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8 UNITED STATES BANKRUPTCY COURT
9 DISTRICT OF ARIZONA TUCSON

8 BARRY WEISBAND	Case No: 09-5175-TUC-EWH
9 Debtor/Respondent	DEBTOR'S MOTION TO DEEM ADMISSIONS ADMITTED, TO DEEM DISCOVERY OBJECTIONS WAIVED, TO COMPEL RESPONSES TO INTERROGATORIES REQUESTS FOR PRODUCTION, TO COMPLETE DOCUMENT PRODUCTION AND FOR ATTORNEY'S FEES
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11 GMAC MORTGAGE, LLC, MOVANT	
12 vs.	
13 DEBTOR/RESPONDENT	Final Hearing: 11/10/09 at 2:00 p.m.
14	Chapter 13
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17 COME NOW, Barry Weisband, Debtor, who files this Debtor's Motion to Deem
18 Admissions Admitted, to Deem Discovery Objections Waived, to Compel Responses to
19 Interrogatories Requests for Production, to Complete Document Production and for Attorney's
20 Fees, and presents unto the Court as follows:

- 21
- 22 1. This Motion pertains to the Motion to Lift Stay filed by GMAC Mortgage, LLC
23 ("GMACM"). A certification of attempt to negotiate a resolution in good faith is included at the
24 end of this Motion. Most of the matters are not the kind of thing for which a negotiated
25 resolution is possible, because they are requests for recognition of consequences that operate
26 as a matter law. The exhibits are to be considered as set forth at length herein. The Court's
27 Docket is attached as Exhibit A and the Timeline prepared by Debtor is attached as Exhibit
28 B. The Debtors Requests for Admission, Interrogatories and Requests for Production to

1 Movant filed by Ronald Ryan of Ronald Ryan, P.C. ("D's Counsel") on behalf of Debtor was
2 served on Movant's Attorney by email and fax on 8/15/09. The Notice of Service and
3 Certificate of Service of same is attached as Exhibit C and the Discovery requests themselves
4 are attached as Exhibit D. These were acknowledged as received in Exhibit E. Attached as
5 Exhibit E is a copy of emails back and forth the substance of which, in part, extended the
6 discovery deadline to 9/29/09 by D's Counsel as a courtesy. The emails in Exhibit E began
7 on 9/11/09. When printing out emails that are sent back and forth between two or more
8 parties, they are printed contiguously, with the earliest email being at the bottom and the latest
9 on top.
10

11 2. The Motion for Relief from Stay filed by Josephine Piranio of Pite Duncan, LLP
12 on behalf of GMACM as to Debtor's Residence, located at 5424 East Placita Apan, Tucson,
13 Arizona 85718 ("Residence"), was filed on 5/29/09.

14 3. Bankruptcy Rule (BR) 7036, Requests for Admission, provides that Federal
15 Rule (FRCP) 36 applies in adversary proceedings, and to contested matters.¹ FRCP 36(a)(3),
16 Requests for Admission, Time to Respond, Effect of Not Responding, provides:

17 A matter is admitted unless, within 30 days after being served, the party to
18 whom the request is directed serves on the requesting party a written answer
19 or objection addressed to the matter and signed by the party or its attorney. A
20 shorter or longer time for responding may be stipulated to under Rule 29 or be
ordered by the court.

21 The original deadline to respond was September 14, 2009, and the request for extension of
22 time to respond was made on D's Counsel on the same date and granted by D's Counsel on
23 the same date, extending the deadline as to all discovery until September 29, 2009. There
24 has been no other request for extension of deadline and none granted. Promises have been
25

26
27 ¹ BR 9014(c) provides that rules: 7009, 7017, 7021, 7025, 7026, 7028-7037, 7041,
28 7042, 7052, 7054-7056, 7064, 7069, 7071, apply to contested matters.

1 made by GMACM of additional documentation being on its way, but no deadlines,
2 requirements or consequences have been waived by Debtor's Counsel. Quite the contrary.²

3 The request for extension was made by Movant's prior Attorney and the extended deadline
4 expired 6 days prior to the entry of the Order Substituting Counsel. Additionally, to this very
5 day there has been no response to the requests for admissions, nor objections thereto, filed
6 by either of the Attorney's involved in the case. The date of this Motion is 35 days after
7 expiration of the initial 30 day deadline pursuant to the Rules, 20 days after expiration of the
8 stipulated extended deadline, and 65 days after they were first served. Accordingly, the
9 admissions are deemed admitted. Debtor files this motion requesting entry of an order
10 recognizing the fact that Debtor's Requests for Admission are deemed to have been admitted.
11

12 4. Additionally, pursuant to BR 7033, Interrogatories to Parties, FRCP 33 applies
13 in adversary proceedings, and to contested matters, as provided in BR 9014(c). FRCP 33,
14 Interrogatories to Parties, provides in relevant part,
15

16 (b) Answers and Objections.

