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

In the matter of the application of WELLS FARGO BANK, NATIONAL ASSOCIATION, 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, 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), Petitioners, For Judicial Instructions under CPLR Article 77 on the Administration and Distribution of a Settlement Payment.	Index No. 657387/2017 IAS Part 60 Hon. Marcy Friedman **STATEMENT OF GROUNDS FOR OBJECTION TO PETITION**

STATEMENT OF GROUNDS FOR OBJECTION TO PETITION

I. PRELIMINARY STATEMENT

Respondent DW Partners LP ("DW"), by and through its undersigned counsel, respectfully submits this Statement of Grounds for Objection, together with the Affidavit of Houdin Honarvar ("Honarvar Aff.") and Affirmation of Amiad Kushner ("Kushner Aff."), to the Petition[1] filed by Wells Fargo Bank, National Association, 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, HSBC Bank U.S.A., N.A., and Deutsche Bank National Trust Company, in their respective capacities as trustees, indenture trustees, successor trustees, securities administrators, paying agents, and/or calculation agents (the "Trustees" or

[1] Unless otherwise noted, capitalized terms herein have the same meaning as those terms are defined in the Petition.

"Petitioners") for the residential mortgage-backed securitization trusts at issue in this proceeding (the "Settlement Trusts") (*See* Petition, Ex. A).

DW acts as an investment adviser for private investment vehicles that are beneficial owners of certificates in the Settlement Trusts, including without limitation the following certificates:

Trust	**Certificate**
BSABS 2006-HE3	M3
BSMF 2006-AR1	2A2
BSMF 2006-AR3	2A2A
BSMF 2007-AR2	A2
BSMF 2007-AR4	1A2
GPMF 2005-AR3	1A3
GPMF 2005-AR4	4A2
GPMF 2006-AR1	A2A
SACO 2005-2	M4
SAMI 2006-AR5	4A2
SAMI 2007-AR4	A6

(Honarvar Aff. ¶ 3) (collectively, the "DW Trusts"). These Settlement Trusts are entitled to a portion of the $4.5 billion settlement between JPMorgan Chase & Co., its direct and indirect subsidiaries ("JPMC"), and a group of institutional investors, entered November 15, 2013, and modified as of July 29, 2014. The DW Trusts are all administered by Petitioner Wells Fargo Bank, N.A., ("Wells Fargo"), with the exception of BSABS 2006-HE3, which is administered by U.S. Bank National Association ("U.S. Bank").

In the Petition, Petitioners have asked the Court for an interpretation of certain terms of the settlement agreement with JPMC (the "Settlement Agreement") and of the terms of the governing documents for the Settlement Trusts, including (1) whether, for certain trusts, the Petitioners should use the Settlement Payment to write up the balances only of "subordinated" certificates, Pet. ¶¶45-48 & Ex. E, and (2) whether to distribute funds to, or write up the

certificate balances of, certificates in certain trusts with aggregate certificate principal balances of zero. Pet. ¶¶53-62 & Ex. G. DW's certificates in the BSMF 2006-AR1, BSMF 2006-AR3, BSMF 2007-AR2, BSMF 2007-AR4, GPMF 2005-AR3, GPMF 2005-AR4, GPMF 2006-AR1, SAMI 2006-AR5, and SAMI 2007-AR4 trusts would each be affected by any instruction from the Court about whether write-ups from the Settlement Payment should be restricted to "subordinated" or "Class B" certificates. Each of DW's certificates in these trusts is a "Senior Certificate" or "Class A" certificate—bonds that are senior in priority to the subordinated Class B certificates. Each of these certificates was originally rated "AAA." According to the PSAs for the DW Trusts, losses are allocated first to the Class B certificates before the Class A certificates incur any losses.[2]

DW's holdings in the BSABS 2006-HE3 and SACO 2005-2 trusts will be affected by any instruction by the Court as to whether certificates with zero balances should receive distributions or have their certificate balances increased as a result of the Settlement Payment. The balances of the certificates DW holds in these trusts have been reduced to zero because of losses on the mortgage loans for which JPMC made representations and warranties.

