

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.

**NOTICE OF
[PROPOSED] PARTIAL
SEVERANCE ORDER
AND PARTIAL FINAL
JUDGMENT**

PLEASE TAKE NOTICE that the attorneys for the Institutional Investors¹ and the AIG Parties² (the “Undersigned”) jointly move for the entry of judgment issuing a judicial instruction to Petitioners concerning the distribution of the Allocable Shares of the Settlement Payment for twenty-four trusts (the “Undisputed Trusts”) identified in the proposed judgment attached as Exhibit 1. The Undersigned respectfully urge the Court to enter the attached proposed judgment. The Undersigned have conferred with the Petitioners, who have confirmed that they can implement the proposed judgment and have no objection to it. As there is no triable issue of fact as to the Undisputed Trusts or the entry of this judgment, the Undersigned request that the judgment be

¹ The “Institutional Investors” include AEGON USA Investment Management, LLC, BlackRock Financial Management, Inc., Cascade Investment, LLC, the Federal Home Loan Bank of Atlanta, Goldman Sachs Asset Management L.P., Voya Investment Management LLC, Invesco Advisers, Inc., Kore Advisors, L.P., Metropolitan Life Insurance Company, Pacific Investment Management Company LLC, The TCW Group, Inc., Thrivent Financial for Lutherans, and Western Asset Management Company (each for themselves and, to the extent applicable, as investment managers of funds and accounts).

² The “AIG Parties” include American General Life Insurance Company, American Home Assurance Company, American International Reinsurance Company, Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, The United States Life Insurance Company, and the Variable Annuity Life Insurance Company.

entered without further delay so that the Allocable Shares of the Settlement Payments can promptly be paid to the Undisputed Trusts.

Dated: New York, New York
July 23, 2019

WARNER PARTNERS, P.C.

By: /s/ Kenneth E. Warner
Kenneth E. Warner
950 Third Avenue, 32nd Floor
New York, New York 10022
(212) 593-8000

GIBBS & BRUNS LLP
Kathy D. Patrick (*pro hac vice*)
David M. Sheeren (*pro hac vice*)
1100 Louisiana, Suite 5300
Houston, Texas 77002
(713) 650-8805

Attorneys for the Institutional Investors

QUINN EMANUEL URQUHART
& SULLIVAN, LLP

By: /s/ Kevin S. Reed
Kevin S. Reed
51 Madison Avenue
New York, NY 10010
Tel.: (212) 849-7000
Fax.: (212) 849-7100
Email: kevinreed@quinnemanuel.com

Attorneys for the AIG Parties

EXHIBIT 1

At IAS Part 60 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York on the ____ day of ____, 2019

SUPREME COURT OF THE STATE OF NEW YORK
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U.S. BANK NATIONAL ASSOCIATION, WELLS
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WILMINGTON TRUST COMPANY, and CITIBANK,
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Administrators, Paying Agents, and/or Calculation Agents
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**[PROPOSED] PARTIAL
SEVERANCE ORDER
AND PARTIAL FINAL
JUDGMENT**

WHEREAS, the Petitioners identified in the above case caption commenced this proceeding under CPLR Article 77 by filing a petition (the "Petition") seeking judicial instructions concerning the administration and distribution of settlement payments (the "Settlement Payments") for 208 residential mortgage-backed securities trusts identified in Exhibit A to the Petition (the "Subject Settlement Trusts") under a Covered Loan Settlement Agreement dated as of November 30, 2016 and modified as of March 17, 2017 and a Transferor Loan Settlement Agreement dated September 5, 2017 and executed and accepted on October 13, 2017 (together with the Covered Loan Settlement Agreement, the "Settlement Agreements"); and

WHEREAS, all capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Petition; and

WHEREAS, pursuant to the Settlement Agreements, the Settlement Payments are to be apportioned among the Subject Settlement Trusts; and

WHEREAS, by Order dated May 30, 2018 (the "Escrow Order"), the Court authorized and directed the Petitioners to place the Settlement Payments for the Subject Settlement Trusts in escrow; and