17 (1) Responding Party.

18 The interrogatories must be answered:

19 (A) by the party to whom they are directed; or

20 (B) if that party is a public or private corporation, a partnership, an association,
21 or a governmental agency, by any officer or agent, who must furnish the
22 information available to the party.

23 (2) Time to Respond. The responding party must serve its answers and any
24 objections within 30 days after being served with the interrogatories. A shorter
25 or longer time may be stipulated to under Rule 29 or be ordered by the court.

26 (3) Answering Each Interrogatory. Each interrogatory must, to the extent it is
27 not objected to, be answered separately and fully in writing under oath.

28 (4) Objections. The grounds for objecting to an interrogatory must be stated
with specificity. Any ground not stated in a timely objection is waived unless the
court, for good cause, excuses the failure.

(5) Signature. The person who makes the answers must sign them, and the
attorney who objects must sign any objections.

² See the communication from prior counsel of GMACM, dated 9/11/09, in Exhibit E,
and D's Counsel's response, dated 9/13/09, in the same exhibit.

1 5. There have been no answers served to a single interrogatory, nor any
2 objections filed to any interrogatory. As stated above, it has been 35 days after expiration of
3 the initial 30 day deadline pursuant to the Rules and 20 days after expiration of the stipulated
4 extended deadline to answer the Interrogatories. The grounds for objecting to an
5 interrogatory must be stated with specificity. Additionally, FRCP 33(b)(4), states in relevant
6 part: "The grounds for objecting to an interrogatory must be stated with specificity. Any ground
7 not stated in a timely objection is waived . . ." Accordingly, pursuant to BR 7033, BR 9014(
8 c), and FRCP 33(b)(2) and (4), Debtor requests an Order that deems all objections to all
9 Interrogatories have been waived.
10

11 6. Pursuant to FRCP 37(a)(2)(B), Debtor requests an order compelling that all
12 Interrogatories be fully and completely answered.³ Additionally, pursuant to FRCP
13 37(a)(4)(B), Debtor requests that D's Counsel's reasonable attorney's fees be granted against
14 GMACM for bringing this motion, and that such fees be in addition to the fees paid by Debtor
15 for representation in this case, inasmuch as the work involved in bringing this motion should
16 not have been necessary.
17

18 7. Pursuant to BR 7034, Production of Documents . . . , Rule 34 F.R.Civ.P. applies
19 in adversary proceedings, and to contested matters, pursuant to BR 9014(c). Pursuant to
20 FRCP 34(b) and 37(a)(2)(B), Debtor requests an order compelling a written response to each
21 Request for Production, and an Order that the remaining documents that have not yet been
22 produced, be produced to Movant immediately.⁴ Additionally, pursuant to FRCP 37(a)(4)(B),
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24
25 ³ BR 7037 and BR 9014(c), make FRCP 37 applicable to this proceeding.

26 ⁴ The following are the documents produced, which constitute a total of 477 pages: 1) Flow Interim Servicing Agreement Between Lehman Capital, a Division of Lehman Brothers
27 Holdings Inc., Purchaser and Greenpoint Mortgage Funding, Inc. Seller Dated as of April 10, 2006
28 Conventional Fixed and Adjustable Rate Residential Mortgage Loans (71 pages); 2) Reconstituted Servicing Agreement 1st Day of November, 2006, by and Between Lehman Brothers Holdings Inc.,

1 Debtor requests that D's Counsel's reasonable attorney's fees be granted for bringing this
2 motion, and that such fees be in addition to the fees paid by Debtor for representation in this
3 case, inasmuch as the work involved in bringing this motion should not have been necessary.

4 WHEREFORE, PREMISES considered, Barry Weisband, Debtor, asks that this Court
5 enter an Order: deeming admitted the Requests for Admission; deeming all objections to
6 Interrogatories and Requests for Production waived; compelling responses to all
7 Interrogatories and Requests for Production and compelling all remaining documents
8 requested to be produced; granting reasonable attorney fees for bringing this motion. Debtor
9 requests all other general and specific relief to which he may show himself entitled under the
10 facts as pled or proven in Court.
11

12
13 Respectfully submitted,
14 /S/ Ronald Ryan
15 Ronald Ryan, Attorney for Debtors

16 **CERTIFICATE OF SERVICE**

17 On October 19, 2009, I did email the above and forgoing to: Yaron Shaham, WOLFE
18 & WYMAN LLP, 5 Park Plaza, Suite 1100, Irvine, California, 92614-5979; Chapter 13 Trustee;
19 and Debtor.

