

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  
Distribution of a Settlement Payment.

Index No. 651625/2018

Hon. Marcy S. Friedman  
Part 60

**SUBMISSION PURSUANT TO  
ORDER TO SHOW CAUSE**

Nover Ventures, LLC (“Nover”) is an Interested Person with respect to each of the Settlement Trusts listed on Annex 1 attached hereto. Nover wishes to be heard on the merits of the questions presented by the Petition. Nover seeks instruction from the Court that the provisions of the Governing Agreements protective of certificateholders’ rights be respected.

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

The Write-Up First Method should be used. Indeed, 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. To the contrary, applying 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, which are contrary to the reasonable expectations of investors and drafters of the Settlement Agreement—and the original parties to the Governing Agreements. The absurdity of the Pay First Method is highlighted by the fact that leakage to subordinate certificateholders is dependent upon on 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. Nover respectfully requests the Court 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. Just because a class of certificates has a zero balance does not mean that it cannot be written up. Although some Governing Agreements state that once a Class of Certificates has been reduced to zero, they will be not entitled to certain distributions, it does not follow that such Classes of Certificates necessarily cannot be written up to receive distributions. Indeed, the provision

Petitioners cite does not preclude writing up the principal balance of the certificates after they have been reduced to zero. Therefore, because the Governing Agreements permit writing-up class and group certificate principal balances after they have been reduced to zero and because not doing so would lead to absurd results, the Court should instruct the Petitioners to first write-up those class certificate balances and then distribute the funds accordingly.

\* \* \*

Nover intends to expand upon its positions in more detail in subsequent briefing on the merits. Pursuant to the Order to Show Cause, this Submission is not intended to nor is shall the positions asserted herein in any way limit Nover's positions or argument in submissions on standing and/or merits issues. Nover respectfully requests the Court to 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. Nover also requests all other relief, at law or in equity, to which it may be justly entitled.

DATED: May 30, 2018  
New York, New York

Respectfully submitted,

MCKOOL SMITH, P.C.

By: /s/ Gayle R. Klein  
Gayle R. Klein  
David I. Schiefelbein

One Bryant Park, 47th Floor  
New York, New York 10036  
gklein@mckoolsmith.com  
dschiefelbein@mckoolsmith.com  
(t) (212) 402-9400  
(f) (212) 402-9444

*Attorneys for Nover Ventures, LLC*

**ANNEX 1 – LIST OF TRUSTS**

ARC 2002-BC8	SAIL 2004-8	SASC 2004-S3
ARC 2002-BC9	SAIL 2004-9	SASC 2004-S4
LABS 2004-1	SAIL 2005-1	SASC 2005-1
LMT 2005-2	SAIL 2005-11	SASC 2005-10
LMT 2005-3	SAIL 2005-2	SASC 2005-2XS
LMT 2006-1	SAIL 2005-3	SASC 2005-5
LMT 2007-1	SAIL 2005-4	SASC 2005-7XS
LMT 2007-2	SAIL 2005-5	SASC 2005-GEL4
LXS 2005-10	SAIL 2005-6	SASC 2005-S1
LXS 2005-2	SAIL 2005-7	SASC 2005-S6
LXS 2005-3	SAIL 2005-8	SASC 2005-S7
LXS 2005-4	SAIL 2005-9	SASC 2005-SC1
LXS 2005-6	SAIL 2005-HE3	SASC 2006-BC4
LXS 2005-8	SAIL 2006-2	SASC 2006-BC6
LXS 2006-10N	SAIL 2006-BNC3	SASC 2006-GEL1
LXS 2006-16N	SARM 2004-20	SASC 2006-GEL2
LXS 2006-3	SARM 2005-11	SASC 2006-GEL4
LXS 2006-5	SARM 2005-17	SASC 2006-S1
LXS 2006-7	SARM 2005-8XS	SASC 2006-S3
LXS 2007-1	SARM 2006-3	SASC 2006-S4
LXS 2007-18N	SARM 2006-8	SASC 2007-BC1
LXS 2007-3	SASC 2003-38	SASC 2007-BC2
SAIL 2004-10	SASC 2004-22	SASC 2007-BNC1
SAIL 2004-2	SASC 2004-23XS	SASC 2007-GEL2
SAIL 2004-5	SASC 2004-GEL1	SASC 2007-OSI