

At IAS Part 53 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 \_\_\_\_\_, 2023

**P R E S E N T:** Hon. Andrew S. Borrok, Justice.

<p>In the matter of the application of</p> <p>U.S. BANK NATIONAL ASSOCIATION and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION (each separately as Trustee, Securities Administrator, Paying Agent, and/or Calculation Agent under various Pooling and Servicing Agreements),</p> <p style="text-align: center;">Petitioners,</p> <p>for judicial instructions pursuant to CPLR Art. 77.</p>
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Index No. 656028/2021

**[PROPOSED] PARTIAL SEVERANCE ORDER AND PARTIAL FINAL JUDGMENT (SACO I 2006-7)**

WHEREAS, petitioners U.S. Bank National Association and U.S. Bank Trust Company, National Association (together, “Petitioner”), commenced this proceeding under CPLR Article 77 by filing a petition (as subsequently amended, the “Petition”) seeking judicial instruction concerning the interpretation and application of certain provisions of the contracts governing 77 residential mortgage-backed securitization trusts identified in Exhibit A to the Petition (the “Subject Trusts”); and

WHEREAS, this [proposed] Partial Severance Order and Partial Final Judgment (the “Order”) concerns SACO I 2006-7 (the “Trust”); and

WHEREAS, the Trust is governed by a Pooling and Servicing Agreements (the “PSA”), pursuant to which Petitioner is the payment administrator, master servicer and trustee; and

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

WHEREAS, the term “Class A Post-Zero Balance Amounts” shall mean all Principal Funds and Interest Funds required to be distributed under the PSA on any Distribution Date when the Certificate Principal Balances of the Class A are equal to zero (after giving effect, for purposes of this calculation, to such distribution), together with escrowed amounts pursuant to the Orders and investment earnings thereon; and

WHEREAS, the Trust contains a so-called “Retired Class Provision,” which appears in Section 6.04(a) of the PSA and provides as follows: “In addition, notwithstanding the foregoing, on any Distribution Date after the Distribution Date on which the Certificate Principal Balance of a Class of Class A, 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 Basis Risk Shortfall Carry Forward Amounts;” and

WHEREAS, as set forth in the Petition, master servicers and/or servicers periodically authorize loan modification agreements with borrowers under which borrowers may be permitted to defer scheduled payments of principal, interest, or other amounts, and master servicers and/or servicers typically include all amounts that are deferred under modification agreements in a non-interest-bearing component of the mortgage loan’s principal balance (“Deferred Principal Amounts”); and

WHEREAS, as set forth in the Petition, master servicers and/or servicers generally report and treat Deferred Principal Amounts as losses on the mortgage loans; and

WHEREAS, in certain instances, borrowers may eventually pay back Deferred Principal Amounts according to a schedule set forth in the applicable modification agreement, and these amounts are remitted to Petitioner for distribution to certificateholders (“Deferred Principal Collections”); and

WHEREAS, the PSA provides that certain amounts remitted by master servicers and/or servicers to Petitioner constitute Subsequent Recoveries related to mortgage loans and may result in the application of write-ups, or increases, to the certificate principal balances of the Primary Classes as provided for in the PSA; and

WHEREAS, as set forth in the Petition, Petitioner's current practice is to not treat Deferred Principal Collections as Subsequent Recoveries for the Trust, and Petitioner does not otherwise apply write-ups, or increases, to the certificate principal balances of the Primary Classes when distributing Deferred Principal Collections; and

WHEREAS, as further explained and described in the Petition, Petitioner is seeking judicial guidance with respect to the Subject Trusts (including the Trust) concerning the following: (1) the proper allocation and distribution under the waterfalls of any collections from mortgage loans following the reduction of the certificate principal balances of all Primary Classes to zero dollars (\$0.00) ("Post-Zero Balance Collections"); (2) the manner in which the Retired Class Provision should be applied with respect to any Primary Classes with certificate principal balances of zero dollars (\$0.00); and (3) the manner in which Deferred Principal Collections should be treated for certain applicable Subject Trusts (including the Trust); and

WHEREAS, by Orders to Show Cause dated November 29, 2021 (NYSCEF Doc. No. 30) and January 10, 2022 (NYSCEF Do. No. 55) (collectively, the "Orders"), the Court directed the Petitioner to provide notice of this proceeding pursuant to the notice program described in the 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, the Orders directed that interested persons respond to the Petition on or before the dates set forth in the Orders, and Poetic Holdings IX LP (“Poetic IX”) and no other party asserted an interest in the Trust; and

WHEREAS, Poetic IX and the Petitioner agree and consent to this Order, which resolves the issues for which judicial instructions were sought in the Petition concerning the Trust; and

WHEREAS, the Orders directed Petitioner to cause Post-Zero Balance Collections, net of any expenses and other fees payable under the applicable governing contracts, to be maintained on deposit, escrowed in a subaccount of the distribution account associated with the Trust on an invested basis, until such time that the Court enters an order concerning the appropriate distribution of such funds and directing such distribution in accordance therewith; and

WHEREAS, the Orders directed that the investment earnings accrued on the escrow funds be treated as principal amount received on the mortgage loans; and

WHEREAS, pursuant to the Orders, funds are currently being held in escrow for the Trust (the “Undisputed Escrow Funds”); and

NOW, THEREFORE, on the motion of Petitioner, with the consent of Poetic IX, it is hereby

ORDERED, ADJUDGED, and DECREED that in administering and distributing available funds to certificateholders for the Undisputed Subject Trusts, any Deferred Principal Collections derived from Deferred Principal Amounts that master servicers and/or servicers reported and treated as losses shall be treated by Petitioners as though such amounts are Subsequent Recoveries in accordance with Section 6.04(b) of the PSA as well as any other applicable provisions therein; and it is further

