UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROYAL PARK INVESTMENTS SA/NV, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. THE BANK OF NEW YORK MELLON, as Trustee, Defendant.	Civil Action No. 14-cv-06502-GHW RENEWED JOINT MOTION FOR APPROVAL TO DISMISS ALL CLAIMS

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I. INTRODUCTION

On August 14, 2014, Royal Park Investments SA/NV ("Royal Park") initiated this action against The Bank of New York Mellon ("BNY Mellon" or "Trustee") alleging that BNY Mellon breached its obligations as trustee under the governing agreements for five residential mortgage-backed securities ("RMBS") trusts ("Covered Trusts" or "Trusts") in which Royal Park invested.[1] Royal Park brought this action on its own behalf and on behalf of a class of all investors in the Covered Trusts. Alternatively, Royal Park brought this action derivatively in the right and for the benefit of the Covered Trusts themselves.

Since then, "***many*** litigations against [RMBS] trustees" have been filed within this jurisdiction and district courts have subsequently shaped the applicable law governing this action. ECF No. 200 at 1.[2] For example, courts in this district have consistently denied class certification in similar RMBS trustee actions. *See, e.g.*, *Royal Park Invs. SA/NV v. Deutsche Bank Nat'l Tr. Co.*, No. 14-CV-4394 (AJN), 2018 WL 1750595 (S.D.N.Y. Apr. 11, 2018). Courts in this District have also unanimously held that RMBS investors lack standing to bring derivative claims against RMBS trustees in circumstances such as these. *See infra* at 8-10.

Given these and other rulings, after more than half a decade of litigation, the parties have reached an agreement to settle Royal Park's claims. Although contained in one agreement, the parties have, in effect, resolved two distinct sets of claims. First, Royal Park has agreed to

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[1] The Covered Trusts are: (1) Encore Credit Receivables Trust 2005-2 ("ECR 2005-2"); (2) GSC Capital Corp. Mortgage Trust 2006-1 ("GSCC 2006-1"); (3) NovaStar Mortgage Funding Trust, Series 2006-3 ("NHEL 2006-3"); (4) Nationstar Home Equity Loan Trust 2007-C ("NSTR 2007-C"); and (5) Structured Asset Mortgage Investments II Trust 2006-AR4 ("SAMI 2006-AR4"). Three of the Covered Trusts (NHEL 2006-3, NSTR 2007-C, and SAMI 2006-AR4) are governed by Pooling and Servicing Agreements and the other two Covered Trusts (ECR 2005-2 and GSCC 2006-1) are governed by Indentures.

[2] Emphasis is added and citations are omitted throughout unless otherwise indicated.

voluntarily dismiss its individual claims in exchange for a settlement payment from BNY Mellon. The settlement is not a windfall to Royal Park. Rather, the payment of $925,000.00 is sufficient only to cover a portion of its costs. Second, Royal Park has also agreed to voluntarily dismiss its alternative derivative claims without any payment benefitting the Trusts because, as described in detail below, after the filing of this case, courts in this District consistently rejected derivative claims in this setting based on lack of investor standing. To effectuate this resolution, the parties filed a motion for voluntary dismissal and accompanying proposed notice pursuant to Federal Rule of Civil Procedure 23.1(c). This Court denied the motion, holding that the parties had not provided the Court with sufficient information to evaluate the proposed dismissal and notice pursuant to Rule 23.1(c).

The parties now submit a revised joint motion to dismiss which should be granted. The parties respectfully submit that the voluntary dismissal and Notice to Holders (the "Notice") are fair and adequate because Royal Park's derivative claims have been rendered worthless by subsequent authority, and the proposed Notice comports with due process and provides an opportunity for any certificateholder to respond to the proposed dismissal before it is entered.[3]

Accordingly, the parties respectfully renew their request that the Court grant their joint motion to dismiss.

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[3] The parties recognize the unusual procedural posture of this case. An alternative method of resolution, which the parties raise in the event it is the Court's preferred approach, would be for BNY Mellon to file a motion to dismiss Royal Park's derivative claims, which Royal Park would have no basis to oppose. And if the Court dismisses Royal Park's derivative claims, consistent with the result of similar motions in four other recent cases in this District (*see infra* at 8-10), the parties could simply file a joint stipulation to voluntarily dismiss the remaining individual claims with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) – an outcome that would require no Court involvement.