As set forth in further detail below, for the DW Trusts, the plain text of the Settlement Agreement, together with the text and structure of the documents governing the DW Trusts (the "DW Governing Agreements"), provide that "subsequent recoveries," such as the Settlement Payment, should be applied to write up the balances of all certificates, not merely subordinated certificates. Any contractual language in the pooling and servicing agreements ("PSAs") for the DW Trusts read to the contrary is a misinterpretation of that language or is a scrivener's error

[2] *See, e.g.*, Kushner Aff. Ex. A (SAMI 2007-AR4 PSA) § 6.02 (losses to be allocated according to definition of "Applied Realized Loss Amount"); *id.* art. I at 3 ("Applied Realized Loss Amount" definition providing for allocating losses in reverse order of priority).

and should be reformed to match the DW Trusts' prospectus supplements ("ProSupps") and the intent of the parties to the Settlement Agreement and the governing contracts.

Further, to effectuate the unmistakable intent of the Settlement Agreement, write-ups must be applied to classes with a current Certificate Principal Balance ("CPB") of zero, such as DW's Class M3 certificates in the BSABS 2006-HE3 trust and DW's Class M4 certificates in the SACO 2005-2 trust, and this write-up must occur *before* each Trusts' Allocable Share is distributed to certificateholders (the "Write-Up First Method"). The funds that the Trustees and JPMC earmarked in the Settlement Agreement are intended to compensate each Group's certificateholders for significant losses incurred as a result of breaches of Representations and Warranties ("R&Ws") with respect to the underlying mortgage loans. If the write-ups are not applied to all classes of Certificates and just to the subordinated classes, funds specifically earmarked for certain loan groups will end up being distributed to other certificateholders, in contravention of the intent of the Settlement Agreement and the structure of the DW Governing Agreements. The only way to prevent such an anomalous result is to use the Settlement Payment to write up the balances of, all classes.

Finally, the Retired Class Provision should not be read to preclude DW's certificates in the DW Trusts from being written up. A careful reading of the PSAs reveals that certificates in the DW Trusts with a CPB of zero cannot possibly be considered "retired." The PSAs set forth several conditions that the Trustee must satisfy before a class of certificates can be considered "retired"— none of which were satisfied here. *See* BSABS 2006-HE3 PSA § 11.02; SACO 2005-2 PSA § 10.02. Further, the placement of the Retired Class Provision within the "Distributions" section of the PSAs indicates that the provision is only intended to be triggered where a class of certificates is reduced to zero as a result of full repayment of its principal

balance—not where, as here, the certificates' CPBs have been written down to zero as a result of the application of losses (losses caused by the poor performance of the underlying Mortgage Loans).

The only interpretation of the Settlement Agreement and the DW Governing Agreements that is logical, equitable, and consistent with the intent of the parties, is to allow all classes of certificates to be written-up to the extent of prior losses.

II. SUBSEQUENT RECOVERIES FOR THE DW TRUSTS SHOULD BE APPLIED TO WRITE UP ALL CERTIFICATE BALANCES.

A common sense and plain reading of the Settlement Agreement and DW Governing Agreements, as well as the explicit intent of the parties in structuring the Settlement Agreement, makes it clear that the Subsequent Recoveries obtained from the Settlement Funds should be applied to write up *all* certificate balances in the DW Trusts.

The Settlement Agreement sets out a specific method for allocating subsequent recoveries to write up bonds. Specifically, the agreement requires trustees to distribute the Allocable Share "***in the reverse order of previously allocated losses***, to increase the balance of each class of securities . . . to which such losses have been previously allocated." Settlement Agreement § 3.06(b) (emphasis added). When a DW Trust experiences losses, the DW Governing Agreements provide for that certificate's "principal balance" to be written down so that the certificate will receive smaller principal distributions in the future. *See*, *e.g.,* SAMI 2007-AR4 PSA art. 1 at 5 (defining "Class A Principal Distribution Amount" which takes into account both the current CPB and any applied Realized Losses.) However, when a DW Trust then recovers funds related to a loss—such as when defective loans are repurchased or when the trust receives a deficiency judgment for a foreclosed loan—those funds are allocated as

"subsequent recoveries" to increase certificate balances, thus increasing the certificates' entitlement to future principal distributions and reversing the prior losses.

Losses are allocated to the most junior bonds first in the DW Trusts, and then later to more senior bonds. *See, e.g.*, *id.* at art. 1 at 3 (defining "Applied Realized Loss Amount"). That allocation follows the basic principle in RMBS deals of "subordination"—that junior certificates should suffer losses before senior certificates. As a result, the Settlement Agreement's command to write up bonds in the reverse order of previous losses expressly contemplates that more senior certificates be written up before more junior bonds when the trust receives its Allocable Share.

