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10 UNITED STATES BANKRUPTCY COURT
11 DISTRICT OF ARIZONA - TUCSON DIVISION

12 In re

13 BARRY WEISBAND,

14 Debtor(s).

Case No. 4:09-bk-05175-EWH

Chapter 13

MOTION FOR RELIEF FROM
AUTOMATIC STAY

(11 U.S.C. § 362 and Bankruptcy Rule 4001)

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16 GMAC MORTGAGE, LLC,

17 Movant,

18 vs.

19 BARRY WEISBAND, Debtor(s);
20 and DIANNE C. KERNS, Chapter 13 Trustee,

21 Respondents.
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24 TO THE RESPONDENTS NAMED ABOVE:

25 GMAC Mortgage, LLC ("Movant"), respectfully represents as follows:

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1 11. Based on the above, under the best case scenario, Movant is informed and
2 believes that the equity in the Real Property is as follows:

3 Fair Market Value:	\$275,000.00
4 Less:	
5 Movant's 1 st Trust Deed (principal only)	\$583,595.61
6 Pima County Assessor's Lien	97.21
7 Costs of Sale (8%)	<u>22,000.00</u>
8 Equity in the Property:	\$<330,692.82>

9 As a result, there is no equity in the Real Property to be realized by the Debtor or the bankruptcy
10 estate. Further, as the Debtor is unable to service the debt on the Real Property, Movant
11 contends that the Real Property is not necessary for an effective reorganization. Therefore,
12 Movant is entitled to relief from stay under 11 United States Code § 362(d)(2).

13 12. If Movant is not allowed to regain possession of and to foreclose on the Real
14 Property it will suffer irreparable injury, loss and damage.

15 **RELIEF FROM STAY - CAUSE**

16 **ADEQUATE PROTECTION**

17 13. Pursuant to the provisions of 11 United States Code §§ 361 and 362(d), Movant is
18 entitled to adequate protection of its interest in the Real Property.

19 14. Movant submits the adequate protection in this case requires normal and periodic
20 cash payments, as called for by the Note, plus the repayment of any and all delinquent amounts
21 owed to Movant, including all attorneys' fees and costs incurred in the filing of this motion.

22 15. Movant is informed and believes that Debtor is presently unwilling or unable to
23 provide adequate protection to the Movant and there is no probability that adequate protection
24 can be afforded to Movant within a reasonable time.

25 16. By reason of the foregoing, Movant is entitled to relief from stay under 11 United
26 States Code § 362(d)(1), based upon the failure of Debtor to provide adequate protection to
27 Movant and to make payments as required by 11 United States Code § 1322.

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1 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

2 1. Terminating the automatic stay of 11 United States Code § 362, as it applies to the
3 enforcement by Movant of all of its rights in the Real Property under the Note and the Deed of
4 Trust;

5 2. Granting Movant leave to foreclose on the Real Property and to enforce the
6 security interest under the Note and the Deed of Trust, including any action necessary to obtain
7 possession of the Property;

8 3. Permitting Movant to offer and provide Debtor with information re: a potential
9 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss
10 Mitigation Agreement and to enter into such agreement with Debtor;

11 4. Alternatively, in the event this court declines to grant Movant the relief requested
12 above, Movant requests that an Order for adequate protection be issued, requiring the Debtor to
13 reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust
14 and all other deeds of trust encumbering the Real Property, including Debtor's obligations to pay
15 when due (a) the monthly installments of principal and interest, as required under the Note;
16 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtor in order
17 to protect Movant's interest in the Real Property, including all attorneys' fees and costs incurred
18 in the filing of this motion;

19 5. That the attorneys' fees and costs incurred by Movant for filing the instant Motion
20 be included in the outstanding balance of the Note as allowed under applicable non-bankruptcy
21 law; and

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1 6. For such other and further relief as the court deems just and proper.

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3 Dated: May 29, 2009

PITE DUNCAN, LLP

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Copies of the foregoing mailed

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May 29, 2009, to:

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BARRY WEISBAND

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15

(DEBTOR)

16

RONALD RYAN

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RONALD RYAN, P.C.

1413 E. HEDRICK DR

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TUCSON, AZ 85719-2633

(Debtor(s) Attorney)

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DIANNE C. KERNS

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7320 N. LA CHOLLA #154 PMB 413

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(Chapter 13 Trustee)

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Pima County Assessor

24

115 N. Church

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Tucson, AZ 85701-1199

26

(Lienholder)

27

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