II. BACKGROUND

A. Procedural History

After amending its complaint on March 20, 2015, Royal Park alleged the following claims against BNY Mellon: (1) breach of contract; (2) breach of trust; (3) violations of the Streit Act; and (4) violations of the Trust Indenture Act of 1939 ("TIA") (as to the ECR 2005-2 and GSCC 2006-1 Covered Trusts). On April 20, 2015, BNY Mellon filed its Motion to Dismiss the Amended Complaint, arguing that Royal Park failed to state a breach of contract, a breach of trust, a Streit Act claim, and a TIA claim as to the Covered Trusts. ECF No. 51. BNY Mellon did not move to dismiss Royal Park's derivative claims.

On March 2, 2016, this Court – consistent with other courts adjudicating RMBS trustee actions in this District – denied BNY Mellon's motion to dismiss with respect to Royal Park's breach of contract, breach of trust, and TIA claims under §§315(b) and 315(c) of that act. ECF No. 80. The Court dismissed Royal Park's Streit Act claim and TIA claim under §315(a). The Court did not address Royal Park's derivative claims.

On September 2, 2016, Royal Park filed its Motion for Class Certification and Appointment of Class Representative and Class Counsel ("Motion for Class Certification"). ECF No. 99. On August 30, 2017, this Court denied Royal Park's Motion for Class Certification without prejudice, holding that the proposed class was "not defined using objective criteria that establish a membership with definite boundaries." ECF No. 140 at 1.

On October 16, 2017, Royal Park filed its Renewed Motion for Class Certification and Appointment of Class Representative and Class Counsel ("Renewed Motion for Class Certification"). ECF No. 150. On February 15, 2019, this Court denied Royal Park's Renewed Motion for Class Certification, emphasizing that "the Court agree[d] with the reasoning of the judges

in this district who have denied class certification in similar actions brought by Royal Park against other RMBS trustees." ECF No. 182 at 1.

Following the Court's denial of Royal Park's motions for class certification, the parties began settlement discussions and, on February 26, 2020, the parties executed a settlement agreement. Pursuant to this agreement, on March 2, 2020, the parties moved this Court to approve the voluntary dismissal of Royal Park's claims with prejudice ("Motion for Voluntary Dismissal"). ECF No. 202. Pursuant to Rule 23.1(c), the parties submitted a proposed form of notice of the dismissal to current Covered Trust noteholders. ECF No. 203-1.

On March 6, 2020, this Court denied the parties' Motion for Voluntary Dismissal, holding that the parties had not provided the Court with sufficient information to evaluate the proposed dismissal and notice pursuant to Rule 23.1(c) (the "March 6 Order"). ECF No. 204 at 1. The Court further directed the parties to submit a comprehensive memorandum of law and supporting affidavits containing sufficient information for the Court to evaluate the proposed resolution or, in the alternative, submit substantive briefing to support the position that the parties can fulfill their "obligations under Rule 23.1 in the absence of any information regarding the dismissal, or the adequacy of the proposed means of notice." *Id.* at 2.

B. The Settlement Agreement

Royal Park and BNY Mellon entered into a Confidential Settlement Agreement and Release, dated as of February 25, 2020 (the "Settlement Agreement").[4] Although neither party conceded the merits of its opponent's claims or defenses, the Settlement Agreement contemplates a payment of $925,000.00 from BNY Mellon to Royal Park with accompanying mutual releases (the "Settlement Payment"). *See* Declaration of Arthur C. Leahy in Support of Renewed Joint Motion for Approval

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[4] The parties are prepared to provide a copy of the confidential Settlement Agreement to the Court for an *in camera* review should the Court deem such a review helpful.

to Dismiss All Claims ("Leahy Decl."), ¶3, filed concurrently herewith. The Settlement Payment is to be made directly to Royal Park and no payment will be made to the Trusts. *See id.* The Settlement Agreement provides, in pertinent part, that it will become effective, triggering the mutual releases and BNY Mellon's payment obligation, on the first business day after the dismissal of the Individual Claims[5] ***and*** the Derivative Claims.[6] *See id.*, ¶3. The Settlement Agreement also provides that, if the Court does not dismiss both the Individual Claims and the Derivative Claims, the agreement shall become null and void. *See id.*