This phrasing was no accident. As Petitioners' witnesses testified, the goal of the Settlement Agreement was for "the distribution of [settlement] proceeds [to] go[] to senior certificateholders first regardless of what caused their losses." Kushner Aff., Ex. A (transcript) at 358:14-17 (testimony of Loretta Lundberg). That testimony reflects the common-sense understanding in the RMBS industry that senior certificates should be compensated ahead of more junior certificates such as the Class B certificates.

Several terms of the PSAs governing the DW Trusts follow this common-sense understanding. For example, certain PSAs' definition of "Realized Loss" states that, "[t]o the extent the Servicer receives Subsequent Recoveries with respect to any Mortgage Loan, the amount of the Realized Loss with respect to that Mortgage Loan will be reduced to the extent such recoveries are applied to reduce the Current Principal Amount of ***any Class of Certificates*** (other than the Class XP, Class X, Class B-IO and Residual Certificates) on any Distribution Date." SAMI 2007-AR4 PSA art. I at 33 (emphasis added).[3] That provision is not limited to

[3] *See also id.* Ex. G (SAMI 2006-AR5 PSA) art. I at 23 (same); *id.* Ex. H (BSMFT 2006-AR1 PSA) art. I at 37 (same); *id.* Ex. F (SAMI 2006-AR3 PSA) art. I at 39-40 (same); *id.* Ex. I (BSMF 2007-AR2 PSA) art. I at 26-27 (same); *id.* Ex. D (BSMF 2007-AR4 PSA) art. I at 18-19 (same).

subordinate certificates, confirming that Class A Certificates such as DW's certificates, must be written up when subsequent recoveries are received.

Likewise, the "Current Principal Amount" for the SAMI 2007-AR2 and SAMI 2007-AR4 trusts is defined as, "with respect to ***each Class of Class A Certificates*** and Class B Certificates, the initial principal amount of such Certificate . . . *plus* any Subsequent Recoveries added to the Current Principal Amount of such Certificates pursuant to Section 6.02(h)." *See, e.g.*, SAMI 2007-AR4 PSA art. I at 14 (emphasis added); SAMI 2007-AR2 PSA) art. I at 10 (same). As with the definitions of "Realized Loss," the definitions of "Current Principal Amount" in these trusts confirm that the Class A Certificates may receive write-ups as a result of subsequent recoveries.

The ProSupps for each of the DW Trusts likewise do not limit the application of subsequent recoveries to subordinated bonds. For example, the ProSupp for the SAMI 2007-AR4 trust states that "to the extent the Servicer receives Subsequent Recoveries with respect to any mortgage loan, the amount of the Realized Loss with respect to that mortgage loan will be reduced to the extent such recoveries are applied to reduce the Current Principal Amount of ***any class of Certificates*** (other than the Class XP, Class X, Class B-IO and Residual Certificates) on any distribution date." Kushner Aff. Ex. B (SAMI 2007-AR4 ProSupp) at 74 (emphasis added).

For the DW Trusts, any reading of the language in the PSAs suggesting that subsequent recoveries should apply to write up the CPB of subordinate, or Class B, certificates only (*see e.g.*, Pet. ¶¶ 45-48) is a misinterpretation of that provision or is clear scrivener's error in light of the clear intent of the parties that drafted the PSAs as well as the Settlement Agreement. For example, Section 6.02(b) of the SAMI 2007-AR4 PSAs states that:

> If, after taking into account such Subsequent Recoveries, the amount of a Realized Loss is reduced, the amount of such ***remaining***

> Subsequent Recoveries will be applied to increase the Current Principal Amount of the Class of Subordinate Certificates with the highest payment priority to which Applied Realized Loss Amounts have been allocated, but not by more than the amount of Applied Realized Loss Amounts previously allocated to that Class of Subordinate Certificates.

See, e.g., SAMI 2007-AR4 PSA §6.02(b) (emphasis added). A plain reading of this section of the PSA combined with the clear intent of the parties, as discussed above, demonstrates that only subsequent recoveries that remain, or are left-over, after applying write-ups to senior certificates will be applied to write up the subordinate certificates. This is further supported by the definitions of Realized Loss and Current Principal Amount, which allow both write-downs and write-ups to be applied to "any Class of Certificates" and "each Class of Class A Certificates," respectively. *Id.* at art. I. at 33, (definitions of "Realized Loss" and "Current Principal Amount").

