

At IAS Part 60 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York on the _____ day of _____, 2020

P R E S E N T : Hon. Marcy S. Friedman, Justice.

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 Distribution of a Settlement Payment.

Index No. 657387/2017

**[PROPOSED]
PARTIAL SEVERANCE
ORDER AND PARTIAL
FINAL JUDGMENT
(4 SETTLEMENT
TRUSTS)**

WHEREAS, the Petitioners identified in the above case caption commenced this proceeding under CPLR Article 77 by filing a petition (NYSCEF No. 1) (the “Petition”) seeking judicial instructions concerning the administration and distribution of a settlement payment (the “Settlement Payment”) for 270 residential mortgage-backed securities trusts identified in Exhibit A to the Petition (the “Settlement Trusts”) under a settlement agreement dated as of November 15, 2013 and modified as of July 29, 2014 (the “Settlement Agreement”); and

WHEREAS, all capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Petition; and

WHEREAS, pursuant to the Settlement Agreement, the Settlement Payment is to be apportioned among the Settlement Trusts, including the individual loan groups therein and classes of principal only certificates therein, based on “Allocable Shares” calculated in an expert report filed with the Court at NYSCEF Nos. 178 and 179; and

WHEREAS, by Order to Show Cause dated December 19, 2017 and Interim Order dated December 20, 2017 (collectively, the “December Orders”), the Court authorized and directed the Petitioners to place the Allocable Shares for the Settlement Trusts in escrow; and

WHEREAS, the Court has been advised that the escrow provisions of the December Orders have been complied with and that the Allocable Shares for the Settlement Trusts, plus any investment earnings thereon, are currently invested as directed in the December Orders; and

WHEREAS, under the December Orders, the Court directed the Petitioners to provide notice of this proceeding pursuant to the notice program described in the December Orders (the “Notice Program”), and the Court found that the Notice Program was the best notice practicable, was reasonably calculated to put interested persons on notice of the proceeding, and constituted due and sufficient notice of the proceeding in satisfaction of federal and state due process requirements and other applicable law; and

WHEREAS, this Partial Severance Order and Partial Final Judgment (the “Order”) concerns the following Settlement Trusts: GPMF 2007-HE1, PRIME 2007-3, SACO 2005-WM2, and SACO 2006-1; and

WHEREAS, with respect to SACO 2005-WM2, Nover Ventures, LLC (“Nover”) had asserted an interest therein through other trust structure(s) such as CDO, re-REMIC, or NIM trusts, but not in certificates issued by SACO 2005-WM2; and

WHEREAS, in a Decision/Order dated August 7, 2018 (the “August 2018 Order”), the Court ordered that “Nover . . . [is] dismissed as respondent[] with respect to any Settlement Trust in which [it] do[es] not hold certificates” (NYSCEF No. 471), and the August 2018 Order was affirmed on appeal (NYSCEF No. 826) (the appellate decision together with the August 2018 Order, the “Standing Decision”); and

WHEREAS, in the August 2018 Order, the Court afforded Nover an opportunity to substitute into the proceeding the trustee(s) of the other trust structure(s) through which it asserted an interest in SACO 2005-WM2; and

WHEREAS, on September 13, 2018, the Court so-Ordered a Stipulation and Order Regarding Trustee Substitutions, under which Nover did not substitute into this case the trustee(s) of the other trust structure(s) through which Nover asserted an interest in SACO 2005-WM2 (NYSCEF No. 514) (the “Trustee Substitution Stipulation”); and

WHEREAS, after giving effect to the Standing Decision and the Trustee Substitution Stipulation, there are no respondents that have standing to appear with respect to SACO 2005-WM2, and no respondents appearing in the proceeding have asserted an interest in the three other Settlement Trusts subject to this Order: GPMF 2007-HE1, PRIME 2007-3, and SACO 2006-1 (together with SACO 2005-WM2, the “Subject No Appearance Settlement Trusts” and the Allocable Shares thereof, the “Subject Allocable Shares”); and

WHEREAS, U.S. Bank National Association (“U.S. Bank”) has the payment administration role for each of the Subject No Appearance Settlement Trusts (in such

capacity, the “Subject Payment Administrator”), and U.S. Bank is the trustee, successor trustee, and/or indenture trustee for PRIME 2007-3 and SACO 2005-WM2, and Wilmington Trust, National Association (“Wilmington Trust”) is the trustee, successor trustee, and/or indenture trustee for GPMF 2007-HE1 and SACO 2006-1 (in such capacities, the “Subject Trustees”) (the Subject Payment Administrator and the Subject Trustees collectively, the “Subject Petitioners”); and

WHEREAS, on February 13, 2020, the Court issued a Decision and Order (NYSCEF No. 843) (the “Merits Ruling”) concerning administration and distribution issues (the “Settlement Payment Application Process Issues”) for certain disputed Settlement Trusts; and

