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6 Attorneys for Plaintiff
LEHMAN BROTHERS HOLDINGS, INC.

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9 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

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11 LEHMAN BROTHERS HOLDINGS, INC.

12 Plaintiff,

13 v.

14 MASON McDUFFIE MORTGAGE
CORPORATION,

15 Defendant.
16

CASE NO.: 3:12-cv-05132-MEJ

~~PROPOSED~~ **STIPULATED
PROTECTIVE ORDER**

17
18 Plaintiff Lehman Brothers Holdings, Inc. (“Plaintiff”) and Defendant Mason McDuffie
19 Mortgage Corporation (“Defendant”), by and through their respective undersigned counsel,
20 hereby request that this Court enter the following [Proposed] Stipulated Protective Order:

21 **I. INTRODUCTION.**

22 Plaintiff and Defendant (collectively, the “Parties”) recognize that during the discovery
23 phase of the above-captioned action, the Parties, and each of them, may be required to disclose
24 private, confidential and privileged information. To ensure that private, confidential and
25 privileged information and documents that may be disclosed during the course of discovery not
26 be disseminated outside this litigation, the Parties request the Court enter the instant Protective
27 Order to protect from further dissemination and/or public disclosure the following categories of
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1 information: 1) sensitive and private personal financial information concerning the borrowers of
2 the loan; and 2) confidential, proprietary information of Plaintiff, Defendant and/or their
3 respective related companies.

4 **II. STIPULATED PROTECTIVE ORDER.**

5 Based upon the foregoing, the Parties, by and through their attorneys of record, hereby
6 agree and stipulate as follows:
7

8 1. Introduction. The provisions of this Protective Order shall control the disclosure,
9 dissemination, and use of “Confidential Information” (defined below) during the litigation of the
10 above-captioned civil action (the “Civil Action”) by the Parties, as well as all such other persons
11 or entities who agree to be bound by the provisions of this Protective Order. The Parties and all
12 other persons or entities who agree to be bound by the provisions of this Protective Order shall
13 hereinafter be referred to as “Covered Parties.”
14

15 2. Scope. This Protective Order shall apply to all documents, materials and/or
16 information, including without limitation, documents produced, answers to interrogatories,
17 responses to requests for admission, and deposition testimony, which shall be known as the
18 “Confidential Information.” “Confidential Information” shall include, but not be limited to, any
19 information, documents, or other data, whether tangible or in electronic and/or digital form, that
20 is produced to or exchanged between the Parties, and which has been designated as “Confidential
21 Information,” pursuant to this Protective Order.
22

23 3. Designations. The parties understand and agree that designated Confidential
24 Information implicated in this case, includes, without limitation, documents, materials and/or
25 information that may contain or refer to any one or all of the following:

- 26 a. information and/or documents that is/are required to be kept confidential due to
27 preexisting obligations, including contractual obligations; or
28

- 1 b. any of the Parties’ sensitive business or technical information, trade secrets,
2 confidential research, development, business plans, new business development,
3 proprietary information, competitor market analysis, internal financial accounting
4 information, or other technical, policy, or commercial information, and that, if
5 disclosed to a business competitor, would provide a significant advantage to the
6 party’s competitors; or
7 c. the personal identifying information (i.e., social security numbers, dates of birth,
8 etc.) and personal financial information of specific borrowers that is or may be
9 subject to additional nondisclosure protections under applicable provisions of
10 federal, state, and/or common law.

11 4. Marking Confidential Information. All Confidential Information shall be
12 designated as such by affixing a stamp or label (electronic or otherwise) indicating its status as
13 “CONFIDENTIAL.” In the event that documents are produced electronically, they can be
14 designated either by imprinting the appropriate notice or by any Party producing a log indicating
15 what information, data or documents are to be treated with the appropriate designation. All
16 information conveyed or discussed in testimony at a deposition or a court proceeding for which
17 Confidential Information status is claimed shall be so designated, orally on the record whenever
18 possible, at the time the testimony is given or hearing is conducted or, in the case of a deposition,
19 no later than fifteen (15) days after receipt of the deposition transcript by the designating party or
20 entity. All portions of deposition testimony or hearing transcripts in which Confidential
21 Information is used or discussed and that is designated with a Confidential Information status
22 shall be treated with the protections afforded such information, as set forth herein.

23 5. Later Designations of Confidential Information. The disclosure, exchange, or
24 production of Confidential Information that inadvertently was not designated as such shall not
25 constitute a waiver of the protections afforded such document or information. Any information
26 or documents not initially designated with the Confidential Information status may be so
27 designated at a later time, in writing to the Parties.

