

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

In the matter of the application of

U.S. BANK NATIONAL ASSOCIATION, THE BANK OF NEW YORK MELLON, THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., WILMINGTON TRUST, NATIONAL ASSOCIATION, LAW DEBENTURE TRUST COMPANY OF NEW YORK, WELLS FARGO BANK, NATIONAL ASSOCIATION, HSBC BANK USA, N.A., and DEUTSCHE BANK NATIONAL TRUST COMPANY (as Trustees under various Pooling and Servicing Agreements and Indenture Trustees under various Indentures), AEGON USA Investment Management, LLC (intervenor), Bayerische Landesbank (intervenor), BlackRock Financial Management, Inc. (intervenor), Cascade Investment, LLC (intervenor), the Federal Home Loan Bank of Atlanta (intervenor), the Federal Home Loan Mortgage Corporation (Freddie Mac) (intervenor), the Federal National Mortgage Association (Fannie Mae) (intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Voya Investment Management LLC (f/k/a ING Investment LLC) (intervenor), Invesco Advisers, Inc. (intervenor), Kore Advisors, L.P. (intervenor), Landesbank Baden-Wuerttemberg (intervenor), Metropolitan Life Insurance Company (intervenor), Pacific Investment Management Company LLC (intervenor), Sealink Funding Limited (intervenor), Teachers Insurance and Annuity Association of America (intervenor), The Prudential Insurance Company of America (intervenor), The TCW Group, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), and Western Asset Management Company (intervenor),

Petitioners,

– against –

QVT FUND V LP, QVT FUND IV LP, QUINTESSENCE FUND L.P., QVT FINANCIAL LP (intervenor), AMBAC ASSURANCE CORPORATION, AND THE SEGREGATED ACCOUNT OF AMBAC ASSURANCE CORPORATION (intervenor), and W&L INVESTMENTS, LLC (intervenor),

Respondents,

for an order, pursuant to CPLR § 7701, seeking judicial instruction.

Index No.
652382/2014

AFFIDAVIT OF MARY L. SOHLBERG
IN SUPPORT OF THE TRUSTEES' FIRST AMENDED PETITION

MINNEAPOLIS)
)
MINNESOTA) ss.:

MARY L. SOHLBERG, being duly sworn, deposes and says:

1. I am a Vice President in the Corporate Trust Services division of Petitioner Wells Fargo Bank, National Association (“Wells Fargo”) and a member of the Corporate Trust Services division’s Default Restructuring Group (the “Default Restructuring Group”). I have been employed by Wells Fargo since 1997 and have approximately 29 years of asset-backed and mortgage-backed securitization experience.

2. I offer this affidavit in support of the First Amended Petition (the “Amended Petition”) filed by Petitioners Wells Fargo, U.S. Bank National Association, The Bank of New York Mellon, The Bank of New York Mellon Trust Company, N.A., Wilmington Trust, National Association, Law Debenture Trust Company of New York (“Law Debenture”), HSBC Bank USA, N.A., and Deutsche Bank National Trust Company, solely in their respective capacities as trustees, indenture trustees, successor trustees, and/or separate trustees (collectively, the “Trustees”) ¹ for the residential mortgage-backed securitization (“RMBS”) trusts and/or loan groups listed in Exhibit A (the “Accepting Trusts”) of the Amended Petition, in the above-captioned proceeding.

3. This affidavit reflects the testimony that I would provide at trial in my individual capacity and on behalf of Wells Fargo and is based on my personal knowledge, except as to certain matters that I believe to be true based on (i) information contained in Wells Fargo’s business records or supplied to me by other Wells Fargo personnel, (ii) information provided by

¹ Throughout this affidavit, I refer to Wells Fargo acting solely in its trustee capacity as the “Trustee” and to the other Trustees as the “Other Trustees.”

the Trustees' experts, or (iii) certain information that has been reported to me by counsel or is contained in pleadings filed in this matter that I reviewed.

4. Wells Fargo acts as trustee for certain residential mortgage-backed securitization ("RMBS") trusts that are at issue in the above-captioned proceeding. Each of the RMBS trusts is governed, in part, by a Pooling and Servicing Agreement (as applicable, the "Governing Agreement"), and relates to a securitization transaction sponsored by JPMorgan Chase & Co. and certain of its affiliates (collectively, "JPMorgan").

I. THE PROPOSED SETTLEMENT OFFER

5. By letter dated November 15, 2013 (the "November 15 Letter"), counsel for a group of institutional investors (collectively, the "Institutional Investors")² informed the Trustees that they had reached a settlement (the "Proposed Settlement") with JPMorgan concerning 330 RMBS trusts sponsored by JPMorgan for which the Trustees act as trustee, indenture trustee, successor trustee, or separate trustee (each a "Trust" and collectively, the "Trusts"). Trustees Exhibit 005 includes a true and correct copy of the November 15 Letter. The November 15 Letter stated that the Institutional Investors collectively held 32% of the outstanding securities issued in connection with the Trusts. *Id.*

6. The Proposed Settlement was memorialized in a written settlement agreement attached to the November 15 Letter (the "Proposed Settlement Agreement"). Trustees Exhibit 005 includes a true and correct copy of the Proposed Settlement Agreement. The final

² The Institutional Investors are: Aegon USA Investment Management, LLC; Bayerische Landesbank; BlackRock Financial Management, Inc.; Cascade Investment, LLC; the Federal Home Loan Bank of Atlanta; the Federal Home Loan Mortgage Corporation (Freddie Mac); the Federal National Mortgage Association; Goldman Sachs Asset Management L.P.; Voya Investment Management LLC (f/k/a ING Investment Management LLC); Invesco Advisers, Inc.; Kore Advisors, L.P.; Landesbank Baden-Wuerttemberg; Metropolitan Life Insurance Company; Pacific Investment Management Company LLC; Sealink Funding Limited; Teachers Insurance and Annuity Association of America; The Prudential Insurance Company of America; the TCW Group, Inc.; Thrivent Financial for Lutherans; and Western Asset Management Company.

settlement agreement that the Trustees ultimately accepted is identified in this matter as Trustees Exhibit 003 (“Final Settlement Agreement”). The November 15th Letter stated that the Proposed Settlement was the result of “exhaustive negotiations” between JPMorgan and the Institutional Investors, and the Institutional Investors “urged the Trustees to accept it.” *Id.*

7. The terms of the Proposed Settlement Agreement and Final Settlement Agreement provided, in relevant part, that JPMorgan would (a) make a cash payment to the Trusts (the “Settlement Payment”) and (b) perform and/or implement certain mortgage loan servicing improvements and remedies set forth in Exhibit B to the Proposed Settlement Agreement (the “Subservicing Protocol” and, together with the Settlement Payment, the “Settlement Consideration”), which includes a requirement that JPMorgan transfer the servicing of certain delinquent loans to qualified subservicers. *See* Trustees Ex. 003.

