

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SYNCORA GUARANTEE INC., formerly known as
XL CAPITAL ASSURANCE INC.,

Plaintiff,

-against-

EMC MORTGAGE LLC (formerly known as EMC
Mortgage Corporation), BEAR, STEARNS & CO.
INC., BEAR STEARNS ASSET BACKED
SECURITIES I, LLC, J.P. MORGAN SECURITIES
LLC (formerly known as BEAR, STEARNS & CO.
INC.), and JPMORGAN CHASE BANK, N.A.,

Defendants.

Index No. 650420/2012
Hon. Charles E. Ramos

**STIPULATION AND ORDER
FOR THE PRODUCTION
AND EXCHANGE OF
CONFIDENTIAL INFORMATION**

This matter having come before the Court by Stipulation of Plaintiff Syncora Guarantee Inc. and Defendants EMC Mortgage LLC, Bear Stearns & Co. Inc., Bear Stearns Asset Backed Securities I, LLC, J.P. Morgan Securities LLC, and JPMorgan Chase Bank, N.A. (each a "Party" and collectively "Parties"), for the entry of a protective order pursuant to CPLR 3103(a), (1) limiting the review, copying, dissemination and filing of confidential and/or proprietary documents and information to be produced by either Party and their respective counsel or by any non-party in the course of discovery in this matter to the extent set forth below, and (2) establishing a mechanism to protect from disclosure and to govern the treatment and preserve the privileged or protected materials; and the Parties, by, between and among their respective counsel, having stipulated and agreed to the terms set forth herein, and good cause having been shown;

IT IS hereby ORDERED that:

1. This Stipulation is being entered into to facilitate the production, exchange and discovery of documents and information, including depositions, deposition exhibits,

interrogatory responses, admissions, and any other information or material produced, given, or exchanged by and among the Parties and any non-parties to the above-captioned action in connection with discovery, that any Party or non-party believes in good faith merit confidential treatment (hereinafter the “Documents” or “Testimony”).

2. A Producing Party (as defined in paragraph 3(b)) may designate Documents produced, or Testimony given, in connection with this action as “Confidential,” either by notation on the document or in its filename (if the document is produced in native format), statement on the record, by counsel, at the time of such disclosure during a deposition or other pretrial testimony, written advice to the respective undersigned counsel for the parties hereto, or by other appropriate means. Failure to designate a document as “Confidential” does not constitute waiver of such claim.

3. As used herein:

(a) “Confidential Information” shall mean all Documents and Testimony, and all information contained therein, and other information designated as “Confidential,” if such Documents or Testimony (i) contain trade secrets, proprietary business information, competitively sensitive information, (ii) contain nonpublic personal information within the meaning of the Gramm-Leach-Bliley Act (15 U.S.C. § 601 *et seq.*) or constitute “consumer reports” within the meaning of the Fair Credit Reporting Act (15 U.S.C. § 1681a) (collectively, with the Gramm-Leach-Bliley Act, “the Acts”) that may have been collected or produced in connection with originating, purchasing, or servicing a mortgage loan (collectively, “Personal Financial Information”), (iii) or contain other information, the disclosure of which would, in the good faith judgment of the Party or non-party designating the material as Confidential, be detrimental to the conduct of that Party’s (or non-party’s) business or the business of any of that

Party's (or non-party's) customers or clients, or (iv) were designated as "Confidential" by the Parties, or other non-parties, pursuant to the Confidentiality Stipulation and Protective Order entered in the action captioned *Syncora v. EMC Mortgage Corp.* (Civ. 09-3106) (S.D.N.Y.) and the Stipulation and Order for the Production and Exchange of Confidential Information entered in the action captioned *Syncora v. J.P. Morgan Securities* (Index No. 651566/2011) (Sup. Ct. N.Y. Cnty.).

(b) "Producing Party" shall mean the Parties to this action and any non-parties producing "Confidential Information" in connection with depositions, document production or otherwise, or the Party asserting the confidentiality privilege, as the case may be.

(c) "Receiving Party" shall mean the Party to this action and/or any non-party receiving "Confidential Information" in connection with this action, including in depositions, document production or otherwise.

4. In order to expedite production of voluminous loan-origination and loan-servicing files, a Party (or affiliate of a Party) may, at its sole option, produce such materials without a detailed, or any, review (including a review to determine whether a privilege or other immunity from discovery, or a confidentiality designation, applies to some of the documents), subject to the "clawback" procedures in this Stipulation and Order or otherwise agreed to. In doing so, the Party or its affiliate may designate those collections of documents that by their nature contain Confidential Information with the appropriate designation notwithstanding that some of the documents within the collection may not qualify for such designation. Further, if, with respect to productions of voluminous loan-origination and loan-servicing files made pursuant to this paragraph 4, a Party or its affiliate notifies the other Party that it, for any reason, disclosed documents or information that are protected from disclosure under the attorney-client privilege,

work-product doctrine, and/or any other applicable privilege or immunity from disclosure, or the Receiving Party discovers such disclosure (in which case the Receiving Party shall give the Producing Party prompt notice), the disclosure shall not be deemed a waiver in this litigation or in any other state or federal proceeding of the applicable privilege or protection.

