

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

**Mikell Scarborough
Master-in-Equity**

**Appellate Case No. 2019-000575
Charleston County Case No. 2010-CP-10-7838**

RECEIVED
OCT 18 2019
SC Court of Appeals

Ditech Financial, LLC Respondent,

v.

**Kevin G. Snyder, individually and
As Personal Representative of the
Estate of Mary Snyder Appellant.**

**RECORD ON APPEAL
(VOLUME II)
(441-819)**

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Ditech Financial LLC,
Plaintiff,
v.
Kevin G. Snyder and Kevin G. Snyder,
individually and as Personal Representative of
the Estate of Mary Snyder,
Defendants.

2010-CP-10-7838
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-07838

FILED
2019 MAY 21 PM 3:27
CLERK OF COURT

**AMENDED NOTICE OF BANKRUPTCY FILING AND IMPOSITION OF
AUTOMATIC STAY**

PLEASE TAKE NOTICE that on February 11, 2019, (the “**Commencement Date**”), Ditech Holding Corporation (f/k/a Walter Investment Management Corp.) and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”), each commenced a voluntary case (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code (11 U.S.C. § 101 *et seq.*) (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). The Chapter 11 Cases are being jointly administered under Case No. 19-10412 (JLG). A copy of the applicable Debtor’s chapter 11 petition is attached hereto as **Exhibit A**.

PLEASE BE ADVISED that pursuant to section 362(a) of the Bankruptcy Code (the “**Automatic Stay**”), the filing of a bankruptcy petition “operates as a stay, applicable to all entities,” of, among other things “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under [the Bankruptcy Code], or to recover a claim against the debtor that arose before the commencement of the [bankruptcy] case” and “any act to obtain possession of property of the estate or of

property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(1), (3).

PLEASE BE FURTHER ADVISED that on February 13, 2019, upon the Debtors’ motion, the Bankruptcy Court entered an interim order granting, among other things, the Debtors’ motion for limited relief from the automatic stay to permit non-Debtor parties to assert and prosecute claims, cross-claims, third-party claims and counter-claims and raise certain defenses on a limited basis as described in the order (the “**Interim Order**”).

PLEASE BE FURTHER ADVISED that on March 20, 2019, the Bankruptcy Court entered an order clarifying and granting such relief on a final basis (the “**Limited Stay Modification Order**”). Paragraphs 16-22 of the Limited Stay Modification Order identify the categories of defenses, claims and counter-claims for which the automatic stay has been lifted (the “**Permitted Claims**”). A copy of the Limited Stay Modification Order is attached hereto as **Exhibit B**.

PLEASE BE FURTHER ADVISED that to the extent that defenses, claims and counter-claims do not constitute Permitted Claims, they are subject to the automatic stay and the continued prosecution of those claims is prohibited.

PLEASE BE FURTHER ADVISED that Ditech’s position is that in this matter, Defendants’ claims for Civil Compensatory Contempt due to alleged violations of S.C. Supreme Court Administrative Order 2011-05-02-11 and for Quiet Title, and Defendants’ affirmative defense seeking rescission are Permitted Claims *only* to the extent they seek a stay or dismissal of Ditech’s foreclosure action or a determination of the validity of Ditech’s lien and do not seek award of money damages, and may proceed to the extent they do not have an adverse effect on any of the Debtors’ assets. The remainder of the Defendants’ claims for Civil Compensatory

Contempt, Breach of Contract, and Unfair Trade Practices do **not** constitute Permitted Claims, they remain subject to the automatic stay and the continued prosecution of these claims is prohibited. In addition, future claims, counter-claims, or defenses may be subject to the automatic stay.

PLEASE BE FURTHER ADVISED that any action taken by the Defendants or any other party against the Debtor without obtaining relief from the Bankruptcy Court from the automatic stay may be void *ab initio* and may result in a finding of contempt by the Bankruptcy Court against Plaintiff or such other party. The Debtor reserves and retains all rights to seek relief in Bankruptcy Court from any action, judgment, order, or ruling entered in violation of the automatic stay.

PLEASE BE FURTHER ADVISED that pursuant to paragraph 18, 19(h), 22 of the Limited Stay Modification Order, any dispute regarding the extent, application and/or effect of the automatic stay under the Limited Stay Modification Order must be heard and determined in the Bankruptcy Court, jointly administered under Case No. 19-10412, and such other and further orders as may be entered by the Bankruptcy Court.

Dated: May 7, 2019

BRADLEY ARANT BOULT CUMMINGS LLP

By: 

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Attorney for Plaintiff, Ditech Financial LLC

2010-CP-10-7838

AFFIRMATION OF SERVICE

I, G. Benjamin Milam, an attorney duly admitted to practice law before the courts of the State of South Carolina, hereby affirms the following to be true under penalty of perjury:

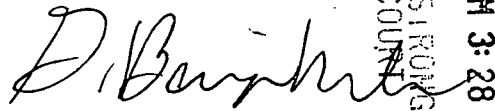
I am over the age of eighteen (18) years, am employed by the law firm of Bradley Arant Boult Cummings LLP, and am not a party to this action.

On the 7th day of May, 2019, I served a copy of the foregoing Amended Notice of Suggestion of Bankruptcy in the above-captioned action upon.

Jason Scott Luck
Seibels Law Firm, P.A.
127 King Street, Suite 100
Charleston, SC 29401

Attorneys for Defendants

Dated: May 7, 2019



G. Benjamin Milam

2019 MAY 21 PM 3:28
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

EXHIBIT A

Chapter 11 Petition

Fill in this information to identify the case

United States Bankruptcy Court for the:

Southern District of New York
(State)

Case number (if known): Chapter 11

☐ Check if this is
an amended filing

Official Form 201

Voluntary Petition for Non-Individuals Filing for Bankruptcy

04/16

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name Ditech Financial LLC

2. All other names debtor used in the last 8 years Green Tree Servicing LLC
Ditech

Include any assumed names, trade names, and doing business as names

3. Debtor's federal Employer Identification Number (EIN) 41-1795868

4. Debtor's address Principal place of business

1100 Virginia Drive
Number Street

Suite 100A

Fort Washington Pennsylvania 19034
City State ZIP CodeMontgomery County
County

Mailing address, if different from principal place of business

3000 Bayport Drive, Suite 985
Number Street

P.O. Box

Tampa Florida 33607
City State ZIP Code

Location of principal assets, if different from principal place of business

Number Street

City State ZIP Code

5. Debtor's website (URL) www.ditech.com

6. Type of debtor

- ☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))
☐ Partnership (excluding LLP)
☐ Other. Specify:

7. Describe debtor's business

A. Check one:

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))
☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
☐ Railroad (as defined in 11 U.S.C. § 101(44))
☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))
☒ None of the above

B. Check all that apply:

- ☐ Tax- entity (as described in 26 U.S.C. § 501)
☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
☐ Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>.
5222

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- ☐ Chapter 7
☐ Chapter 9

☒ Chapter 11. **Check all that apply:**

- ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,566,050 (amount subject to adjustment on 4/01/19 and every 3 years after that).
☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). If the debtor is a small business debtor, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if all of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
☐ A plan is being filed with this petition.
☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

☐ Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

☒ No

☐ Yes

If more than 2 cases, attach a separate list.

District _____ When _____ Case number _____
MM / DD / YYYY
District _____ When _____ Case number _____
MM / DD / YYYY

10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?

☐ No

☒ Yes

Debtor See attached Schedule 1 Relationship _____
District Southern District of New York When February 11, 2019
Case number, if known _____ MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

11. Why is the case filed in this district?*Check all that apply:*

- ☐ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- ☒ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?☒ No☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.**Why does the property need immediate attention?** *(Check all that apply.)*

- ☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? _____

- ☐ It needs to be physically secured or protected from the weather.

- ☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

☐ Other _____**Where is the property?**

Number _____

Street _____

City _____

State _____

ZIP Code _____

Is the property insured?☐ No☐ Yes. Insurance agency _____

Contact Name _____

Phone _____

Statistical and administrative information**13. Debtor's estimation of available funds***Check one:*

- ☒ Funds will be available for distribution to unsecured creditors.
- ☐ After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors
(on a consolidated basis)**

☐ 1-49	☐ 1,000-5,000	☐ 25,001-50,000
☐ 50-99	☐ 5,001-10,000	☒ 50,001-100,000
☐ 100-199	☐ 10,001-25,000	☐ More than 100,000
☐ 200-999		

**15. Estimated assets
(on a consolidated basis)**

☐ \$0-\$50,000	☐ \$1,000,001-\$10 million	☐ \$500,000,001-\$1 billion
☐ \$50,001-\$100,000	☐ \$10,000,001-\$50 million	☐ \$1,000,000,001-\$10 billion
☐ \$100,001-\$500,000	☐ \$50,000,001-\$100 million	☒ \$10,000,000,001-\$50 billion
☐ \$500,001-\$1 million	☐ \$100,000,001-\$500 million	☐ More than \$50 billion

**16. Estimated liabilities
(on a consolidated basis)**

☐ \$0-\$50,000	☐ \$1,000,001-\$10 million	☐ \$500,000,001-\$1 billion
☐ \$50,001-\$100,000	☐ \$10,000,001-\$50 million	☐ \$1,000,000,001-\$10 billion
☐ \$100,001-\$500,000	☐ \$50,000,001-\$100 million	☒ \$10,000,000,001-\$50 billion
☐ \$500,001-\$1 million	☐ \$100,000,001-\$500 million	☐ More than \$50 billion

Request for Relief, Declaration, and Signatures

WARNING – Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

17. Declaration and signature of authorized representative of debtor

- ☐ The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- ☐ I have been authorized to file this petition on behalf of the debtor.
- ☐ I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 11, 2019
MM/ DD /YYYY

x /s/ Kimberly Perez Kimberly Perez
Signature of authorized representative of debtor Printed name

Senior Vice President and Chief Accounting Officer
Title

18. Signature of attorney

x /s/ Ray C. Schrock, P.C. Date February 11, 2019
Signature of attorney for debtor MM / DD / YYYY

Ray C. Schrock, P.C.
Printed Name

Weil, Gotshal & Manges LLP
Firm Name

767 Fifth Avenue
Number Street

New York New York 10153
City State ZIP Code

(212) 310-8000 ray.schrock@weil.com
Contact phone Email address

4860631 New York
Bar Number State

Schedule 1

Pending Bankruptcy Cases Filed by the Debtor and Affiliates of the Debtor

On the date hereof, each of the affiliated entities listed below, including the debtor in this chapter 11 case, filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the "**Court**"). A motion will be filed with the Court requesting that the chapter 11 cases of the entities listed below be consolidated for procedural purposes only and jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

COMPANY	CASE NUMBER	DATE FILED	DISTRICT	JUDGE
Green Tree Credit LLC	19-____()	February 11, 2019	S.D.N.Y.	Pending
Ditech Holding Corporation	19-____()	February 11, 2019	S.D.N.Y.	Pending
DF Insurance Agency LLC	19-____()	February 11, 2019	S.D.N.Y.	Pending
Ditech Financial LLC	19-____()	February 11, 2019	S.D.N.Y.	Pending
Green Tree Credit Solutions LLC	19-____()	February 11, 2019	S.D.N.Y.	Pending
Green Tree Insurance Agency of Nevada, Inc.	19-____()	February 11, 2019	S.D.N.Y.	Pending
Green Tree Investment Holdings III LLC	19-____()	February 11, 2019	S.D.N.Y.	Pending
Green Tree Servicing Corp.	19-____()	February 11, 2019	S.D.N.Y.	Pending
Marix Servicing LLC	19-____()	February 11, 2019	S.D.N.Y.	Pending
Mortgage Asset Systems, LLC	19-____()	February 11, 2019	S.D.N.Y.	Pending
REO Management Solutions, LLC	19-____()	February 11, 2019	S.D.N.Y.	Pending
Reverse Mortgage Solutions, Inc.	19-____()	February 11, 2019	S.D.N.Y.	Pending
Walter Management Holding Company LLC	19-____()	February 11, 2019	S.D.N.Y.	Pending
Walter Reverse Acquisition LLC	19-____()	February 11, 2019	S.D.N.Y.	Pending

Exhibit A

Resolutions of the Board of Directors

**RESOLUTIONS OF THE
THE BOARD OF DIRECTORS OF
DITECH HOLDING CORPORATION**

February 10, 2019

WHEREAS, Ditech Holding Corporation (the “Company”), with the assistance of financial and legal advisors, has been conducting a review of strategic alternatives, including the potential sale of the Company, a sale of all or a portion of the Company’s assets, and/or a recapitalization of the Company;

WHEREAS, the Board of Directors (the “Board”) of the Company previously established a special committee of the Board composed of independent and disinterested directors (the “Special Committee”) to assist management of the Company in evaluating, exploring and negotiating strategic alternatives, and recommending to the Board whether to approve any such potential transaction;

WHEREAS, upon recommendation of the Special Committee, the Board previously approved the form, terms and provisions of, and the execution, delivery, and performance of, and, on February 8, 2019, the Company entered into, the restructuring support agreement (the “RSA”) with an ad hoc group of lenders (the “Term Loan Lenders”) holding more than 75% of the aggregate total principal amount of the Company’s senior secured first lien term loan, borrowed pursuant to the Second Amended and Restated Credit Agreement, dated as of February 9, 2018 (as amended, supplemented or otherwise modified, the “Credit Agreement”) establishing the Term Loan Lenders’ support for a prearranged chapter 11 plan of reorganization;

WHEREAS, upon recommendation of the Special Committee, the Board previously approved, and on February 8, 2019, the Company entered into, the Commitment Letter (the “Commitment Letter”), by and among the Company as Guarantor, its wholly-owned direct subsidiaries Reverse Mortgage Solutions, Inc. (“RMS”) and Ditech Financial LLC (“Ditech”) as Sellers, Barclays Bank PLC (“Barclays”) as Administrative Agent and as Buyer and Nomura Corporate Funding Americas, LLC (“Nomura”) as Buyer (together with Barclays in its capacity as Buyer, the “Buyers”), pursuant to which the Buyers committed to provide new debtor-in-possession financing in an amount of up to \$1.9 billion on terms and subject to conditions set forth in the Commitment Letter and the term sheet attached thereto;

WHEREAS, the Board has met on various occasions to review and has had the opportunity to ask questions about the materials presented by the management and the legal and financial advisors of the Company regarding the liabilities and liquidity of the Company, the strategic alternatives available to it and the impact of the foregoing on the Company’s business; and

WHEREAS, in connection therewith, the Board desires to approve the following resolutions.