To effectuate the dismissal of the Individual and Derivative Claims, the parties agreed that they would file a motion seeking their dismissal and describing the proposed notice to the Trusts' certificateholders. In response to the March 6 Order, the parties have revised the proposed Notice to include: (i) additional detail concerning the terms of the Settlement Agreement; (ii) an explanation that the Derivative Claims will be dismissed without payment to the Trusts; and (iii) an expanded description of the proposed 30-day notice period as a time during which potential substitute derivative plaintiffs can consider whether to intervene in the case. *See* Leahy Decl., Ex. A. Finally, the parties now intend to append this Renewed Joint Motion for Approval to Dismiss All Claims to the Notice in order to provide holders with additional context and the rationale underlying the proposed dismissal of the Derivative Claims. *See id.*

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[5] The Settlement Agreement defines "Individual Claims" as "the claims brought by Plaintiff in this Action on its own behalf in its individual capacity, including for alleged (i) violation of the Trust Indenture Act; (ii) breach of contract; (iii) breach of common law duty of trust; and (iv) violation of the Streit Act." Leahy Decl., ¶3 n.2.

[6] The Settlement Agreement defines "Derivative Claims" as "the claims brought by Plaintiff in this Action derivatively for the benefit of the Trusts, including for alleged (i) violation of the Trust Indenture Act; (ii) breach of contract; (iii) breach of common law duty of trust; and (iv) violation of the Streit Act." Leahy Decl., ¶3 n.2.

III. ARGUMENT

A. The Court Can Dismiss Royal Park's Individual Claims Pursuant to Rule 41(a)(1)(A)(ii)

It is axiomatic that the Federal Rules of Civil Procedure are given their plain meaning. *See, e.g.*, *Bus. Guides, Inc. v. Chromatic Commc'ns Enters., Inc.*, 498 U.S. 533, 541 (1991). By its terms, Rule 41 states that a "plaintiff may dismiss an action without a court order by filing . . . a stipulation of dismissal signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). Courts in this District routinely permit parties to resolve individual claims through the filing of a notice of dismissal. *See, e.g.*, *Dykstra v. 6069321 Can., Inc.*, No. 1:19-cv-688-GHW, 2019 WL 4688726, at *1 (S.D.N.Y. Sept. 25, 2019) (noting plaintiff filed notice of voluntary dismissal with prejudice under Rule 41(a) dismissing claims against certain defendants); *Ace American Insurance Co. v. Delgado*, No. 1:17-cv-07640-GHW, ECF No. 55 (S.D.N.Y. June 15, 2018) (endorsing Rule 41 notice of dismissal); *Adam P10tch LLC v. The Bank of New York Mellon*, No. 1:14-cv-04238-GHW, ECF No. 22 (S.D.N.Y. Sept. 11, 2014) (same).

Even assuming court approval were required, the parties here have reached an arms'-length agreement concerning the Individual Claims – BNY Mellon has agreed to pay Royal Park $925,000.00 in exchange for the dismissal of the Individual Claims coupled with mutual releases. The resolution of litigation in this way is strongly favored by federal courts. *See ABKCO Music, Inc. v. Harrisongs Music, Ltd.*, 722 F.2d 988, 997 (2d Cir. 1983) ("courts favor the policy of encouraging voluntary settlement of disputes"); *Kurtz v. Kimberly-Clark Corp.*, No. 14-CV-1142, 2016 WL 6820405, at *4 (E.D.N.Y. Nov. 18, 2016) ("Voluntary settlement of all cases, by all parties is preferred.").

Therefore, the Court can dismiss this action pursuant to Rule 41(a)(1)(A)(ii) and no further analysis is needed.

B. The Court Should Approve the Dismissal of Royal Park's Nonviable Derivative Claims Pursuant to Rule 23.1(c)

Under Rule 23.1(c), a derivative action "may be settled, voluntarily dismissed, or compromised only with the court's approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders." Fed. R. Civ. P. 23.1(c). The Rule 23.1(c) notice and court approval requirements are intended to discourage unfair, collusive, or fraudulent settlements of derivative claims. *See* 7C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure – Civil* §1839 (3d ed. 2020).

