

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 17th day of July, 2023.

PRESENT: HON. MELISSA A. CRANE
J.S.C.

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

Hon. Melissa A. Crane

ORDER TO SHOW CAUSE

Mot. Seq. No. 10

Upon the reading and filing of the accompanying Affirmation of Brigitte R. Rose, Esq., affirmed July 13, 2023 (the "Attorney Affirmation"), New York counsel for Wells Fargo Bank, National Association ("Wells Fargo"), and upon the pleadings and proceeding heretofore had herein;

NOW, on the motion of Thompson Coburn LLP and Faegre Drinker Biddle & Reath LLP, attorneys for Wells Fargo, ~~xxx~~

LET

~~ORDERED~~ that all parties or their attorneys show cause before the Hon. Melissa A. Crane

at IAS Part 60, ~~Room 607~~, of the Supreme Court of the State of New York for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York, on July 31, 2023 at
****VIRTUALLY OVER MICROSOFT TEAMS - NO APPEARANCE UNLESS DIRECTED****

9:30 a.m. ~~xxxx~~, or as soon thereafter as counsel can be heard, why an Order should not be made and entered:

- (a) granting and entering the [Proposed] Partial Severance Order and Partial Final Judgment, attached as Exhibit 1 to the Attorney Affirmation; and
- (b) granting such other and further relief as this Court deems just and proper.

ORDERED that service of a copy of this Order, together with all supporting papers, shall be made on or before July 18, 2023, via NYSCEF and by e-mail upon all appearing counsel for the parties, and such service shall be deemed good and sufficient service; and it is further

ORDERED that opposition papers, if any, shall be filed and served ~~at least two business~~ **by 7/26/23** ~~days prior to the return date of this motion~~, via NYSCEF ~~and by email~~ upon all appearing counsel for the parties.

ENTER:



 HON. MELISSA A. CRANE,
 J.S.C.

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),

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**AFFIRMATION OF
BRIGITTE R. ROSE IN
SUPPORT OF ORDER TO
SHOW CAUSE**

BRIGITTE R. ROSE, an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following under the penalties of perjury, pursuant to CPLR § 2106:

1. I am an associate of the law firm Thompson Coburn LLP, New York counsel for petitioner Wells Fargo Bank, National Association (“Petitioner” or “Wells Fargo”) in the above-captioned action. I make this application in support of the Proposed Order to Show Cause filed by Wells Fargo contemporaneously herewith.

2. I am familiar with the proceedings in this case and have personal knowledge of the facts stated in this affirmation, all of which are true and correct, except where I rely upon the determinations or analysis of Wells Fargo, which is true and correct upon my information and belief.

3. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Petition ([Doc. No. 1](#)).

4. On April 20, 2018, the Court entered an Order to Show Cause (the “Order to Show Cause”) directing the above-captioned Petitioners to provide notice of this proceeding pursuant to the notice program described in the Order to Show Cause (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 laws.

5. The Notice Program directed that interested persons respond to the Petition on or before May 30, 2018.

6. No interested Persons appeared with respect to the trusts listed on Exhibit A (the “Subject No Appearance Trusts”) to the [Proposed] Partial Severance Order and Partial Final Judgment attached as Exhibit 1 to this affirmation (the “Proposed Severance Order”).

7. Wells Fargo acts as Trustee (in such capacity, the “Subject Trustee”) and securities administrator, paying agent, and/or calculation agent for the Subject No Appearance Trusts (in such capacity the “Subject Payment Administrator”).

8. For the No Appearance Settlement Trusts, including the Subject No Appearance Trusts, the Court entered a Modified Interim Order Concerning Settlement Trusts for Which No Parties Have Appeared ([Doc No. 222](#)), which provided that, “within forty-five (45) days after [a] Merits Ruling becomes final and non-appealable..., the Relevant Petitioners shall file proposed orders with the Court to resolve the issues for the No Appearance Settlement Trusts” ([Doc. No. 222](#) at 3).

9. Because it appears that no Merits Ruling will issue in this proceeding, Wells Fargo has determined that a proposed order resolving the issues for the Subject No Appearance Trusts should be filed.

10. Wells Fargo determined that the only issue in this proceeding concerning the Subject No Appearance Trusts was whether the “Write-Up First” or “Pay-First” methodology should be used in distributing the Settlement Payments for the Subject No Appearance Trusts.

11. Wells Fargo analyzed the distribution of Settlement Payments for the Subject No Appearance Trusts using the “Write-Up First” or “Pay-First” methodology based on actual data for the Subject No Appearance Trusts as of March 31, 2023.¹ Based on that analysis, Wells Fargo has determined that there is either no difference in the share of Settlement Payments classes of certificates will receive or any differences are de minimis.