1 6. Restrictions on Disclosure of Confidential Information. All Confidential
2 Information, and any notes, work papers, summaries, or other documents prepared from such
3 Confidential Information, shall be used by the receiving party solely in connection with the Civil
4 Action and shall not be disclosed by the receiving party other than as follows:

- 5
- 6 a. To any person or entity who authored, received, or is mentioned in the
Confidential Information;
- 7
- 8 b. The Court and its employees (“Court Personnel”); except that Paragraph 9 hereof
shall govern all submissions of Confidential Information to the Court.
- 9
- 10 c. Trial Counsel for the Parties, including necessary secretarial, clerical and
paralegal personnel assisting with the litigation of this action;
- 11
- 12 d. The Parties and any designated representative for the parties provided that:
- 13 i. such disclosure is necessary to assist in the prosecution or defense of the
litigation of this action; and
- 14 ii. prior to disclosing any such Confidential Information to any such
employee of the Parties or any affiliated entity of any Party, that person or
15 entity execute an agreement in writing stating that he/she has read this
Protective Order and agrees to be bound by its provisions. An acceptable
16 form of such agreement is attached hereto as Exhibit A, and incorporated
herein by reference.
- 17
- 18 e. Outside consultants and experts, and their staff, retained by any Party for the
purpose of assisting in the preparation of the litigation of this action, whether as a
19 testifying expert or a non-testifying consultant (collectively “Experts”) if, prior to
disclosing any Confidential Information to any such Expert, that Expert executes
20 an agreement in writing stating that he/she has read this Protective Order and
agrees to be bound by its provisions. An acceptable form of such agreement is
21 attached hereto as Exhibit A, and incorporated herein by reference.
- 22
- 23 f. Any fact witness, provided that prior to disclosing any such Confidential
Information they execute an agreement in writing stating that he/she has read this
24 Protective Order and agrees to be bound by its provision. An acceptable form of
such agreement is attached hereto as Exhibit A, and incorporated herein by
25 reference.
- 26
- 27 g. Court reporters, videographers, interpreters, and such other qualified persons
otherwise unconnected to any party but who are involved in taking testimony,
28 copying documents, and the like.

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2 7. Disclosure Agreements. The attorneys of record for the party receiving the
3 Confidential Information shall retain the original, executed Exhibit A agreements that have been
4 executed by those to whom disclosure has been made.

5 8. Procedure for Challenging Designations. A party may object to the designation
6 by giving written notice to the party designating the disputed information. The written notice
7 shall identify the information to which the objection is made. If the parties cannot, in good faith,
8 resolve the objection within ten business days after the time the notice is received, it shall be the
9 obligation of the party designating the information to file an appropriate motion requesting that
10 the Court determine whether the disputed information should be subject to the terms of this
11 Protective Order.
12

13 9. Filings with Court. Whenever Confidential Information is used in, included with,
14 or the contents thereof are in any way disclosed in any pleading, motion, deposition, transcript or
15 other filing with the Court (“Pleading(s)”), such Pleading shall be filed and kept under seal by
16 the Clerk of this Court in accordance with any local rules governing same.
17

18 10. Depositions, Hearings, and Trial. No person may refuse to answer any question at
19 a deposition, hearing, or trial on the sole ground that the questions require the person to reveal
20 Confidential Information. Nothing contained in this Protective Order shall preclude the use of
21 Confidential Information at a deposition, in a hearing, or at trial, including any appeal of this
22 action.
23

24 11. Use of Confidential Information At Trial. Except as otherwise provided above,
25 this Protective Order shall not affect or govern the use or admissibility of Confidential
26 Information at trial. Each party hereto shall be responsible for requesting appropriate relief from
27 the Court regarding trial testimony and exhibits, including but not limited to further protective
28 orders, trial management order provisions, motions in limine and/or objections.

1 12. Modification. Any Covered Person may apply for modification of this Protective
2 Order, including relief from the terms of this Protective Order, modification of its terms, or the
3 imposition of additional protections, upon reasonable notice to the Parties and after the Covered
4 Party who seeks modification shall have contacted counsel for the Parties to attempt to resolve
5 the issues that are the subject of the modification.
6

7 13. Conclusion of the Civil Action. Upon the request of a Covered Party following
8 the final disposition of the Civil Action, including all appeals therefrom, or the final disposition
9 of this action against any one or more of the Parties, the remaining Covered Parties, including
10 their Experts, shall destroy all Confidential Information, and certify to the requesting Covered
11 Party such destruction, or return to the requesting Covered Party all Confidential Information.
12 Notwithstanding the foregoing, counsel for each Covered Party may retain a record of the Civil
13 Action, irrespective of whether a Covered Party's Confidential Information is included in the
14 correspondence, pleadings, discovery, notes, research, or other files maintained by the attorney
15 for purposes of representing his/her client in the litigation of this action.
16

17 14. Continuing Jurisdiction. The Court shall retain jurisdiction over the Covered
18 Parties for the purpose of ensuring compliance with this Protective Order and granting such
19 amendments, modifications, and additions to this Protective Order, and such other and further
20 relief as may be necessary.
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22 15. Survival. This Protective Order shall survive the final disposition of this action,
23 by judgment, dismissal, settlement, appeal, or otherwise.