8. The Proposed Settlement Agreement and the Final Settlement Agreement also provided that, in exchange for the Settlement Consideration, JPMorgan would receive a final release by the Trustees on behalf of the Accepting Trusts of all claims against JPMorgan that arise under the Governing Agreements for the Accepting Trusts and relate to the origination, sale, delivery, or servicing of mortgage loans, including all claims relating to alleged breaches of mortgage loan representations and warranties (the “Rep and Warranty Claims”) and alleged breaches of mortgage loan servicing obligations (the “Servicing Claims,” and together with the Rep and Warranty Claims, the “Released Claims”). *See* Trustees Exs. 002 at ¶ 3.02, 003 at ¶ 3.02.

9. If the Trustees accepted the Proposed Settlement for all 330 Trusts, the Settlement Payment to the Trusts would equal \$4.5 billion. *See* Trustees Exs. 002 at ¶ 3.01, 003 at ¶ 3.01. The Proposed Settlement Agreement allocated the Settlement Payment among the Accepting

Trusts pursuant to a formula agreed upon between the Institutional Investors and JPMorgan based on lifetime losses in the Trusts (the “Allocation Formula”). *See* Trustees Exs. 002 at ¶ 3.05, 003 at ¶ 3.05. The Allocation Formula also requires certain adjustments in certain trusts, so that losses attributable to loans originated by certain third-parties selected by JPMorgan and the Institutional Investors are reduced by 90% for purposes of calculating the allocable share of the Settlement Payment for applicable Trusts. *See* Trustees Exs. 002 at ¶ 3.05(b), 003 at ¶ 3.05(b).

10. The terms of the Final Settlement Agreement permitted the Trustees to accept or reject the Proposed Settlement on behalf of loan groups within the Trusts (“Loan Groups”). *See* Trustees Ex. 003 at ¶ 2.03(a).

11. The Trustees’ last date to accept or reject the Proposed Settlement (the “Acceptance Date”) was initially set as January 15, 2014. *See* Trustees Ex. 002 at ¶¶ 1.01, 2.03(a). The Proposed Settlement Agreement permitted the Trustees to extend the Acceptance Date without seeking consent of JPMorgan for up to 60 additional days. *See* Trustees Ex. 002 at ¶ 2.03(b). As described in greater detail below, the Acceptance Date ultimately was extended pursuant to successive agreements to and including August 1, 2014 with the exception of an identified group of Trusts and Loan Groups subject to a further extension to and including October 1, 2014. *See* Trustees Ex. 040.

II. SEPARATE ROLES OF WELLS FARGO AND LAW DEBENTURE WITH RESPECT TO 30 OF THE TRUSTS

12. Wells Fargo serves as trustee of 30 of the Trusts that were subject to the Proposed Settlement (the “WF/LD Trusts”), which include a total of 58 Loan Groups. The Trusts and Loan Groups for which Wells Fargo is Trustee are identified in Trustees Ex. 297. On or before December 2, 2013, Law Debenture was appointed separate trustee for each of the WF/LD Trusts.

13. As separate trustee, Law Debenture is responsible for any enforcement obligations or settlement of the Rep and Warranty Claims related to the RMBS loans held in the WF/LD Trusts. Wells Fargo has no responsibility for the enforcement or settlement of the Rep and Warranty Claims against JPMorgan. Wells Fargo retains responsibility for all other trustee matters related to the WF/LD Trusts, including any settlement of the Servicing Claims.

III. THE INTERNAL STRUCTURE FOR WELLS FARGO'S EVALUATION OF THE SETTLEMENT OFFER

14. In response to the request by the Institutional Investors and JPMorgan, Wells Fargo undertook an eight and half month process of evaluating whether it, as Trustee, should accept the Proposed Settlement Agreement on behalf of the WF/LD Trusts as it related to the settlement of the Servicing Claims.³ As part of this process, Wells Fargo retained the law firm of Faegre Baker Daniels LLP (“FaegreBD”) to represent it in connection with, and assist in its evaluation of, the Proposed Settlement Agreement as it related to the Servicing Claims.

15. On behalf of Wells Fargo, I had primary responsibility for the day-to-day duties of managing and coordinating the evaluation of the Proposed Settlement. Prior to my involvement in the Proposed Settlement, I was involved in a similarly large RMBS settlement, including on behalf of RMBS trusts in a settlement with Residential Capital, LLC. As part of my responsibilities in connection with the Proposed Settlement, I was involved with, among other things:

- (a) reviewing the Proposed Settlement Agreement and the Final Settlement Agreement;
- (b) determining Wells Fargo's role in the settlement evaluation process, and, based on that determination, determining which issues required opinions from qualified subject matter experts;

³ I refer to the period between November 18, 2013, the date Wells Fargo received a letter informing it about the Settlement Agreement, and August 1, 2014, the date Wells Fargo accepted the Proposed Settlement as to all but one Loan Group of the WF/LD Trusts, as the “Evaluation Period.”

- (c) selecting and retaining subject matter experts to assist the Trustees in their evaluation of the Proposed Settlement;
- (d) gathering relevant data and information as needed to assist in the evaluation of the Proposed Settlement by Wells Fargo or the subject matter experts;
- (e) communicating with other employees of Wells Fargo on a regular basis concerning the status of the Trustees' evaluation of the Proposed Settlement;
- (f) communicating with investors in the WF/LD Trusts regarding the Proposed Settlement;
- (g) participating in frequent calls with the Other Trustees and their counsel regarding issues related to the Trustees' evaluation of the Proposed Settlement; and
- (h) recommending to the Wells Fargo employees with ultimate decision-making authority as to the Proposed Settlement whether to accept or reject the Proposed Settlement as to each Trust or Loan Group.