12. For the reasons set out herein and within the Proposed Severance Order, Wells Fargo respectfully requests that the Court enter the Proposed Severance Order.

13. No prior application for the relief herein requested has been made to this Court or to any other Court.

Dated: New York, New York
July 13, 2023

s/ Brigitte R. Rose
BRIGITTE R. ROSE

¹ Wells Fargo has not made any forward-looking projections and the percentage differences for the Subject Settlement Funds could change in the future based on the amount of Subject Settlement Funds available and the actual performance of the Subject No Appearance Trusts after March 31, 2023.

CERTIFICATION OF COUNSEL

Pursuant to Rule 17 of the Rules of Practice for the Commercial Division:

The foregoing affirmation was prepared on a computer using Microsoft Word. Pursuant to the word count system in Microsoft Word, the total number of words in this affirmation, excluding the caption and signature block, is 639 words.

Dated: New York, New York
July 13, 2023

THOMPSON COBURN LLP

By: s/ Brigitte R. Rose
Brigitte R. Rose

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New York, New York 10022
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-and-

Stephen M. Mertz (admitted pro hac vice)
FAEGRE DRINKER BIDDLE & REATH LLP
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Attorneys for Petitioner
Wells Fargo Bank, National Association

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 ____, 2023

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),

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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 funds Petitioners have received from the Lehman bankruptcy case (the “Settlement Payments”) for 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, pursuant to the Settlement Agreements, the Settlement Payments are to be apportioned among the Settlement Trusts, including the individual loan groups therein and classes of principal only certificates therein, based on “Allocable Shares” calculated in an expert report as indicated in Exhibit F to the Petitions¹; and

WHEREAS, by Order to Show Cause dated April 20, 2018 (the “Order to Show Cause”) and Interim Order dated May 30, 2018 (collectively, the “Escrow Orders”), the Court authorized and directed the Petitioners to place the Settlement Payments for the Settlement Trusts in escrow; and

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

WHEREAS, under the Order to Show Cause, the Court directed the Petitioners to provide notice of this proceeding pursuant to the notice program described in the Order to Show Cause (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 laws; and

WHEREAS, the Order to Show Cause directed that interested persons respond to the Petition on or before May 30, 2018; and

¹ The term “loan group” as used herein refers to any loan group, loan subgroup, loan pool, loan subpool, or any other applicable grouping, pooling, or other assemblage of loans.

WHEREAS, no interested persons appeared with respect to the No Appearance Settlement Trusts² listed on Exhibit A hereto (the “Subject No Appearance Trusts”); and

WHEREAS, for the No Appearance Settlement Trusts, including the Subject No Appearance Trusts, the Court entered a Modified Interim Order Concerning Settlement Trusts for Which No Parties Have Appeared ([Doc No. 222](#)), which provided that, “within forty-five (45) days after [a] Merits Ruling becomes final and non-appealable..., the Relevant Petitioners shall file proposed orders with the Court to resolve the issues for the No Appearance Settlement Trusts” ([Doc. No. 222](#) at 3); and

WHEREAS, it appears that no Merits Ruling will issue in this proceeding; and

WHEREAS, Petitioner Wells Fargo Bank, National Association (“Wells Fargo”)³ acts as Trustee (in such capacity, the “Subject Trustee”) and securities administrator, paying agent, and/or calculation agent for the Subject No Appearance Trusts (in such capacity the “Subject Payment Administrator”); and

WHEREAS, Wells Fargo has determined that a proposed order resolving the issues for the Subject No Appearance Trusts should be filed; and

WHEREAS, the only issue in this proceeding concerning the Subject No Appearance Trusts was whether the “Write-Up First” or “Pay-First” methodology should be used in distributing the Settlement Payments for the Subject No Appearance Trusts; and

² The No Appearance Settlement Trusts are trusts for which none of the certificateholders who have appeared in this matter have claimed an interest, as described more fully in the Court’s Interim Order Concerning Settlement Trusts for Which No Parties Have Appeared ([Doc. No. 106](#)).

³ On November 1, 2021, Wells Fargo sold substantially all of its corporate trust services business to Computershare Trust Company, National Association (“Computershare”). Since November 1, 2021, Computershare has been acting as Wells Fargo’s agent and attorney-in-fact for the Subject No Appearance Trusts. For purposes of this order, the terms “Wells Fargo”, “Subject Trustee” and “Subject Payment Administrator” shall include Computershare.