Before approving a proposed settlement or dismissal, the court must determine whether the proposal is "fair, reasonable and adequate." *In re Pfizer Inc. S'holder Derivative Litig.*, 780 F. Supp. 2d 336, 340 (S.D.N.Y. 2011) ("'[t]he central question is whether the compromise is fair, reasonable and adequate'"); *In re AOL Time Warner S'holder Derivative Litig.*, No. 02 Civ. 6302(SWK), 2006 WL 2572114, at *2 (S.D.N.Y. Sept. 6, 2006) ("'[T]he Court must be satisfied that the compromise "fairly and adequately serves the interests of [the entity] on whose behalf the derivative action was instituted."'"). In evaluating fairness, reasonableness, and adequacy, courts typically consider the following four factors: "(1) the reasonableness of the benefits achieved by the settlement in light of the potential recovery at trial; (2) the likelihood of success in light of the risks posed by continued litigation; (3) the likely duration and cost of continued litigation; and (4) any shareholder objections to proposed settlement." *AOL Time Warner*, 2006 WL 2572114, at *3 (citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974)).

Once the court approves the settlement or dismissal, adequate notice must be given to shareholders or members "in the manner that the court orders." Fed. R. Civ. P. 23.1(c). Notice is generally adequate if it informs potential derivative plaintiffs "of the claims and defenses involved in the action, the terms of the proposed settlement, and the time and place for them to appear to show

cause why the settlement should not be adopted." 7C Wright & Miller, *supra*, §1839. The notice must comport with due process, but the amount of information to be included in the notice depends on the circumstances of each case. *Id.*; *see also Milstein v. Werner*, 57 F.R.D. 515, 518 (S.D.N.Y. 1972).

As demonstrated below, well-established case law in this District makes clear that Royal Park lacks standing to recover on the derivative claims asserted here. This has rendered these derivative claims worthless not just to Royal Park, but to all certificateholders in the Trusts. Royal Park's decision to voluntarily dismiss these claims as part of its overall settlement of this action is fair, reasonable, and adequate.

1. Because Case Law Indicates Royal Park Lacks Standing to Prosecute the Derivative Claims, There Is No Realistic Possibility of Recovery

Here, we analyze the first two prongs of the *Grinnell* factors together. Because there is no reasonable "likelihood of success" on these claims, there is likewise virtually no "potential recovery at trial." *AOL Time Warner*, 2006 WL 2572114, at *3.

a. Relevant Case Law Issued After the Commencement of This Action Holds that Royal Park Lacks Derivative Standing

"Because standing is jurisdictional under Article III of the United States Constitution, it is a threshold issue in all cases since putative plaintiffs lacking standing are not entitled to have their claims litigated in federal court." *Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114, 117 (2d Cir. 1991). "If plaintiffs lack Article III standing, a court has no subject matter jurisdiction to hear their claim." *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck–Medco Managed Care, L.L.C.*, 433 F.3d 181, 198 (2d Cir. 2005). "[L]ack of subject matter jurisdiction may be raised at any time "'even by a party who originally asserted jurisdiction.'"" *Wight v. BankAmerica Corp.*, 219 F.3d 79, 90 (2d Cir. 2000). Thus, a lack of subject matter jurisdiction may be addressed at any time.

Id.; *see also* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

The first court in this District to address the question of an RMBS investor's standing to assert derivative claims was Judge Katherine B. Forrest in *Blackrock Allocation Target Shares: Series S Portfolio v. U.S. Bank Nat'l Ass'n*, No. 14-cv-9401 (KBF), 2015 WL 2359319 (S.D.N.Y. May 18, 2015). Judge Forrest first acknowledged that the New York Appellate Division had adopted the test articulated by the Delaware Supreme Court in *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031 (Del. 2004), to determine whether a claim is direct or derivative. *Blackrock*, 2015 WL 2359319, at *5. Under *Tooley*, a court should look to "[w]ho suffered the alleged harm—the corporation or the suing stockholder individually—and who would receive the benefit of the recovery or other remedy" in determining whether an action is direct or derivative. *Tooley*, 845 A.2d at 1035.