NOW, THEREFORE, BE IT HEREBY

Commencement of Chapter 11 Cases

RESOLVED, that, upon recommendation of the Special Committee, the Board has determined, after consultation with the management and the legal and financial advisors of the Company, that it is desirable and in the best interests of the Company, its creditors, and other parties in interest to approve and authorize the filing of petitions by the Company and certain of its subsidiaries, including RMS and Ditech, seeking relief under the provisions of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"); and be it further

RESOLVED, that upon recommendation of the Special Committee, the Board has determined, after consultation with the management and the legal and financial advisors of the Company, that it is desirable and in the best interests of the Company, its creditors, and other parties in interest that the Company and its advisors prepare, finalize and file, as appropriate, the prearranged chapter 11 plan of reorganization (the "Plan") and related disclosure statement (the "Disclosure Statement") consistent with the terms of the RSA;

RESOLVED, that any officer of the Company (each, an "Authorized Officer"), in each case, acting singly or jointly, be, and each hereby is, authorized, empowered, and directed to execute and file in the name and on behalf of the Company all petitions, schedules, motions, lists, applications, pleadings, and other papers in the Bankruptcy Court, and, in connection therewith, to employ and retain all assistance by legal counsel, accountants, financial advisors, investment bankers and other professionals, and to take and perform any and all further acts and deeds which such Authorized Officer deems necessary, proper, or desirable in connection with the chapter 11 cases (the "Chapter 11 Cases"), the Plan and the Disclosure Statement, including, without limitation, negotiating, executing, delivering and performing any and all documents, agreements, certificates and/or instruments in connection with the transactions and professional retentions set forth in these resolutions, with a view to the successful prosecution of the Chapter 11 Cases; and be it further

Debtor-in-Possession Financing

RESOLVED, that in connection with the Chapter 11 Cases, and as previously authorized and agreed to by Ditech and RMS in connection with the Commitment Letter, and upon recommendation of the Special Committee, it is in the best interest of the Company, Ditech, RMS, RMS REO CS, LLC ("RMS REO CS"), RMS REO BRC, LLC ("RMS REO BRC") and RMS REO BRC II, LLC ("RMS REO BRC II") to engage in, and the Company, Ditech, RMS, RMS REO CS, RMS REO BRC and RMS REO BRC II will obtain benefits from, the financing transactions contemplated by the agreements listed on Schedule A hereto and any and all of the other agreements, including, without limitation, any other guarantees, certificates, documents and instruments authorized, executed, delivered, reaffirmed, verified and/or filed in connection with the Debtor-in-Possession Financing (as defined below) (together with the transaction documents listed on Schedule A, collectively, the "DIP Financing Documents"), which, subject to the approval of the Bankruptcy Court, will provide the Company, Ditech, RMS and RMS REO BRC II up to \$1.9 billion in available warehouse financing, which is necessary

and appropriate for the conduct, promotion and attainment of the business of the Company and its subsidiaries, including Ditech, RMS and RMS REO BRC II (the "Debtor-in-Possession Financing") (capitalized terms used in this section with respect to Debtor-in-Possession Financing and not otherwise defined herein shall have the meanings ascribed to such terms in the Commitment Letter or the term sheet attached thereto); and be it further

RESOLVED, that the Company's performance of its obligations under the DIP Financing Documents, including the borrowings and guarantees contemplated thereunder, are hereby, in all respects confirmed, ratified and approved; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, empowered and directed, in the name and on behalf of the Company, to cause the Company to negotiate and approve the terms, provisions of and performance of, and to prepare, execute and deliver the DIP Financing Documents, on substantially the same terms and conditions presented to the Board, in the name and on behalf of the Company under its corporate seal or otherwise, and such other documents, agreements, instruments and certificates as may be required by the Administrative Agent or required by the DIP Financing Documents; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, as part of the adequate protection to be provided to the lenders and administrative agent under the Credit Agreement, to grant replacement security interests in, and replacement liens on, any and all property of the Company as collateral pursuant to the Bankruptcy Court's orders to secure all of the obligations and liabilities of the Company thereunder, and to authorize, execute, verify, file and/or deliver to the administrative agent, on behalf of the Company, all agreements, documents and instruments required by the lenders or the administrative agent under the Credit Agreement in connection with the foregoing; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, empowered, and directed, in the name and on behalf of the Company, to take all such further actions including, without limitation, to pay all fees and expenses, in accordance with the terms of the DIP Financing Documents, which shall, in such Authorized Officer's judgment, be necessary, proper or advisable to perform the Company's obligations under or in connection with the DIP Financing Documents and the transactions contemplated therein and to carry out fully the intent of the foregoing resolutions; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, empowered, and directed, in the name and on behalf of the Company, to execute and deliver any amendments, supplements, modifications, renewals, replacements, consolidations, substitutions and extensions of any of the DIP Financing Documents which shall, in such Authorized Officer's sole judgment, be necessary, proper or advisable; and be it further

Retention of Advisors

RESOLVED, that, upon recommendation of the Special Committee, in connection with the Chapter 11 Cases, any Authorized Officer, in each case, acting singly or jointly, be, and each hereby is, authorized, empowered, and directed, with full power of delegation, in the name and on behalf of the Company, to employ and retain all assistance by

legal counsel, accountants, financial advisors, investment bankers and other professionals, on behalf of the Company, which such Authorized Officer deems necessary, appropriate or advisable in connection with, or in furtherance of, the Chapter 11 Cases, with a view to the successful prosecution of the Chapter 11 Cases (such acts to be conclusive evidence that such Authorized Officer deemed the same to meet such standard); and be it further

RESOLVED, that the firm of Houlihan Lokey Capital, Inc., located at 10250 Constellation Blvd., 5th Floor, Los Angeles, California 90067, is hereby retained as investment banker for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval; and be it further

RESOLVED, that the law firm of Weil, Gotshal & Manges LLP, located at 767 Fifth Avenue, New York, NY 10153, is hereby retained as counsel for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval; and be it further

RESOLVED, that the firm of AlixPartners, located at 909 Third Avenue, New York, New York 10022, is hereby retained as financial advisor for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval; and be it further

RESOLVED, that the firm of Epiq Corporate Restructuring, LLC, located at 777 Third Avenue, 12th Floor, New York, New York 10017, is hereby retained as claims, noticing, and solicitation agent and administrative advisor for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval; and be it further

Approval of Actions of Subsidiaries

RESOLVED, that in the judgment of the Board, it is desirable and in the best interests of certain of the Company's direct and indirect subsidiaries for each such entity or entities to take any and all action, including related to the DIP Financing Documents, Debtor-in-Possession Financing and filing in the Bankruptcy Court, and to execute and deliver all documents, agreements, motions and pleadings as are necessary, proper, or desirable to enable such subsidiary to carry out the DIP Financing Documents, Debtor-in-Possession Financing and filing in the Bankruptcy Court contemplated hereby, including granting any director, officer, or other authorized representative as applicable according to local law, the authority to take action in support thereof; and be it further

General

RESOLVED, that any Authorized Officer is hereby authorized, empowered and directed, in the name and on behalf of the Company, to cause the Company to enter into, execute, deliver, certify, file and/or record, perform and approve any necessary public disclosures and filings related to, such documents, agreements, instruments, motions, affidavits, applications for approvals or rulings of governmental or regulatory authorities and certificates as may be required in connection with the Chapter 11 Cases, DIP Financing Documents and Debtor-in-Possession Financing, and to take such other actions that in the judgment of the Authorized Officer shall be or become necessary, proper or desirable in connection therewith; and be it further

RESOLVED, that any actions taken by any Authorized Officer, for or on behalf of the Company, prior to the date hereof that would have been authorized by these resolutions but for the fact that such actions were taken prior to the date hereof be, and they hereby are, authorized, adopted, approved, confirmed and ratified in all respects as the actions and deeds of the Company.

Schedule A

1. Master Refinancing Agreement, dated as of the Closing Date, by and among Barclays, as administrative agent for the Buyers (as defined therein) and other Secured Parties (as defined therein), Barclays and Nomura, each as a Buyer (as defined therein), Barclays Capital Inc. and Nomura Securities International, Inc., each as an MSFTA Counterparty (as defined therein), Ditech and Reverse Mortgage Solutions, Inc., each as a Seller (as defined therein) and RMS REO BRC II, LLC, as REO Subsidiary (as defined therein) (the "Omnibus Agreement").
2. Master DIP Fee Letter, dated as of the Closing Date, among Barclays, as administrative agent, Barclays and Nomura, as Committed Buyers (as defined therein), Ditech, RMS and Ditech Holding Corporation.
3. Master DIP Guaranty, dated as of the Closing Date, made by Guarantor in favor of Barclays, as Administrative Agent, for the benefit of Buyers and the other Buyer Parties (as defined therein).
4. Margin, Setoff and Netting Agreement, dated as of the Closing Date, among Barclays, as Administrative Agent, Barclays Capital, Inc., Nomura Securities International, Inc., Nomura, Ditech, RMS, and RMS REO BRC II, LLC and acknowledged and agreed to by Ditech Holding Corporation.
5. Master Administration Agreement, dated as of the Closing Date, among Barclays, as Administrative Agent for the Buyers and other Secured Parties (as defined therein), Barclays and Nomura, each as a Buyer (as defined therein), Barclays Capital Inc. and Nomura Securities International, Inc., each as a MSFTA Counterparty (as defined therein), Ditech and RMS, each as a Seller (as defined therein), and RMS REO BRC II, LLC as REO Subsidiary (as defined therein).
6. Amended and Restated Master Repurchase Agreement, dated as of the Closing Date, by and among Barclays and Nomura, as Purchasers (as defined therein), Barclays, as Agent (as defined therein), RMS and RMS REO BRC II, LLC.
7. Amended and Restated Pricing Side Letter, dated as of the Closing Date, among Barclays, as Purchaser and Agent, Nomura, as Purchaser, RMS and RMS REO BRC II, LLC.
8. Assignment Agreement, dated as of the Closing Date, between RMS REO CS, LLC and RMS.
9. Assignment Agreement, dated as of the Closing Date, between RMS REO BRC, LLC and RMS.
10. Assignment Agreement, dated as of the Closing Date, between RMS REO BRC II, LLC and RMS.

11. Amended and Restated Custodial Agreement, dated as of the Closing Date, by and among RMS REO BRC II, LLC (the "REO Subsidiary"), RMS, Deutsche Bank National Trust Company, as custodian for Purchasers (as defined therein) and for the REO Subsidiary, Barclays and Nomura, as Purchasers (as defined therein), and Barclays, as Agent (as defined therein).
12. Amended and Restated Deposit Account Control Agreement, dated as of the Closing Date, by and among RMS, Barclays, as Agent (as defined therein), and Wells Fargo Bank, National Association.
13. Amendment No. 1 to the Limited Liability Company Agreement of RMS REO BRC II, LLC, dated as of the Closing Date, entered into by RMS, as the sole member, RMS REO BRC II, LLC, and consented to by Barclays, as Agent.
14. Indenture, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Agency Facility Indenture"), by and among Ditech Agency Advance Trust, as issuer (the "Agency Facility Issuer"), Wells Fargo Bank, N.A. ("Wells Fargo"), as indenture trustee (in such capacity, the "Agency Facility Indenture Trustee"), calculation agent, paying agent and securities intermediary, Ditech, as administrator (in such capacity, the "Agency Facility Administrator") and as servicer (in such capacity, the "Agency Facility Servicer") and Barclays, as administrative agent (in such capacity, the "Agency Facility Administrative Agent") (successor to Credit Suisse First Boston Mortgage Capital LLC, as initial administrative agent).
15. Series 2019-VF1 Indenture Supplement to Agency Facility Indenture, dated as of the Closing Date, by and among the Agency Facility Issuer, the Agency Facility Indenture Trustee (as indenture trustee, calculation agent, paying agent and securities intermediary), the Agency Facility Administrator, the Agency Facility Servicer and the Agency Facility Administrative Agent.
16. Receivables Sale Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Agency Facility Receivables Sale Agreement"), by and among the Agency Facility Servicer, as servicer and as the receivables seller (in such capacity, the "Agency Facility Receivables Seller"), Ditech Agency Advance Depositor LLC, as depositor (the "Agency Facility Depositor") and the Company, as guarantor.
17. Amendment No.1 to the Agency Facility Receivables Sale Agreement, dated as of the Closing Date, by and among the Agency Facility Servicer, the Agency Facility Receivables Seller, the Agency Facility Depositor and the Company, as guarantor.
18. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Depositor and the Agency Facility Receivables Seller.

19. Receivables Pooling Agreement, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Depositor and the Agency Facility Issuer.
20. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Depositor and the Agency Facility Issuer.
21. Administration Agreement, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Issuer and the Agency Facility Administrator.
22. Acknowledgment Agreement with Respect to Servicing Advance Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the “Agency Facility Acknowledgment Agreement”), by and among the Agency Facility Issuer, the Agency Facility Depositor, the Agency Facility Servicer, the Agency Facility Indenture Trustee, Fannie Mae and the Agency Facility Administrative Agent.
23. Amendment No. 1 to the Agency Facility Acknowledgment Agreement, dated as of April 20, 2018, by and among the Agency Facility Issuer, the Agency Facility Depositor, the Agency Facility Servicer, the Agency Facility Indenture Trustee, Fannie Mae and the Agency Facility Administrative Agent.
24. Amendment No. 2 to the Agency Facility Acknowledgment Agreement, dated as of the Closing Date, by and among the Agency Facility Issuer, the Agency Facility Depositor, the Agency Facility Servicer, the Agency Facility Indenture Trustee, Fannie Mae and the Agency Facility Administrative Agent.
25. Series 2019-VF1 Variable Funding Note Purchase Agreement, dated as of the Closing Date, (the “Agency Facility Note Purchase Agreement”), by and among Ditech, as the Agency Facility Servicer, the Agency Facility Administrator and the Agency Facility Receivables Seller, the Agency Facility Depositor, the Agency Facility Issuer, the Administrative Agent, and Barclays, as a Purchaser Agent (“Agency Facility Purchaser”).
26. Ditech Agency Advance Trust Advance Receivables Backed Note, Series 2019-VF1 Note, Number 1 (the “Agency Facility Note”), dated as of the Closing Date, in the name of the Agency Facility Purchaser.
27. Amended and Restated Trust Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the “Agency Facility Trust Agreement”), by and among the Agency Facility Depositor, Wilmington Trust, National Association, as the owner trustee (in such capacity, the “Agency Facility Owner Trustee”), and the Agency Facility Administrator.
28. Amendment No.1 to the Agency Facility Trust Agreement, dated as of the Closing Date, by and among the Agency Facility Depositor, Wilmington Trust, National Association, the Agency Facility Owner Trustee and the Agency Facility Administrator.

29. Amended and Restated Limited Liability Company Agreement of the Agency Facility Depositor (the "Agency Facility Depositor LLC Agreement"), dated as of February 9, 2018 and effective as of February 12, 2018, by and among Ditech, as the sole economic member of the Agency Facility Depositor and Albert Fioravanti, as the Special Member and Independent Manager of the Agency Facility Depositor.
30. Amendment No. 1 to the Agency Facility Depositor LLC Agreement, dated as of the Closing Date, made by Ditech, as the sole economic member of the Agency Facility Depositor and consented to by Albert Fioravanti, as the Special Member and Independent Manager of the Agency Facility Depositor and Barclays, as sole noteholder.
31. Indenture, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "PLS Facility Indenture"), by and among Ditech PLS Advance Trust II, as issuer (the "PLS Facility Issuer"), Wells Fargo Bank, as indenture trustee (in such capacity, the "PLS Facility Indenture Trustee"), calculation agent, paying agent and securities intermediary, Ditech, as administrator (in such capacity, the "PLS Facility Administrator") and as servicer (in such capacity, the "PLS Facility Servicer") and Barclays, as administrative agent (in such capacity, the "PLS Facility Administrative Agent") (successor to Credit Suisse First Boston Mortgage Capital LLC, as initial administrative agent).
32. Series 2019-VF1 Indenture Supplement to PLS Facility Indenture, dated as of the Closing Date (the "PLS Facility Indenture Supplement"), by and among the PLS Facility Issuer, the PLS Facility Indenture Trustee (as indenture trustee, calculation agent, paying agent and securities intermediary), the PLS Facility Administrator, the PLS Facility Servicer and the PLS Facility Administrative Agent.
33. Receivables Sale Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "PLS Facility Receivables Sale Agreement"), by and among the PLS Facility Servicer, as servicer and as the receivables seller (in such capacity, the "PLS Facility Receivables Seller"), Ditech PLS Advance Depositor LLC, as depositor (the "PLS Facility Depositor") and the Company, as guarantor.
34. Amendment No. 1 to the PLS Facility Receivables Sale Agreement, dated as of the Closing Date, by and among the PLS Facility Servicer, the PLS Facility Receivables Seller, the PLS Facility Depositor and the Company, as guarantor ("PLS Facility Receivables Sale Agreement Amendment").
35. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (the "PLS Facility Assignment of Receivables"), by and between the PLS Facility Depositor and the PLS Facility Receivables Seller.
36. Receivables Pooling Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (the "PLS Facility Receivables Pooling Agreement"), by and between the PLS Facility Depositor and PLS Facility Issuer.

37. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (the “Depositor PLS Facility Assignment of Receivables”), by and between the PLS Facility Depositor and the PLS Facility Issuer.
38. Administration Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (the “PLS Facility Administration Agreement”), by and between the PLS Facility Issuer and the PLS Facility Administrator.
39. Acknowledgment Agreement with Respect to Servicing Advance Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the “PLS Facility Acknowledgment Agreement”), by and among the PLS Facility Issuer, the PLS Facility Depositor, the PLS Facility Servicer, the PLS Facility Indenture Trustee, Fannie Mae and the PLS Facility Administrative Agent.
40. Series 2019-VF1 Variable Funding Note Purchase Agreement, dated as of the Closing Date, and effective as of the Effective Date (the “PLS Facility Note Purchase Agreement”), by and among Ditech, as the PLS Facility Servicer, the PLS Facility Administrator and the PLS Facility Receivables Seller, the PLS Facility Depositor, the PLS Facility Issuer, the Administrative Agent, and Barclays, as a Purchaser Agent (“PLS Facility Purchaser”).
41. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class A-VF1 Note Number 1 (the “PLS Facility Note, Class A”), dated as of the Closing Date, in the name of the PLS Facility Purchaser.
42. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class B-VF1 Note Number 1 (the “PLS Facility Note, Class B”), dated as of the Closing Date, in the name of the PLS Facility Purchaser.
43. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class C-VF1 Note Number 1 (the “PLS Facility Note, Class C”), dated as of the Closing Date, in the name of the PLS Facility Purchaser.
44. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class D-VF1 Note Number 1 (the “PLS Facility Note, Class D”), dated as of the Closing Date, in the name of the PLS Facility Purchaser.
45. Amended and Restated Trust Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the “PLS Facility Trust Agreement”), by and among the PLS Facility Depositor, Wilmington Trust, National Association, as the owner trustee (in such capacity, the “PLS Facility Owner Trustee”), and the PLS Facility Administrator.
46. Amendment No.1 to the PLS Facility Trust Agreement, dated as of the Closing Date, by and among the Agency Facility Depositor, the Agency Facility Owner Trustee and the Agency Facility Administrator.

47. Amended and Restated Limited Liability Company Agreement of the PLS Facility Depositor (the "PLS Facility Depositor LLC Agreement"), dated as of February 9, 2018 and effective as of February 12, 2018, by and among Ditech, as the sole economic member of the PLS Facility Depositor and Albert Fioravanti, as the Special Member and Independent Manager of the PLS Facility Depositor.
48. Amendment No. 1 to the PLS Facility Depositor LLC Agreement, dated as of the Closing Date, made by Ditech, as the sole economic member of the PLS Facility Depositor and consented to by Albert Fioravanti, as the Special Member and Independent Manager of the PLS Facility Depositor and Barclays, as sole noteholder.
49. Pledge Agreement, dated as of the Closing Date, made by the Ditech in favor of Barclays.
50. Master Repurchase Agreement, dated as of the Closing Date, by and among Barclays, as Administrative Agent on behalf of Buyers (as defined therein), Barclays and Nomura, as Buyers (as defined therein), other Buyers party thereto from time to time, and Ditech.
51. Pricing Side Letter, dated the Closing Date, among Barclays, as Administrative Agent for the benefit of Buyers (as defined therein), Barclays and Nomura, as Committed Buyers (as defined therein), and Ditech.
52. Power of Attorney, dated as of the Closing Date, to be entered into by Ditech.
53. Custodial and Disbursement Agreement, dated as of the Closing Date, by and among Barclays and Nomura, as Buyers (as defined therein), Ditech, Barclays, as agent of the Buyers, and Wells Fargo Bank, N.A.
54. Amended and Restated Deposit Account Control Agreement, dated as of the Closing Date, by and among Barclays, as Administrative Agent (as defined therein), Ditech and U.S. Bank National Association.
55. Second Amendment to the Master Securities Forward Transaction Agreement, dated as of the Closing Date, between Barclays Capital Inc. and Ditech.
56. Second Amendment to the Master Securities Forward Transaction Agreement, dated as of the Closing Date, between Nomura Securities International, Inc. and Ditech.

**ACTION BY
WRITTEN CONSENT OF
THE GOVERNING BODIES OF**

DF INSURANCE AGENCY LLC
DITECH FINANCIAL LLC
GREEN TREE CREDIT LLC
GREEN TREE CREDIT SOLUTIONS LLC
GREEN TREE INSURANCE AGENCY OF NEVADA, INC.
GREEN TREE INVESTMENT HOLDINGS III LLC
GREEN TREE SERVICING CORP.
MARIX SERVICING LLC
MORTGAGE ASSET SYSTEMS, LLC
REO MANAGEMENT SOLUTIONS, LLC
REVERSE MORTGAGE SOLUTIONS, INC.
WALTER MANAGEMENT HOLDING COMPANY LLC
WALTER REVERSE ACQUISITION LLC

February 10, 2019

The required members of the board of directors, the sole member, the managing member, the sole manager or the sole general partner, as the case may be (as applicable, the "Governing Body"), of each of the entities referenced above (each, a "Company" and collectively, the "Companies"), do hereby consent to, adopt, and approve, by written consent in accordance with applicable law, the following resolutions and every action effected thereby:

WHEREAS, each Company is a direct or indirect wholly-owned subsidiary of Ditech Holding Corporation (the "Parent");

WHEREAS, Reverse Mortgage Solutions, Inc. is the sole "member" (as such term is used in the Delaware Limited Liability Company Act, 6 Del.C. § 18-101, et seq. (the "DLLC Act")) (the "Sole Member") of RMS REO CS, LLC, RMS REO BRC, LLC, RMS REO BRC II, LLC and RMS 2018-09, LLC (each a "Single Member LLC" and, collectively, the "Single Member LLCs");

WHEREAS, the Board of Directors of the Parent and the Governing Body of the Company previously approved the form, terms and provisions of, and the execution, delivery, and performance of, and, on February 8, 2019, the Company entered into, the restructuring support agreement (the "RSA") with an ad hoc group of lenders (the "Term Loan Lenders") holding more than 75% of the aggregate total principal amount of the Parent's senior secured first lien term loan, borrowed pursuant to the Second Amended and Restated Credit Agreement, dated as of February 9, 2018 (as amended, supplemented or otherwise modified, the "Credit Agreement") establishing the Term Loan Lenders' support for a prearranged chapter 11 plan of reorganization;

WHEREAS, the Board of Directors of the Parent and, if applicable, the Governing Body of the Company, previously approved, and on February 8, 2019, the Parent and the applicable Companies entered into, the Commitment Letter (the "Commitment Letter"), by and among the Parent as Guarantor, its wholly-owned direct subsidiaries Reverse Mortgage Solutions, Inc. ("RMS") and Ditech Financial LLC ("Ditech") as Sellers, Barclays Bank PLC ("Barclays") as Administrative Agent

and as Buyer and Nomura Corporate Funding Americas, LLC ("Nomura") as Buyer (together with Barclays in its capacity as Buyer, the "Buyers"), pursuant to which the Buyers committed to provide new debtor-in-possession financing in an amount of up to \$1.9 billion on terms and subject to conditions set forth in the Commitment Letter and the term sheet attached thereto;

WHEREAS, the Governing Body of the Company has reviewed and had the opportunity to ask questions about the materials attached hereto and the impact of the foregoing on the Company's business; and

WHEREAS, the Governing Body has considered and determined that taking the applicable actions set forth below are in the best interests of the Company and, therefore, desires to approve the following resolutions.

Commencement of Chapter 11 Cases

RESOLVED, that it is desirable and in the best interests of the Company, its creditors, and other parties in interest and the Governing Body approves and authorizes the filing of petitions by the Company seeking relief under the provisions of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"); and be it further

RESOLVED, that it is desirable and in the best interests of the Company, its creditors, and other parties in interest that the Company and its advisors prepare, finalize and file, as appropriate, the prearranged chapter 11 plan of reorganization (the "Plan") and related disclosure statement (the "Disclosure Statement") consistent with the terms of the RSA;

RESOLVED, that any officer of the Company (each, an "Authorized Officer"), in each case, acting singly or jointly, be, and each hereby is, authorized, empowered, and directed to execute and file in the name and on behalf of the Company all petitions, schedules, motions, lists, applications, pleadings, and other papers in the Bankruptcy Court, and, in connection therewith, to employ and retain all assistance by legal counsel, accountants, financial advisors, investment bankers and other professionals, and to take and perform any and all further acts and deeds which such Authorized Officer deems necessary, proper, or desirable in connection with the chapter 11 cases (the "Chapter 11 Cases"), the Plan and the Disclosure Statement, including, without limitation, negotiating, executing, delivering and performing any and all documents, agreements, certificates and/or instruments in connection with the transactions and professional retentions set forth in this resolution, with a view to the successful prosecution of the Chapter 11 Cases; and be it further

Retention of Advisors

RESOLVED, that in connection with the Chapter 11 Cases, any Authorized Officer, in each case, acting singly or jointly, be, and each hereby is, authorized, empowered, and directed, with full power of delegation, in the name and on behalf of the Company, to employ and retain all assistance by legal counsel, accountants, financial advisors, investment bankers and other professionals, on behalf of the Company, which such Authorized Officer deems necessary, appropriate or advisable in connection with, or in furtherance of, the Chapter 11 Cases, with a view to the successful prosecution of the Chapter

11 Cases (such acts to be conclusive evidence that such Authorized Officer deemed the same to meet such standard); and be it further

RESOLVED, that the firm of Houlihan Lokey Capital, Inc., located at 10250 Constellation Blvd., 5th Floor, Los Angeles, California 90067, is hereby retained as investment banker for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval; and be it further

RESOLVED, that the law firm of Weil, Gotshal & Manges LLP, located at 767 Fifth Avenue, New York, NY 10153, is hereby retained as counsel for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval; and be it further

RESOLVED, that the firm of AlixPartners, located at 909 Third Avenue, New York, New York 10022, is hereby retained as financial advisor for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval, and that the Company's prior engagement of AlixPartners is hereby ratified in all respects; and be it further

RESOLVED, that the firm of Epiq Corporate Restructuring, LLC, located at 777 Third Avenue, 12th Floor, New York, New York 10017, is hereby retained as claims, noticing, and solicitation agent and administrative advisor for the Company in the Chapter 11 Cases, subject to Bankruptcy Court approval; and be it further

Specified Consent with Respect to Sole Member

RESOLVED, that the written consent of the Sole Member provided herein to file a petition seeking relief under the Bankruptcy Code shall, to the maximum extent permitted by law, constitute a "written consent" for purposes of §18-304 of the DLLC Act; and be it further

RESOLVED, that it is desirable and in the best interests of the Sole Member, its creditors, and other parties in interest that the Sole Member shall not cease to be a "member" (as such term is used in the DLLC Act) of any Single Member LLC as a result of the Chapter 11 Cases or upon the happening of any other event specified in §18-304 of the DLLC Act; and be it further

General

RESOLVED, that any Authorized Officer is hereby authorized, empowered, and directed, in the name and on behalf of the Company, to cause the Company to enter into, execute, deliver, certify, file and/or record, perform, and approve any necessary public disclosures and filings related to, and such other documents, agreements, instruments and certificates as may be required by the Chapter 11 Cases or retention of advisors and to take such other actions that in the judgment of the Authorized Officer shall be or become necessary, proper or desirable in connection therewith; and be it further

RESOLVED, that any actions taken by any Authorized Officer, for or on behalf of the Company, prior to the date hereof that would have been authorized by these resolutions but for the fact that such actions were taken prior to the date hereof be, and they hereby are, authorized, adopted, approved, confirmed and ratified in all respects as the actions and deeds of the Company.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned, being the managing member of the entities listed under "Group 1" on Schedule I has executed this written consent as of the date first set forth above.

DITECH HOLDING CORPORATION

/s/ Kimberly Perez

Name: Kimberly Perez

Title: SVP & Chief Accounting Officer

IN WITNESS WHEREOF, the undersigned, being all of the members of the board of directors of the entity listed under "Group 2" on Schedule I have executed this unanimous written consent as of the date first set forth above.

/s/ Jeffrey Baker

Jeffrey Baker

/s/ Alan Clark

Alan Clark

IN WITNESS WHEREOF, the undersigned, being the sole member of the board of directors of the entity listed under "Group 3" on Schedule I has executed this unanimous written consent as of the date first set forth above.

/s/ Laura Reichel

Laura Reichel

IN WITNESS WHEREOF, the undersigned, being the sole member or managing member, as applicable, of the entities listed under "Group 4" on Schedule I, has executed this written consent as of the date first set forth above.

**GREEN TREE CREDIT SOLUTIONS
LLC,**

/s/ Kimberly Perez

Name: Kimberly Perez

Title: SVP & Chief Accounting Officer

IN WITNESS WHEREOF, the undersigned, being the managing member of each entity listed under "Group 5" on Schedule I, has executed this written consent as of the date first set forth above.

**REVERSE MORTGAGE SOLUTIONS,
INC.**

/s/ Jeanetta Brown _____
Name: Jeanetta Brown
Title: Vice President

IN WITNESS WHEREOF, the undersigned, being the managing member of the entity listed under "Group 6" on Schedule I, has executed this written consent as of the date first set forth above.

**WALTER MANAGEMENT HOLDING
COMPANY LLC**

/s/ Kimberly Perez

Name: Kimberly Perez

Title: SVP & Chief Accounting Officer

IN WITNESS WHEREOF, the undersigned, being the managing member of the entity listed under "Group 7" on Schedule I, has executed this written consent as of the date first set forth above.

GREEN TREE SERVICING CORP.

/s/ Kimberly Perez

Name: Kimberly Perez

Title: SVP & Chief Accounting Officer

Schedule I

Group 1

Walter Reverse Acquisition LLC, a Delaware limited liability company

Green Tree Credit Solutions LLC, a Delaware limited liability company

Marix Servicing LLC, a Delaware limited liability company

Group 2

Reverse Mortgage Solutions, Inc., a Delaware corporation

Group 3

Green Tree Insurance Agency of Nevada, Inc., a Nevada corporation

Green Tree Servicing Corp., a Delaware corporation

Group 4

Walter Management Holding Company LLC, a Delaware limited liability company

DF Insurance Agency LLC, a Delaware limited liability company

Green Tree Investment Holdings III LLC, a Delaware limited liability company

Group 5

Mortgage Asset Systems, LLC, a Delaware limited liability company

REO Management Solutions, LLC, a Delaware limited liability company

Group 6

Green Tree Credit LLC, a New York limited liability company

Group 7

Ditech Financial LLC, a Delaware limited liability company

**ACTION BY
WRITTEN CONSENT OF
THE GOVERNING BODIES OF**

DITECH FINANCIAL LLC
REVERSE MORTGAGE SOLUTIONS, INC.
RMS REO CS, LLC
RMS REO BRC, LLC
RMS REO BRC II, LLC

February 10, 2019

The required members of the board of directors, the sole member, the managing member, the sole manager or the sole general partner, as the case may be (as applicable, the "Governing Body"), of each of the entities referenced above (each, a "Company" and collectively, the "Companies"), do hereby consent to, adopt, and approve, by written consent in accordance with applicable law, the following resolutions and every action effected thereby:

WHEREAS, the Company is a direct or indirect wholly-owned subsidiary of Ditech Holding Corporation (the "Parent");

WHEREAS, the Board of Directors of the Parent and the Governing Body of each of Reverse Mortgage Solutions, Inc. ("RMS") and Ditech Financial LLC ("Ditech") previously approved the form, terms and provisions of, and the execution, delivery, and performance of, and, on February 8, 2019, the Parent and certain of its subsidiaries, including RMS and Ditech, entered into, the restructuring support agreement (the "RSA") with an ad hoc group of lenders (the "Term Loan Lenders") holding more than 75% of the aggregate total principal amount of the Parent's senior secured first lien term loan, borrowed pursuant to the Second Amended and Restated Credit Agreement, dated as of February 9, 2018 (as amended, supplemented or otherwise modified, the "Credit Agreement") establishing the Term Loan Lenders' support for a prearranged chapter 11 plan of reorganization;

WHEREAS, the Board of Directors of the Parent and the Governing Body of each of RMS and Ditech previously approved, and on February 8, 2019, the Parent, RMS and Ditech entered into, the Commitment Letter (the "Commitment Letter"), by and among the Parent as Guarantor, its wholly-owned direct subsidiaries Reverse Mortgage Solutions, Inc. ("RMS") and Ditech Financial LLC ("Ditech") as Sellers, Barclays Bank PLC ("Barclays") as Administrative Agent and as Buyer and Nomura Corporate Funding Americas, LLC ("Nomura") as Buyer (together with Barclays in its capacity as Buyer, the "Buyers"), pursuant to which the Buyers committed to provide new debtor-in-possession financing in an amount of up to \$1.9 billion on terms and subject to conditions set forth in the Commitment Letter and the term sheet attached thereto;

WHEREAS, the Governing Body of the Company has reviewed and had the opportunity to ask questions about the materials attached hereto and the impact of the foregoing on the Company's business; and

WHEREAS, the Governing Body has considered and determined that taking the applicable actions set forth below are in the best interests of the Company and, therefore, desires to approve the following resolutions.

