

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, 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),

Petitioners,

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

Index No. 657387/2017

Assigned to: Crane, J.

**AFFIRMATION OF
CLAY J. PIERCE**

Clay J. Pierce, an attorney duly admitted to practice law in the State of New York, hereby affirms under penalties of perjury, pursuant to CPLR § 2106, as follows:

1. I am a Partner with the law firm Faegre Drinker Biddle & Reath LLP, counsel for petitioner Wells Fargo Bank, National Association (“Petitioner” or “Wells Fargo”) in the above-captioned action. I make this application in support of the Proposed Order to Show Cause filed by Wells Fargo contemporaneously herewith.

2. I am familiar with the proceedings in this case and have personal knowledge of the facts stated in this affirmation, all of which are true and correct.

3. All capitalized terms not defined herein have meanings set forth in the Petition (NYSCEF [No. 1](#)) and in the Wells Fargo Objection (defined below) (NYSCEF [No. 988](#)).

4. On February 13, 2020, the Court issued a Decision and Order (NYSCEF [No. 843](#)) (the “Merits Ruling”) addressing the settlement payment administration and distribution issues raised in the Petition.

5. The First Department, Appellate Division affirmed the Merits Decision on August 19, 2021. Subsequently, certain parties filed motions seeking discretionary leave to appeal to New York’s Court of Appeals.

6. On April 26, 2022, the New York Court of Appeals denied the motions seeking leave to appeal. The Court of Appeals also denied the movants’ subsequent motions for re-argument.

7. On August 30, 2022, the Institutional Investors¹ moved, on behalf of all interested parties (including the affected Petitioners), by Order to Show Cause for the Entry of a Proposed Final Judgment and Order for 37 trusts (NYSCEF [No. 982](#)) (the “Original Proposed Order”). The Court signed the Original Proposed Order on August 31, 2022 (NYSCEF [No. 983](#)).

8. On September 14, 2022, Wells Fargo, an interested party (and affected Petitioner), filed papers in partial opposition to the Institutional Investors’ motion (NYSCEF [No. 988](#) and [No. 989](#)) (the “Wells Fargo Objection” or the “Objection”). In its Objection, Wells Fargo asked the Court to remove 27 Settlement Trusts from the Institutional Investors’ Original Proposed Order pending further guidance from the Court regarding interpretative issues in the governing Pooling and Servicing Agreements (the “PSAs”) that were implicated by the distributions required by the Original Proposed Order.

¹ Capitalized Terms not otherwise defined herein shall have the meaning set forth in the [Proposed] Final Judgment and Order Concerning 24 Trusts (24 Trusts Proposed Judgment).

9. Specifically, Wells Fargo sought instruction on: first, the manner in which certificate holders are to be written up when a PSA governing the trusts in Wells Fargo's Objection directs write-ups to be conducted on the basis of undefined terms such as "payment priority," "highest payment priority," or "seniority" (the "Allocation Issue"); and second, how to apply provisions in certain of the governing PSAs for the trusts in Wells Fargo's Objection addressing distributions made after the date that the PSAs define as the "Cross-Over Date" (the "Cross-Over Date Issue").

10. On September 19, 2022, Wells Fargo submitted the Supplemental Affirmation supplementing its Objection and limiting its applicability to 24 of the 27 Settlement Trusts originally identified in the Objection that are impacted by the above-referenced issues (the "Objection Trusts").

11. On October 4, 2022, the Parties appeared before this Court to address Wells Fargo's Objection to the Original Proposed Order. At that hearing, the Court ordered the Parties to brief their respective positions on Wells Fargo's Objection by November 3, 2022.

12. On October 5, 2022, the Court issued an Interim Decision and Order (NYSCEF No. 1001): (i) denying immediate approval of the Original Proposed Order; (ii) requiring the parties to present the Court with a joint proposed order for those Settlement Trusts not implicated by the issue identified in the Objection; and (iii) setting a briefing schedule on the substantive issues raised in the Objection, with opening briefs due on November 3, 2022.