ORDERED, ADJUDGED, and DECREED that in administering and distributing available funds to certificateholders for the Trust, Petitioner shall apply the Retired Class Provision in a manner that: (i) permits the application of increases, or write-ups, to the Certificate Principal Balance of any Primary Class, on an individual class basis, with an aggregate Certificate Principal Balance of zero dollars (\$0.00) at any time (“Zero Balance Primary Class”) *so long as* any portion of the Initial Certificate Principal Balance of such class remains unpaid (including, without limitation, as a result of unreimbursed losses outstanding on such class) or there is any interest due on such class that has not been paid in full (including, without limitation, as a result of any shortfalls), and (ii) permits distributions to any Zero Balance Primary Class *so long as* any portion of the Initial Certificate Principal Balance of such class remains unpaid (including, without limitation, as a result of unreimbursed losses outstanding on such class) or there is any interest due on such class that has not been paid in full (including, without limitation, as a result of any shortfalls); and it is further

ORDERED, ADJUDGED, and DECREED that in administering and distributing available funds to certificateholders for the Trust, Petitioner shall (i) treat all Post-Zero Balance Collections as Principal Distribution Amounts to be distributed in accordance with the applicable provisions of the Undisputed Subject PSAs, and (ii) prior to such distribution, increase, or write up, the Certificate Principal Balances of the Primary Classes in the amount of any Post-Zero Balance Collections as though such amounts are Subsequent Recoveries in accordance with Section or 6.04(b) of the PSA as well as any other provisions therein concerning the application of write-ups for Subsequent Recoveries (for the avoidance of doubt, for the Trust, such increases or write-ups to begin with the Class A Certificates until the Applied Realized Loss Amount has been reduced to zero, followed by the other Primary Classes as applicable); *provided, however*, that if no portion

of the Initial Certificate Principal Balance of any of the Primary Classes remains unpaid (including, without limitation, as a result of unreimbursed losses outstanding on such class), then (x) any remaining Post-Zero Balance Collections shall be treated as though they were Excess Cashflow and distributed in accordance with the applicable provisions in the Undisputed Subject PSAs, and (y) no increases, or write-ups, shall be applied to the certificate principal balances of the Primary Classes for any remaining Post-Zero Balance Collections; and it is further<sup>1</sup>

ORDERED, ADJUDGED, and DECREED that any aspects of the administration and distribution of available funds not expressly addressed in this Order shall be performed as provided for in the PSA; and it is further

ORDERED, ADJUSTED, and DECREED that with respect to the Trust, Petitioner is hereby exculpated and protected from liability for placing, receiving, holding, investing, and/or reinvesting any Undisputed Escrow Funds held in escrow in accordance with the Orders; and it is further

ORDERED, ADJUDGED, and DECREED that nothing herein shall rescind, annul, limit, modify, or alter the Ex Parte Order and Partial Final Judgment entered on August 22, 2022 (NYSCEF Doc. No. 151); and it is further

ORDERED, ADJUDGED, and DECREED that certificateholders and any other parties claiming rights or interests (whether past, present, or future, or known or unknown) in the Trust are forever barred from asserting claims against Petitioner with respect to any conduct taken by Petitioner to comply with the terms of this Order, so long as such conduct is performed in accordance with the terms of this Order; and it is further

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<sup>1</sup> As required under this Paragraph of the Order, the treatment of Post-Zero Balance Collections as deemed Subsequent Recoveries may result in non-payment of interest shortfalls or carry-forward amounts for the Primary Classes of the Undisputed Subject Trusts.

ORDERED, ADJUDGED, and DECREED that on the next distribution date after the date on which this Order is entered and appears on the New York State Court Electronic Filing System (the “Effective Distribution Date”) and all distribution dates thereafter, Petitioner shall comply with the terms of this Order in administering and distributing any available funds to certificateholders for the Trust and

ORDERED, ADJUDGED, and DECREED that the escrow instructions in the Orders to Show Cause are hereby terminated with respect to the Trust as of the Effective Distribution Date (provided, for avoidance of doubt, that Petitioner shall continue to comply with the escrow instructions on any distribution date preceding the Effective Distribution Date), and Petitioner shall distribute any Undisputed Escrow Funds for the Trust on the Effective Distribution Date in accordance with the terms of this Order; and it is further

ORDERED, ADJUDGED, and DECREED that this Order is not applicable to, and shall be without prejudice to and shall have no precedential effect on, any trust, indenture, or other securitization other than the Trust; and it is further

ORDERED, ADJUDGED, and DECREED that this Order is prospective such that it shall not have any application to the Trust prior to the Effective Distribution Date; and it is further

ORDERED, ADJUDGED, and DECREED that Petitioner’s consent to this Order does not constitute an admission or agreement concerning the legally proper or valid meaning or interpretation of any aspects of the PSA, and Petitioner does not waive or forfeit any argument concerning the same with respect to Petitioner’s historical application of the terms of the PSA; and it is further

ORDERED, ADJUDGED, and DECREED that following the date on which this Order is entered and appears on the New York State Court Electronic Filing System, the Petitioner shall

promptly post a copy of this Order bearing the Court’s signature on the Petitioner’s investor portal;  
and it is further

ORDERED that the Clerk of New York County be, and he hereby is, directed to enter this  
Order forthwith and without delay.

Dated: New York, New York

\_\_\_\_\_, 2023

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Hon. Andrew Borrok, J.S.C.

Judgment signed and entered this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

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Clerk of New York County