To the extent that provisions such as Section 6.02 of the SAMI 2007-AR4 PSA are interpreted as limiting write-ups to reverse Realized Losses on "Subordinate Certificates" only, such language is an obvious scrivener's error that should be reformed to conform with the PSA's other provisions that permit write-ups to be applied to the Class A Certificates. A court may correct a scrivener's error when the agreement does not accurately express the parties' intentions as manifested by their prior agreements, course of performance, or practical interpretation of the contract. *See, e.g.*, *Warberg Opportunistic Trading Fund L.P. v. GeoResources, Inc.*, 151 A.D.3d 465, 470-71 (1st Dep't 2017).

In any event, such a restriction on write-ups is contrary to the intent of the parties in entering into the Settlement Agreement. If only subordinated bonds were permitted to be written up, that result would violate the Settlement Agreement's command to write up bonds "in the reverse order of previously allocated losses," Settlement Agreement § 3.06(b), because Class A

certificates, like DW's, have suffered losses that were allocated ***after*** the subordinate certificates. *See, e.g.*, Kushner Aff. Ex. C (SAMI 2007-AR4 remittance report) (showing that DW's certificates, the A6 tranche, have been allocated losses); *see also* SAMI 2007-AR4 PSA art. I at 3 (order of priority for allocating losses). The Court should apply the plain text of the Settlement Agreement and require bonds to be written up in the reverse order of previous losses, whether or not such bonds are "subordinated."

Any objection to that language in the Settlement Agreement is also barred by *res judicata*, given that this Court approved the Settlement Agreement in a prior Article 77 proceeding brought by the same Petitioners and covering the same trusts. For "judicially settled accounting decrees" like instruction proceedings, the court's "decree is conclusive and binding with respect to all issues raised and against all persons over whom [the court] obtained jurisdiction." *In re Hunter*, 4 N.Y.3d 260, 270 (2005). Preclusion covers not just all "issues that were decided," but also "those that ***could have been raised*** in the accounting." *Id.* at 270 (emphasis added).

This Court's prior Article 77 proceeding was extensively litigated, including discovery and a four-day evidentiary hearing. *See In the Matter of the Application of U.S. Bank, N.A.*, No. 652382/2014, 2016 WL 9110399, at *2 (Sup. Ct. N.Y. Cty. Aug. 12, 2016) (recounting procedural history). Any interested person could have appeared during that proceeding and objected on the ground that the Settlement Agreement's write-up instructions conflicted with the language in any of the individual PSAs for trusts that would be affected. No person did so and the Court should preclude anyone from attempting to do so now.

The parties' manifest intent for the DW Trusts was to write up ***all*** certificate balances with subsequent recoveries, not merely subordinate certificates. First, such manifest intent is

shown by the multiple clauses of each PSA that do ***not*** restrict write-ups to subordinate bonds. By contrast, there is an obvious drafting error in the PSA language that purportedly restricts write-ups. For example, in the SAMI 2007-AR4 PSA, the definition of "Current Principal Amount"—which does ***not*** limit write-ups—refers to a write-up "pursuant to Section 6.02(h)," SAMI 2007-AR4 PSA art. I at 14, but no such "Section 6.02(***h***)" exists. Rather, the PSA provision that purportedly limits write-ups is located at Section 6.02(***b***), further implying that such provision was included in error.

Second, the parties' prior agreements also show their intent to use subsequent recoveries to benefit all certificates, not merely subordinate certificates. Prior RMBS PSAs between Wells Fargo and JPMorgan entities involved write-up provisions that were not limited to subordinate certificates. *See, e.g.*, BSABS 2005-1 PSA §5.04A (providing for write-up of "each Class of Certificates ... that had been reduced by the allocation of a Realized Loss"); SACO 2005-2 PSA §5.04(b) (similar).

Moreover, even "[i]n the absence of a claim for reformation, courts may, as a matter of interpretation, carry out the intention of a contract by transposing, rejecting, or supplying words to make the meaning of the contract more clear." *Wallace v. 600 Partners Co.*, 86 N.Y.2d 543, 547 (1995). To the extent that the plain text of the Settlement Agreement and *res judicata* principles do not compel writing up all certificates, the Court should carry out the intent of the parties to the Settlement Agreement and to the PSAs to ensure that senior certificateholders can receive the benefit of the Settlement Payment write-up.