Applying *Tooley*, Judge Forrest held under both prongs of the test that Blackrock's claims were direct rather than derivative. *Blackrock*, 2015 WL 2359319, at *5. As for the first prong, Judge Forrest recognized that Blackrock's claims were direct because "the trusts' governing documents – as well as plaintiffs' own allegations – indicate that the contractual promises run in favor of the investors – and not the trusts." *Id.* at *6. As for the second prong, Judge Forrest held that RMBS investors and not the trusts would benefit from any recovery, acknowledging that "[w]hile plaintiffs argue that any recovery would go to the trusts, the Complaint is quite clear that the trusts have an absolute obligation to pass any such recovery along to certificateholders." *Id.*

Consequently, Blackrock lacked standing to bring its claims derivatively and its derivative claims were thus dismissed. *Id.*[7]

Since Judge Forrest's ruling in *Blackrock*, courts in this District have consistently followed suit and dismissed derivative claims brought by RMBS investors against RMBS trustees. *See, e.g.*, *Royal Park Invs. SA/NV v. HSBC Bank USA, Nat'l Ass'n*, 109 F. Supp. 3d 587, 613-14 (S.D.N.Y. 2015) (holding that "[u]nder both prongs of *Tooley*, plaintiffs' claims are direct, not derivative . . . [b]ecause plaintiffs directly suffered the injury, and because plaintiffs would receive the benefit of any recovery"); *Royal Park Invs. SA/NV v. Deutsche Bank Nat'l Tr. Co.*, No. 14-CV-4394 (AJN), 2016 WL 439020, at *10 (S.D.N.Y. Feb. 3, 2016) ("Because investors and not the trusts themselves 'stand to receive the benefit' of the lawsuit, the suit is direct rather than derivative in nature."). Based on these rulings, it appeared that Royal Park's derivative claims against other RMBS trustees would not be sustained, and Royal Park voluntarily dismissed them, for no consideration, when questions regarding their viability arose, electing instead to pursue its claims on a class-wide basis under Fed. R. Civ. 23(b)(3).[8] The same is true here. Because case law since the initiation of this case indicates that Royal Park does not have standing to pursue derivative claims, they have no likelihood of success, and should be dismissed.

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[7] Courts often frame the question of whether a claim is direct or derivative under *Tooley* as one of standing. *See, e.g.*, *Obeid ex rel. Gemini Real Estate Advisors LLC v. La Mack*, No. 14CV6498-LTS-MHD, 2017 WL 1215753, at *5 (S.D.N.Y. Mar. 31, 2017) (applying *Tooley* "in determining the question of standing"); *C.D.S., Inc. v. Zetler*, 288 F. Supp. 3d 551, 559-61 (S.D.N.Y. 2017) (same).

[8] *See, e.g.*, *Royal Park Investments SA/NV v. U.S. Bank National Association*, No. 1:14-cv-02590-VM-JCF, ECF No. 43 (S.D.N.Y. July 29, 2015) (court-approved stipulation stating Royal Park's "claims, solely to the extent they are asserted derivatively . . . shall be dismissed without prejudice from the complaint as to all trusts at issue in this action") (original emphasis omitted); *Blackrock Allocation Target Shares: Series S. Portfolio v. Wells Fargo Bank, Nat'l Ass'n*, 247 F. Supp. 3d 377, 407 n.13 (S.D.N.Y. 2017) ("Royal Park . . . subsequently abandoned its derivative claims" during the pendency of the motion to dismiss).

b. On Balance, Certificateholders Will Benefit from Dismissing the Derivative Claims

The first two prongs of the *Grinnell* factors involve balancing tests: (i) balancing the benefits of settlement against a potential recovery at trial; and (ii) balancing the likelihood of success against the risks of continued litigation. *See AOL Time Warner*, 2006 WL 2572114, at *3. Although Royal Park's voluntary dismissal of the Derivative Claims does not involve a direct payment to the Trusts, dismissal of these claims does permit the resolution of claims that developing case law has rendered futile. It is inherently beneficial to conclude such litigation, particularly in order to preserve and efficiently utilize valuable judicial and party resources. This benefit outweighs the small chance of any recovery by the Trusts at trial, given the evolution of the law since this case was filed. Moreover, the robust notice procedures here create a process for any interested certificateholder to step into the shoes of Royal Park and pursue the Derivative Claims. *See* Leahy Decl., Ex. A. The first and second prongs weigh in favor of dismissing the Derivative Claims.

