other related pending state-court actions filed by numerous other MLtd investors involving similar claims in Maricopa County Superior Court *(Ashkenazi, et al. v. Greenberg Traurig, LLP, et al.*, Case No. CV2010-020851, and *Goldblatt, et al. v. Mortgages Ltd. Securities, LLC, et al.*, Case No. CV2009-006500); (5) no jurisdictional basis other than § 1334; (6) remoteness of VR's action to MLtd's main bankruptcy case; (7) the substance of VR's claims, which are not core proceedings; (8) no problem severing VR's state-law claims from MLtd's bankruptcy case; (9) sub-

stantial burden on this Court's docket unless remanded[2]; (10) clear likelihood of Defendants' forum shopping; (11) VR's and Defendants' entitlement to a jury trial; (12) nondebtor status of all parties to VR's action; (13) comity in favor of allowing the state court to adjudicate VR's state-law claims; and (14) no possibility of prejudice to Defendants—either way they will have to defend VR's claims and will be subject to the same amount of liability regardless of whether the claims are litigated in this Court or in state court where they should be. *Maya*, 374 B.R. at 738-41; *Pacific Inv. Mgmt.*, 296 B.R. at 509.

Finally, as this Court concluded in *Vantage Dev.*, *supra*, and *Goldblatt*, *supra*, the serious questions about whether Plaintiff's claims are "related to" MLtd's bankruptcy proceedings also support remand on equitable grounds. *See also, Marina at Harbor Center, Inc. v. Security Pac. Bank Idaho, F.S.B. (In re Bowen Corp.)*, 150 B.R. 777, 786 (Bankr. D. Idaho 1993).

Although abstention is inapplicable in the Ninth Circuit unless there is a related action still pending in state court after the action in question has been removed, *Security Farms*, 124 F.3d at 1009-10, decisions from this District and this and other Circuits regarding permissive abstention based on the same equitable factors, clearly support remand of VR's action. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1167 (9th Cir. 1990) (discussing and applying 12 equitable factors).

For example, in *Nat'l Acceptance Co. v. Levin*, 75 B.R. 457 (D. Ariz. 1987), the court remanded the case to the Maricopa County Superior Court, noting that, like here, "(1) the action was commenced in state court; (2) it can be timely resolved there; and (3) it involves a state-law claim … ; and (4) there is no independent basis for federal jurisdiction other than its relatedness to a bankruptcy." *Id.* at 459; *accord*, *In re Roman Catholic Bishop of San Diego*, 374 B.R. 756, 761-62 (Bankr. S.D. Cal. 2007); *In re Pac. Gas & Elec. Co.*, 279 B.R. 561, 570-71 (Bankr. N.D. Cal. 2002). To the same effect is *Nat'l Union Fire Ins. Co. v. Titan Energy, Inc. (In re Titan Energy, Inc.*, 837 F.2d 325, 332-33 (8th Cir. 1988), where the court, following

---

[2] The congestion of the federal courts, particularly in Arizona where there is an extraordinarily large and ever increasing number of bankruptcy filings, is an important factor weighing heavily in favor of remanding this case. *See Van Horn v. Western Elec. Co.*, 424 F. Supp. 920, 923 (E.D. Mich. 1977).

Vantage Dev., *supra*, affirmed the district court's remand of a state-law action on the basis of permissive abstention because the action was brought by a non-debtor against another non-debtor, it would affect the debtor's estate only if the non-debtor defendant lost the action and sought indemnification from the debtor, the action could not have been filed in federal court absent the purported bankruptcy jurisdiction, and there was no evidence to suggest that the action could not be timely litigated in the state court.

C. Remand of VR's action is appropriate and consistent with the Court's remand of the same type of state-court action in *Goldblatt* in this bankruptcy case.