5. The Receiving Party may, at any time, notify the Producing Party that the Receiving Party does not concur in the designation of a Document or other material as Confidential Information. If the Producing Party does not agree to declassify such Document or material, the Receiving Party may move before the Court for an order declassifying those Documents or materials. If no such motion is filed, such Documents or materials shall continue to be treated as Confidential Information. If such motion is filed, the Documents or other materials shall be deemed Confidential Information unless and until the Court rules otherwise.

6. Except with the prior written consent of the Producing Party or by Order of the Court, Confidential Information shall not be furnished, shown or disclosed to any person or entity except to:

(a) current or former personnel of Plaintiff or Defendant actually engaged in assisting in the conduct of this litigation who have been advised of their obligations hereunder;

(b) author(s) and recipient(s) of the Document containing Confidential Information, who authored or received the Document prior to its production in this action;

(c) counsel for the Parties to this action and their associated or temporary attorneys, paralegals, other professional personnel (including support staff), and service vendors (including outside copying and litigation support services) who are directly assisting such counsel in the preparation of this action for trial or other proceeding herein, are under the

supervision or control of such counsel, and who have been advised by such counsel of their obligations hereunder;

(d) expert witnesses or consultants who have been consulted for the purpose of being retained, or who have been retained by the Parties or their counsel to furnish technical or expert services in connection with the conduct of this action or to give testimony in the course of the conduct of this action; and the employees of such experts or consultants when working in connection with the conduct of this action under the direct supervision of said persons, provided, however, that such Confidential Information is furnished, shown or disclosed in accordance with paragraph 8 hereof;

(e) the Court and Court personnel, if filed in accordance with paragraph 13 hereof;

(f) an officer before whom a deposition is taken, including stenographic reporters and any necessary secretarial, clerical or other personnel of such officer, if furnished, shown or disclosed in accordance with paragraph 11 hereof;

(g) trial and deposition witnesses, if furnished, shown or disclosed in accordance with paragraphs 10 and 11, respectively, hereof;

(h) any other person agreed to by the Parties; and

(i) Any other person as required by law, regulation, the rules of any government agency or self-regulatory organization, or the order of a court of competent jurisdiction.

7. Confidential Information and other Documents or Testimony produced in the litigation, even if not marked "Confidential," shall be utilized by the Receiving Party and its counsel only for purposes of this litigation and for no other purposes. The Receiving Party shall

maintain any Personal Financial Information that it receives hereunder in accordance with the Acts and other applicable Federal and State privacy laws.

8. Before any disclosure of Confidential Information is made to an expert witness or consultant pursuant to paragraph 6(d) hereof, counsel for the Receiving Party shall provide the expert's written agreement, in the form of Exhibit A attached hereto. Counsel for the Receiving Party obtaining the Confidentiality Undertaking shall supply a copy to counsel for the other Party at the time of the disclosure of the information required to be disclosed by CPLR 3101(d). Any Confidentiality Undertaking signed by an expert or consultant whom the Receiving Party, in good faith, reasonably does not expect to be called as a witness at trial does not need to be disclosed.

9. All depositions shall presumptively be treated as Confidential Information and subject to this Stipulation during the deposition and for a period of fifteen (15) days after a transcript of said deposition is received by counsel for each of the Parties. At or before the end of such fifteen day period, the deposition shall be classified appropriately.

10. In the event that a Receiving Party seeks to use Confidential Information during any hearing or trial before the Court, including through argument or the presentation of evidence, such information shall not lose its status as Confidential Information through such use. Counsel shall confer on such procedures that are necessary to protect the confidentiality of any Documents, information, and transcripts used in the course of any Court proceedings. The Receiving Party may use such Confidential Information only after taking such steps as agreed to by the Parties or as the Court, upon motion of the Producing Party, shall deem necessary to preserve the Confidential Information's confidentiality.

11. This Stipulation shall not preclude counsel for the Parties from using during any deposition in this action any Documents or information which have been designated as "Confidential Information" under the terms hereof. Any stenographer and non-party deposition witness who is given access to Confidential Information shall, prior thereto, be provided with a copy of this Stipulation and shall execute the Confidentiality Undertaking annexed hereto as Exhibit A. Counsel for the Party obtaining the Confidential Undertaking shall supply a copy to counsel for the other Party.