13. On November 3, 2022, counsel for the Institutional Investors emailed the Court to advise that the parties had made progress in resolving the issues raised in the Wells Fargo Objection and, consistent therewith, requested that the Court provide the interested parties additional time to resolve the issues raised in the Wells Fargo Objection.

14. On November 10, 2022, the Institutional Investors and Nover (defined below) submitted memoranda to the Court advising that they had reached an agreement in principle concerning the issues raised in the Wells Fargo Objection, and requesting additional time to finalize the details of the proposed final judgment for the Objection Trusts (the “24 Trust Proposed Judgment”).

15. On November 14, 2022, the Court adjourned the hearing on Wells Fargo’s Objection to December 8, 2022 at 9:30 AM.

16. On December 8, 2022, the Court further adjourned the hearing on Wells Fargo’s Objection to December 16, 2022 at 11:30 AM.

17. Prior to the December 16, 2022 hearing, counsel for Nover informed Wells Fargo that, at the hearing, it would request that the Court enter an order directing Wells Fargo to provide a submission to the Court modeling the terms of the latest draft of the 24 Trust Proposed Judgment with respect to the Cross-Over Date issue identified in Wells Fargo’s Objection.

18. On December 16, 2022, the Court held a hearing during which the Court stated that it would entertain an order directing Wells Fargo to model the proposed distribution methodology in one of the Subject Trusts for the Settlement Payment and for ordinary course distributions for a limited time thereafter, the terms of such order to be agreed to and submitted by the parties.

19. On January 20, 2023, the Court held a hearing in which it ordered all parties to confer on the proposed order for Wells Fargo to model the proposed distribution methodology in one of the Subject Trusts on the basis of the draft 24 Trust Proposed Judgment circulated to all parties.

20. On January 26, 2023, the Court entered the Order that Petitioner Prepare Exemplar Modeling Submission in Aid of Proposed Distribution Order (“Modeling Order”), which attached

as Exhibit A a draft of the 24 Trust Proposed Judgment (NYSCEF [No. 1016](#)), ordering Wells Fargo to file an exemplar modeling submission (“Modeling Submission”) by January 31, 2023.

21. On January 31, 2023, Wells Fargo filed the Modeling Submission based on the agreed upon draft of the 24 Trust Proposed Judgment (NYSCEF [No. 1018](#)) pursuant to the Modeling Order entered on January 26, 2023.

22. Pursuant to the terms of the Modeling Order, the Responding Parties, as defined therein, were required to inform Wells Fargo whether they consent to entry of an Order to Show Cause why an order substantially in the form of the 24 Trust Proposed Judgment should not be entered by February 4, 2023 at 5:00PM EST. A true and correct copy of the 24 Trust Proposed Judgment is attached hereto as Exhibit A. No Responding Party objected to entry of the order to show cause why the 24 Trust Proposed Judgment not be entered.

23. Petitioners take no position on whether the instructions in the 24 Trust Proposed Judgment concerning the resolution of the issues raised in the Wells Fargo Objection comport with or were resolved by the Merits Ruling, and further, Petitioners reserve the right to seek additional clarification or instruction regarding any unforeseen consequences that may arise due to the implementation of the 24 Trust Proposed Judgment.

24. Wells Fargo agrees to implement the 24 Trust Proposed Judgment, notwithstanding that Wells Fargo initially objected to the entry of the Original Proposed Order. Wells Fargo understands the Court’s Order to be a binding instruction with respect to the Objection Trusts.