WHEREAS, the Court has been advised that the escrow provisions of the Escrow Order have been complied with and that Settlement Payments for the Subject Settlement Trusts, plus any investment earnings thereon, are currently invested as directed in the Escrow Order; and

WHEREAS, under the Order to Show Cause dated April 18, 2018 (the "Show Cause Order"), the Court directed the Petitioners to provide notice of this proceeding pursuant to the notice program described in the Show Cause Order (the "Notice Program"), and the Court found that the Notice Program was the best notice practicable, was reasonably calculated to put interested persons on notice of the proceeding, and constituted due and sufficient notice of the proceeding in satisfaction of federal and state due process requirements and other applicable law; and

WHEREAS, the Notice Program directed that interested persons respond to the Petition on or before May 30, 2018; and

WHEREAS, AEGON USA Investment Management, LLC, BlackRock Financial Management, Inc., Cascade Investment, LLC, the Federal Home Loan Bank of Atlanta, Goldman Sachs Asset Management L.P., Voya Investment Management LLC, Invesco Advisers, Inc., Kore Advisors, L.P., Metropolitan Life Insurance Company, Pacific Investment Management Company LLC, The TCW Group, Inc., Thrivent Financial for Lutherans, and Western Asset Management Company (each for themselves and, to the extent applicable, as investment managers of funds and accounts, and collectively, the "Institutional Investors") and the AIG Parties (American General

Life Insurance Company, American Home Assurance Company, American International Reinsurance Company, Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, The United States Life Insurance Company, and the Variable Annuity Life Insurance Company) have asserted an interest in the Subject Settlement Trusts through direct holdings of certificates issued by the trusts identified in Exhibit A hereto (the “Undisputed Trusts”); and

WHEREAS, Nover Ventures, LLC (“Nover”) asserted an interest in the Undisputed Trusts through ownership interests in other structures, either CDO, re-REMIC, or NIM trusts, but not in direct certificates issued by the Undisputed Trusts;

WHEREAS, on August 21, 2018, the Court granted a motion for summary judgment filed by the Institutional Investors and AIG Parties, among other investors, dismissing Nover as a respondent with respect to any Settlement Trust in which it does not hold certificates (Dkt. No. 135, transcript of August 21, 2018 hearing) (the “Standing Decision”);

WHEREAS, in the Standing Decision, the Court afforded Nover an opportunity to substitute into the proceeding the trustees of the other CDO, re-REMIC, or NIM trust structures through which it asserted an interest in the Undisputed Trusts;

WHEREAS, on September 5, 2018, all parties stipulated to a schedule under which Nover could substitute into this case the trustees of the other CDO, re-REMIC, or NIM trust structures for the Undisputed Trusts in which it had asserted an interest (Dkt. No. 132) (the “Trustee Substitution Stipulation”) but Nover did not so substitute any such trustee of a CDO, re-REMIC, or NIM trust;

WHEREAS, no other party has appeared asserting an interest in the Undisputed Trusts;

WHEREAS, the Institutional Investors and AIG Parties agree and consent to this Partial Severance Order and Partial Final Judgment (this “Order”), which resolves the issues for which

judicial instructions were sought concerning the administration and distribution of the Settlement Payments for the Undisputed Trusts (the "Subject Allocable Shares"); and

WHEREAS, as identified in Exhibit A hereto, U.S. Bank National Association ("U.S. Bank"), Wilmington Trust National Association, Wilmington Trust Company, and Wells Fargo Bank, National Association ("Wells Fargo") are the trustees, successor trustees, and/or indenture trustees for the Undisputed Trusts (in such capacities, the "Subject Trustees") and U.S. Bank, Wells Fargo, and Citibank, N.A., are the securities administrators, paying agents, and/or calculation agents for the Undisputed Trusts (in such capacities, the "Subject Payment Administrators"); and

WHEREAS, as used herein, the term "Judgment Entry Date" means the date on which the Clerk's docketing of this Order first appears publicly on the New York State Court Electronic Filing System; without regard to when the Court actually signs or the Clerk actually enters this Order; and