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1 SO STIPULATED BY THE PARTIES THROUGH THEIR RESPECTIVE COUNSEL.
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3 DATED this 25th day of January 2013.
4

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6 FOSTER GRAHAM MILSTEIN
& CALISHER, LLP

7 /s/ Daniel K. Calisher _____

8 Daniel K. Calisher

9 David S. Canter

Attorneys for Plaintiff Lehman Brothers Holdings, Inc.

10
11 AMERICAN MORTGAGE LAW GROUP, PC

12 /s/ Greg W. Chambers _____

13 James W. Brody, Esq.

14 Greg W. Chambers, Esq.

Attorneys for Defendant Mason-McDuffie Mortgage, Inc.

15
16 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

17 Dated this 29th day of _____ January _____, 2013.
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20 _____
~~UNITED STATES DISTRICT~~ MAGISTRATE JUDGE
MARIA-ELENA JAMES
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EXHIBIT A

PERSONAL UNDERTAKING REGARDING PROTECTIVE ORDER

I, _____ declare:

1. My address is _____. My present occupation is _____.

2. I have received the Stipulated Protective Order (“Protective Order”) issued in Lehman Brothers Holdings, Inc. v. Mason McDuffie Mortgage Corporation. I have carefully read and understand the provisions of the Protective Order.

3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone other than those persons specifically authorized by the Protective Order, and will not copy or use except for purposes of this litigation, any information designated as “CONFIDENTIAL” which I receive in this litigation, except to the extent such Confidential Information is or becomes public information under the Protective Order.

4. I will comply with Paragraph 13 of the Protective Order regarding the return or destruction of all Confidential Information in my possession following the conclusion of this litigation.

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed this _____ day of _____, 2013, at _____, _____.

Signature

Print Name

1 **PROOF OF SERVICE**

2 **STATE OF COLORADO, CITY & COUNTY OF DENVER**

3 I am employed in the aforesaid county, State of Colorado; I am over the age of 18 years
4 old and not a party to the within action, my business address is 360 S. Garfield, Suite 600,
Denver, CO 80209.

5 On the below date, I served a copy of the **[PROPOSED] STIPULATED**
6 **PROTECTIVE ORDER** as follows:

7 James W. Brody
8 American Mortgage Law Group, P.C.
9 75 Rowland Way, Suite 350
10 Novato, California 94945
11 Attorneys for Defendant Mason McDuffie Mortgage Corporation

12 **(BY MAIL)**

13 I deposited such envelope in the mail at Denver, Colorado. The envelope was mailed
14 with postage thereof fully prepaid.

15 I am readily familiar with the business practice of my place of employment in respect to
16 the collection and processing of correspondence, pleadings and notices for mailing with the
17 United States Postal Service. The foregoing sealed envelope was placed for collection and
18 mailing this date consistent with the ordinary business practice of my place of employment, so
19 that it will be picked up this date with postage thereon fully prepaid at Denver, Colorado, in the
20 ordinary course of such business.

21 **X (BY ELECTRONIC SERVICE VIA CM/ECF SYSTEM)**

22 In accordance with the electronic filing procedures of this Court, service has
23 been effected on the aforesaid party above, whose counsel of record is a registered participant of
24 CM/ECF, via electronic service through the CM/ECF system

25 **(BY ELECTRONIC MAIL)**

26 On the below date prior to 5:00 p.m., PST, I transmitted the foregoing document(s) by
27 electronic mail, and the transmission was reported as complete and without error. A true and
28 correct copy of the electronic transmission is attached to this declaration. This method was made
pursuant to the agreement of counsel.

(BY FACSIMILE)

One the below date, I transmitted the foregoing document(s) by facsimile sending
number. Pursuant to Rule 2.306(3)(4), I caused the machine to print a transmission record of the
transmission.

(BY FEDERAL EXPRESS)

I am readily familiar with the business practice of my place of employment in respect to
the collection and proceeding of correspondence, pleadings and notices for delivery by Federal
Express. Under the practice it would be deposited with Federal Express on the same date with
postage thereon fully prepared at Denver, Colorado in the ordinary course of business. I am
aware that on motion of the party service, service is presumed invalid if delivery by Federal
Express is more than one day after the date of deposit with Federal Express. Executed on the
below date, at Denver, Colorado.

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(BY PERSONAL SERVICE)

I caused to be delivered such envelope by hand to the addressee noted above. Executed on the below date at Denver, Colorado.

X (FEDERAL)

I declare under penalty of perjury that the foregoing is true and correct, and that I am employed at the office of a member of the bar of this Court at whose direction the service was made.

Executed on this 25th day of January, 2013, at Denver, Colorado.

s/Daniel K. Calisher
Daniel K. Calisher