16. Mr. John Berczuk and Ms. Kathy Jones, corporate trust personnel from Wells Fargo's Corporate Trust Servicing Management Team, worked with me to evaluate the Proposed Settlement as it related to the Servicing Claims, including evaluating the servicing enhancements detailed in the Subservicing Protocol.

17. Throughout the Evaluation Period, I participated in telephone conferences with FaegreBD and, in some instances, the Other Trustees on a weekly basis to discuss issues relating to the Proposed Settlement, including, but not limited to: (i) the retention of subject matter experts; (ii) providing notices to investors in the Trusts; (iii) requesting information from JPMorgan for the experts to consider in connection with their analyses; and (iv) issues related to the reports prepared by the subject matter experts. In addition, throughout the Evaluation Period, I participated in *ad hoc* calls with FaegreBD to address various questions and inquiries. As appropriate, Mr. Berczuk and/or Ms. Jones also participated in the telephone conferences with FaegreBD and the Other Trustees.

18. In addition, during the Evaluation Period, I and certain senior leaders and internal counsel of Wells Fargo participated in monthly meetings of the Structured Product Services (“SPS”) Watchlist Committee and of the Corporate Trust Services (“CTS”) Watchlist Committee. The general purpose of these standing meetings is to advise participants of new matters that have come in to the Default Restructuring Group that month and to provide updates on ongoing Default Restructuring Group matters. Between December 2013 and October 2014, I updated the SPS and CTS Watchlist Committees on the Proposed Settlement, including, among other things, the Trustees’ current progress in: (i) selecting and retaining experts; (ii) issuing notices to investors; (iii) obtaining extensions of the Acceptance Date; (iv) an on-site visit of the proposed servicer under the Servicing Protocol; (v) the experts’ reports; and (vi) any judicial proceedings should Wells Fargo decide to accept the Proposed Settlement on behalf of any of the WF/LD Trusts.

19. The Wells Fargo senior leaders who ultimately had authority to approve acceptance or rejection of the Proposed Settlement on behalf of the WF/LD Trusts related to the Servicing Claims consisted of Senior Vice Presidents William (Doc) Walther and Michael (Mike) Watchke, and Troy Kilpatrick, head of CTS beginning on May 19, 2014 (the “Senior Leaders”).

20. Throughout the Evaluation Period and at the time when Wells Fargo ultimately decided to accept the Proposed Settlement, I was not aware of an Event of Default as defined in the Governing Agreements for any of the WF/LD Trusts. Nor did anyone within Wells Fargo advise me that there had been an Event of Default as to any of the WF/LD Trusts. If there had been an Event of Default, that information would have been escalated to the Default Restructuring Group, discussed at the monthly SPS Watchlist Committee meetings, and added to

the relevant database within Corporate Trust Services. I attended the monthly SPS Watchlist Committee meetings and the attendees never mentioned nor discussed an Event of Default related to any of the WF/LD Trusts. Based on my position in the Default Restructuring Group, if proper procedures were followed, I would have been aware of any Event of Default in any of the WF/LD Trusts. Therefore, to the best of my knowledge, no Event of Default existed in any of the WF/LD Trusts prior to Wells Fargo's acceptance of the Proposed Settlement related to the WF/LD Trusts.

21. In August 2015, I reviewed the relevant database within Corporate Trust Services to confirm that there was not an Event of Default for any of the WF/LD Trusts. I continue to attend the monthly SPS Watchlist Committee meetings and no Event of Default for any of the WF/LD Trusts has been raised or discussed. Thus, as of the date hereof, I believe that no Event of Default exists for any of the WF/LD Trusts.

IV. WELLS FARGO'S EVALUATION AND SELECTION OF EXPERTS

22. After receiving the Proposed Settlement Agreement, Wells Fargo and FaegreBD, together with the Other Trustees and their counsel, began a multi-stage process of vetting potential experts to assist in evaluating the Proposed Settlement. Wells Fargo participated in this process to the extent the potential experts were sought in connection with the evaluation of Servicing Claims. In this respect, Wells Fargo and the Other Trustees considered such experts on the basis of, among other factors: (i) credentials and subject-matter expertise; (ii) understanding of the roles of securitization participants, including corporate trustees; (iii) methodologies for assessing the reasonableness of the Proposed Settlement; (iv) availability and capacity; (v) conflicts; and (vi) testifying experience (the "Expert Evaluation Factors").

23. The Trustees considered various areas of possible expert advice and guidance. Ultimately, the Trustees decided to seek the advice of four types of experts, three of which are relevant to Wells Fargo's evaluation of the Proposed Settlement:⁴ (i) a servicing expert to evaluate the servicing-related aspects of the Proposed Settlement, including the potential benefit from implementation of the Subservicing Protocol (the "Servicing Expert"); (ii) legal experts who could provide analysis to, and inform the assumptions of, the Trustees and the other experts (the "Legal Experts"); and (iii) a financial and economic expert who could consider the results of the analyses conducted by the Trustees' other experts and provide a recommendation to either accept or reject the Proposed Settlement as to each Trust and Loan Group (the "Economic Expert" and together with the Servicing Expert, the Legal Experts, and the Valuation Expert, the "Experts").

24. On or about December 3, 2013, representatives of Wells Fargo and FaegreBD, along with representatives of the Other Trustees and their respective counsel, conducted interviews with Servicing Expert and Economic Expert candidates. These candidates made presentations to the Trustees concerning their potential evaluation of the Proposed Settlement.

A. Servicing Expert

25. The Trustees selected Jeremy Reifsnyder of Boston Portfolio Advisors, Inc. ("BPA") to serve as their expert concerning evaluation of the servicing issues presented by the Proposed Settlement. See Trustees Ex. 019 (Expert Report of Jeremy E. Reifsnyder, dated July 12, 2014 (the "Reifsnyder Report"). Based on the Expert Evaluation Factors, the presentations given by Mr. Reifsnyder and his colleague at BPA, the written materials BPA provided to the Trustees, and BPA's reputation in the industry, I believed, and was in agreement with the Other

⁴ The Other Trustees also relied upon a valuation expert to consider the Rep and Warranty Claims (the "Valuation Expert"). Wells Fargo did not participate in the selection or retention of the Valuation Expert.

