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July 12, 2019

VIA NYSCEF AND HAND DELIVERY

Justice Marcy S. Friedman
New York State Supreme Court, Commercial Division
60 Centre Street, Room 663
New York, NY 10007

Re: *In the Matter of the Application of The Bank Of New York Mellon, in its Capacity as Trustee for 278 Residential Mortgage-Backed Securitization Trusts, Petitioner, For Judicial Instructions Under CPLR Article 77 Concerning the Proper Pass-Through Rate Calculation for CWALT Interest Only Senior Certificates*, Index No. 150738/2019

Dear Justice Friedman:

We, along with our co-counsel Mark Zauderer of Ganfer Shore Leeds & Zauderer, represent respondent Silian Ventures LLC and write on behalf of the parties to update the Court as to the status of certain discovery issues that were discussed at the Initial Conference held on April 18, 2019.

At the April conference, we informed the Court that Silian believed there were factual disputes regarding the Trustee's historical methodology for calculating payments to certificate holders and that discovery would be necessary to resolve any such disputes that might be relevant to the Court's determination at the Initial Merits Hearing. Transcript at 9-10. The Trustee suggested in response that the parties work to reach a stipulation in respect of its historical methodology in lieu of the discovery being sought. At that time, the Court stated that if the parties did not reach a stipulation, they could "let [the Court] know whether there's going to be a request for discovery and whether there's an agreement as to the timeline for that." *Id.* at 17. The Court otherwise stayed discovery for the time being and ordered three rounds of dispositive briefs. *Id.* at 24.

The parties write to inform the Court that they were unable to reach a stipulation as to the Trustee's historical methodology. However, both Silian and the Investor Group have argued in their opening briefs that the relevant agreements are unambiguous and that the Court can resolve this action without consideration of extrinsic evidence. In the Trustee's opening brief, it argues

that if the Court determines the agreements to be ambiguous, the Court should consider extrinsic evidence including its historical methodology and the historical conduct of certain third parties. The parties disagree as to whether some or all of the extrinsic evidence presented in the Trustee's submission is subject to reasonable factual dispute.

The parties have met and conferred and agree that engaging in discovery at this time would be inefficient and disruptive to the existing schedule. The parties have therefore agreed that no party shall ask the Court to resolve at the Initial Merits Hearing any triable issue of fact that is disputed by the parties and for which the Court believes discovery is necessary, including on the basis that facts essential to justify opposition may exist but cannot then be stated because discovery has not yet occurred. The parties further agree that the parties have reserved all rights to seek discovery following the Initial Merits Hearing in respect of any issues not resolved at the Initial Merits Hearing.

We thank the Court for its attention to this matter.

Respectfully,



Jonathan E. Pickhardt

cc: Counsel of Record