Further, to the extent that PSA language appears to limit write-ups to subordinated bonds, such language is also in conflict with the trusts' ProSupps. "Under New York law, all writings forming a part of a single transaction are to be read together." *This Is Me, Inc. v. Taylor*, 157

F.3d 139, 143 (2d Cir. 1998). As a result, courts read PSAs together with the ProSupps. *See, e.g.*, *Wells Fargo Bank, N.A. v. ESM Fund I, LP,* 785 F. Supp. 2d 188, 195 (S.D.N.Y. 2011), *aff'd sub nom. Wells Fargo Bank, N.A. v. Fin. Sec. Assur. Inc.*, 504 F. App'x 38 (2d Cir. 2012); *In re Trusteeship Created by Am. Home Mortg. Inv. Trust 2005-2*, No. 14 Civ. 2494, 2014 WL 3858506, at *20-21 (S.D.N.Y. July 24, 2014). The Court should do the same here and read any errant PSA language in light of unambiguous statements in the prospectus supplements entitling all parties to write-ups from the Settlement Payment.

Any contrary reading of the Settlement Agreement or of the PSAs would be absurd and commercially unreasonable. "[A] contract should not be interpreted to produce a result that is absurd, commercially unreasonable, or contrary to the reasonable expectations of the parties." *New York Univ. v. Pfizer Inc.*, 151 A.D.3d 42, 52 (1st Dep't 2017) (quoting *Matter of Lipper Holdings v. Trident Holdings*, 1 A.D.3d 170, 171 (1st Dep't 2003)). Given that the parties to the Settlement Agreement expressly contemplated paying the most senior bonds with losses, it would be absurd to allow write-ups to benefit only more subordinated bonds at the senior bonds' expense. Further, given that subordination is an essential form of credit enhancement for senior bonds such as DW's holdings in these trusts, it would be commercially unreasonable for senior, Class A certificates to be denied a write-up while Class B certificates gain a windfall. The Court should avoid that result and hold, consistent with the Settlement Agreement's plain text, that all classes of certificates are entitled to write-ups, but in the context of the PSAs' order of priority.

III. ZERO-BALANCE BONDS SHOULD BE WRITTEN-UP AND ARE ENTITLED TO DISTRIBUTIONS OF THE SETTLEMENT FUNDS.

The plain language of the Settlement Agreement allows a certificate with a Current Principal Amount of zero to receive a write-up as a result of the Settlement Payment. The Agreement specifies that "distribution"—the payment of cash to bondholders—and writing-up,

or increasing the principal balance of those bonds, are two separate events. In particular, the Settlement Agreement specifies that certificates should be written up "[a]fter the distribution of the Allocable Share to a ***Settlement Trust***" and not after distribution to the individual classes of certificates. Settlement Agreement § 3.06(b) (emphasis added). Further, the writing-up process "***shall not affect the distribution*** of the Settlement Payment," implying that writing-up is distinct from distribution. *Id.* (emphasis added). Because the Settlement Agreement distinguishes between "distributions" and writing-up in this manner, holders of zero-balance bonds are still entitled to have their certificate balances increased, even if they are not entitled to "distributions" during the time their bonds' balances remain at zero.

Two of the DW Trusts—SACO 2005-2[4] and BSABS 2006-HE3—contain clauses that purport to make zero-balance bonds ineligible for distributions. For example, Section 5.04 of the SACO 2005-2 PSA states that "on any Distribution Date after the Distribution Date on which the Certificate Principal Balance or Notional Balance of a Class of Class A, Class A-IO, Class M or Class B Certificates has been reduced to zero, that Class of Certificates will be retired and will no longer be entitled to distributions, including distributions in respect of Prepayment Interest Shortfalls or Net WAC Cap Rate Carryover Amounts." SACO 2005-2 PSA §5.04; BSABS 2006-HE3 PSA §6.04(b) (similar).

Notably, each PSA specifies that a "retired" bond "will no longer be entitled to ***distributions***," meaning the specific process by which money is paid out to certificateholders. SACO 2005-2 PSA §5.04(a) (emphasis added); BSABS 2006-HE3 PSA §6.04(b) (same); *cf., e.g.*, SACO 2005-2 PSA §5.04(a) (using the term "distribution" to refer to payments). The provision of these agreements for writing up bonds occurs in separate subsections of the PSAs,

[4] Petitioners originally omitted SACO 2005-2 from the list of trusts with "retired class provisions." The trust has been included in the Petitioners' amended pleading. *See* Pet. at 37.

and which occurs "***in addition to***," and thus separate from, "distributions." *See, e.g.*, SACO 2005-2 PSA §5.04(b) (emphasis added). As with the Settlement Agreement, the distinction between "writing up" and "distributing" certificates in the PSAs shows that bonds with zero principal balances can still be written up, even if they are not currently entitled to distributions.