12. A Party may designate as Confidential Information subject to this Stipulation any document, information, or deposition testimony produced or given by any non-party to this case, or any portion thereof, to the extent such materials contain or reflect a Party's Confidential Information. In the case of Documents, designation shall be made by notifying all counsel in writing of those documents which are to be stamped and treated as such at any time up to fifteen (15) days after actual receipt of copies of those documents by counsel for the Party asserting the confidentiality privilege. In the case of deposition Testimony, designation shall be made by notifying all counsel in writing of those portions which are to be stamped or otherwise treated as such at any time up to fifteen (15) days after the transcript is received by counsel for the Party asserting the confidentiality privilege. Prior to the expiration of such fifteen (15) day period (or until a designation is made by counsel, if such a designation is made in a shorter period of time), all such Documents shall be treated as Confidential Information.

13. (a) A Receiving Party who seeks to file with the Court any deposition transcripts, exhibits, answers to interrogatories, and other Documents which have previously been designated as comprising or containing Confidential Information, and any pleading, brief or memorandum which discloses Confidential Information, shall make a good faith effort to

provide the Producing Party with reasonable notice under the circumstances (where possible, the notice shall be given at least seven (7) days in advance, and in writing), of its intent to file such material with the Court, so that the Producing Party may file by Order to Show Cause a motion to seal such Confidential Information. In the alternative, the Receiving Party may file by Order to Show Cause a motion to seal such Confidential Information. In the further alternative, Receiving Party may seek consent from the Producing Party to declassify Confidential Information on the terms set forth in paragraph 5 above. In any event, the Confidential Information shall not be filed until the Court renders a decision on the motion to seal or until the Producing Party has consented to the declassification of the Confidential Information. If the Court issues an order directing sealing, all documents which are the subject of the order to seal, shall be filed in sealed envelopes or other appropriate sealed container on which shall be endorsed the caption of this litigation, the words "CONFIDENTIAL MATERIAL-SUBJECT TO STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION" as an indication of the nature of the contents, and a statement in substantially the following form: "This envelope, containing documents which are filed in this case by (name of Party), is not to be opened nor are the contents thereof to be displayed or revealed other than to the Court, the parties and their counsel of record, except by order of the Court or consent of all the parties. Violation hereof may be regarded as contempt of the Court."

(b) As an alternative to the procedure set forth in paragraph 13(a), any Party may submit to the Court on oral argument any Documents or Testimony previously designated as comprising or containing Confidential Information by submitting such Documents or Testimony to the Part clerk in sealed envelopes or other appropriate sealed container on which shall be

endorsed the caption of this litigation, the words "CONFIDENTIAL MATERIAL SUBJECT TO STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION" as an indication of the nature of the contents, and a statement in substantially the following form: " This envelope, contains documents which are submitted but not to be filed." Such documents shall be returned by the Part Clerk upon disposition of the motion or other proceeding for which they were submitted.

(c) All pleadings, briefs or memoranda which reproduce, paraphrase or disclose any documents which have previously been designated by a Party as comprising or containing Confidential Information shall identify such documents by the production number ascribed to them at the time of production.

(d) Nothing herein shall prevent the Parties from providing courtesy copies of pleadings, briefs or memoranda to the Court.

14. Any person receiving Confidential Information shall not reveal or discuss such information to or with any person not entitled to receive such information under the terms hereof.

15. Any document or information that may contain Confidential Information that has been inadvertently produced without identification as to its "Confidential" nature as provided in paragraphs 2 and/or 12 of this Stipulation, may be so designated by the Party asserting the confidentiality privilege by written notice to the undersigned counsel for the Receiving Party identifying the document or information as "Confidential" within a reasonable time following the discovery that the document or information has been produced without such designation.

16. Excerpts of Confidential Information shall also be treated as confidential in accordance with the provisions of this Stipulation.

17. The production or disclosure of Confidential Information shall in no way constitute a waiver of each Party's right to object to the production or disclosure of other information in this action or in any other action.

18. With regard to inadvertent disclosures of any documents or other information that constitute privileged or protected materials ("the Privileged Materials"):

(a) The inadvertent production or disclosure of any Privileged Materials protected by attorney-client privilege, the work-product doctrine, a joint-defense privilege, or any applicable privilege, immunity, or protective doctrine (collectively, "Privilege") shall not constitute, or be considered as a factor suggesting, a waiver or impairment of any claims of such Privilege. In the event of an inadvertent production or disclosure, the Producing Party may provide written notice that Privileged Materials have been inadvertently produced or disclosed. Within 7 days of receipt of such notice, any person that has received such Privileged Materials shall return to the Producing Party all such material and copies thereof in its possession and shall make reasonable efforts to reclaim and return all such material.