Debtor-in-Possession Financing

RESOLVED, that as previously authorized and agreed to by Ditech and RMS in connection with the Commitment Letter, it is in the best interest of Ditech, RMS, RMS REO CS, LLC ("RMS REO CS"), RMS REO BRC, LLC ("RMS REO BRC") and RMS REO BRC II, LLC ("RMS REO BRC II") to engage in, and the Parent, Ditech, RMS, RMS REO CS, RMS REO BRC and RMS REO BRC II will obtain benefits from, the financing transactions contemplated by the agreements listed on Schedule A hereto and any and all of the other agreements, including, without limitation, any other guarantees, certificates, documents and instruments authorized, executed, delivered, reaffirmed, verified and/or filed in connection with the Debtor-in-Possession Financing (as defined below) (together with the transaction documents listed on Schedule A, collectively, the "DIP Financing Documents"), which, subject to the approval of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") in connection with the chapter 11 cases of the Parent, RMS, Ditech and certain other subsidiaries of the Parent, will provide the Parent, Ditech, RMS and RMS REO BRC II up to \$1.9 billion in available warehouse financing, which is necessary and appropriate for the conduct, promotion and attainment of the business of the Parent and its subsidiaries, including Ditech, RMS and RMS REO BRC II (the "Debtor-in-Possession Financing") (capitalized terms used in this section with respect to Debtor-in-Possession Financing and not otherwise defined herein shall have the meanings ascribed to such terms in the Commitment Letter or the term sheet attached thereto); and be it further

RESOLVED, that the Company's performance of its obligations under the DIP Financing Documents, including the borrowings and guarantees contemplated thereunder, are hereby, in all respects confirmed, ratified and approved; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, empowered and directed, in the name and on behalf of the Company, to cause the Company to negotiate and approve the terms, provisions of and performance of, and to prepare, execute and deliver the DIP Financing Documents, on substantially the same terms and conditions presented to the Company, in the name and on behalf of the Company under its corporate seal or otherwise, and such other documents, agreements, instruments and certificates as may be required by the Administrative Agent or required by the DIP Financing Documents; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, as part of the adequate protection to be provided to the lenders and administrative agent under the Credit Agreement, to grant replacement security interests in, and replacement liens on, any and all property of the Company as collateral pursuant to the Bankruptcy Court's orders to secure all of the obligations and liabilities of the Company thereunder, and to authorize, execute, verify, file and/or deliver to the administrative agent, on behalf of the Company, all agreements, documents and instruments required by the lenders or the administrative agent under the Credit Agreement in connection with the foregoing; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, empowered, and directed, in the name and on behalf of the Company, to take all such further actions including, without limitation, to pay all fees and expenses, in accordance with the terms of the DIP Financing Documents,

which shall, in such Authorized Officer's judgment, be necessary, proper or advisable to perform the Company's obligations under or in connection with the DIP Financing Documents and the transactions contemplated therein and to carry out fully the intent of the foregoing resolutions; and be it further

RESOLVED, that any Authorized Officer is hereby authorized, empowered, and directed, in the name and on behalf of the Company, to execute and deliver any amendments, supplements, modifications, renewals, replacements, consolidations, substitutions and extensions of any of the DIP Financing Documents which shall, in such Authorized Officer's sole judgment, be necessary, proper or advisable; and be it further

General

RESOLVED, that any Authorized Officer is hereby authorized, empowered and directed, in the name and on behalf of the Company, to cause the Company to enter into, execute, deliver, certify, file and/or record, perform and approve any necessary public disclosures and filings related to, such documents, agreements, instruments, motions, affidavits, applications for approvals or rulings of governmental or regulatory authorities and certificates as may be required in connection with the DIP Financing Documents and Debtor-in-Possession Financing, and to take such other actions that in the judgment of the Authorized Officer shall be or become necessary, proper or desirable in connection therewith; and be it further

RESOLVED, that any actions taken by any Authorized Officer, for or on behalf of the Company, prior to the date hereof that would have been authorized by these resolutions but for the fact that such actions were taken prior to the date hereof be, and they hereby are, authorized, adopted, approved, confirmed and ratified in all respects as the actions and deeds of the Company.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned, being all of the members of the board of directors of **Reverse Mortgage Solutions, Inc.**, a Delaware corporation, have executed this unanimous written consent as of the date first set forth above.

/s/ Jeffrey Baker

Jeffrey Baker

/s/ Alan Clark

Alan Clark

IN WITNESS WHEREOF, the undersigned, being the sole member of each entity listed below, has executed this written consent as of the date first set forth above.

RMS REO CS, LLC

RMS REO BRC, LLC

RMS REO BRC II, LLC

**REVERSE MORTGAGE SOLUTIONS,
INC.**

as Member

/s/ Jeanetta Brown

Name: Jeanetta Brown

Title: Vice President

IN WITNESS WHEREOF, the undersigned, being the managing member of **Ditech Financial LLC**, a Delaware limited liability company, has executed this written consent as of the date first set forth above.

GREEN TREE SERVICING CORP.

/s/ Kimberly Perez

Name: Kimberly Perez

Title: SVP & Chief Accounting Officer

Schedule A

1. Master Refinancing Agreement, dated as of the Closing Date, by and among Barclays, as administrative agent for the Buyers (as defined therein) and other Secured Parties (as defined therein), Barclays and Nomura, each as a Buyer (as defined therein), Barclays Capital Inc. and Nomura Securities International, Inc., each as an MSFTA Counterparty (as defined therein), Ditech and Reverse Mortgage Solutions, Inc., each as a Seller (as defined therein) and RMS REO BRC II, LLC, as REO Subsidiary (as defined therein) (the "Omnibus Agreement").
2. Master DIP Fee Letter, dated as of the Closing Date, among Barclays, as administrative agent, Barclays and Nomura, as Committed Buyers (as defined therein), Ditech, RMS and Ditech Holding Corporation.
3. Master DIP Guaranty, dated as of the Closing Date, made by Guarantor in favor of Barclays, as Administrative Agent, for the benefit of Buyers and the other Buyer Parties (as defined therein).
4. Margin, Setoff and Netting Agreement, dated as of the Closing Date, among Barclays, as Administrative Agent, Barclays Capital, Inc., Nomura Securities International, Inc., Nomura, Ditech, RMS, and RMS REO BRC II, LLC and acknowledged and agreed to by Ditech Holding Corporation.
5. Master Administration Agreement, dated as of the Closing Date, among Barclays, as Administrative Agent for the Buyers and other Secured Parties (as defined therein), Barclays and Nomura, each as a Buyer (as defined therein), Barclays Capital Inc. and Nomura Securities International, Inc., each as a MSFTA Counterparty (as defined therein), Ditech and RMS, each as a Seller (as defined therein), and RMS REO BRC II, LLC as REO Subsidiary (as defined therein).
6. Amended and Restated Master Repurchase Agreement, dated as of the Closing Date, by and among Barclays and Nomura, as Purchasers (as defined therein), Barclays, as Agent (as defined therein), RMS and RMS REO BRC II, LLC.
7. Amended and Restated Pricing Side Letter, dated as of the Closing Date, among Barclays, as Purchaser and Agent, Nomura, as Purchaser, RMS and RMS REO BRC II, LLC.
8. Assignment Agreement, dated as of the Closing Date, between RMS REO CS, LLC and RMS.
9. Assignment Agreement, dated as of the Closing Date, between RMS REO BRC, LLC and RMS.
10. Assignment Agreement, dated as of the Closing Date, between RMS REO BRC II, LLC and RMS.
11. Amended and Restated Custodial Agreement, dated as of the Closing Date, by and among RMS REO BRC II, LLC (the "REO Subsidiary"), RMS, Deutsche Bank National Trust Company, as custodian for Purchasers (as defined therein) and for the REO Subsidiary, Barclays and Nomura, as Purchasers (as defined therein), and Barclays, as Agent (as defined therein).
12. Amended and Restated Deposit Account Control Agreement, dated as of the Closing Date, by and among RMS, Barclays, as Agent (as defined therein), and Wells Fargo Bank, National Association.

13. Amendment No. 1 to the Limited Liability Company Agreement of RMS REO BRC II, LLC, dated as of the Closing Date, entered into by RMS, as the sole member, RMS REO BRC II, LLC, and consented to by Barclays, as Agent.
14. Indenture, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Agency Facility Indenture"), by and among Ditech Agency Advance Trust, as issuer (the "Agency Facility Issuer"), Wells Fargo Bank, N.A. ("Wells Fargo"), as indenture trustee (in such capacity, the "Agency Facility Indenture Trustee"), calculation agent, paying agent and securities intermediary, Ditech, as administrator (in such capacity, the "Agency Facility Administrator") and as servicer (in such capacity, the "Agency Facility Servicer") and Barclays, as administrative agent (in such capacity, the "Agency Facility Administrative Agent") (successor to Credit Suisse First Boston Mortgage Capital LLC, as initial administrative agent).
15. Series 2019-VF1 Indenture Supplement to Agency Facility Indenture, dated as of the Closing Date, by and among the Agency Facility Issuer, the Agency Facility Indenture Trustee (as indenture trustee, calculation agent, paying agent and securities intermediary), the Agency Facility Administrator, the Agency Facility Servicer and the Agency Facility Administrative Agent.
16. Receivables Sale Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Agency Facility Receivables Sale Agreement"), by and among the Agency Facility Servicer, as servicer and as the receivables seller (in such capacity, the "Agency Facility Receivables Seller"), Ditech Agency Advance Depositor LLC, as depositor (the "Agency Facility Depositor") and the Company, as guarantor.
17. Amendment No.1 to the Agency Facility Receivables Sale Agreement, dated as of the Closing Date, by and among the Agency Facility Servicer, the Agency Facility Receivables Seller, the Agency Facility Depositor and the Company, as guarantor.
18. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Depositor and the Agency Facility Receivables Seller.
19. Receivables Pooling Agreement, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Depositor and the Agency Facility Issuer.
20. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Depositor and the Agency Facility Issuer.
21. Administration Agreement, dated as of February 9, 2018 and effective as of February 12, 2018, by and between the Agency Facility Issuer and the Agency Facility Administrator.
22. Acknowledgment Agreement with Respect to Servicing Advance Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Agency Facility Acknowledgment Agreement"), by and among the Agency Facility Issuer, the Agency Facility Depositor, the Agency Facility Servicer, the Agency Facility Indenture Trustee, Fannie Mae and the Agency Facility Administrative Agent.

23. Amendment No. 1 to the Agency Facility Acknowledgment Agreement, dated as of April 20, 2018, by and among the Agency Facility Issuer, the Agency Facility Depositor, the Agency Facility Servicer, the Agency Facility Indenture Trustee, Fannie Mae and the Agency Facility Administrative Agent.
24. Amendment No. 2 to the Agency Facility Acknowledgment Agreement, dated as of the Closing Date, by and among the Agency Facility Issuer, the Agency Facility Depositor, the Agency Facility Servicer, the Agency Facility Indenture Trustee, Fannie Mae and the Agency Facility Administrative Agent.
25. Series 2019-VF1 Variable Funding Note Purchase Agreement, dated as of the Closing Date, (the "Agency Facility Note Purchase Agreement"), by and among Ditech, as the Agency Facility Servicer, the Agency Facility Administrator and the Agency Facility Receivables Seller, the Agency Facility Depositor, the Agency Facility Issuer, the Administrative Agent, and Barclays, as a Purchaser Agent ("Agency Facility Purchaser").
26. Ditech Agency Advance Trust Advance Receivables Backed Note, Series 2019-VF1 Note, Number 1 (the "Agency Facility Note"), dated as of the Closing Date, in the name of the Agency Facility Purchaser.
27. Amended and Restated Trust Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "Agency Facility Trust Agreement"), by and among the Agency Facility Depositor, Wilmington Trust, National Association, as the owner trustee (in such capacity, the "Agency Facility Owner Trustee"), and the Agency Facility Administrator.
28. Amendment No.1 to the Agency Facility Trust Agreement, dated as of the Closing Date, by and among the Agency Facility Depositor, Wilmington Trust, National Association, the Agency Facility Owner Trustee and the Agency Facility Administrator.
29. Amended and Restated Limited Liability Company Agreement of the Agency Facility Depositor (the "Agency Facility Depositor LLC Agreement"), dated as of February 9, 2018 and effective as of February 12, 2018, by and among Ditech, as the sole economic member of the Agency Facility Depositor and Albert Fioravanti, as the Special Member and Independent Manager of the Agency Facility Depositor.
30. Amendment No. 1 to the Agency Facility Depositor LLC Agreement, dated as of the Closing Date, made by Ditech, as the sole economic member of the Agency Facility Depositor and consented to by Albert Fioravanti, as the Special Member and Independent Manager of the Agency Facility Depositor and Barclays, as sole noteholder.
31. Indenture, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "PLS Facility Indenture"), by and among Ditech PLS Advance Trust II, as issuer (the "PLS Facility Issuer"), Wells Fargo Bank, as indenture trustee (in such capacity, the "PLS Facility Indenture Trustee"), calculation agent, paying agent and securities intermediary, Ditech, as administrator (in such capacity, the "PLS Facility Administrator") and as servicer (in such capacity, the "PLS Facility Servicer") and Barclays, as administrative agent (in such capacity, the "PLS Facility Administrative Agent") (successor to Credit Suisse First Boston Mortgage Capital LLC, as initial administrative agent).

32. Series 2019-VF1 Indenture Supplement to PLS Facility Indenture, dated as of the Closing Date (the “PLS Facility Indenture Supplement”), by and among the PLS Facility Issuer, the PLS Facility Indenture Trustee (as indenture trustee, calculation agent, paying agent and securities intermediary), the PLS Facility Administrator, the PLS Facility Servicer and the PLS Facility Administrative Agent.
33. Receivables Sale Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the “PLS Facility Receivables Sale Agreement”), by and among the PLS Facility Servicer, as servicer and as the receivables seller (in such capacity, the “PLS Facility Receivables Seller”), Ditech PLS Advance Depositor LLC, as depositor (the “PLS Facility Depositor”) and the Company, as guarantor.
34. Amendment No.1 to the PLS Facility Receivables Sale Agreement, dated as of the Closing Date, by and among the PLS Facility Servicer, the PLS Facility Receivables Seller, the PLS Facility Depositor and the Company, as guarantor (“PLS Facility Receivables Sale Agreement Amendment”).
35. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (the “PLS Facility Assignment of Receivables”), by and between the PLS Facility Depositor and the PLS Facility Receivables Seller.
36. Receivables Pooling Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (the “PLS Facility Receivables Pooling Agreement”), by and between the PLS Facility Depositor and PLS Facility Issuer.
37. Assignment of Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (the “Depositor PLS Facility Assignment of Receivables”), by and between the PLS Facility Depositor and the PLS Facility Issuer.
38. Administration Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (the “PLS Facility Administration Agreement”), by and between the PLS Facility Issuer and the PLS Facility Administrator.
39. Acknowledgment Agreement with Respect to Servicing Advance Receivables, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the “PLS Facility Acknowledgment Agreement”), by and among the PLS Facility Issuer, the PLS Facility Depositor, the PLS Facility Servicer, the PLS Facility Indenture Trustee, Fannie Mae and the PLS Facility Administrative Agent.
40. Series 2019-VF1 Variable Funding Note Purchase Agreement, dated as of the Closing Date, and effective as of the Effective Date (the “PLS Facility Note Purchase Agreement”), by and among Ditech, as the PLS Facility Servicer, the PLS Facility Administrator and the PLS Facility Receivables Seller, the PLS Facility Depositor, the PLS Facility Issuer, the Administrative Agent, and Barclays, as a Purchaser Agent (“PLS Facility Purchaser”).
41. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class A-VF1 Note Number 1 (the “PLS Facility Note, Class A”), dated as of the Closing Date, in the name of the PLS Facility Purchaser.

42. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class B-VFI Note Number 1 (the "PLS Facility Note, Class B"), dated as of the Closing Date, in the name of the PLS Facility Purchaser.
43. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class C-VFI Note Number 1 (the "PLS Facility Note, Class C"), dated as of the Closing Date, in the name of the PLS Facility Purchaser.
44. Ditech PLS Advance Trust II Advance Receivables Backed Note, Series 2019 Class D-VFI Note Number 1 (the "PLS Facility Note, Class D"), dated as of the Closing Date, in the name of the PLS Facility Purchaser.
45. Amended and Restated Trust Agreement, dated as of February 9, 2018 and effective as of February 12, 2018 (as amended, restated, supplemented or otherwise modified as of the date hereof, the "PLS Facility Trust Agreement"), by and among the PLS Facility Depositor, Wilmington Trust, National Association, as the owner trustee (in such capacity, the "PLS Facility Owner Trustee"), and the PLS Facility Administrator.
46. Amendment No.1 to the PLS Facility Trust Agreement, dated as of the Closing Date, by and among the Agency Facility Depositor, the Agency Facility Owner Trustee and the Agency Facility Administrator.
47. Amended and Restated Limited Liability Company Agreement of the PLS Facility Depositor (the "PLS Facility Depositor LLC Agreement"), dated as of February 9, 2018 and effective as of February 12, 2018, by and among Ditech, as the sole economic member of the PLS Facility Depositor and Albert Fioravanti, as the Special Member and Independent Manager of the PLS Facility Depositor.
48. Amendment No. 1 to the PLS Facility Depositor LLC Agreement, dated as of the Closing Date, made by Ditech, as the sole economic member of the PLS Facility Depositor and consented to by Albert Fioravanti, as the Special Member and Independent Manager of the PLS Facility Depositor and Barclays, as sole noteholder.
49. Pledge Agreement, dated as of the Closing Date, made by the Ditech in favor of Barclays.
50. Master Repurchase Agreement, dated as of the Closing Date, by and among Barclays, as Administrative Agent on behalf of Buyers (as defined therein), Barclays and Nomura, as Buyers (as defined therein), other Buyers party thereto from time to time, and Ditech.
51. Pricing Side Letter, dated the Closing Date, among Barclays, as Administrative Agent for the benefit of Buyers (as defined therein), Barclays and Nomura, as Committed Buyers (as defined therein), and Ditech.
52. Power of Attorney, dated as of the Closing Date, to be entered into by Ditech.
53. Custodial and Disbursement Agreement, dated as of the Closing Date, by and among Barclays and Nomura, as Buyers (as defined therein), Ditech, Barclays, as agent of the Buyers, and Wells Fargo Bank, N.A.

54. Amended and Restated Deposit Account Control Agreement, dated as of the Closing Date, by and among Barclays, as Administrative Agent (as defined therein), Ditech and U.S. Bank National Association.
55. Second Amendment to the Master Securities Forward Transaction Agreement, dated as of the Closing Date, between Barclays Capital Inc. and Ditech.
56. Second Amendment to the Master Securities Forward Transaction Agreement, dated as of the Closing Date, between Nomura Securities International, Inc. and Ditech.

Fill in this information to identify the case:Debtor name: Ditech Financial LLCUnited States Bankruptcy Court for the: Southern District of New York
(State)

Case number (If known): _____

☐ Check if
this is an
amended filing**Official Form 204****Chapter 11 or Chapter 9 Cases: Consolidated List of Creditors
Who Have the 40 Largest Unsecured Claims and Are Not Insiders**

12/15

A list of creditors holding the 40 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an insider, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 40 largest unsecured claims.

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
					If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.	Total claim, if partially secured	Unsecured claim
1	ISGN Solutions Inc. Attn.: E. Rock Primas 2330 Commerce Park Drive, NE, Suite 2 Palm Bay, Florida 32905	Attn.: E. Rock Primas Phone: (609) 932-4712 Email: rock.primas@isgnsolutions.com	Trade Debt				\$1,531,484.00
2	Black Knight Tech Solutions Attn.: Darlene Ledet 601 Riverside Avenue Jacksonville, FL 32204	Attn.: Darlene Ledet Phone: (904) 854-3153 Email: darlene.ledet@bkfs.com	Trade Debt				\$1,458,204.00
3	Servicelink Attn.: Joe Greve 9600 Reserve Run Brecksville, Ohio 15108	Attn.: Joe Greve Phone: (216) 374-1888 Email: joe.greve@svclnk.com	Trade Debt				\$1,222,945.00
4	Corelogic Tax Services LLC Attn.: Tom Blauvelt 4 First American Way Santa Ana, California 92707	Attn.: Tom Blauvelt Phone: (512) 977-3716 Email: tblauvelt@corelogic.com	Trade Debt				\$1,155,282.00
5	Safeguard Properties Mgmt. LLC Attn.: Gregory Sharp 7887 Safeguard Cir. Valley View, Ohio 44125	Attn.: Gregory Sharp Phone: (216) 739-2900 Email: gregory.sharp@safeguardproperties.com	Trade Debt				\$1,150,138.00
6	Tata Consultancy Services Ltd. Attn.: Prashant Panghal 379 Thornall Street Edison, New Jersey 08837	Attn.: Prashant Panghal Phone: (732) 986-6921 Email: prashant1.p@tcs.com	Trade Debt				\$1,135,384.00
7	Cognizant Technology Solutions Attn.: Janine Lj Durham 2512 Dunlap Avenue Phoenix, Arizona 32905	Attn.: Janine Lj Durham Phone: (602) 315-0481 Email: janine.durham@cognizant.com	Trade Debt				\$1,023,481.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
8 Corelogic Information Solutions Attn.: Tom Blauvelt 4 First American Way Santa Ana, California 92707	Attn.: Tom Blauvelt Phone: (512) 977-3716 Email: tblauvelt@corelogic.com	Trade Debt				\$800,585.00
9 Black Knight Financial Services Attn.: Darlene Ledet 601 Riverside Avenue Jacksonville, Florida 32204	Attn.: Darlene Ledet Phone: (904) 854-3153 Email: darlene.ledet@bkfs.com	Trade Debt				\$586,915.00
10 Verizon Business Attn.: Lona Gruebele 22001 Loudoun County Pkwy Ashburn, Virginia 20147	Attn.: Lona Gruebele Phone: (612) 805-1034 Email: lona.j.gruebele@verizon.com	Trade Debt				\$555,663.00
11 Nationwide Title Clearing Inc. Attn.: Debbie Lastoria 2100 Alt 19 North Palm Harbor, Florida 34683	Attn.: Debbie Lastoria Phone: (727) 771-4000 Email: debbie_lastoria@nwtc.com	Trade Debt				\$554,418.00
12 NCP Solutions LLC Attn.: Tom Hart 5200 East Lake Boulevard Birmingham, Alabama 35217	Attn.: Tom Hart Phone: (205) 421-7254 Email: thart@ncpsolutions.com	Trade Debt				\$492,500.00
13 Pegasystems Inc. Attn.: Kirk Faustman One Rogers Street Cambridge, Massachusetts 02142	Attn.: Kirk Faustman Phone: (617) 777-3229 Email: kirk.faustman@pega.com	Trade Debt				\$480,180.00
14 Padgett Law Group Attn.: Timothy D. Padgett 6267 Old Water Oak Road, Suite 203 Tallahassee, Florida 32312	Attn.: Timothy D. Padgett Phone: (850) 422-2520 Email: accounting@padgettlaw.net	Professional Services				\$471,337.00
15 McCalla Raymer Leibert Pierce LLC Attn.: Michael Allgood 1544 Old Alabama Road Roswell, Georgia 30076	Attn.: Michael Allgood Phone: (770) 643-7202 Email: michael.allgood@mccalla.com	Trade Debt				\$462,992.00
16 RAS Crane LLC Attn.: John Crane 10700 Abbott's Bridge Road, Suite 170 Duluth, Georgia 30097	Attn.: John Crane Phone: (972) 757-1486 Email: jcrane@rascrane.com	Professional Services				\$446,268.00
17 Locke Lord LLP Attn.: Lori Barton 2200 Ross Avenue, Suite 2800 Dallas, Texas 75201	Attn.: Lori Barton Phone: (214) 740-8000 Email: lori.barton@lockelord.com	Professional Services				\$443,666.00
18 Ellie Mae Inc. Attn.: John Coppa 4420 Rosewood Drive, Suite 500 Pleasanton, CA 94588	Attn.: John Coppa Phone: (925) 227-2060 Email: john.coppa@elliemae.com	Trade Debt				\$347,728.00
19 Quattro Direct LLC Attn.: Dan Lawler 200 Berwyn Park, Suite 310 Berwyn, Pennsylvania 19312	Attn.: Dan Lawler Phone: (610) 993-0070 Email: dlawler@quattrodirect.com	Trade Debt				\$342,006.00
20 KML Law Group PC Attn.: Lisa Lee 701 Market Street, Suite 5000 Philadelphia, Pennsylvania 19106	Attn.: Lisa Lee Phone: (215) 627-1322 Email: llee@kmlawgroup.com	Professional Services				\$332,535.00
21 Phelan Hallinan LLP Attn.: Jay Jones 1617 JFK Blvd., Suite 1400 Philadelphia, Pennsylvania 19103-1814	Attn.: Jay Jones Phone: (215) 563-7000 Email: jay.jones@phelanhallinan.com	Professional Services				\$305,245.00

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
22	Insight Direct/ Datalink Attn.: Michael Schmidt 6820 South Harl Avenue Tempe, Arizona 85283	Attn.: Michael Schmidt Phone: (651) 260-4017 Email: Michael.schmidt@insight.com	Trade Debt				\$300,279.00
23	TCS America Attn.: Prashant Panghal 379 Thornall Street Edison, New Jersey 08837	Attn.: Prashant Panghal Phone: (732) 986-6921 Email: prashant1.p@tcs.com	Trade Debt				\$297,383.00
24	Robertson Anschutz & Schneid PL Attn.: Eric L. Bronfeld 6409 Congress Avenue, Suite 100 Boca Raton, Florida 33487	Attn.: Eric L. Bronfeld Phone: (561) 241-6901 Email: arcollections@rasflaw.com	Professional Services				\$290,502.00
25	American Bankers Insurance Attn.: Michelle Griffith 11222 Quail Roost Drive Miami, Florida 33157	Attn.: Michelle Griffith Phone: (305) 253-2244 Email: michelle.griffith@assurant.com	Trade Debt				\$285,213.00
26	Indecomm Holdings Inc. Attn.: Teddi Horan 205 Regency Executive Park Drive, Suite 500 Charlotte, North Carolina 28217	Attn.: Teddi Horan Phone: (215) 962-7212 Email: teddi.horan@indecomm.net	Trade Debt				\$284,830.00
27	Wells Fargo Bank N.A. Attn.: Holly Monday 420 Montgomery Street San Francisco, California 94104	Attn.: Holly Monday Phone: (703) 865-7740 Email: holly.monday@wellsfargo.com	Trade Debt				\$271,624.00
28	Newcourse Communications Inc. Attn.: Valerie Griffin 5010 Linbar Dr., Ste. 100 Nashville, Tennessee 37211	Attn.: Valerie Griffin Phone: (615) 921-6656 Email: valerie.griffin@newcoursecc.com	Trade Debt				\$270,000.00
29	Xome Valuation Services Attn.: Allen Illgen 444 East Washington Street Indianapolis, Indiana 46204	Attn.: Allen Illgen Phone: (612) 207-4012 Email: allen.illgen@assurant.com	Trade Debt				\$249,474.00
30	Rean Cloud LLC Attn.: Rupa Vasireddy 2201 Cooperative Way #250 Herndon, Virginia 20171	Attn.: Rupa Vasireddy Phone: (844) 377-7326 Email: rupa@reancloud.com	Trade Debt				\$240,667.00
31	US Real Estate Services Inc. Attn.: Becca Nottberg 25520 Commerce Centre Drive; 1st Floor Lake Forest, California 92630	Attn.: Becca Nottberg Phone: (949) 206-5353 Email: becca.nottberg@res.net	Trade Debt				\$233,284.00
32	Operational Excellence Attn.: Tony Galluzzo 19712 MacArthur Blvd., Suite 110 Irvine, California 92612	Attn.: Tony Galluzzo Phone: (949) 988-7229 Email: tgalluzzo@ca-usa.com	Trade Debt				\$231,378.00
33	US Bank Trust NA Att.: Kirk Larson 300 East Delaware; 8th Floor Wilmington, Delaware 19809	Attn.: Kirk Larson Phone: (651) 466-5666 Email: kirk.larson1@usbank.com	Trade Debt				\$230,809.00
34	Wolfe & Wyman LLP Attn.: Stuart B. Wolfe 11811 N. Tatum, Suite 3031 Phoenix, Arizona 85028-1621	Attn.: Stuart B. Wolfe Phone: (602) 953-0100 Email: sbwolfe@wolfewyman.com	Professional Services				\$228,398.00

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
35	Five Brothers Mortgage Servs Attn.: Dawn Whiteaker 12220 E. 13 Mile Road; Suite 100 Warren, Missouri 48093	Attn.: Dawn Whiteaker Phone: (586) 354-2017 Email: dawnrw@fiveonline.com	Trade Debt				\$224,947.00
36	Servicelink Default Title & Closing Attn.: Joe Greve 1355 Cherrington Parkway Moon Township, Pennsylvania 15108	Attn.: Joe Greve Phone: (216) 374-1888 Email: joe.greve@svclnk.com	Trade Debt				\$218,298.00
37	Level 3 Communications LLC Attn.: Timothy McGraw 600 W. Chicago Avenue, Suite 325 Chicago, Illinois 60654	Attn.: Timothy McGraw Phone: (612) 392-7364 Email: timothy.mcgraw@level3.com	Trade Debt				\$209,330.00
38	Xome Field Services LLC Attn.: Allen Illgen 444 East Washington Street Indianapolis, Indiana 46204	Attn.: Allen Illgen Phone: (612) 207-4012 Email: allen.illgen@assurant.com	Trade Debt				\$206,077.00
39	RAS Boriskin LLC Attn.: Sara Borskin 900 Merchants Concourse Westbury, New York 11590	Attn.: Sara Boriskin Phone: (516) 280-7675 Email: sboriskin@rasboriskin.com	Trade Debt				\$202,336.00
40	ISGN Corporation Attn.: E. Rock Primas 2330 Commerce Park Drive, NE, Suite 2 Palm Bay, Florida 32905	Attn.: E. Rock Primas Phone: (609) 932-4712 Email: rock.primas@isgnsolutions.com	Trade Debt				\$200,850.00

Fill in this information to identify the case:

Debtor name: Ditech Financial LLC
United States Bankruptcy Court for the: Southern District of New York
(State)
Case number (If known): _____

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING – Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.
I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- ☐ Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- ☐ Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- ☐ Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- ☐ Schedule H: Codebtors (Official Form 206H)
- ☐ Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- ☐ Amended Schedule _____
- ☒ Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 40 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- ☐ Other document that requires a declaration _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 11, 2019
MM /DD /YYYY

X

/s/ Kimberly Perez

Signature of individual signing on behalf of debtor

Kimberly Perez

Printed name

Senior Vice President and Chief Accounting Officer

Position or relationship to debtor

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
In re :
: Chapter 11
:
DITECH FINANCIAL LLC, : Case No. 19- _____ ()
:
Debtor. :
----- X

LIST OF EQUITY HOLDERS¹

Pursuant to Rule 1007(a)(3) of the Federal Rules of Bankruptcy Procedure, the following identifies all holders having a direct or indirect ownership interest of the above-captioned debtor in possession (the "**Debtor**").

Name and Last Known Address or Place of Business of Holder	Number of Securities/Kind of Interest
Walter Management Holding Company LLC 1100 Virginia Drive Suite 100A Fort Washington, PA 19034	100 % (Equity)

¹ This list serves as the required disclosure by the Debtor pursuant to Rule 1007 of the Federal Rules of Bankruptcy Procedure. All equity positions listed are as of the date of commencement of the chapter 11 case.