WHEREAS, Wells Fargo has analyzed the difference in distributing the Settlement Payments currently available for the Subject No Appearance Trusts using the “Write-Up First” or “Pay-First” methodology based on actual data for the Subject No Appearance Trusts as of March 31, 2023.⁴ Based on that analysis, Wells Fargo has determined that there is either no difference in the share of Settlement Payments classes of certificates will receive or any differences are de minimis. Wells Fargo has concluded that the difference between the use of the two methodologies, in each Subject No Appearance Trust, is:

<u>Trust</u>	<u>Per Class Distribution Difference as a % of Settlement Payment</u>
BNCMT 2007-4	No difference
LMT 2007-9	0.8% distribution difference spread over six classes
LMT 2008-2	5.8% distribution difference spread over four classes

WHEREAS, Wells Fargo is currently holding approximately \$12,400,000 in Settlement Payments for the Subject No Appearance Trusts in escrow; and

WHEREAS, Wells Fargo now seeks an order finally resolving the issues related to the Subject No Appearance Trusts, instructing Wells Fargo to apply the “Write-Up First” methodology to distribute the available Settlement Payments to the No Appearance Settlement Trusts; 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

⁴ Wells Fargo has not made any forward-looking projections and the percentage differences for the Subject Settlement Funds could change in the future based on the amount of Subject Settlement Funds available and the actual performance of the Subject No Appearance Trusts after March 31, 2023.

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

WHEREAS, as used herein, the term “Transfer Target Date” means the fifteenth (15th) day of the Transfer Month; 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 Subject No Appearance Trusts occurring in the Transfer Month; and

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

NOW, THEREFORE, on the motion of Thompson Coburn Hahn & Hessen LLP and Faegre Drinker Biddle & Reath LLP, attorneys for Petitioner Wells Fargo, it is hereby

ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Trustee is to (i) cause escrowed assets to be liquidated to cash with a value equal to the Settlement Payment for each Subject No Appearance Trust (the “Subject Settlement Payments”) plus any investments earnings thereon, and (ii) cause the Subject Settlement Payments and investment earnings thereon to be deposited in the respective distribution accounts of the Subject No Appearance Trusts. From the time of the aforescribed deposit, the amount so deposited shall be deemed the Subject Settlement Payments for the Subject No Appearance 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 Settlement Payments not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph (“Trailing Interest”) shall 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. Any Trailing Interest shall be deemed a Subject Settlement Payment for the Subject No Appearance Trust on whose Settlement Payment such Trailing Interest was accrued, and any Trailing Interest shall be administered and distributed as a Subject Settlement Payment subject to the terms of the Settlement Agreements and this Order; and

ORDERED, ADJUDGED and DECREED that the Subject Payment Administrator shall distribute the Subject Settlement Payments to certificateholders of the Subject No Appearance Trusts on the AS Distribution Date; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Settlement Payments for the Subject No Appearance Trusts, the Subject Payment Administrator (i) shall first increase the applicable certificate principal balances in the amount of the Settlement Payment Write-Up or a portion thereof (the "Written-Up Certificate Principal Balances"), and, after applying the Settlement Payment Write-Up, (ii) shall then distribute the Subject Settlement Payments to certificateholders based on the Written-Up Certificate Principal Balances, in each of the cases of (i) and (ii) above in a manner consistent with the other terms of this Order; and it is further

ORDERED, ADJUDGED and DECREED that any aspects of the administration and distribution of the Subject Settlement Payments not expressly addressed in this Order shall be performed as provided for in the Governing Agreements and the Settlement Agreements; 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 for Subject

Settlement Trusts other than the Subject No Appearance Trusts; (ii) the Subject Settlement Trusts for which no parties have appeared in this proceeding or any trust, indenture, or other securitization other than the Subject No Appearance Trusts; or (iii) any applications to certificate balances (e.g., write-ups) or distributions of payments or funds, or the timing thereof, other than the Subject Settlement Payments; 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 Subject No Appearance Trusts; and it is further

ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties claiming rights or interests in any of the Subject No Appearance Trusts are barred from asserting claims against Wells Fargo with respect to any conduct taken to implement and comply with the terms of this Order and with respect to Wells Fargo's administration and distribution of the Settlement Payments with respect to such Subject No Appearance 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
_____, 2023

Hon. Melissa Crane, J.S.C.

EXHIBIT A

Trust	Payment Admin.	Trustee
BNCMT 2007-4	Wells Fargo	Wells Fargo
LMT 2007-9	Wells Fargo	Wells Fargo
LMT 2008-2	Wells Fargo	Wells Fargo