(b) Any Party receiving materials that, on their face, appear to be covered by a Privilege, shall provide prompt notice of the disclosure to the Producing Party to afford the Producing Party the opportunity to designate the materials as inadvertently produced Privileged Materials subject to the claw-back provision in sub-paragraph 18(a).

19. Any person in possession of Confidential Information who receives a subpoena or other process in another action or proceeding seeking production or other disclosure of another Party's or non-party's Confidential Information shall promptly give telephonic notice and written notice by overnight delivery, electronic mail or facsimile to counsel for the designating Party or non-party, enclosing a copy of the subpoena or other process. In no event shall production or

other disclosures be made before the later of (i) 10 days following the date on which notice is given, or (ii) the return date of the subpoena, unless otherwise required by applicable law or by court order.

20. This Stipulation is entered into without prejudice to the right of either Party to seek relief from, or modification of, this Stipulation or any provisions thereof by properly noticed motion to the Court or to challenge any designation of confidentiality as inappropriate under the Civil Practice Law and Rules or other applicable law.

21. This Stipulation shall continue to be binding after the conclusion of this litigation except that (a) that there shall be no restriction on documents that are used as exhibits in Court (unless such exhibits were filed under seal); and (b) that a Party may seek the written permission of the Producing Party or further order of the Court with respect to dissolution or modification of any the Stipulation. The provisions of this Stipulation shall, absent prior written consent of both parties, or order of a court of competent jurisdiction, continue to be binding after the conclusion of this action.

22. Nothing herein shall be deemed to waive any privilege recognized by law, or shall be deemed an admission as to the admissibility in evidence of any facts or documents revealed in the course of disclosure.

23. This Stipulation has no effect upon, and shall not apply to, the Parties' use of their own Confidential Information for any purpose. Nothing herein shall impose any restrictions on the use or disclosure by a Party of Documents, materials or information designated as Confidential that has been obtained lawfully by such Party independently of the proceedings in this action.

24. To the extent any state or federal law or other legal authority governing the disclosure or use of Nonpublic Personal Information (hereinafter “Nonpublic Personal Information Law”) permits disclosure of such information pursuant to an order of a court, this Stipulation and Order shall constitute compliance with such requirement. To the extent any Nonpublic Personal Information Law requires a Party to obtain a court-ordered subpoena or give notice to or obtain consent, in any form or manner, from any person or entity before disclosure of any Nonpublic Personal Information, the Court finds that, in view of the protections provided for the information disclosed in this Stipulation and Order, the volume of documents to be produced, and the ongoing oversight of the Court, there is good cause to excuse such requirement, and this Stipulation and Order shall constitute an express direction that the Party is exempted from obtaining a court-ordered subpoena or having to notify and/or obtain consent from any person or entity prior to the disclosure of Nonpublic Personal Information. To the extent that any Nonpublic Personal Information Law requires that any person or entity be notified prior to disclosure of Nonpublic Personal Information except where such notice is prohibited by court order, the Court directs that, in view of the protections provided for the information disclosed in this Stipulation and Order, the volume of documents to be produced, and the ongoing oversight of the Court, the parties are explicitly prohibited from providing such notice; provided, however, that this Stipulation and Order shall not prohibit either Party from contacting any person or entity for any other purpose. Any Party may seek additional orders from this Court that such Party believes may be necessary to comply with any Nonpublic Personal Information Law.

25. Within sixty (60) days after the final termination of this action by settlement or exhaustion of all appeals, all Confidential Information produced or designated and all reproductions thereof, shall be returned to the Producing Party or shall be destroyed, at the


option of the Producing Party. In the event that any Party chooses to destroy physical objects and Documents, such Party shall certify in writing within sixty (60) days of the final termination of this litigation that it has undertaken its best efforts to destroy such physical objects and Documents, and that such physical objects and documents have been destroyed to the best of its knowledge. Notwithstanding anything to the contrary, counsel of record for the Parties may retain copies of documents constituting work product, a copy of pleadings, motion papers, discovery responses, deposition transcripts and deposition and trial exhibits. This Stipulation shall not be interpreted in a manner that would violate any applicable canons of ethics or codes of professional responsibility. Nothing in this Stipulation shall prohibit or interfere with the ability of counsel for any Party, or of experts specially retained for this case, to represent any individual, corporation, or other entity adverse to any Party or its affiliate(s) in connection with any other matters.

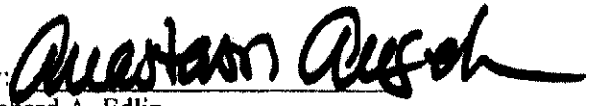
26. This Stipulation may be changed by further order of this Court, and is without prejudice to the rights of a Party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular material or information.

Dated: New York, New York
May 17, 2013

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SO
ORDERED
SC
2/2/13

CHARLES E. RAMOS