Trustees, that Mr. Reifsnyder and BPA were qualified to opine on the servicing issues presented by the Proposed Settlement. I refer to Mr. Reifsnyder's report (Trustees Exhibit 019) for the details of Mr. Reifsnyder's background and qualifications.

B. Legal Experts

26. As a preliminary matter, the Trustees determined to retain the Legal Experts to avoid the possibility that separately retained lawyers would provide the Trustees and the other Experts with divergent legal conclusions on relevant legal issues.

27. In March 2014, the Trustees and their respective counsel conducted interviews with approximately 6 candidates for the role of Legal Expert. *See* Trustees Exs. 081-086.

28. After Wells Fargo considered the Expert Evaluation Factors, Wells Fargo and the Other Trustees selected Professor Alan Schwartz of Yale Law School and Yale School of Management, and Justice Anthony Carpinello, a retired Associate Justice of the New York Supreme Court, Appellate Division, Third Department, to serve as the Legal Experts.

29. Based on the Expert Evaluation Factors, the interviews of Professor Schwartz and Justice Carpinello, and their respective legal experiences, I believed, and was in agreement with the Other Trustees in believing, that Professor Schwartz and Justice Carpinello were highly qualified to perform the analyses with which they were charged and each of their analyses are squarely within their respective fields of expertise. *See* Trustees Exs. 015 at 2, 017 at 1, 081, and 085.

C. Economic Expert

30. In addition to the other Experts, Wells Fargo and the Other Trustees agreed that a financial and economic expert was needed to evaluate the reasonableness of the Proposed Settlement as to each Trust and Loan Group, taking into account the analyses and conclusions of

the other Experts and other considerations the expert deemed relevant, and formulate a recommendation to accept or reject the Proposed Settlement for each Loan Group in each Trust. Wells Fargo and FaegreBD (along with the Other Trustees and their counsel) conducted interviews with potential experts to assist in the evaluation of the Proposed Settlement. Following these interviews and follow-up telephone discussions with the candidates, the Trustees selected Professor Daniel Fischel of Compass Lexecon. Based on the Expert Evaluation Factors, the materials provided by Compass Lexecon, the Trustees' interview of Professor Fischel and his colleagues, and Professor Fischel's reputation in the industry, I believed (and agreed with the Other Trustees) that Professor Fischel was qualified to serve as this expert. I refer to Professor Fischel's report and supplemental report (the "Fischel Reports") for the details of his background and qualifications. Trustees Exs. 020 and 022.

V. THE EXPERTS' EVALUATIONS OF THE PROPOSED SETTLEMENT

31. After they were retained, the Experts considered the issues within their roles as described above at ¶ 23, designed analyses they deemed appropriate, and began their analyses.

32. Each of the Experts requested documents and information from the Trustees to aid in their analyses. Wells Fargo's counsel provided to the Experts, among other documents, the Governing Agreements for the WF/LD Trusts, summaries of certain provisions in those agreements requested by the Experts, copies of correspondence from investors concerning the Proposed Settlement, payments made by monoline insurers on account of losses on mortgage loans in the WF/LD Trusts, document exception lists, and tolling agreements applicable to the Trusts.

33. The Experts also requested documents and information from JPMorgan to aid in their analyses. Counsel for the Trustees conferred with JPMorgan over a period of approximately seven months to obtain those documents.

34. The documents and information provided by JPMorgan to the Trustees and the Experts are described in Trustees Exhibit 129, JPMorgan Chase & Co.'s Verified Responses to Agreed-Upon Questions in Lieu of Deposition, dated December 17, 2015. I understand that JPMorgan ultimately provided approximately 1.75 million pages of documents and information to the Trustees and the Experts, and that such documents and information included:

- (a) transaction closing sets and other documents related to the Trusts;
- (b) data compiled at the Experts' request related to the Trusts, including historic mortgage loan repurchase and performance information and mortgage loan modification data;
- (c) mortgage loan breach notices received by JPMorgan and subsequent correspondence;
- (d) repurchase data concerning certain mortgage loans JPMorgan sold to government sponsored entities;
- (e) information concerning JPMorgan's servicing practices;
- (f) documents and information regarding proposed subservicer Select Portfolio Servicing, Inc. ("Select Portfolio Servicing"); and
- (g) loan servicing records from various third-party and JPMorgan databases.

See Trustees Ex. 129 at 4. Among other things, I understand that JPMorgan also provided the Experts with access to CoreLogic LoanPerformance and Risk Model, a third-party database that contains loan-level data concerning the Trusts, and arranged for BPA to visit the Select Portfolio Servicing's headquarters on two separate occasions. *See* Trustees Ex. 129.

VI. COMMUNICATIONS WITH INVESTORS IN THE TRUSTS

35. The Trustees retained Garden City Group, LLC (“GCG”) to assist in their efforts to provide relevant information to investors in the Trusts. At the Trustees’ direction, GCG established a publicly accessible website containing relevant documents, information, and notices concerning the Proposed Settlement at www.rmbstrusteesettlement.com (the “Settlement Website”). GCG continues to maintain the Settlement Website, and in addition to the notices to investors, expert reports, and other relevant documents, GCG has posted filings of the parties and orders of this Court in this special proceeding.

36. On December 11, 2013, the Trustees provided an informational notice to investors informing them of the Proposed Settlement (the “December 11th Notice”). *See* Trustees Ex. 010. The December 11th Notice provided the address of the Settlement Website, where anyone, including investors, could view the Proposed Settlement Agreement. *See id.* at 2. The December 11th Notice also set forth certain basic terms of the Proposed Settlement Agreement (including the Settlement Consideration, the Released Claims, and the Acceptance Date by which the Trustees were required initially to reach a decision to accept or reject the offer). *See id.* The Trustees urged investors and any potentially interested persons to review the Proposed Settlement Agreement carefully and referred investors to the Settlement Website for its complete terms. *See id.* at 3.

