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

In the matter of the application of

U.S. BANK NATIONAL ASSOCIATION, WELLS FARGO BANK, NATIONAL ASSOCIATION, WILMINGTON TRUST, NATIONAL ASSOCIATION, WILMINGTON TRUST COMPANY, and CITIBANK, N.A. (as Trustees, Indenture Trustees, Securities Administrators, Paying Agents, and/or Calculation Agents of Certain Residential Mortgage-Backed Securitization Trusts),

Petitioners,

For Judicial Instructions under CPLR Article 77 on the Administration and Distribution of a Settlement Payment.

Index No. 651625/2018

Friedman, J.
Motion Seq. 1

MERITS SUBMISSION OF NOVER VENTURES, LLC

Nover Ventures, LLC ("Nover") is an Interested Person with respect to each of its Settlement Trusts and takes the positions as set forth herein. Nover respectfully submits this Merits Submission pursuant to the April 18, 2018 Order to Show Cause and the September 5, 2018 Stipulation Regarding Merits Briefing Schedule and Trustee Substitutions. Given that these issues are being fully briefed by multiple parties herein, and further have been fully briefed by Nover and others in *In re Wells Fargo Bank, et al.,* Index No. 657387/2017, Nover submits a short statement to preserve its arguments. Nover incorporates by reference herein the arguments of other Interested Persons that support its positions.

ARGUMENT

For each of the Settlement Trusts, the Governing Agreements contain unambiguous and precise language that the Court should follow in distributing the Settlement Funds. Indeed, the Petitioners and the Institutional Investors (the parties that negotiated the terms of the Settlement Agreement) are in agreement that the Settlement Agreement expressly requires the Court to defer to the language of the Governing Agreements when determining how to distribute the Allocable

Share for each of the Settlement Trusts. Because the Governing Agreements unambiguously address the distribution methods at issue in this proceeding (the "Petition Issues"), the Petition Issues can and should be resolved by reference to the respective Governing Agreements as set forth in more detail below.

A. Write-Up First Is The Only Appropriate Method.

The Write-Up First Method should be used. The Write-Up First Method is consistent with the plain language of the Governing Agreements and the trusts' structures and is the ***only*** method that produces consistent results across all scenarios. By contrast, the Pay First Method would create inconsistent results and multiple layers of uncertainty. The Pay First Method also may lead to absurd, commercially unreasonable distributions that are contrary to the reasonable expectations of investors and drafters of the Settlement Agreement—and the original parties to the Governing Agreements. Specifically, leakage to subordinate certificateholders is dependent upon both the unusually large amount of subsequent recoveries ***and*** the timing of when those funds are received. Such wild swings in recovery are not contemplated by the Settlement Agreement or the Governing Agreements and can be avoided by using the Write-Up First Method. The Court should therefore instruct Petitioners to distribute the Settlement Payment pursuant to the Write-Up First Method.

B. The Court Should Write-Up Zero Balance Certificates.

Petitioners seek instruction on the distribution of Allocable Shares for classes of certificates or loan groups that have a current aggregate certificate principal balance of zero. The Retired Class Provision requires affirmative conduct to retire a certificate and the provision similarly makes clear that reducing a certificate principal balance to zero does not equate to retirement. The Court should take care not to conflate the concept of a "zero-balance bond" with a "Retired" bond as the two are not synonymous. Once the Certificate Principal Balance of a

class of certificates has been reduced to zero, the certificates are ***not*** automatically retired and that class of certificates is ***not*** automatically precluded from future distributions.

Nor do the Governing Agreements require that a Certificate Principal Balance permanently remain zero. Language in the Governing Agreements that a bond with a zero balance on any particular distribution date should not receive distributions is beside the point. That is an obvious proposition, but one which does not imply that a balance must always be zero. To the contrary, the Definition of Certificate Principal Balance in the Governing Agreements expressly allows writing-up of zero balance bonds from sufficient subsequent recovery.

CONCLUSION

For the foregoing reasons, as well as those to be presented in additional briefing and at oral argument before the Court, Nover respectfully requests that the Court instruct Petitioners to distribute the Allocable Shares for the Settlement Trusts in a manner that is consistent with the terms, meaning, and intent of the Governing Agreements by following the language of those agreements, including without limitation by using the Write-Up First Method and writing up zero balance certificates. Nover also request all other relief, at law or in equity, to which it may be justly entitled.

DATED: October 19, 2018
New York, New York

Respectfully submitted,

MCKOOL SMITH, P.C.

By: /s/ Gayle R. Klein
Gayle R. Klein
Robert W. Scheef
David I. Schiefelbein

One Bryant Park, 47th Floor
New York, New York 10036
gklein@mckoolsmith.com
rscheef@mckoolsmith.com
dschiefelbein@mckoolsmith.com

(t) (212) 402-9400
(f) (212) 402-9444

Attorneys for Nover Ventures, LLC and as attorneys for The Bank of New York Mellon Trust Company, National Association as Indenture Trustee under the Duke IX Indenture