Fill in this information to identify the case:

Debtor name: Ditech Financial LLC
United States Bankruptcy Court for the: Southern District of New York
(State)
Case number (if known): _____

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING – Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.
I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ Schedule A/B: Assets–Real and Personal Property (Official Form 206A/B)
- ☐ Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- ☐ Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- ☐ Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- ☐ Schedule H: Codebtors (Official Form 206H)
- ☐ Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- ☐ Amended Schedule _____
- ☐ Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 40 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- ☒ Other document that requires a declaration List of Equity Holders

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 11, 2019
MM / DD /YYYY

X

/s/ Kimberly Perez
Signature of individual signing on behalf of debtor
Kimberly Perez
Printed name
Senior Vice President and Chief Accounting Officer
Position or relationship to debtor

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
In re	:	Chapter 11
	:	
DITECH FINANCIAL LLC,	:	Case No. 19-[] ()
	:	
Debtor.	:	
	:	
Fed. Tax Id. No. 41-1795868	:	
-----X		

**CONSOLIDATED CORPORATE OWNERSHIP
STATEMENT PURSUANT TO FED. R. BANKR. P. 1007 AND 7007.1**

Pursuant to Rules 1007(a)(1) and 7007.1 of the Federal Rules of Bankruptcy Procedure and Rule 1007-3 of the Local Bankruptcy Rules for the Southern District of New York, Ditech Holding Corporation (f/k/a Walter Investment Management Corp.) (“**Ditech**”) and its debtor affiliates, as debtors and debtors in possession in the above captioned chapter 11 cases (collectively, the “**Debtors**”), respectfully represent:

1. To the best of the Debtors’ knowledge and belief, as of the date hereof (the “**Commencement Date**”), based solely on publicly available information, no entity directly or indirectly owns 10% or more of Ditech’s common stock.

2. To the best of the Debtors’ knowledge and belief, as of the Commencement Date, based solely on publicly available information, Lion Point Master, LP owns approximately 38.1% of the convertible preferred shares of Ditech, First Pacific Advisors LLC owns approximately 11.1% of the convertible preferred shares of Ditech, and no other entity directly or indirectly owns 10% or more of Ditech’s convertible preferred shares.

3. Ditech has a one hundred percent (100%) ownership interest in the following entities:

- i. Walter Reverse Acquisition LLC

- ii. Green Tree Credit Solutions LLC
- iii. Marix Servicing LLC
- iv. Mid-State Capital, LLC¹
- v. Hanover SPC-A, Inc.*
- vi. WIMC Real Estate Investment LLC*

4. Walter Reverse Acquisition LLC has a one hundred percent (100%) ownership interest in Reverse Mortgage Solutions, Inc.

5. Reverse Mortgage Solutions, Inc. has a one hundred percent (100%) ownership interest in the following entities:

- i. Mortgage Asset Systems, LLC
- ii. REO Management Solutions, LLC
- iii. RMS REO BRC, LLC*
- iv. RMS REO CS, LLC*
- v. RMS REO BRC II, LLC*
- vi. RMS 2018-09, LLC*

6. Green Tree Credit Solutions LLC has a one hundred percent (100%) ownership interest in the following entities:

- i. Green Tree Insurance Agency of Nevada, Inc.
- ii. Walter Management Holding Company LLC
- iii. DF Insurance Agency LLC
- iv. Green Tree Investment Holdings III LLC

7. Walter Management Holding Company LLC has a one hundred percent

¹ Mid-State Capital, LLC and each other entity noted with a (*) are not debtors in these chapter 11 cases.

(100%) ownership interest in the following entities:

- i. Green Tree Credit LLC
- ii. Green Tree Servicing Corp.
- iii. Ditech Financial LLC

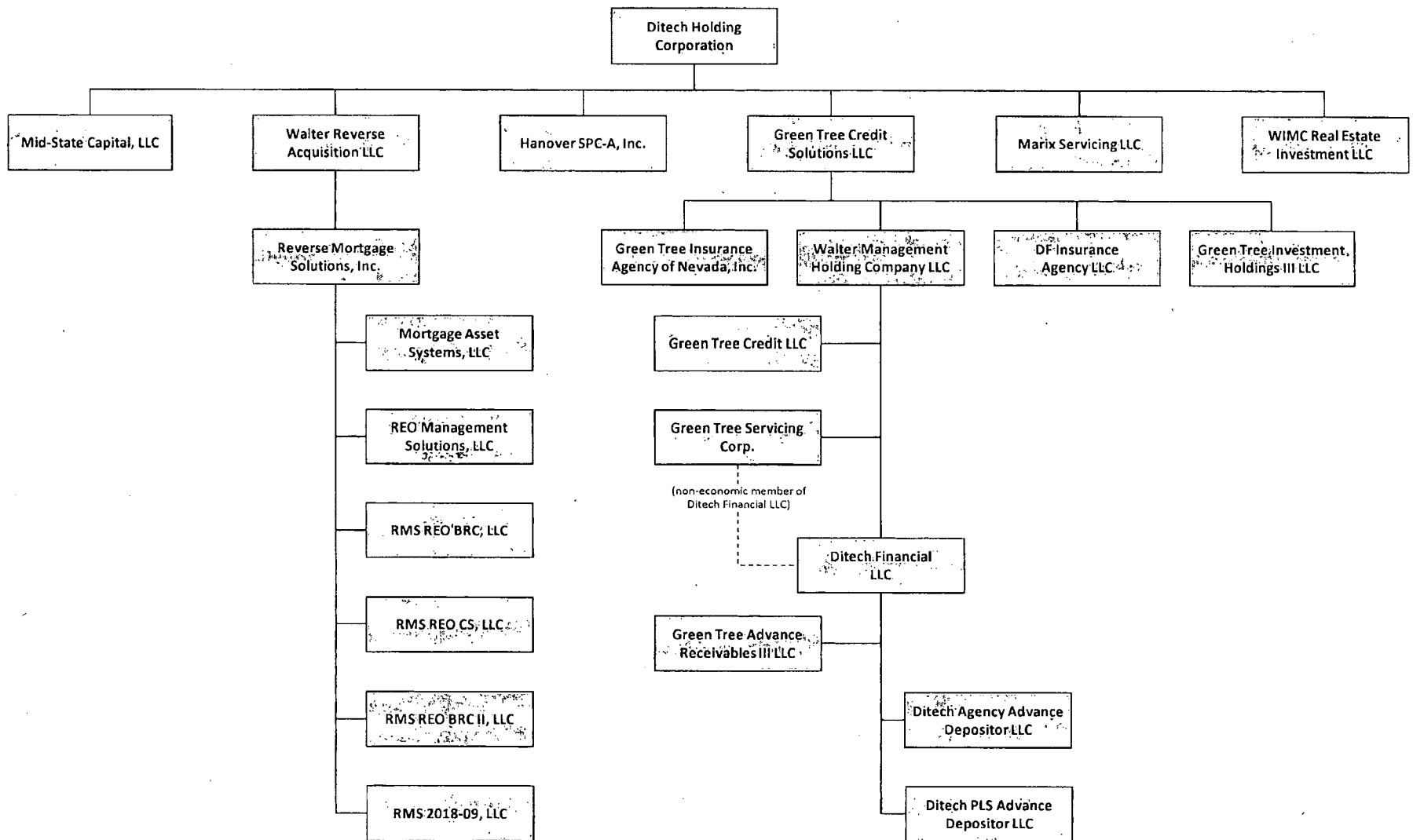
8. Ditech Financial LLC has a one hundred percent (100%) ownership interest in the following entities:

- i. Green Tree Advance Receivables III LLC*
- ii. Ditech Agency Advance Depositor LLC*
- iii. Ditech PLS Advance Depositor LLC*

9. Attached hereto as **Exhibit A** is an organizational chart reflecting all of the ownership interests of the Debtors and their non-Debtor affiliates as of the Commencement Date.

Exhibit A

Organizational Chart



Fill in this information to identify the case:

Debtor name: Ditech Financial LLC

United States Bankruptcy Court for the: Southern District of New York
(State)

Case number (if known): _____

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING – Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ Schedule A/B: Assets–Real and Personal Property (Official Form 206A/B)
- ☐ Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- ☐ Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- ☐ Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- ☐ Schedule H: Codebtors (Official Form 206H)
- ☐ Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- ☐ Amended Schedule _____
- ☐ Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 40 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- ☒ Other document that requires a declaration Consolidated Corporate Ownership Statement

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 11, 2019
MM /DD /YYYY

X /s/ Kimberly Perez
Signature of individual signing on behalf of debtor
Kimberly Perez
Printed name
Senior Vice President and Chief Accounting Officer
Position or relationship to debtor

EXHIBIT B

Limited Stay Modification Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
In re : **Chapter 11**
:
DITECH HOLDING CORPORATION, et al., : **Case No. 19-10412 (JLG)**
:
Debtors.¹ : **(Jointly Administered)**
: **Related Docket No. 9, 55, 187**
-----X

**FINAL ORDER (I) AUTHORIZING
DEBTORS TO CONTINUE ORIGATION
AND SERVICING OF FORWARD MORTGAGE LOANS IN ORDINARY
COURSE AND GRANTING RELATED RELIEF AND (II) MODIFYING AUTOMATIC
STAY ON A LIMITED BASIS TO FACILITATE DEBTORS' ONGOING OPERATIONS**

Upon the motion dated February 11, 2019 (the "**Motion**")² of Ditech Holding Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**" and, together with their non-debtor affiliates, the "**Company**"), pursuant to sections 105(a), 362, 363(c), 1107(a), and 1108 of the Bankruptcy Code and Bankruptcy Rules 4001, 6003, and 6004, the Debtors request authority, but not direction, to continue in the ordinary course of business (a) to originate and purchase mortgage loans; (b) to sell and securitize loans, including by performing under certain agreements with Fannie Mae, Freddie Mac, Ginnie Mae, and private parties; (c) to service and subservice loans pursuant to terms and conditions set forth in certain agreements with Fannie Mae, Freddie Mac,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are Ditech Holding Corporation (0486); DF Insurance Agency LLC (6918); Ditech Financial LLC (5868); Green Tree Credit LLC (5864); Green Tree Credit Solutions LLC (1565); Green Tree Insurance Agency of Nevada, Inc. (7331); Green Tree Investment Holdings III LLC (1008); Green Tree Servicing Corp. (3552); Marix Servicing LLC (6101); Mortgage Asset Systems, LLC (8148); REO Management Solutions, LLC (7787); Reverse Mortgage Solutions, Inc. (2274); Walter Management Holding Company LLC (9818); and Walter Reverse Acquisition LLC (8837). The Debtors' principal offices are located at 1100 Virginia Drive, Suite 100, Fort Washington, Pennsylvania 19034.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion. As used herein, the term "mortgage" and similar formulations include both mortgages and deeds of trust.

Ginnie Mae, other applicable federal agencies, and private parties; (d) to make servicing advances; (e) to pay prepetition amounts owed to critical vendors; (f) to fulfill compliance and regulatory obligations; and (g) to provide assurances of future performance to Fannie Mae, Freddie Mac, and Ginnie Mae, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion and Final Hearing (defined below) having been provided to the Notice Parties as set forth in the affidavit of service filed with respect thereto [ECF No. 45]; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis on February 13, 2019 (the “**Interim Hearing**”); and the Court having entered an order granting the relief requested in the Motion on an interim basis [ECF No. 55] and scheduling a final hearing on the Motion for March 14, 2019 (the “**Final Hearing**”); and, if necessary, the Final Hearing having been held to consider the relief requested in the Motion on a final basis; and upon the Lombardo Declaration, filed contemporaneously with the Motion, and the record of the Interim Hearing and the Final Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the

proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis to the extent set forth herein.

Forward Mortgage Origination Business

2. The Debtors are authorized but not directed, to continue in the ordinary course of business:

- (a) to fund their origination and purchase of mortgage loans and to pay related obligations, regardless of whether such obligations arose prepetition or postpetition;
- (b) (i) to honor and perform under the GSE Sales Agreements, (ii) to pay the GSE Guaranty Fees, (iii) to honor and pay the GSE Repurchase Obligations, and (iv) to perform other activities and pay fees related to mortgage loan origination, including paying all obligations related to loans originated prepetition;
- (c) (i) to honor and perform under the Ginnie Mae Agreements, (ii) to honor and pay the Ginnie Mae Buyout Obligations, (iii) to pay the Ginnie Mae Fees, and (iv) to pay the Ginnie Mae Administrative Fees, including, in each instance, all obligations related to loans originated prepetition; and
- (d) (i) to sell mortgage loans to private investors and (ii) to enter into, and perform under, MLPAs, including, to pay all obligations related to loans originated prepetition.

Forward Mortgage Servicing Business

3. The Debtors are authorized but not directed, to continue in the ordinary course of business:

- (a) to service and subservice GSE Loans in the ordinary course, including by continuing to perform under the GSE Servicing Agreements and by continuing to honor and pay the GSE Repurchase Obligations and all prepetition amounts arising under the GSE Servicing Agreements;

- (b) to service Ginnie Securitized Loans in the ordinary course, including by continuing to perform under the Ginnie Mae Agreements and the applicable Government Loan Servicing Guidelines;
- (c) to service and subservice Private Loans in the ordinary course, including by continuing to perform under the Private Servicing Agreements;
- (d) (i) to sell MSRs and related reimbursement rights for Servicer Advances and (ii) the NRM Servicing Transition;
- (e) to service and subservice loans;
- (f) to make Servicer Advances, whether arising from prepetition or postpetition obligations, in accordance with the Agency Servicing Agreements and Private Servicing Agreements, as applicable;
- (g) (i) to modify loans and to participate in loan modification programs, (ii) make and/or accept Loss Mitigation Payments, which payments, for the avoidance of doubt, may include payments or other concessions to or from borrowers, lienholders, mortgagors, the heirs, estates, and other successors in interest of the foregoing, tenants, title companies, title insurers, purchasers from a tax sale or a foreclosure sale, or other parties with a claimed interest in the subject property or loan (each, an **"Interested Party"**) with respect to foreclosures, evictions, Title Disputes (as defined below), collection actions, insurance disputes, replevins, and similar servicing related actions, and (iii) to enter into, and perform under existing, Deferment and Forbearance Arrangements, which agreements, for the avoidance of doubt, may include agreements with Interested Parties to compromise or settle claims related to loans owned, serviced or subserved by the Debtors, and including honoring all obligations related thereto that accrued in whole or part prior to the Commencement Date;
- (h) to engage in nonperforming loan servicing activities with respect to Agency Loans, including (i) to conduct foreclosures, short sales, deeds in lieu of foreclosure, evictions, and similar actions, including to honor and to enter into settlements and other arrangements related thereto, including on behalf of investors in accordance with the Debtors' existing servicing and subservicing obligations, (ii) to pay any T&I Advances and Corporate Advances, including any prepetition amounts owed, with respect to (A) GSE Loans in accordance with the applicable GSE Servicing Agreements and (B) Ginnie Securitized Loans until such loans are conveyed to the FHA or transferred into the custody of the VA, in

each case as required pursuant to the applicable Government Loan Servicing Guidelines, (iii) to pay any P&I Advances, including any prepetition amounts owed, with respect to Ginnie Securitized Loans until such loans are conveyed to the FHA or transferred into the custody of the VA, in each case as required pursuant to the Ginnie Mae Agreements and the applicable Government Loan Servicing Guidelines, (iv) to distribute net sale proceeds to the appropriate parties in accordance with the applicable Agency Servicing Agreements, and (v) as necessary, to transfer or assign deeds to Agency REOs to the applicable owner of the Agency REO; and

- (i) to engage in nonperforming loan servicing activities with respect to Private Loans, including to (i) pay any Servicer Advances—including any prepetition amounts owed—with respect to Private REOs and Private Loans in foreclosure, (ii) sell Private REOs, whether owned by the Debtors or on behalf of third parties in the Debtors' capacity as servicer or subservicer, on an "as is where is" basis and without any representation and warranties except for title, in their discretion and subject to their business judgment, and free and clear of any and all liens and encumbrances either pursuant to (A) section 363(f) of the Bankruptcy Code, to the extent that the Private REO is owned by the Debtors, or (B) applicable non-bankruptcy law, to the extent the Private REO is owned by third parties; *provided that*, should any lien, claim, or encumbrance exist on such Private REOs, such liens, claims, or encumbrances shall attach to the proceeds from the sales thereof, (iii) remit (A) overpayments to purchasers and (B) net sale proceeds to the appropriate parties, and (iv) conduct foreclosures, short sales, deeds in lieu of foreclosure, evictions, and similar actions, including to honor and to enter into settlements and other arrangements related thereto, including on behalf of investors in accordance with the Debtors' existing servicing and subservicing obligations, each of (i) through (iv) in accordance with the relevant Private Servicing Agreements.