37. The December 11th Notice also informed investors of a tolling and forbearance agreement (the “JPM Tolling Agreement”), a copy of which is posted to the Settlement Website, in which JPMorgan agreed that while the Trustees considered the Proposed Settlement any statutes of limitations would be tolled with respect to certain claims of the Trusts (excluding Trusts in litigation and certain other identified Trusts). *See* Trustees Ex. 004. Furthermore, the

Trustees informed investors that they intended to retain expert advisors to assist them in an independent evaluation of the Proposed Settlement, and provided contact information of the Trustees for inquiries from investors and other potentially interested persons. *See* Trustees Ex. 010 at 2.

38. Wells Fargo disseminated the notices to keep investors in the WF/LD Trusts apprised of developments in the settlement evaluation process and to give them an opportunity to communicate to Wells Fargo their support or opposition to the Proposed Settlement. As Trustee, Wells Fargo wanted to solicit investors' views on the Proposed Settlement before it made a decision on the Proposed Settlement. This also allowed Professor Fischel to consider the views of investors other than the Institutional Investors before he gave a Trust or Loan Group recommendation. Wells Fargo believed that, given the disclosure of the Proposed Settlement Agreement and the lengthy period during which the investors could conduct their own evaluation of the Proposed Settlement Agreement, investors who wished to share their views with Wells Fargo before acceptance or rejection of the Proposed Settlement had an ample opportunity to do so.

39. From December 11, 2013 to October 14, 2014, the Trustees provided a total of 12 separate informational notices to investors concerning developments relating to the Proposed Settlement and posted all of the notices on the Settlement Website. *See* Trustees Exs. 010-013, 023-030. In addition to the previously discussed December 11th Notice, the Trustees' informational notices included:

- (a) notice dated January 17, 2014 concerning the extension of the Acceptance Date to March 16, 2014 and a corresponding extension of the JPM Tolling Agreement;

- (b) notice dated March 7, 2014 concerning the extension of the Acceptance Date to June 16, 2014 and a corresponding extension of the JPM Tolling Agreement;
- (c) notice dated April 28, 2014 concerning the ongoing review of the Proposed Settlement and stating, among other things, that investors who “wish to provide a direction with respect to the Proposed Settlement . . . for consideration by a[] . . . Trustee should contact the applicable Trustee as soon as possible to verify their holdings and receive a confidential form of direction and indemnity letter”;
- (d) notice dated June 11, 2014 concerning the extension of the Acceptance Date to August 1, 2014 and a corresponding extension of the JPM Tolling Agreement;
- (e) notice dated July 22, 2014 concerning the posting of the Experts’ reports on the Settlement Website;
- (f) notice dated August 1, 2014 concerning the Final Settlement Agreement, the Trustees’ acceptance or rejection of the Final Settlement Agreement for certain Trusts and Loan Groups, the extension of the Acceptance Date to October 1, 2014 for certain Trusts and Loan Groups and a corresponding extension of the JPM Tolling Agreement for those Trusts and Loan Groups;
- (g) notice dated August 20, 2014 concerning a judicial instruction proceeding in connection with the Proposed Settlement;
- (h) notice dated August 27, 2014 regarding Trusts and Loan Groups for which the Acceptance Date was extended to October 1, 2014;
- (i) notice dated August 29, 2014 inviting qualified certificateholders to apply for membership on the Servicing Advisory Committee (as defined in the Final Settlement Agreement);
- (j) notice dated October 1, 2014 concerning the Trustees’ acceptance and rejection of the Final Settlement Agreement for certain Trusts and Loan Groups for which the Acceptance Date was extended to October 1, 2014; and
- (k) supplemental notice dated October 14, 2014 concerning this judicial instruction proceeding.

See Trustees Exs. 011-013, 023-030.

40. As discussed *infra* ¶¶ 69, 74, the August 20, 2014 notice and the October 12, 2014 supplemental notice concerning this judicial instruction proceeding were also provided to investors in accordance with directives of the Court. Further, on August 19, 2014, Wells Fargo separately provided an individual notice concerning one of the Loan Groups that it administers for which the Acceptance Date was extended to October 1, 2014. *See* Trustees Ex. 311. This notice is discussed *infra* ¶ 61.

41. During Wells Fargo's settlement evaluation process, various investors contacted Wells Fargo concerning the Proposed Settlement. I, with the assistance of FaegreBD, maintained a reasonable process to manage the inflow of investor communications, including by establishing and maintaining a dedicated email address that was referenced in notices to investors and available on the Settlement Website (D&RTeam@wellsfargo.com). Wells Fargo communicated directly with investors via emails from me and/or FaegreBD. Communications with investors typically concerned the details of the Proposed Settlement, an investor's support or opposition to the Proposed Settlement, or, in a few instances, an investor's interest in potentially providing a direction and indemnity to Wells Fargo to reject the Proposed Settlement as to a particular Trust or Loan Group. In total, Wells Fargo communicated with approximately 12 investors concerning the Proposed Settlement, excluding communications related to the consent solicitation discussed below at Section IX.

VII. EXPERT REPORTS

42. Following the completion of their respective analyses of the issues presented to them, Mr. Reifsnyder, Professor Schwartz, and Justice Carpinello each provided the Trustees

with their expert reports.⁵ *See* Trustees Exs. 015-020, 022. As previously indicated, all of the Experts' reports were posted to the Settlement Website on July 22, 2014, with the exception of the Supplemental Fischel Report (defined below), which was posted on July 26, 2014.

43. Mr. Reifsnyder's report provided a "Servicing Loss Differential," an estimate of losses attributable to differences between servicing by JPMorgan and other comparable servicers, and an estimate of the benefit provided to the Trusts by the Subservicing Protocol. *See* Trustees Ex. 019.

44. Justice Carpinello's reports provided analyses of, among other topics, (i) the statute of limitations applicable to the claims to be released pursuant to the Proposed Settlement; (ii) conditions precedent to the Trustees bringing suit to enforce claims against JPMorgan; and (iii) the effect of tolling agreements on claims potentially released by the Proposed Settlement. *See* Trustees Exs. 015, 016, and 018.

45. Professor Schwartz's report provided an analysis of, among other topics, contractual obligations placed on mortgage loan servicers. *See* Trustees Ex. 017.

