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VIA E-FILING AND HAND DELIVERY

Hon. Marcy S. Friedman
New York State Supreme Court
60 Centre Street, Courtroom 248
New York, NY 10007

Re: *In re: Application of Wells Fargo Bank, et al., Petitioners, for Judicial Instructions under CPLR Article 77*, Index No. 657387/2017

Dear Justice Friedman:

I write on behalf of the Challenging Respondents in response to the May 14, 2018 letter to the Court from counsel for Nover Ventures, LLC ("Nover"). Nover's May 14 letter was submitted pursuant to the Court's direction at the May 7 hearing on the Challenging Respondents' motion to limit standing that Nover advise the Court whether it "will seek to make arrangements to have their Trustee represent their interests in this proceeding in the event they are found not to have the right in their own capacity to participate in this proceeding." (Tr. 67:9-12). In answer to that question, Nover has stated,

> Should the Court determine that Nover cannot participate in its own capacity, Nover will seek to make arrangements to have the . . . trustees represent its interests in this proceeding and respectfully requests the Court allow it to do so. Where Nover is the controlling class holder, it has already begun that process. Nover will seek to do so for its other . . . holdings, if necessary.

The Challenging Respondents respectfully submit that Nover's response is inconsistent with the Court's direction insofar as Nover states an intention to begin the process of involving trustees for the investment vehicles in which it lacks a controlling interest only "if necessary" – *i.e.*, only if and when the Court rules that Nover lacks standing to appear with respect to those vehicles. In stating this position, Nover assumes that the Court's intention at the May 7 hearing was to give Nover a cost-free hedge against an unfavorable ruling on the standing motion, such that Nover can sit on its hands while it hopes for a favorable ruling and need only make efforts to involve its trustees – and incur the costs and potential indemnity obligations associated with such

efforts – in the event the ruling is unfavorable. The Challenging Respondents, on the other hand, understood the Court to have afforded Nover not a hedge, but possibly a last chance to begin efforts immediately following the hearing to involve its trustees, so that in the event the Court ruled that Nover lacks standing, the Court, if it determined to do so, could permit Nover's trustees to substitute in for Nover without delaying the progress of this proceeding. Accordingly, the Challenging Respondents respectfully request that, in the event the Court rules that Nover lacks standing but nevertheless permits its trustees to appear in this proceeding, the Court only permit those trustees whose agreement to appear Nover has obtained in writing at the time of the Court's ruling.[1]

This request notwithstanding, the Challenging Respondents, first and foremost, maintain their position that Nover's involvement of *any* trustees in the proceeding at this late date is untimely and will prejudice the interests of certificateholders who appeared timely, as Nover did not seek to do so either prior to the January 29, 2018 appearance deadline or even after it became public in pleadings filed on April 12, 2018 that HBK had done so as a contingency.

Respectfully submitted,

/s/ *Kevin S. Reed*

Kevin S. Reed

[1] Nover's letter is intentionally ambiguous on a separate issue; namely, the number of independent investment vehicles in which Nover alleges it has a sufficient interest to permit it to direct the trustees. Nover's statement that it will "seek to make arrangements to have the . . . trustees represent its interests" does not establish that Nover has the legal right or the financial wherewithal to issue a binding direction to *even one* of the trustees of the vehicles in which Nover invested. Nover's dissembling response should be treated as a refusal to answer the Court's question: If Nover can direct a trustee, it should do so now; if it cannot, it should say so. There is no reason to delay these proceedings when, as here, Nover has the ability to answer the Court's direct question and chose not to do so.