25. Consistent with prior instructions by this Court, the Proposed Order to Show Cause sets a date by which parties may file papers opposing entry of the 24 Trust Proposed Judgment. In addition, Wells Fargo has included in the Proposed Order to Show Cause a provision requiring

that, within 21 days of the entry of the Proposed Order to Show Cause, Petitioners cause notice of the hearing to be made by:

- Mailing a copy of a notice substantially in the form attached as Exhibit B hereto (the “Notice”) as well as the Order to Show Cause; the Affirmation and Supplemental Affirmation of Clay J. Pierce in Partial Opposition to the Institutional Investors’ Order to Show Cause Seeking Entry of Final Judgment and Order for 37 Trusts; and the [Proposed] Final Judgment and Order Concerning 24 Trusts (the “24 Trust Proposed Judgment”) (collectively, the “Notice Documents”) to all certificateholders listed on the certificate registry for each of the Trusts subject to the 24 Trust Proposed Judgment and to any certificateholder in a Trust subject to the 24 Trust Proposed Judgment (or its counsel) that has requested such papers from any Petitioner;
- Electronically transmitting the Notice to The Depository Trust Company, which will post the Notice in accordance with its established procedures; and
- Electronically posting the Notice Documents to <http://www.rmbstrusteesettlement.com>.

(the “Notice Program”). Any opposition papers by any interested party² to the entry of the [Proposed] Final Judgment and Order Concerning 24 Trusts are to be served at least two business days prior to the return date of this motion, by e-filing and by email upon all appearing counsel for the parties. Any opposition papers by parties that have not previously appeared in this action

² The following parties have standing to appear with respect to the Trusts listed on Exhibit A to the 24 Trust Proposed Judgment are AEGON USA Investment Management, LLC, 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 (Fannie Mae), Goldman Sachs Asset Management L.P., Voya Investment Management LLC, Invesco Advisors, Inc., Kore Advisors, L.P., Metropolitan Life Insurance Company, Pacific Investment Management Company LLC, Teachers Insurance and Annuity Association of America, the TCW Group, Inc., Thrivent Financial for Lutherans, and Western Asset Management Company (each for themselves and, to the extent applicable, as investment managers of funds and accounts, and collectively, the “Institutional Investors”); Ambac Assurance Corporation; American General Life Insurance Company, American Home Assurance Company, Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, Pa., The United States Life Insurance Company in the City of New York, and The Variable Annuity Life Insurance Company; Ellington Management Group, L.L.C.; Tilden Park Investment Master Fund LP, Tilden Park Management I LLC, and Tilden Park Capital Management LP, each on behalf of itself and its advisory clients; and Nover Ventures, LLC (“Nover”).

opposing entry of the [Proposed] Final Judgment and Order Concerning 24 Trusts may be filed only if such opposition is limited to objections concerning how Wells Fargo should treat the Cross-Over Date Issue in connection with all future normal course activity, such oppositions to be served at least two business days prior to the return date of this motion, by e-filing and by email upon all appearing counsel for the parties.

26. Wells Fargo has proposed the Notice Program described above because the 24 Trust Proposed Judgment instructs Wells Fargo regarding how to address the Cross-Over Date Issue not only with respect to the Allocable Share, but also in connection with all future normal course distributions. Petitioner originally sought instruction only regarding distribution issues related to the Allocable Share. Since the 24 Trust Proposed Judgment addresses distributions other than the Allocable Share, Wells Fargo believes that further notice to the affected investors is appropriate.

27. For the reasons set forth above, Wells Fargo respectfully requests that the Court enter the 24 Trust Proposed Judgment. In making this request, Wells Fargo reiterates that it takes no position on whether the instructions in the 24 Trust Proposed Judgment comport with or were resolved by the Merits Ruling, and specifically reserves its right to seek additional clarification or instruction regarding any unforeseen consequences that may arise due to the implementation of the 24 Proposed Judgment.

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

Dated: February 6, 2023
New York, New York

FAEGRE DRINKER BIDDLE & REATH LLP

By: /s/ Clay J. Pierce
Clay J. Pierce

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*Counsel for Petitioner Wells Fargo Bank, National
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CERTIFICATION PURSUANT TO RULE 17 OF THE COMMERCIAL DIVISION

I, Clay J. Pierce, hereby certify that the filed document to which this certification is attached contains 1,996 words in compliance with the word count limit of Rule 17 of the Commercial Division.

Dated: February 6, 2023
New York, New York

FAEGRE DRINKER BIDDLE & REATH LLP

/s/ Clay J. Pierce
CLAY J. PIERCE

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