46. On July 17, 2014, Professor Fischel provided his Expert Report of Daniel R. Fischel (the "Fischel Report"), which considered and discussed relevant aspects of the other Experts' reports, performed certain economic analyses, and provided recommendations to either accept or reject the Proposed Settlement for each of the 330 Trusts, including the 30 WF/LD Trusts. *See* Trustees Ex. 020 at Ex. T. On July 26, 2014, Professor Fischel provided the Supplemental Expert Report of Daniel R. Fischel (the "Supplemental Fischel Report"), which provided recommendations at the Loan Group level for each of the 330 Trusts. *See* Trustees Ex. 022 at Ex. F.

⁵ The Valuation Expert also provided her report to the Trustees in a report dated July 17, 2014. *See* Trustees Ex. 021.

47. The Fischel Reports included the following:
- (a) an explanation of the general economics of settlement decisions;
 - (b) an analysis and comparison of the Proposed Settlement to other RMBS-related settlements;
 - (c) an analysis of the market's reaction to the Proposed Settlement;
 - (d) an analysis of investor support and opposition to the Proposed Settlement;
 - (e) an estimate of the Settlement Consideration for each Trust and Loan Group;
 - (f) an estimate under 6 different economic models of the expected recovery for each Trust and Loan Group if litigation were pursued in lieu of the Proposed Settlement ("Expected Recovery");⁶ and
 - (g) an analysis of the impact of the applicable statute of limitations on claims against JPMorgan, using the analyses provided by the Legal Experts.

See Trustees Exs. 020, 022.

48. With respect to Professor Fischel's specific recommendations for each Trust and Loan Group, the Fischel Reports stated that he would recommend rejecting the Proposed Settlement only if: (i) the holders of a substantial proportion of the Trust's or Loan Group's certificates have expressed opposition to accepting the Proposed Settlement and their holdings exceed those of investors who support the Proposed Settlement; (ii) there is an indication that the Expected Recovery would be greater than the value of the estimated Settlement Consideration; and (iii) the Trust's or Loan Group's Rep and Warranty Claims are not likely barred by the applicable statute of limitations or there is an indication that the Trust's or Loan Group's potential recovery related to Servicing Claims would exceed the Settlement Consideration. *See* Trustees Ex. 020 at 18. Professor Fischel further stated that even if all three criteria were

⁶ For purposes of the analysis of Expected Recovery, the Fischel Reports assumed that claims would not be barred. *See* Trustees Exs. 020 at ¶ 122, 022 at ¶ 1.

satisfied, rejection was only appropriate if a Trustee was “confident there [was] a group of [c]ertificateholders . . . willing and able to direct and indemnify the Trustee to complete the investigation and litigation that would likely be necessary to pursue claims against JPM[organ].” *See* Trustees Ex. 020 at 19.

49. Applying the above criteria, Professor Fischel recommended that Wells Fargo and Law Debenture each accept the Proposed Settlement on behalf of all 58 Loan Groups in the 30 WF/LD Trusts with the exception of one: BSMF 2007-AR1, Loan Group II (“Loan Group II”). *See* Trustees Ex. 022 at Ex. F.

50. As indicated on Exhibit F to the Supplemental Fischel Report, Professor Fischel’s criteria for Loan Group II supported rejecting the Proposed Settlement because (1) there were investors with holdings greater than 15% at the Loan Group level opposing the Proposed Settlement and those investors held more than the investors supporting the Proposed Settlement, (2) there were investors with holdings greater than 15% at the Trust level opposing the Proposed Settlement, (3) there were five factors indicating a potential for a high recovery, and (4) any Rep and Warranty Claims were not likely barred or the Settlement Consideration was less than the Servicing Claims. However, Professor Fischel recommended that Wells Fargo and Law Debenture reject the Proposed Settlement for Loan Group II only if they were confident that there was a group of investors who were willing and able to direct and indemnify Wells Fargo and/or Law Debenture, as appropriate, to complete an investigation and commence litigation that would likely be necessary to pursue claims against JPMorgan. As described below ¶ 61, Wells Fargo conducted a consent solicitation to solicit investor input as to whether Wells Fargo should accept or reject the Final Settlement Agreement for Loan Group II and to request that any

investors who wished to direct Wells Fargo to accept or reject the Final Settlement Agreement for Loan Group II complete and deliver an attached instruction form to Wells Fargo.

VII. WELLS FARGO'S EVALUATION OF SELECT PORTFOLIO SERVICING, INC.

51. As discussed above, Wells Fargo's evaluation of the Proposed Settlement included the assessment of the proposed Servicing Enhancements that JPMorgan agreed to undertake with respect to the Accepting Trusts. As part of this assessment, Wells Fargo undertook to evaluate Select Portfolio Servicing, at that time the only approved subservicer in the Subservicing Protocol.

52. On February 19, 2014, Kathy Jones, Robert Schnell from FaegreBD, counsel for certain of the Other Trustees, members of BPA, and I traveled to Salt Lake City to conduct an on-site evaluation of Select Portfolio Servicing's facilities and operations. BPA's opinion of Select Portfolio Servicing is reflected in the Reifsnyder Report. In addition, Ms. Jones and I determined that Select Portfolio Servicing was qualified to serve as a subservicer under the Subservicing Protocol. Wells Fargo communicated its opinion about Select Portfolio Servicing to the Other Trustees.

**VIII. WELLS FARGO RELIED UPON THE EXPERTS
IN ACCEPTING THE FINAL SETTLEMENT AGREEMENT ON
BEHALF OF ALL BUT ONE LOAN GROUP IN THE WF/LD TRUSTS**

53. I reviewed the Reifsnyder Report, Fischel Reports, and relevant portions of the Legal Experts' reports (collectively, the "Relevant Reports") after I received them.

54. On July 28, 2014, the Senior Leaders, other Wells Fargo personnel, counsel and I held a telephonic meeting to discuss the Relevant Reports and the Experts' conclusions related to the WF/LD Trusts. Prior to that meeting, each of the Wells Fargo attendees received copies of the Final Settlement Agreement and the Relevant Reports. At the meeting, the discussion

primarily focused on the key terms of the Proposed Settlement and the Trustees' evaluation process, including retention of the Experts, evaluation of Select Portfolio Servicing, communications with investors, and the analyses and recommendations of the Experts contained in the Relevant Reports, including Professor Fischel's recommendations for each Loan Group in the WF/LD Trusts.