WHEREAS, on July 31, 2020, certain petitioners filed a Proposed Procedural Order Concerning Settlement Trusts For Which No Investors Have Appeared (NYSCEF No. 878), to propose a procedure for resolving administration and distribution issues for certain Settlement Trusts including the Subject No Appearance Settlement Trusts; and

WHEREAS, on August 5, 2020, the Court entered a Decision and Order (NYSCEF No. 879) (the “August 5 Order”) providing, among other things, that with respect to “No Appearance Settlement Trusts for which ‘all of the Settlement Payment Application Process Issues . . . can be resolved in a manner consistent with the Merits Ruling’ (Proposed Resolved No Appearance Settlement Trusts),” “the interested petitioner(s) for such Trust(s) shall file on NYSCEF proposed partial severance order(s) and partial final judgment(s), ordering that the allocable share(s) for the applicable No Appearance Settlement Trust(s) be distributed in accordance with the Merits Ruling”; and

WHEREAS, the Subject Petitioners informed the Court that, with respect to the Subject No Appearance Settlement Trusts, all of the Settlement Payment Application Process Issues can be resolved in a manner consistent with the Merits Ruling (*see* NYSCEF No. 880), and, as required by the August 5 Order, have contemporaneously filed herewith: (1) a supporting affirmation of Nidhi Nina Yadava setting forth “the basis in the Merits Ruling for the proposed distribution of the Settlement Payment [in this Order] and the provisions of the [S]ettlement [A]greement and [applicable] [G]overning [A]greement(s) . . . that support such distribution,” and (2) true and correct copies of the GPMF 2007-HE1 Indenture, PRIME 2007-3 Pooling and Servicing Agreement (“PSA”), SACO 2005-WM2 PSA, and SACO 2006-1 Indenture (each a “Subject Governing Agreement”) as well as the Settlement Agreement; and

WHEREAS, as used herein, the term “Transfer Month” means the month of the Entry Date (as defined below) if the Entry Date is on or before the eighth calendar date of that month, and otherwise the month immediately following; and

WHEREAS, as used herein, the term “Transfer Target Date” means the fifteenth day of the Transfer Month; and

WHEREAS, as used herein, the term “AS Distribution Date” means the Distribution Date (as that term is defined in the applicable Subject Governing Agreement) for each of the Subject No Appearance Settlement Trusts occurring in the Transfer Month, and

NOW, THEREFORE, as contemplated in the August 5 Order, and on the motion of U.S. Bank and Wilmington Trust, it is hereby:

1. ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Trustees (each with respect to the Subject No Appearance Settlement

Trusts for which each act(s) as trustee) are to (i) cause escrowed assets to be liquidated to cash with a value equal to the Subject Allocable Shares plus any investments earnings thereon, and (ii) cause the Subject Allocable Shares and investment earnings thereon to be deposited in the respective distribution accounts of the Subject No Appearance Settlement Trusts. From the time of the aforescribed deposit, the amount so deposited shall be deemed the Subject Allocable Shares for the Subject No Appearance Settlement Trusts for all purposes under the Settlement Agreement and this Order; and it is further

2. ORDERED, ADJUDGED and DECREED that sums representing investment earnings accrued on the Subject Allocable Shares not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph (“Trailing Interest”) shall (i) for Subject No Appearance Settlement Trusts where the Subject Trustee and Subject Payment Administrator are the same party, be distributed on the Distribution Date for the month the Trailing Interest is received by the Subject Trustee so long as the Trailing Interest is received on or before the fifteenth day of the month or, if the Trailing Interest is received after the fifteenth day of the month, be distributed on the Distribution Date for the immediately following month or (ii) for Subject No Appearance Settlement Trusts where the Subject Trustee and Subject Payment Administrator are different parties, (x) be transferred from the Subject Trustee to the Subject Payment Administrator promptly following the Subject Trustee’s receipt of such Trailing Interest and (y) be distributed on the Distribution Date for the month the Trailing Interest is transferred so long as such transfer takes place on or before the fifteenth day of the month or, if the Trailing Interest is transferred after the fifteenth day of the month, be distributed on the Distribution Date for the immediately following month. Any Trailing Interest shall be deemed a Subject Allocable Share for the

Subject No Appearance Settlement Trust on whose Allocable Share such Trailing Interest was accrued, and any Trailing Interest shall be administered and distributed as a Subject Allocable Share subject to the terms of the Settlement Agreement and this Order; and it is further

3. ORDERED, ADJUDGED and DECREED that the Subject Payment Administrator shall distribute the Subject Allocable Shares to certificateholders of the Subject No Appearance Settlement Trusts on the AS Distribution Date; and it is further

4. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each of the Subject No Appearance Settlement Trusts, the Subject Payment Administrator (i) shall first increase the applicable certificate principal balances in the amount of the Settlement Payment Write-Up (the “Written-Up Certificate Principal Balances”), and, after applying the Settlement Payment Write-Up, (ii) shall then distribute the Subject Allocable Shares to certificateholders based on the Written-Up Certificate Principal Balances, in each of the cases of (i) and (ii) above in a manner consistent with the other terms in this Order; and it is further

5. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for PRIME 2007-3, the Subject Payment Administrator shall not use the Settlement Agreement Write-Up Instruction for any purposes, and shall increase the certificate principal balance(s) of the applicable class(es) of certificates in the amount of the Settlement Payment Write-Up using the subsequent recovery write-up instructions contained in Section 6.01(g) of the PRIME 2007-3 PSA;¹ and it is further

¹ For avoidance of doubt, this paragraph 5 requires the Settlement Payment Write-Up to be applied only to Subordinate Certificates (as defined in the PRIME 2007-3 PSA) in a manner consistent with Section 6.01(g) of the PRIME 2007-3 PSA.

6. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for GPMF 2007-HE1, the Subject Payment Administrator shall apply the Settlement Payment Write-Up in the reverse order of previously allocated losses in the manner provided for in the Settlement Agreement Write-Up Instruction; and it is further

7. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for SACO 2005-WM2, the Subject Payment Administrator shall not treat the Retired Class Provision as prohibiting the application of a Settlement Payment Write-Up to any class of certificates that is a Zero Balance Class at the time of the distribution of the applicable Subject Allocable Shares, and, instead, shall (i) treat the Zero Balance Classes as eligible to receive the Settlement Payment Write-Up as provided for in paragraph 4 above (“Written Up Zero Balance Classes”), and (ii) treat the Written Up Zero Balance Classes as eligible to receive distributions of the applicable Subject Allocable Shares, all in a manner consistent with this Order;² and it is further

8. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for SACO 2006-1, the applicable Subject Allocable Shares shall be deemed to be Principal Collection Amounts and shall be distributed as Available Principal

² As of October 13, 2020, SACO 2005-WM2 has no Zero Balance Classes with outstanding losses, and thus has no Zero Balance Classes to which the Settlement Payment Write-Up could be applied. This means that paragraph 7 is not presently expected to be operative. However, paragraph 7 is included in this Order to account for the possibility that SACO 2005-WM2 could potentially have Zero Balance Classes with outstanding losses at the time that this Order is entered by the Court.

Payment Amounts³ under the SACO 2006-1 Indenture in a manner consistent with this Order; and it is further

9. ORDERED, ADJUDGED and DECREED that any aspects of the administration and distribution of the Subject Allocable Shares not expressly addressed in this Order shall be performed as provided for in the Subject Governing Agreements and the Settlement Agreement; and it is further

10. ORDERED, ADJUDGED and DECREED that this Order is not applicable to, and shall be without prejudice to and shall have no precedential effect on, (i) any argument of any party concerning the appropriate administration and distribution of the Settlement Payment where there is a dispute among the parties regarding how the Settlement Payment should be administered and distributed, (ii) the Settlement Trust(s) for which no investors have appeared in this proceeding, or any trust, indenture, or other securitization, other than the Subject No Appearance Settlement Trusts, or (iii) any applications to certificate balances (*e.g.*, write-ups) or distributions of payments or funds other than the Subject Allocable Shares; and it is further

11. ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties claiming rights or interests in any of the Subject No Appearance Settlement Trusts are barred from asserting claims against any of the Subject Petitioners with respect to any conduct taken to implement and comply with the terms of this Order and with respect to such Subject Petitioners' administration and distribution of the Settlement Payment with

³ The terms "Principal Collection Amounts" and "Available Principal Payment Amounts" shall have the meanings ascribed to such terms in the SACO 2006-1 Indenture.

respect to such Subject No Appearance Settlement Trusts, so long as such conduct is performed in accordance with the terms of this Order; and it is further

12. ORDERED, ADJUDGED, and DECREED that the Subject Petitioners shall promptly file a Notice of Entry of this Order (the “Notice of Entry”) following the date on which the Subject Petitioners receive a copy of this Order executed by the Court (the first date on which the Notice of Entry is publicly viewable on NYSCEF, the “Entry Date”); and it is further

13. ORDERED that the Clerk of New York County be, and hereby is, directed to enter this Order forthwith and without delay, to the extent practicable during the COVID-19 public health emergency.

Dated: New York, New York
_____, 2020

Hon. Marcy Friedman, J.S.C.

Judgment signed and entered this _____ day of _____ 2020.

Clerk of New York County