4. As to mortgage loans not owned by Ditech, principal, interest, and funds for the payment of property taxes and insurance premiums collected by Ditech in connection with its performance of its Servicing Functions do not constitute property of the Debtors' estates under section 541 of the Bankruptcy Code, and no lien or other interest therein will be given by the Debtors to any party.

Additional Relief Related to Forward Mortgage Origination and Servicing Businesses

5. The Debtors are authorized but not directed, to continue in the ordinary course of business (a) to fulfill state licensing requirements and to pay related obligations, (b) to submit to, and comply with, state and federal regulatory exams and audits and to pay related obligations, costs, and expenses, and (c) to remediate errors and/or lack of compliance with laws or regulations, including by continuing (i) to make payments to borrowers (*e.g.*, in the form of reimbursements, refunds, and/or out-of-pocket expenses), (ii) to forgive past due amounts and/or assessed but unpaid fees or other charges, (iii) to pay fees, fines, and/or penalties, either directly to the applicable authority or through a Critical Vendor, (iv) to incur and pay certain expenses, (v) to pay the costs and expenses of state and federal regulatory examinations, (vi) to take such other measures as may be required by, or agreed to with, state and federal regulators, and (vii) to perform any other adjustments to borrowers' accounts as part of the Debtors' compliance obligations.

6. If, after the Commencement Date, a Specified Servicing Default (as defined below) under any Specified Agreement (as defined below) has occurred, then the Specified Counterparty (as defined below) under such Specified Agreement may, in accordance with the terms of such Specified Agreement and notwithstanding the automatic stay, issue a written notice declaring that such Specified Servicing Default has occurred and is continuing (a **"Specified Servicing Default Notice"**), to the Debtors and their counsel, the DIP Agent and its counsel, the U.S. Trustee, counsel to the official committee of unsecured creditors appointed in these chapter 11 cases (the **"Creditors' Committee"**), and counsel to the Consenting Term Lenders (collectively, the **"Specified Servicing Default Notice Parties"**). To be effective hereunder, any Specified Servicing Default Notice shall (i) specify that it is a "Specified Servicing Default Notice", (ii) identify and attach copies of the relevant Specified Agreement(s), and (iii) otherwise comply with the requirements for such notice

under the applicable Specified Agreement. If a Specified Servicing Default Notice has been delivered in accordance with this paragraph and the alleged Specified Servicing Default is not cured within the longer of (x) three (3) business days of the Specified Servicing Default Notice Parties' receipt of such Specified Servicing Default Notice and (y) the applicable cure, grace, or notice period set forth in the Specified Agreement, then, upon the running of such cure, grace or notice period, the Specified Counterparty may move for relief from the automatic stay in connection with such Specified Servicing Default, which such motion may be heard by this Court on an expedited basis (but in any event, no earlier than five (5) days after such motion is filed with this Court and served on the Specified Servicing Default Notice Parties) (a "**Lift Stay Motion**"). At any hearing on any Lift Stay Motion, the applicable standards and burdens of proof and persuasion for relief from the automatic stay shall apply. Notwithstanding the automatic stay, solely to the extent necessary to effectuate its rights pursuant to this paragraph, and subject to the express terms of the applicable Specified Agreement, a Specified Counterparty may give notice to a Debtor in its servicing or servicing-related role pursuant to a Specified Agreement of the occurrence of any event, condition or default that, with the giving of notice, the passage of time, or both, would become a Specified Servicing Default. For purposes of this paragraph:

- (a) "**Specified Agreement**" means any Private Servicing Agreement, pooling and servicing agreement, or similar servicing agreement, in any such case, (x) permitting the securitization trustee, indenture trustee, or similar trustee party to such agreement (an "**MBS Trustee**") a right to terminate servicing for the Private Loans placed in the securitization trust subject to such agreement and (y) under which a Debtor is performing a servicing or servicing-related role postpetition in accordance with the relief granted in this Order with respect to Private Loans that have been securitized;
- (b) "**Specified Counterparty**" means the MBS Trustee party to such Specified Agreement; and
- (c) "**Specified Servicing Default**" means a failure by any Debtor to timely (i) make a Servicer Advance, or (ii) remit or make deposits of assets, in any such case of clause (i) or (ii), required to be made or remitted by such Debtor, in its servicing or servicing-related role,

pursuant to any Specified Agreement, which failure has continued beyond any applicable cure, grace or notice period set forth in such Specified Agreement and as a result of which the Specified Counterparty under such Specified Agreement would otherwise have the current right (but for the effect of the automatic stay and the provisions of this paragraph) to terminate the applicable Debtor from such servicing or servicing related role pursuant to the terms of such Specified Agreement.

7. For the avoidance of doubt, nothing herein nor the performance of the Debtors hereunder shall convert a prepetition debt to a postpetition administrative expense claim.

Critical Vendors

8. Pursuant to sections 105(a) and 363(c) of the Bankruptcy Code, the Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay some or all of the prepetition claims of the Critical Vendors (each, a “**Critical Vendor Claim**”), upon such terms and in the manner provided in this Order and the Motion and subject to the Management Approval Process (as defined below); *provided*, that payments to Critical Vendors on account of prepetition claims shall not exceed \$40 million during the chapter 11 cases; *provided, further*, that payments to Critical Vendors on account of such prepetition claims may not be accelerated and shall be made only in the ordinary course in accordance with Customary Trade Terms.

9. As used herein, the term “**Management Approval Process**” means the advance review and approval by the chief financial officer of the Company, following consultation with the Debtors’ management and AlixPartners, LLP (collectively, with the chief financial officer, the “**Vendor Council**”), of payment of a Critical Vendor Claim. Twenty-four hours prior to any meeting of the Vendor Council to approve payment of any Critical Vendor Claim (the “**Review Period**”), the Debtors shall provide the Creditors’ Committee’s advisors with the following information:

- (a) the summary schedules provided to the Vendor Council in connection with such proposed payments of Critical Vendor Claims; and
- (b) a detailed listing of each such proposed payment of a Critical Vendor Claim, as well as supporting documentation, which listing and documentation shall be consistent with the form of information previously provided to the Creditors' Committee's advisors in connection with the previous payments of Critical Vendor Claims made by the Debtors.

During the Review Period, the Creditors' Committee may communicate with AlixPartners, LLP and the designated representatives of the Debtors in order to discuss the proposed payments of Critical Vendor Claims, it being understood, however, that the receipt of the above described information by the Creditors' Committee and its right to have communications with AlixPartners, LLP and the Debtors' representatives with respect thereto shall not (a) constitute grounds for the Creditors' Committee to object to the payment of any Critical Vendor Claim or (b) grant any consent right to the Creditors' Committee to the payment of any Critical Vendor Claim.

10. As soon as reasonably practicable following entry of this Order, the Debtors shall provide a list of potential Critical Vendors and potential Critical Vendor Claims to the Court and the U.S. Trustee (the "**Critical Vendors List**"). The Critical Vendors List shall not be publicly filed. The Debtors shall not pay a claim as a Critical Vendor Claim unless such claim is set forth on the Critical Vendors List; provided, that the Debtors may update the Critical Vendors List from time to time with two business days' written notice and opportunity to object to the U.S. Trustee and the advisors to the Creditors' Committee.

11. Promptly after entry of this Order and weekly thereafter, the Debtors shall provide counsel for the Creditors' Committee, counsel to the Term Loan Lender Ad Hoc Group, and the U.S. Trustee with a schedule of all payments made to the Critical Vendors on account of

the Critical Vendor Claims in accordance with the terms of this Order, which shall include the name and address of the Critical Vendor and the amount and date of the payment.

12. If a Critical Vendor refuses to supply products and/or services to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of payment on its prepetition claim, then the Debtors may, upon notice to the Creditors' Committee, and without further order of the Court:

- (a) Declare that any payments made to the Critical Vendor on account of such claim be deemed to have been in payment of then-outstanding (or subsequently accruing) postpetition claims of the Critical Vendor without further order of the Court or action by any person or entity; and
- (b) Take actions to recover or seek disgorgement of any payment made to the Critical Vendor on account of its prepetition claim to the extent that the payments exceeded the postpetition claims of the Critical Vendor, without giving effect to any rights of setoff, recoupment, claims, provision for payment of reclamation or trust fund claims, or other defense.

13. Under such circumstances, such Critical Vendor shall immediately repay to the Debtors any payment made to it on account of its prepetition claims to the extent that such payments exceed its postpetition claims, without giving effect to any rights of setoff, recoupment, claims, provision for payment of reclamation or trust fund claims, or other defense.

14. Nothing herein shall:

- (a) Constitute a waiver of the Debtors' rights to seek damages, disgorgement or other appropriate remedies against any breaching Critical Vendor;
- (b) Be construed to waive, limit, or in any way affect the Debtors' ability to dispute a claim of a Critical Vendor;
- (c) Be deemed an admission to the validity of the underlying obligation, including any payment made pursuant to this Order;

- (d) Be deemed to constitute an assumption or rejection of any executory contract or prepetition or postpetition agreement between the Debtors and a Critical Vendor; or
- (e) Be deemed to require the Debtors to make any of the payments to the Critical Vendors authorized herein.

15. Notwithstanding entry of this Order, the Debtors' rights to enforce the automatic stay provision of section 362 of the Bankruptcy Code with respect to any creditor who demands payment of its prepetition claims as a condition to doing business with the Debtors postpetition are preserved.

Limited Relief from Automatic Stay

Borrower Foreclosure, Eviction, and Related Proceedings

16. The stay imposed by section 362(a) of the Bankruptcy Code is hereby modified to allow Interested Parties to assert and prosecute claims, cross-claims, third-party claims, and counter-claims related to judicial and non-judicial foreclosure, eviction, replevin, actions on the note, and collection actions (each a "**Default Action**") brought by the Debtors to the limited extent such claims, cross-claims, third-party claims, and counterclaims, including the appeal and settlement of such, (a) have the sole purpose of defending, unwinding, or otherwise enjoining or precluding the relief sought by the Debtors in the Default Action, (b) are necessary for the resolution of such Default Action, (c) do not result in any order, judgment, or decree against the Debtors entitling any party to an award of money damages, including, without limitation, Interested Parties' attorneys' fees or costs, and (d) do not result in a claim against property of any Debtor's estate, other than as expressly allowed in Paragraph 20 below (collectively, the "**Permitted Default Actions**").

17. Absent further order of this Court, the automatic stay shall remain in full force and effect with respect to any and all pending or future claims, cross-claims, third-party

claims, and counterclaims by Interested Parties other than the Permitted Default Actions, including those with respect to (a) monetary relief of any kind or any nature against the Debtors, including, without limitation, Interested Parties' attorneys' fees or costs, (b) claims of recoupment or setoff, and (c) actions asserted in the form of a class action or collective action.

18. For convenience, to avoid prejudice, or to expedite and economize, the claims described in Paragraph 16 above may proceed separately from any other claim that is stayed by the Bankruptcy Code. Should there be any disagreements between or among any Interested Parties and/or the Debtors regarding whether any claims, cross-claims, third-party claims, or counterclaims fall within the exception to the automatic stay approved by this Court, this Court shall have exclusive jurisdiction to hear and resolve such disputes.

Borrower Bankruptcy Proceedings

19. The automatic stay imposed by section 362(a) of the Bankruptcy Code applicable against a borrower who has sought, or may seek during the pendency of these cases, bankruptcy protection under chapters 7, 11, 12, or 13 of the Bankruptcy Code (each, a "**Bankrupt Borrower**"), is hereby modified pursuant to the following terms and conditions:

- (a) except as set forth herein, a Bankrupt Borrower, a Bankruptcy Trustee, or a United States Trustee shall be entitled:
 - (i) to assert or continue to assert an objection to a proof of claim; notice of payment change, notice of postpetition fee, expense, or charge, or response to notice of final cure (collectively, the "**Required Bankruptcy Documents**") filed by the Debtors in the Bankrupt Borrower's bankruptcy case;
 - (ii) to assert or continue to assert an objection to a motion to lift the automatic stay filed by the Debtors in the Bankrupt Borrower's bankruptcy case;
 - (iii) to assert appeals with respect to items (i) and (ii); and
 - (iv) to seek an accounting from the Debtors with respect to the Bankrupt Borrower's loan;

- (b) except as set forth herein, a Bankrupt Borrower shall be entitled:
 - (i) to engage in court-supervised or court-authorized loss-mitigation programs regarding the Bankrupt Borrower's loan; and
 - (ii) to engage in discussion with the Debtors and execute a modification of the Bankrupt Borrower's loan or otherwise discuss, enter into, and consummate settlements of claims and liens in accordance with the ordinary course of the Debtors' business and applicable law;
- (c) absent further order of this Court, the automatic stay shall remain in full force and effect with respect to all the Bankrupt Borrower's, the Bankruptcy Trustee's, and the United States Trustee's direct claims, counterclaims, motions, or adversary proceedings:³
 - (i) for monetary relief of any kind and of any nature against the Debtors, including, without limitation, attorneys' fees or costs, with the exception of adjustments resulting from objections permitted pursuant to Paragraph 19(a)(i) above;
 - (ii) for violation of any local, state, or federal statute or other law in connection with the origination of the Bankrupt Borrower's loan; or
 - (iii) asserted in the form of a class action;
- (d) absent further order of this Court, the automatic stay shall remain in full force and effect with respect to (a) any party seeking to intervene in a Bankrupt Borrower's bankruptcy case to assert claims against the Debtors on behalf of itself or others (including, without limitation, a class of borrowers) and (b) any class action or collective action brought by any Bankrupt Borrower on behalf of any class;
- (e) with the sole exception of objections to Debtors' proofs of claim permitted by subsection (a)(i) above, and solely for purposes of reducing any such claim and not for the purpose of obtaining an affirmative recovery or award, under no circumstances shall a Bankrupt Borrower, a Bankruptcy Trustee, or a United States Trustee be entitled to recoup, setoff, or collect from the Debtors any judgment or award related to any direct claim or counterclaim for which the automatic stay has been lifted by the terms of this Order;

³ United States Trustees have been included in this provision out of an abundance of caution. However, as referenced in Paragraph 31 of this Order, nothing herein shall be construed to limit the rights of the Office of the United States Trustee to take any action in these chapter 11 cases not subject to the automatic stay.

- (f) the Debtors shall retain the right, upon appropriate motion and notice to any Bankrupt Borrower, Bankruptcy Trustee, or United States Trustee, to seek to impose any provision of section 362(a) of the Bankruptcy Code modified by this Order, and to the extent such relief is sought, the Debtors will not object to such party's telephonic participation at any hearing on such motion;
- (g) nothing set forth herein shall preclude or limit any Bankrupt Borrower, Bankruptcy Trustee, or United States Trustee from seeking relief from the automatic stay under section 362(a) of the Bankruptcy Code on appropriate motion and notice to the Debtors and parties in interest; and
- (h) should there be any disagreements between the Debtors, a Bankrupt Borrower, a Bankruptcy Trustee, or a United States Trustee regarding whether any actions, claims, or counterclaims fall within the exception to the automatic stay approved by this Court, this Court shall have exclusive jurisdiction to hear and resolve such dispute.