WHEREAS, as used herein the term "Transfer Month" means the second calendar month after the Judgment Entry Date; and

WHEREAS, as used herein, the term "AS Distribution Date" means the Distribution Date (as that term is defined in the applicable Governing Agreements) for each of the Undisputed Trusts occurring in the Transfer Month; and

WHEREAS, as used herein, the term "Transfer Target Date" means ten days prior to the AS Distribution Date (or, if occurring on a day that is not a business day, the immediately preceding business day); and

WHEREAS, for each Undisputed Trust included in Exhibit A hereto, the term "Overcollateralization Amount Calculation" is used herein to refer to the terms in the applicable Governing Agreements prescribing that the "overcollateralization amount" is equal to the excess

of the aggregate balances of the mortgage loans held by the Undisputed Trust over the aggregate certificate principal balances of certain designated classes of certificates and the term "Undercollateralization Amount Calculation" is used herein to refer to the terms in the applicable Governing Agreements prescribing that the "undercollateralization amount" is equal to the excess of the aggregate certificate principal balances of certain designated classes of certificates over the aggregate balances of the mortgage loans held by the Undisputed Trust, in each case as more fully defined and described in the applicable Governing Agreements; and

NOW, THEREFORE, on the motion of the Institutional Investors and the AIG Parties, it is hereby

ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Trustees (each with respect to the Undisputed Trusts for which each act as trustee) are to (i) cause escrowed assets to be liquidated to cash with a value equal to the Settlement Payment for each Undisputed Trust (the "Subject Allocable Shares") plus any investments earnings thereon, and (ii) cause the Subject Allocable Shares and investment earnings thereon to be deposited in the respective distribution accounts of the Undisputed Trusts. From the time of the aforescribed deposit, the amount so deposited shall be deemed the Subject Allocable Shares for the Undisputed Trusts for all purposes under the Settlement Agreements and this Order; and it is further

ORDERED, ADJUDGED and DECREED that sums representing investment earnings accrued on the Subject Allocable Shares not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph ("Trailing Interest") shall (i) for Undisputed Trusts where the Subject Trustee and Subject Payment Administrator are the same party, be distributed on the later of the AS Distribution Date or the Distribution Date for the month following the month such Trailing Interest is received by the Subject Trustee or (ii) for Undisputed Trusts

where the Subject Trustee and Subject Payment Administrator are different parties, be distributed on the later of the AS Distribution Date or the Distribution Date for the month following the month such Trailing Interest is transferred from the Subject Trustee to the Subject Payment Administrator (which transfer shall take place within five days after the Subject Trustee receives such Trailing Interest). Any Trailing Interest shall be deemed a Subject Allocable Share for the Undisputed Trust on whose Allocable Share such Trailing Interest was accrued, and any Trailing Interest shall be administered and distributed as a Subject Allocable Share subject to the terms of the Settlement Agreements and this Order; and

ORDERED, ADJUDGED and DECREED that the Subject Payment Administrators shall distribute the Subject Allocable Shares to certificateholders of the Undisputed Trusts on the AS Distribution Date; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Undisputed Trust identified in Exhibit A, the Subject Payment Administrators (i) shall first distribute the Subject Allocable Shares to certificateholders based on certificate principal balances that have not been adjusted by the Settlement Payment Write-Up, and, after such distribution, (ii) shall then increase the applicable certificate principal balances in the amount of the Settlement Payment Write-Up in a manner consistent with this Order; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Undisputed Trust identified in Exhibit A hereto, the Subject Payment Administrators shall ignore both the distribution of the Subject Allocable Shares and the accompanying Settlement Payment Write-Up when performing the Overcollateralization Amount Calculation or the Undercollateralization Amount Calculation and, further, for the avoidance of doubt, with respect to the Distribution Date on which the Subject Allocable Shares are distributed,