20 /s/ Ronald Ryan

21 Ronald Ryan
22 _____

23 and Greenpoint Mortgage Funding, Inc. Acknowledged by Aurora Loan Services LLC, ("Aurora")
24 and U.S. Bank National Association (the "Trustee")(43 pages); 3) Lehman Brothers Holdings Inc.,
25 Seller and Structured Asset Securities Corporation, Depositor Mortgage Loan Sale and
26 Assignment Agreement, Dated as of November 1, 2006 GreenPoint Mortgage Funding Trust
27 (Mortgage Pass-Through Certificates, Series 2006-AR7)(20 pages); 4) GMAC Mortgage, LLC, as
28 Servicer and Lehman Brothers Holdings Inc., As Seller and Aurora Loan Services LLC, as Master
Servicer Greenpoint Mortgage Funding Trust Mortgage Pass-through Certificates, Series
2006-AR7 Securitization Servicing Agreement, Dated as of November 1, 2006(105 pages); 5)
Structured Asset Securities Corporation, as Depositor, Aurora Loan Services LLC, as Master
Servicer, and U.S. Bank National Association, As Trustee Trust Agreement Dated November 1,
2006 GreenPoint Mortgage Funding Trust Mortgage Pass-through Certificates, Series 2006-AR7
(238 pages).

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7 BARRY WEISBAND 8 Debtor/Respondent	Case No: 09-5175-TUC-EWH
9 _____ 10 GMAC MORTGAGE, LLC, MOVANT 11 vs. 12 DEBTOR/RESPONDENT	CERTIFICATE OF GOOD FAITH EFFORT TO CONSULT TO RESOLVE DISCOVERY DISPUTES Chapter 13

15 STATE OF ARIZONA

17 COUNTY OF PIMA

18 "I swear under penalty of perjury that the following is true and correct to the best of
19 my knowledge, information and belief. Because of the fact that GMACM, hopefully without
20 the prior knowledge of their former Attorneys, were misleading and committing fraud upon
21 the Court and Debtor, by failing to disclose the fact that the loan had been securitized, just
22 as Debtor's Counsel said it had at the 8/6/09 preliminary hearing, at which point this was
23 denied or at least failed to be acknowledged, there was not much room for discussion the
24 first time its attorneys contacted the undersigned in the 9/11/09 email. Exhibit E is a copy
25 of emails back and forth, beginning on 9/11/09 that: GMACM finally admitted that Debtor's
26 Loan had been securitized; Pite Duncan, former Counsel for GMACM asked for an
27 extension of discovery deadline to 9/29/09; D's Counsel agreed as a courtesy to extend
28 to 9/29/09. The content of those emails are self-explanatory. The next contact had was
with GMACM's new attorney, Yaron Shaham, Wolfe & Wyman, who had not yet been
substituted in. This conversation occurred on 9/17/09. During this conversation it was
clear to D's Attorney that Shaham did not understand, or was acting as though he didn't
understand, what Debtor is contending occurred in this case and in all other MBS Trust
cases, namely that there has been widespread intentional fraud that was pre-planned in
the early and mid-1990s and placed into effect and included almost every mortgage written

1 the early and mid-1990s and placed into effect and included almost every mortgage written
2 between 2001 and 2007. Even though the content is included in D's Response and
3 Amended Response to MLS, D's Counsel agreed to write a summary of D's position.
4 Exhibit F contains that summary. Shaham did not substitute in until after the extended
5 discovery deadline had expired. There have been nice discussions in which Shaham
6 agreed to provided documentation. It was not until after the first discussion that any
7 documentation had been provided, subsequent to which there was documentation provided
8 pertaining to the Mortgage Backed Securities ("MBS") Trust in which Debtor's loan had
9 been included in the Pool of mortgages. This was the only time that documentation was
10 ever provided, and the only response to all of D's Discovery requests. Most of the
11 documentation has not been produced, as of the date hereof, even though other items
12 have been promised. Also, even though Shaham agreed to produced documentation and
13 did provide some, GMACM was required to produce as well as to respond to the
14 Interrogatories. It is not D's Counsel's responsibility to offer any concessions in exchange
15 for GMACM doing what it is required to do. Debtor's counsel never made any further
16 deadline extensions, nor waived any rights, other than to agree to a continuance of the
17 10/5/2009 final hearing on the Motion for Relief from Stay, because of the volume of
18 documents produced and to be produced. Despite the above efforts the issues raised in
19 this motion have not been resolved.

20 "Declarant has nothing further to add at this time.

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Ronald Ryan, Declarant, October 19, 2009