As the Court will no doubt recall, four other MLtd investors (Mr. and Mrs. Goldblatt and others) filed a complaint alleging fraud against four of MLtd's subsidiaries, including Mortgages Ltd. Securities, LLC ("MLS"), in Maricopa County Superior Court in February 2009 (*Goldblatt, et al. v. Mortgages Ltd. Securities, LLC, et al.*, Case No. CV2009-006500). That action was removed to this Court on the same basis that VR's action was removed and became Adversary No. 2:09-ap-00713-RJH. The plaintiffs filed a motion for remand on July 21, 2009, which this Court granted on September 3, 2009, stating, "Because ... ***this case will [not] be decided by interpretation and application of specific plan provisions***, the 'close nexus' that is required for post confirmation bankruptcy jurisdiction may not exist. In any event, the Court determines that remand on equitable grounds pursuant to 28 U.S.C. § 1452(b) is appropriate." *Order Granting Motion to Remand* (Dk. No. 2164) (footnote omitted) (emphasis added).

The similarities between the Goldblatt case and VR's case are striking. The plaintiffs in both cases are investors in various MLtd's loan programs. The defendants in both cases include entities listed in the Plan as "target" defendants (MLS in Goldblatt's case; GT and MHM in VR's case). All of the defendants in both cases are nondebtors in and nonparties to MLtd's bankruptcy case. The claims alleged in both cases include state-law causes of action and the same types of fraud. In both cases the Plan expressly contemplates and allows the plaintiffs to bring such third-party claims; the Plan will not dictate the result of either case; the Plan has no provision that will govern the results; neither case will be decided by interpretation

and application of any specific Plan provisions; and both cases were originally filed in the same state court.

Because of these similarities, the principles of equitable remand apply equally to both cases and, therefore, the result in VR's case should be the same as, and would be consistent with, the result in the *Goldblatt* case—remand to the state court.

III. CONCLUSION

For the above reasons, Defendants' removal of VR's state-court action was improper. This Court should remand this case because it lacks subject-matter jurisdiction of VR's claims and causes of action, or in the alternative, equitable factors warrant remand. In any event, remand would be consistent with and should be governed by this Court's remand of the prior *Goldblatt* adversary action, which involved similar facts, circumstances and claims. Therefore, VR requests that the Court grant its motion to remand and order that its case be remanded to the Maricopa County Superior Court where it commenced, and that the removing Defendants be ordered to pay VR its costs and expenses, including attorney fees, incurred herein under 28 U.S.C. § 1447(c). *See Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 861 (9th Cir. 2001).

RESPECTFULLY SUBMITTED this 16th day of August, 2010.

/s/ William A. Miller
William A. Miller
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2010, I electronically filed the foregoing with the Clerk of the Court using the Court's CM/ECF system and emailed copies of the same to the following:

Kendall D. Steele, Esq.
Denise O'Rourke, Esq.
JARDINE BAKER HICKMAN & HOUSTON PLLC
3300 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
ksteele@jbhhlaw.com
dorourke@jbhhlaw.com

David F. Adler, Esq.
James R. Wooley, Esq.
Louis A. Chaiten, Esq.
Eric E. Murphy, Esq.
Katie M. McVoy, Esq.
JONES DAY
Northpoint
901 Lakeside Avenue
Cleveland, Ohio 44114
dfadler@jonesday.com
lachaiten@jonesday.com
jrwooley@jonesday.com
kmmcvoy@jonesday.com

Attorneys for Defendants CBIZ, Inc., CBIZ MHM, LLC, Mayer Hoffman McCann PC, Charles A. and Eileen M. McLane, and Joel B. and Donna L. Kramer

Kevin Downey, Esq.
Ellen Oberwetter, Esq.
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
kdowney@wc.com
eoberwetter@wc.com
Attorneys for Defendants Greenberg Traurig, LLP, Robert S. and Ellen P. Kant, and Jeffrey H. Verbin

Russell Piccoli, Esq.
Mariscal, Weeks, McIntyre & Friedlander, P.A.
2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012
russ.piccoli@mwmf.com
Attorney for Jeffrey A. Newman and Kathleen N. Newman

Paul J. Roshka, Jr., Esq.
J. Matthew Derstine, Esq.
Jeffrey D. Gardner, Esq.
ROSHKA DEWULF & PATTEN, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004
roshka@rdp-law.com
mderstine@rdp-law.com
jgardner@rdp-law.com
Attorneys for Defendants Michael M. Denning and Donna J. Denning

/s/ William A. Miller
William A. Miller
Attorney for Plaintiff