The specific write-up provisions of the PSA also demonstrate that bonds with zero principal balances are eligible to be written up when subsequent recoveries are received. While ***distributions*** are not made to so-called "retired" bonds, *i.e.*, bonds with a zero principal balance, under the PSA, there is no such limitation on ***writing up*** bonds with a zero principal balance. Rather, subsequent recoveries "shall be applied to increase the Certificate Principal Balance of the Class of Certificates to which the highest payment of priority to which Realized Losses have been allocated," whether or not any given Class of Certificates is "retired." *See* BSABS 2006-HE3 PSA § 6.04(b); SACO 2005-2 PSA § 5.04(b). The fact that distributions are made differently from write-ups—and that only the former process excludes "retired" bonds—shows that bonds with zero balances are still entitled to have their balances written up.

Other provisions of the PSA confirm that so-called "retired" bonds should still have their balances written up when the trust receives a subsequent recovery. First, the PSAs contain provisions for how to cancel certificates upon the final distribution to a class—a process that involves the "presentation and surrender" of certificates at the trustee's corporate trust office. BSABS 2006-HE3 PSA §11.02; SACO 2005-2 PSA §10.02. When a final distribution is made, such bonds are not merely "retired," but "***cancell[ed]***." BSABS 2006-HE3 PSA §11.02 (describing "surrender ... for payment of the final distribution and cancellation") (emphasis added); SACO 2005-2 PSA §10.02 (same). Similarly, if a certificateholder opts to transfer or exchange its certificates, or if certificates are lost or mutilated, those certificates must be

"surrendered" and "shall be cancelled." BSABS 2006-HE3 PSA §§ 5.03, 7.02(b); SACO 2005-2 PSA §§ 6.02(a), 6.03.

By contrast, the terms of the PSAs addressing distributions to bonds with zero balances say nothing about cancelling or surrendering those certificates, and the Trustee has not taken any steps to cancel those certificates. By definition, the bonds are therefore "outstanding" under the PSAs. Each contract specifies that "all Certificates" are deemed "Outstanding" "except [for] (a) Certificates theretofore canceled" or "delivered . . . for cancellation" and "Certificates in exchange for which or in lieu or which other Certificates have been executed and delivered." SACO 2005-2 PSA art. I at 26; BSABS 2006-HE3 PSA art. I at 44. Because zero-balance bonds are still "outstanding" and have not been cancelled, they are therefore entitled to the same write-ups as any other outstanding certificate.

Moreover, the ProSupps for the DW Trusts say nothing about cancelling or denying write-ups to bonds with certificate balances of zero. *Cf.* Kushner Aff. Ex D (SACO 2005-2 private placement memorandum) at 26-30 (describing the trust's waterfall without stating that so-called "retired" bonds are ineligible for write-ups); *id.* Ex. E (BSABS 2006-HE3 ProSupp) (same). Those offering documents—which must be read together with the PSAs—further demonstrate that bonds with a zero certificate principal balance may receive write-ups even if they are not currently entitled to distributions. The Court should instruct Wells Fargo and U.S. Bank to follow the plain text of the Settlement Agreement and the PSAs and write up bonds in the contracts' order of priority, whether or not any particular bond has been "retired."

PRAYER FOR RELIEF

DW respectfully requests that the Court enter judgment as follows:

a) Instruct Wells Fargo that, for the BSMF 2006-AR1, BSMF 2006-AR3, BSMF 2007-AR2, BSMF 2007-AR4, GPMF 2005-AR3, GPMF 2005-AR4, GPMF 2006-AR1, SAMI 2006-AR5, and SAMI 2007-AR4 trusts, the Subsequent Recoveries constituting the Allocable Share for each trust shall be applied to write up the certificate principal balances of all certificates according to the governing documents' order of payment priority, not merely the certificate principal balances of subordinated certificates;

b) Further instruct U.S.Bank, that, for the BSABS 2006-HE3 and SACO 2005-2 trusts, the Settlement Payment should be applied to increase the certificate balance of all certificates according to the DW Governing Documents' order of payment priority, without regard to whether any certificate has a zero certificate principal balance; and

c) Granting such other, further, and different relief as may be just and proper.

Dated: January 29, 2018
New York, New York

Respectfully Submitted,

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