55. The Senior Leaders then determined that Wells Fargo should accept the Final Settlement Agreement with respect to the Servicing Claims on behalf of each of the WF/LD Trusts, with the exception of Loan Group II.

56. The Senior Leaders reached this decision, after careful evaluation and deliberation, because they concluded the Proposed Settlement and its terms were reasonable and in the best interests of the investors of each WF/LD Trust. The Senior Leaders were guided principally by Professor Fischel's reports and their confidence that his reports were thorough and the result of robust analysis. They were also aware that there is delay and uncertainty associated with the litigation alternative, and that relatively few investors or other interested parties expressed any objection to the Proposed Settlement during the settlement evaluation process. They were aware that not every investor supported the Proposed Settlement, but that Wells Fargo was responsible for considering the interests of all the investors. Finally, they were aware that, if any investors opposed the Proposed Settlement, the investors would have an opportunity to raise their concerns in connection with the judicial instruction proceeding the Trustees intended to file. I believe the Senior Leaders acted in good faith throughout the process and in reaching Wells Fargo's ultimate decision to accept the settlement.

57. As discussed in Section IX, below, Wells Fargo and Law Debenture each decided to solicit investors in Loan Group II on whether to accept or reject the Final Settlement Agreement.

58. On August 1, 2014, I executed the Final Settlement Agreement on behalf of Wells Fargo in its capacity as Trustee of the WF/LD Trusts related to the Servicing Claims for each Loan Group in the Trusts, with the exception of Loan Group II, subject to judicial approval. *See* Trustees Ex. 012 at B.

IX. CONSENT SOLICITATION OF INVESTORS IN LOAN GROUP II

59. As discussed above at ¶ 39(f) and in light of Professor Fischel's conditional recommendation as to certain identified Trusts and Loan Groups, at the request of certain Trustees, JPMorgan agreed to extend the Acceptance Date to October 1, 2014 for those identified Trusts and Loan Groups (the "Extended Acceptance Date Trusts and Loan Groups"), including Loan Group II, to permit the Trustees additional time to solicit investors on whether to accept or reject the Final Settlement Agreement for those Trusts and Loan Groups. *See* Trustees Ex. 012.

60. On August 19, 2014, Wells Fargo sent a notice to investors in Loan Group II to solicit investor input as to whether Wells Fargo should accept or reject the Final Settlement Agreement for Loan Group II and to request that any investor in Loan Group II who wished to direct Wells Fargo to accept or reject the Final Settlement Agreement for Loan Group II complete and return to Wells Fargo an attached instruction form (the "Consent Solicitation"). *See* Trustees Ex. 311.

61. In the August 19 notice, Wells Fargo advised investors in Loan Group II that if it received a direction to reject the Final Settlement Agreement for Loan Group II and to enforce through litigation any Servicing Claims against JPMorgan, with indemnity from investors

satisfying a requisite holding requirement, at least 10 days prior to the October 1, 2014 deadline, Wells Fargo anticipated rejecting the Final Settlement Agreement on behalf of Loan Group II. *See id.* Alternatively, if Wells Fargo received a direction to accept the Final Settlement Agreement from investors satisfying a requisite holding requirement by the deadline, Wells Fargo anticipated accepting the Final Settlement Agreement with respect to Loan Group II. *See id.* If Wells Fargo did not receive a direction and indemnity to reject the Final Settlement Agreement from investors satisfying the requisite holding requirement, Wells Fargo anticipated accepting the Final Settlement Agreement. *See id.* Wells Fargo advised that in each of these potential scenarios, its decision to accept the Final Settlement Agreement would be subject to judicial approval. *See id.*

62. The Consent Solicitation for Loan Group II ultimately resulted in 53.6% of responding investors voting in favor of accepting the Final Settlement Agreement and 21.6% of responding investors voting in favor of rejecting the Final Settlement Agreement. Based on the results of the Consent Solicitation and the reasons previously discussed, Wells Fargo determined to accept the Final Settlement Agreement for Loan Group II.

63. On October 1, 2014, Wells Fargo accepted the Final Settlement Agreement as to Loan Group II, subject to judicial approval. *See* Trustees Ex. 030.

X. NOTICE TO INVESTORS OF ACCEPTANCE OF PROPOSED SETTLEMENT

64. On August 1, 2014, the Trustees provided a notice (the “August 1st Notice”) informing investors of their respective determinations concerning whether to accept or reject the Proposed Settlement for each Trust and Loan Group, and posted a copy of the August 1st Notice on the Settlement Website where it remains available for review. *See* Trustees Ex. 012.

65. Exhibit B to the August 1st Notice sets forth the Trusts and Loan Groups for each Trustee that accepted the Proposed Settlement on August 1 (collectively, the “August 1st Accepting Trusts and Loan Groups,” and as the WF/LD Trusts, the “WF/LD August 1st Accepting Trusts and Loan Groups”). Exhibit D identified that Wells Fargo had obtained an extension for the deadline to accept for Loan Group II.

66. Shortly thereafter, the Trustees, by and through their counsel, commenced this special proceeding (the “Article 77 Proceeding”) by filing a petition on August 3, 2014.

67. The Court entered an Order to Show Cause on August 15, 2014, ECF No. 40 (the “Order to Show Cause”), setting forth a comprehensive program to provide notice to investors of the Article 77 Proceeding and the Trustees’ acceptance of the Final Settlement Agreement (the “Notice Program”).

68. On August 20, 2014, the Trustees provided a notice (the “August 20th Notice”) informing investors, among other things, of: (i) the Trustees’ acceptance of the Final Settlement Agreement; (ii) the Trustees’ commencement of the Article 77 Proceeding; (iii) the Court’s entry of the Order to Show Cause; (iv) the deadline for objections to the Final Settlement Agreement; and (v) the time and place of the hearing. *See* Trustees Ex. 027. The Trustees posted a copy of the August 20th Notice on the Settlement Website, where it remains available for review.