2. Continuing to Litigate the Derivative Claims Will Be Expensive and Futile

As described above, the weight of recent authority in this District clearly demonstrates that the Derivative Claims asserted by Royal Park are unlikely to succeed. Yet continuing to litigate this matter will result in the additional expenditure of party and judicial resources.

The expense and time needed to continue litigating the Derivative Claims, coupled with the reduced chances of recovering on the claims due to the evolution in the law, renders this factor in favor of dismissing the Derivative Claims.

3. There Is No Reason for a Certificateholder to Object to the Settlement

For all of the reasons set forth above, there is no need for any certificateholder in the Trusts to object to this settlement.[9] First, due to the evolution of the law regarding derivative claims in the RMBS context, the likelihood of successfully recovering on the Derivative Claims is extremely small in this District. Second, the settlement eliminates a significant use of party and judicial resources and permits their efficient use elsewhere. And finally, even setting aside the adverse authority pertaining specifically to derivative claims such as these, the results for certificateholder plaintiffs in lawsuits asserting similar claims against RMBS trustees have been dismal – no such case, when resolved on the merits, has involved a single dollar paid to plaintiffs. *See, e.g.*, *W. & S. Life Ins. Co. v. Bank of N.Y. Mellon*, 129 N.E.3d 1085 (Ohio Ct. App. 2019); *Am. Fid. Assurance Co. v. Bank of N.Y. Mellon*, No. CIV-11-1284-D, 2018 WL 6582381 (W.D. Okla. Oct. 31, 2018); *Commerce Bank v. Bank of N.Y. Mellon*, 141 A.D.3d 413 (N.Y. App. Div. 2016). Therefore it is unlikely that a new certificateholder plaintiff will consider this case to be a worthy investment of time and resources.

4. The Proposed Notice Is Reasonable and Adequate

Finally, the parties' proposed Notice – attached as Ex. A to the Leahy Decl. – is adequate. BNY Mellon will cause the Notice to be posted on the trust investor reporting website for each of the Covered Trusts. Accessing the trust investor reporting website is the means by which certificateholders customarily obtain information and notices regarding the Trusts. This manner of providing notice is reasonable and adequate to ensure that current holders in the Trusts are informed about the dismissal of the litigation.

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[9] As of the date of filing, no certificateholders in the Trusts have contacted Royal Park's counsel with respect to objecting to this settlement or intervening as a substitute derivative plaintiff. *See* Leahy Decl., ¶4.

As described above, the parties' revised Notice provides: (i) additional detail concerning the terms of the Settlement Agreement; and (ii) an explanation that the Derivative Claims will be dismissed without payment to the Trusts. Leahy Decl., Ex. A. In addition, the revised Notice will append this Renewed Joint Motion for Approval to Dismiss All Claims in order to provide holders with additional context and the rationale underlying the proposed dismissal of the Derivative Claims. *See id*. The content of the Notice therefore satisfies the requirements of due process by informing potential derivative plaintiffs "of the claims and defenses involved in the action, the terms of the proposed settlement, and the time and place for them to appear to show cause why the settlement should not be adopted." 7C Wright & Miller, *supra*, §1839. Moreover, the revised Notice contains an expanded description of the proposed 30-day notice period as a time during which other certificateholders can consider whether to intervene in the case. Leahy Decl., Ex. A. This expanded Notice, including giving other certificateholders the opportunity to intervene in the action should they choose, will assure this Court that the views of all interested parties have the opportunity to be heard prior to dismissal.

IV. CONCLUSION

The parties respectfully request that the Court (i) approve the content of the revised Notice appended to the Leahy Declaration, which will be posted for 30 days on the investor reporting website for each Covered Trust and (ii) dismiss all of Royal Park's claims against BNY Mellon with prejudice upon the expiration of the 30-day notice period unless a substitute derivative plaintiff appears.

Dated: June 5, 2020

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on June 5, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

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