

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

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In the Matter of the Application of

WELLS FARGO BANK, NATIONAL
ASSOCIATION, U.S. BANK NATIONAL
ASSOCIATION, U.S. BANK TRUST COMPANY,
NATIONAL ASSOCIATION, THE BANK OF
NEW YORK MELLON, THE BANK OF NEW
YORK MELLON TRUST COMPANY, N.A.,
WILMINGTON TRUST, NATIONAL
ASSOCIATION, HSBC BANK USA, N.A., and
DEUTSCHE BANK NATIONAL TRUST
COMPANY (as Trustees, Indenture Trustees,
Securities Administrators, Paying Agents, and/or
Calculation Agents of Certain Residential Mortgage-
Backed Securitization Trusts),

Index No. 657387/207
(Part 60 – Justice Crane)

Mot. Seq. 15

Petitioners,

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

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**The Institutional Investors’
Supplemental Submission on Wells Fargo’s Objection**

As Ordered by the Court on October 4, 2022 (Dkt. 1001), the Institutional Investors¹ make this supplemental submission addressing Wells Fargo’s September 19th objection (Dkt. 993) to an otherwise undisputed proposed judgment (Dkt. 982) on the grounds that Wells Fargo needs additional judicial instructions on two new contractual interpretation issues: “(i) how to apply provisions in the governing PSAs that require write-ups to be made according to ‘payment priority’ or similar undefined terms; and (ii) how to apply provisions controlling distributions made after the occurrence of the ‘Cross-Over Date.’” Wells Fargo Objection (Dkt. 988) at 6-7.

¹ The Institutional Investors include the sixteen investors identified in Docket No. 135.

Wells Fargo's Objection is now limited to 24 settlement trusts, which stand to receive in excess of \$309 million in settlement distributions. Those settlement funds are currently held in escrow, invested in low-yielding money market funds.

On September 20, 2022, the Institutional Investors filed an Affidavit arguing that Wells Fargo's Objection was untimely and improper. That Affidavit is attached as Exhibit 1 hereto.

Wells Fargo represented in its Objection and at the October 4th hearing that Wells Fargo is ambivalent as to how the two new issues it raised should be resolved, and Wells Fargo has asked the Court to "delay [Wells Fargo's] obligation to make distributions to the Affected Trusts until those instructions are received, or until all interested parties are able to consensually resolve these issues." *Id.* at 4 (emphasis added).

After the October 4th hearing, the two primary interested parties that have disputed the two new issues Wells Fargo has raised – the Institutional Investors and Nover Ventures LLC – were able to reach an understanding in principle that would "consensually resolve these issues." (*See* Wells Fargo Objection at 4). Specifically:

- The "payment priority" for the settlement write up is the priority of payment for principal funds as of the AS Distribution Date as if no Cross-Over Date has occurred; and
- For certificates impacted by the perceived "Cross-Over Date" issue, trust proceeds (including Allocable Shares, as well as normal course principal and interest) are to be distributed as though no Cross-Over Date has occurred.

This understanding in principle is expressly subject to the successful negotiation of final language in a proposed judgment and confirmation from Wells Fargo that the agreed upon language will actually result in the intended distributions set forth above. At this time, the Institutional Investors understand that no other interested party opposes the understanding in

principle between Nover and the Institutional Investors, though each interested party will have the opportunity to make its position clear on the record.

With the interested parties having “consensually resolved” the substantive distribution terms, as set forth above, the Institutional Investors have requested that Wells Fargo circulate to all parties a proposed judgment and Order to Show Cause implementing those terms. To keep this matter moving forward, the Institutional Investors ask that Wells Fargo circulate its draft Orders prior to the hearing set for November 16.

Finally, should Wells Fargo take future positions that would cause further undue delay in the distribution of the \$309 million in settlement funds, or otherwise undermine the understanding in principle described above, the Institutional Investors reserve all rights and remedies, including the right to oppose Wells Fargo’s positions and to seek the prompt distribution of the remaining settlement funds.

November 10, 2022

Respectfully submitted,

WARNER PARTNERS, P.C.

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