69. Jose C. Fraga of GCG provided an affidavit, dated October 13, 2014, which was filed by Wells Fargo’s counsel, concerning the Trustees’ compliance with the Notice Program (the “Fraga Affidavit”). *See* NYSCEF No. 73. GCG provided the August 20th Notice to The Depository Trust Company (“DTC”), which disseminated the August 20th Notice in accordance with DTC’s established procedures. *See id.* ¶ 7. GCG also published the August 20th Notice in several national and international publications, including *The Wall Street Journal*, *The New York*

Times, and *The Economist Worldwide Edition*. See *id.* ¶ 3. GCG had local-language translations of the August 20th Notice published in numerous countries, including France, Germany, Italy, Netherlands, Japan, and China. See *id.* ¶ 4. GCG purchased online banner advertisements on investing websites, including [wsj.com](http://www.wsj.com) and [reuters.com](http://www.reuters.com). See *id.* ¶ 6. Finally, GCG undertook a program to send via mail to investors listed in the Certificate Registry for each Accepting Trust copies of each of the August 20th Notice, the Order to Show Cause, and the Petition. See *id.* ¶ 9.

70. For each of the WF/LD August 1st Accepting Trusts and Loan Groups, Wells Fargo provided the names and addresses of the registered certificateholders to GCG to complete the mailings required under the Notice Program, which are described in paragraph 9 of the Fraga Affidavit. Wells Fargo also provided to GCG the names and contact information for certificateholders (or their counsel) that had communicated with Wells Fargo and requested such papers, as well as all persons and entities identified in paragraphs 4(a) – (m) of the Affirmation of Robert C. Micheletto dated August 3, 2014. See NYSCEF No. 73.

71. Wells Fargo also posted a notice on its investor reporting website advising investors of the WF/LD August 1 Accepting Trusts and Loan Groups of the Settlement and Article 77 Proceeding and referring them to the Settlement Website for information about the Proposed Settlement and the Article 77 Proceeding (or, where applicable, Wells Fargo confirmed that third parties who perform investor reporting posted such a notice).

72. With respect to the Extended Acceptance Date Trusts and Loan Groups, on October 1, 2014, the Trustees provided a notice (the “October 1st Notice”) informing investors of their determination to accept the Final Settlement Agreement as to the Extended Acceptance Date Trusts and Loan Groups (the “October 1st Accepting Trusts and Loan Groups”) and posted a copy of the October 1st Notice on the Settlement Website where it remains available for

review. *See* Trustees Ex. 030. Exhibit A to the October 1st Notice identified the October 1st Accepting Trusts and Loan Groups, including Loan Group II, for which the Trustees had accepted the Settlement.

73. Shortly thereafter, on October 2, 2014, the Trustees, by and through their counsel, filed a First Amended Petition (the “First Amended Petition”), which added the October 1st Accepting Trusts and Loan Groups to the Article 77 Proceeding.

74. For the October 1st Accepting Trusts and Loan Groups, the Court entered an Order to Show Cause on October 9, 2014, NYSCEF Doc. 68, setting forth a similar comprehensive worldwide program to provide notice to investors of the Article 77 Proceeding and the Trustees’ acceptance of the Final Settlement Agreement for the Extended Acceptance Date Trusts and Loan Groups (the “Supplemental Notice Program”). Mr. Fraga provided an additional affidavit, dated November 4, 2014, which was filed by Jones Day, concerning the Trustees’ compliance with the Supplemental Notice Program. *See* NYSCEF No. 169.

VIII. THE ARTICLE 77 PROCEEDING

75. In October and November 2014, the following parties intervened in the Article 77 Proceeding and asserted objections: Ambac Assurance Corporation and The Segregated Account of Ambac Assurance Corporation (“Ambac”); Construction Laborers Pension Trust for Southern California and Laborers Pension Trust Fund for Northern California (“California Pension Funds”); DW Catalyst Master Fund, Ltd. and DW Value Master Fund, Ltd. (f/k/a Brevan Howard Credit Catalysts Master Fund Limited and Brevan Howard Credit Value Master Fund Limited) (“DW Funds”); the Federal Home Loan Bank of Boston (“FHLBB”); the National Credit Union Administration Board As Liquidating Agent (“NCUA”); QVT Fund V LP, QVT Fund IV LP, Quintessence Fund L.P., and QVT Financial LP (“QVT”); Triaxx Prime CDO

2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd., and Triaxx Prime CDO 2007-1, Ltd. (“Triaxx”); and W&L Investments, LLC (“W&L”). These objecting parties asserted objections with respect to 171 of the 319 Trusts and Loan Groups that accepted the Proposed Settlement.

76. The following objecting parties have since withdrawn from the proceeding: DW Funds, California Pension Funds, FHLBB, NCUA and Triaxx.

77. The remaining objecting parties purport to object to the Final Settlement Agreement with respect to 11 of the 319 Trusts and Loan Groups that accepted the Final Settlement Agreement. Below is a table showing the remaining objecting parties and the 11 Trusts with respect to which they have asserted objections (along with the corresponding Trustee):

Objecting Parties	Objection Trusts (Corresponding Trustee)
Ambac	SAMI 2006-AR7 (The Bank of New York Mellon) SAMI 2006-AR8 (The Bank of New York Mellon) BSMF 2006-AR2 (Wells Fargo/Law Debenture) BSMF 2006-AR4 (Wells Fargo/Law Debenture) GPMF 2005-AR5 (Wells Fargo/Law Debenture) GPMF 2006-AR2 (Wells Fargo/Law Debenture) GPMF 2006-AR3 (Wells Fargo/Law Debenture) BALTA 2006-4 (Wilmington Trust, National Association)
QVT	JPMAC 2006-WMC1 (U.S. Bank)
W&L	CHASE 2007-A3 (The Bank of New York Mellon Trust Company, N.A.) CHASE 2007-S6 (The Bank of New York Mellon Trust Company, N.A.)

78. I have reviewed the First Amended Petition and verify that the statements contained therein with respect to Wells Fargo are true and correct. At all times, Wells Fargo acted within the bounds of its discretion, reasonably, and in good faith with respect to its evaluation of the Proposed Settlement and acceptance of the Final Settlement Agreement for the WF/LD Trusts and Loan Groups. Wells Fargo rendered its decision as to each WF/LD Trust and

Loan Group based on its belief as to the best interests of the investors in the WF/LD Trusts and Loan Groups.

Mary L. Sohlberg

Mary L. Sohlberg

Subscribed and sworn to before me,
A Notary Public, this 15th day of January, 2016

Patricia S. McDowell

Notary Public