the instructions in this paragraph are intended to and shall prevent the Undisputed Trusts identified in Exhibit A hereto from being overcollateralized or undercollateralized solely as a result of the receipt, administration, and/or distribution of the Subject Allocable Shares (but shall not impact whether the Undisputed Trusts in Exhibit A are overcollateralized or undercollateralized on such Distribution Date as result of anything unrelated to the receipt, administration, and or distribution of the Subject Allocable Shares); and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Undisputed Trust included in Exhibit A hereto that contains a Zero Distribution Provision, the applicable Subject Payment Administrator shall (i) apply any Zero Distribution Provision to prevent the distribution of the Subject Allocable Shares to any applicable class of certificates with aggregate certificate principal balances of zero dollars (\$0.00) ("Retired Classes") at the time of the distribution of the Subject Allocable Shares and (ii) apply any Zero Distribution Provision to permit the Settlement Payment Write-Up to be applied only to classes of certificates with aggregate certificate principal balances greater than zero dollars (\$0.00) at the time of the distribution of the Subject Allocable Shares (the "Outstanding Classes"); *provided, however*, that if the Settlement Payment Write-Up exceeds the aggregate unpaid realized losses of all Outstanding Classes of an Undisputed Settlement Trust or of an individual loan group of an Undisputed Settlement Trust with multiple loan groups therein, such excess amount of the Settlement Payment Write-Up shall be applied to Retired Classes in such Undisputed Trust or loan group in a manner consistent with this Order; and it is further

ORDERED, ADJUDGED and DECREED that any aspects of the administration and distribution of the Subject Allocable Shares not expressly addressed in this Order shall be

performed as provided for in the Governing Agreements and the Settlement Agreement; and it is further

ORDERED, ADJUDGED and DECREED that this Order is not applicable to, and shall be without prejudice to and shall have no precedential effect on, (i) any argument of any party concerning the appropriate administration and distribution of the Settlement Payments where there is a dispute among the parties regarding how the Settlement Payments should be administered and distributed; (ii) the Subject Settlement Trusts for which no parties have appeared in this proceeding or any trust, indenture, or other securitization other than the Undisputed Trusts, or (iii) any applications to certificate balances (*e.g.*, write-ups) or distributions of payments or funds other than the Subject Allocable Shares; and it is further

ORDERED, ADJUDGED and DECREED that this Order shall not preclude any argument of any party concerning whether the Petition should be dismissed with respect to the Subject Settlement Trusts other than the Undisputed Trusts; and it is further

ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties claiming rights or interests in any of the Undisputed Trusts are barred from asserting claims against any Petitioner with respect to any conduct taken to implement and comply with the terms of this Order and with respect to such Petitioner's administration and distribution of the Settlement Payments with respect to such Undisputed Trust, so long as such conduct is performed in accordance with the terms of this Order; and it is further

ORDERED that the Clerk of New York County be, and hereby is, directed to enter this Order forthwith and without delay.

Dated: New York, New York
July __, 2019

Hon. Marcy Friedman, J.S.C.

Judgment signed and entered this ____ day of _____, 2019.

Clerk of New York County

EXHIBIT A

Trust	Payment Administrator	Trustee
ARC 2002-BC8	WF	WF
LMT 2005-2	USB	USB
LMT 2007-1	WF	WF
SAIL 2004-2	WF	USB
SAIL 2004-8	WF	USB
SAIL 2004-9	WF	USB
SAIL 2005-2	WF	USB
SAIL 2005-3	WF	USB
SAIL 2005-4	WF	USB
SAIL 2005-5	WF	USB
SAIL 2005-6	WF	USB
SAIL 2005-8	WF	USB
SAIL 2005-9	WF	USB
SAIL 2006-2	WF	USB
SARM 2004-20	WF	WF
SARM 2005-11	WF	WF
SARM 2005-17	WF	WF
SARM 2005-8XS	USB	USB
SARM 2006-3	WF	USB
SASC 2004-23XS	Citi	WT
SASC 2005-1	Citi	WT
SASC 2005-10	Citi	WT
SASC 2005-5	Citi	WT
SASC 2005-7XS	USB	USB