Actions Involving Amount, Validity, or Priority of Liens

20. The automatic stay imposed by section 362(a) of the Bankruptcy Code applicable to actions involving the amount, validity, and/or priority of liens with respect to properties subject to mortgages owned or serviced by the Debtors (such actions, "**Title Disputes**")⁴ is hereby modified to allow Interested Parties to defend and assert and prosecute claims, cross-claims, third-party claims, and counter-claims, including the appeal or settlement of such, in Title Disputes, to the limited extent such claims, cross-claims, third-party claims, and counterclaims (a) are necessary for the resolution of such Title Dispute and (b) do not result in any order, judgment, or decree against the Debtors entitling any party to an award of money damages including, without limitation, Interested Parties' attorneys' fees or costs (collectively, the "**Permitted Title Disputes**").

21. Absent further order of this Court, the automatic stay shall remain in full force and effect with respect to any and all pending or future claims, cross-claims, third-party

⁴ These actions include quiet title suits, efforts by third parties to foreclose their liens, eminent domain and condemnation suits, corrective and reformation actions, disputes with home owners associations or common interest associations, code violation actions, tax sales, and other analogous causes of action.

claims, and counterclaims against the Debtors other than the Permitted Title Disputes, including those with respect to (a) monetary relief of any kind or any nature against the Debtors, including, without limitation, Interested Parties' attorneys' fees or costs, (b) actions for partition or criminal forfeiture or seizure of the property securing lien(s) held by the Debtors, (c) relief that is not necessary for the resolution of the Title Dispute, or (d) actions asserted in the form of a class action or collective action.

22. For convenience, to avoid prejudice, or to expedite and economize, the claims described in Paragraph 20 above may proceed separately from any other claim that is stayed by the Bankruptcy Code. Should there be any disagreements between or among any Interested Parties and/or the Debtors regarding whether any claims, cross-claims, third-party claims, or counterclaims fall within the exception to the automatic stay approved by this Court, this Court shall have exclusive jurisdiction to hear and resolve such disputes.

Additional Relief Related to Fannie Mae, Freddie Mac, and Ginnie Mae

23. The Debtors are authorized to provide to Fannie Mae, Freddie Mac, and Ginnie Mae assurances of future performance under the applicable Agency Agreements on the terms and conditions set forth in **Schedules 1, 2, and 3** to this Order and to comply therewith; *provided, that*, nothing herein, including the provision of such assurances, shall be deemed to constitute an assumption or rejection of any executory contract or prepetition or postpetition agreement between the Debtors and Fannie Mae, Freddie Mac, or Ginnie Mae, as applicable. The acceptance by Fannie Mae, Freddie Mac, and Ginnie Mae of the assurances and related relief granted pursuant to this Order shall not be deemed to constitute consent by Fannie Mae, Freddie Mac, and Ginnie Mae of the assumption and assignment of the applicable Agency Agreements or to the release of any Debtor from any obligations under the Ginnie Mae Agreements. Notwithstanding anything herein or in any order to the contrary, Fannie Mae, Freddie Mac, and

Ginnie Mae may seek additional assurances or modification to its grant of assurances provided herein so as to provide different or additional assurance, without prejudice to the right of the Debtors or any other party in interest to contest any such addition or modification.

24. For the avoidance of doubt, all payments by the Debtors to Fannie Mae, Freddie Mac, Ginnie Mae, and Ginnie Mae guaranteed RMBS investors under the Agency Agreements (including, without limitation, repurchase or repurchase-related requests and requests for payments of principal and interest, Servicer Advances, and other origination-related, servicing-related, and with respect to Ginnie Securitized Loans, securitization-related escrows, fees and claims) shall be made free and clear of any lien, security interest, or other interest of any party, including, without limitation, any prepetition or postpetition lenders.

25. Nothing in this Order constitutes a determination of the applicability, if any, of the automatic stay under Bankruptcy Code section 362(a) to requests by Fannie Mae, Freddie Mac, or Ginnie Mae to the Debtors to honor their origination-related, servicing-related, and with respect to Ginnie Securitized Loans, securitization-related, commitments and obligations, including, without limitation, repurchase or repurchase-related requests and requests for payment of principal and interest, Servicer Advances, and other origination-related, servicing-related, and with respect to Ginnie Securitized Loans, securitization-related, fees and claims, in each case to the extent provided under the relevant Agency Agreements, and the rights of all parties are reserved with respect thereto. Without limiting the foregoing, in the event of a failure by any Debtor to timely (i) make a Servicer Advance, or (ii) remit or deposit receipts of the relevant mortgagee's assets, in any such case, required to be made or remitted by such Debtor, in its servicing or servicing-related role, pursuant to any Fannie Agreement or any Freddie Agreement, which failure has continued beyond any applicable cure, grace or notice

period set forth in such Fannie Agreement or Freddie Agreement and as a result of which Fannie Mae or Freddie Mac, as applicable, under such Fannie Agreement or Freddie Agreement would otherwise have the current right (but for the effect of the automatic stay, to the extent applicable) to terminate the applicable Debtor from such servicing or servicing related role pursuant to the terms of such Fannie Agreement or Freddie Agreement, then Fannie Mae or Freddie Mac, as applicable, may elect to avail itself of procedures set forth in Paragraph 6 above, with respect to such failure.

26. To the extent that the automatic stay under Bankruptcy Code section 362(a) applies to requests by Fannie Mae, Freddie Mac, and Ginnie Mae that the Debtors honor their origination-related, servicing-related, and with respect to Ginnie Securitized Loans, securitization-related, commitments and obligations, the automatic stay is hereby modified to the limited extent necessary to allow Fannie Mae, Freddie Mac, and Ginnie Mae to make such requests to the Debtors, including, without limitation, repurchase or repurchase-related requests and requests for payment of principal and interest, Servicer Advances, and other origination-related, servicing-related, and with respect to Ginnie Securitized Loans, securitization-related, fees and claims, in each case to the extent provided under the relevant Agency Agreements; *provided, that*, Fannie Mae, Freddie Mac, and Ginnie Mae reserve all rights to assert that they may exercise any and all rights available to them under their respective agreements notwithstanding the automatic stay.

Other Relief

27. Nothing contained in the Motion or this Order, nor any payment made pursuant to the authority granted by this Order, shall constitute or be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim

against the Debtors; (c) a waiver of any claims or causes of action which may exist against any creditor or interest holder; or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

28. Notwithstanding anything to the contrary contained herein or in the Motion, any payment, obligation or other relief authorized by this Order shall be subject to and limited by the requirements imposed on the Debtors under the terms of any interim and/or final order approving the *Debtors' Motion for Interim and Final Orders (A) Authorizing Debtors to Enter Into Repurchase Agreement Facilities, Servicer Advance Facilities and Related Documents; (B) Authorizing Debtors to Sell Mortgage Loans and Servicer Advance Receivables in the Ordinary Course of Business; (C) Granting Back-Up Liens and Superpriority Administrative Expense Claims; (D) Authorizing Use of Cash Collateral and Granting Adequate Protection (E) Modifying the Automatic Stay; (F) Scheduling a Final Hearing; and (G) Granting Related Relief* [ECF No. 26], as may be amended or superseded from time to time, or any budget in connection therewith, entered by this Court in these chapter 11 cases.

29. Nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

30. Nothing herein shall be construed to limit the right of any governmental unit (as such term is defined in section 101(27) of the Bankruptcy Code) to take any action not subject to the automatic stay.

31. Nothing herein shall be construed to narrow or limit any exception to the automatic stay under section 362(b) of the Bankruptcy Code applicable to the United States Trustee Program or any other governmental unit pursuant to any police and regulatory power.

32. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

33. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

34. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Order.

35. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: March 20, 2019
New York, New York

/s/ James L. Garrity, Jr.

HONORABLE JAMES L. GARRITY, JR.
UNITED STATES BANKRUPTCY JUDGE

Schedule 1

Fannie Mae Assurances of Future Performance

Fannie Mae Assurances of Future Performance¹

1. Ditech shall provide Fannie Mae staff with regular access to Ditech facilities, including reasonable access to its books, records, and accounts, so as to allow Fannie Mae to oversee Ditech's performance of its servicing duties.
2. Ditech shall at all times maintain its servicing performance to the standards set forth in certain Fannie Mae Mortgage Selling and Servicing Contract dated as of March 23, 2005 (together with all supplements, addendums, amendments, and related agreements, the "**Fannie Mae Mortgage Selling and Servicing Contract**"), which includes that certain Selling Guide: Fannie Mae Single Family (together with all supplements, addendums, amendments, and related agreements, the "**Fannie Selling Guide**") and that certain Servicing Guide: Fannie Mae Single Family (together with all supplements, addendums, amendments, and related agreements, the "**Fannie Servicing Guide**" and, together with the Fannie Selling Guide, the "**Fannie Guides**"), that certain Subservicing Agreement effective as of December 22, 2010 (together with all supplements, addendums, amendments, and related agreements, the "**Fannie Subservicing Agreement**"), and that certain Pledge and Security Agreement effective as of December 19, 2014 (together with all supplements, addendums, amendments, and related agreements, the "**Fannie Pledge Agreement**" and, together further with the Fannie Mae Mortgage Selling and Servicing Contract, the Fannie Subservicing Agreement, and the Fannie Guides, the "**Fannie Agreements**"), as well as to the following supplemental standards:
 - (a) As to each separate portfolio of Fannie Mae loans serviced or subserviced by Ditech, Ditech shall maintain monthly STAR Scorecard metrics as good as or better than such metrics for such portfolio as of the month ending November 30, 2018;
 - (b) No STAR overall operational assessment can result in a rating of "red";
 - (c) Any formal servicing compliance review must not return an overall risk rating of 'high';
 - (d) As applicable, Ditech shall comply with the High Touch Servicing Protocols previously agreed to by Fannie Mae and Ditech;
 - (e) Ditech shall use best efforts to reduce the net population of seriously delinquent loans;
 - (f) Ditech shall timely comply with all servicing action plans;
 - (g) Ditech shall deliver custodial account reconciliations of all P&I and T&I accounts relating to Fannie Mae Loans via tapes to Fannie Mae on or before the fifteenth day of the month immediately following the reconciliation period;
 - (h) Ditech shall provide Fannie Mae with a copy of its key employee retention program and key employee incentive program;

¹ Capitalized terms used but not otherwise defined herein or in the Motion shall have the meaning ascribed to such term in the Fannie Agreements (as defined below).

- (i) Ditech shall at all times maintain staffing levels commensurate with the servicing portfolio, including maintaining adequate staffing within the requisite servicing departments;
 - (j) Ditech shall provide notice to Fannie Mae, within two (2) business days, of (i) senior management departures and/or (ii) the number of loans per employee falling below the level as of the date of the bankruptcy filing;
 - (k) Ditech shall provide all reporting and other servicing information as reasonably requested by Fannie Mae, including such additional reports that may be requested, as currently permitted under the Fannie Servicing Guide;
 - (l) Ditech shall continue regularly scheduled engagements with Fannie Mae, such as the monthly performance reviews at the current participation level, including Ditech senior management;
 - (m) Ditech shall keep Fannie Mae apprised of its ongoing compliance efforts, and will be entitled to apply for and obtain any extensions as it deems appropriate, which extensions will not be withheld solely on the basis of Ditech's bankruptcy proceedings;
 - (n) Ditech shall deliver to Fannie Mae the following information: (i) on a quarterly basis, a completed Mortgage Bank Financial Reporting Form, (ii) monthly financial statements, and (iii) weekly liquidity reporting, in each case, on the same timeframe as such reports were delivered immediately prior to the Commencement Date;
 - (o) Ditech shall continue to meet margin requirements as may be required under the Fannie Agreements in connection with the sale of loans; and
 - (p) Ditech agrees to comply with the Fannie Servicing Guide to facilitate the orderly transfer of servicing rights to any new servicer where applicable;
3. Ditech shall maintain response times to file requests (for both origination and servicing files) timely (within 30 days) as is current practice and Ditech will comply with Fannie Mae timelines for appeal letters, identifying "impasse loans", and for supplying missing documents as well as timely addressing aged repurchase issues.
4. Ditech shall not grant a lien or security interest (including any adequate protection liens) in (a) any cash, accounts, or other collateral (or any proceeds of the foregoing) that has been pledged to Fannie Mae pursuant to any collateral pledge agreement or other security agreement between Ditech and Fannie Mae (including, without limitation, the Fannie Pledge Agreement), or (b) any mortgage servicing rights with respect to mortgages which are now or hereafter serviced or subserviced by Ditech for Fannie Mae, except as otherwise expressly authorized by, that certain Acknowledgment Agreement With Respect to Servicing Advance Receivables, dated as of February 9, 2018 and effective as of February 12, 2018, and amended as of April 20, 2018 (as further amended, restated, supplemented or otherwise modified from time to time), among Fannie Mae, Ditech, Ditech Agency Advance Depositor LLC, Ditech Agency Advance Trust, Wells Fargo Bank, N.A, in its capacity as Indenture Trustee, and Barclays Bank PLC, in its capacity as Administrative Agent; or by that certain

First Amended and Restated Acknowledgment Agreement dated as of February 9, 2018 (as amended, restated, supplemented or otherwise modified from time to time), among Fannie Mae, Ditech, Credit Suisse AG, Cayman Islands Branch, in its capacity as collateral agent for the First Lien Secured Party, and Wilmington Savings Fund Society, FSB, in its capacity as Collateral Agent for the Second Lien Secured Party. In addition, Ditech shall not seek to modify or otherwise affect Fannie Mae's rights under the Fannie Mae Pledge Agreement.

Schedule 2

Freddie Mac Assurances of Future Performance

Freddie Mac Assurances of Future Performance¹

1. Ditech shall provide Freddie Mac staff with regular access to Ditech facilities, including reasonable access to its books, records, and accounts, so as to allow Freddie Mac to oversee Ditech's performance of its servicing duties.
2. Ditech shall at all times maintain its servicing performance consistent with the standards set forth in the that certain Master Agreement dated as of August 1, 2014, as amended and restated on October 6, 2017 (together with all supplements, addendums, amendments, and related agreements, the "**Freddie Master Agreement**"), that certain Purchase Agreement dated as of November 7, 2018 (together with all supplements, addendums, amendments, and related agreements, the "**Freddie Purchase Agreement**"), and the Freddie Mac Single-Family Seller/Service Guide (the "**Freddie Selling and Servicing Guide**" and, together with the Freddie Master Agreement and the Freddie Purchase Agreement, the "**Freddie Agreements**"), as well as with the following supplemental standards (*provided that*, nothing herein is intended to waive or release any of Ditech's current obligations under the Freddie Agreements):
 - (a) In connection with any operation assessment by Freddie Mac's Counterparty Operations Risk Evaluation group ("**CORE**"), Ditech must maintain an operational assessment that is above "critical" or "major" for each finding in connection with such assessment. If there is a finding by CORE of "critical," "major" or "other" for any matter that is within the scope of any CORE review, Ditech must remediate and address each such finding;
 - (b) Ditech shall deliver custodial account reconciliations of all P&I and T&I accounts relating to Freddie Mac Loans via tapes to Freddie Mac on or before the fifth day of the month immediately following the reconciliation period;
 - (c) Ditech shall provide Freddie Mac with a copy of its key employee retention program and key employee incentive program;
 - (d) Ditech shall at all times maintain staffing levels commensurate with the servicing portfolio, including maintaining adequate staffing within the requisite servicing departments;
 - (e) Ditech shall provide notice to Freddie Mac, within five business days, of senior management departures or larger-than-average departures of non-management personnel;
 - (f) Ditech shall provide all reporting and other servicing information as reasonably requested by Freddie Mac, including (without limitation) fraud reports and such additional reports that may be requested by Freddie Mac, in accordance with the Freddie Selling and Servicing Guide;

¹ Capitalized terms used but not otherwise defined herein or in the Motion shall have the meaning ascribed to such term in the Freddie Agreements (as defined below).

- (g) Ditech shall confer and consult with Freddie Mac in good faith with respect to the implementation of any new programs/directives, and policy changes and Ditech will (i) comply with such changes if compliance is required pursuant to applicable law or regulation, or if noncompliance would itself constitute grounds for termination of Ditech as a seller/servicer under the Freddie Agreements, and (ii) use commercially reasonable efforts to comply with such changes in all other cases, notwithstanding possible additional costs to implement those changes;
 - (h) Ditech shall keep Freddie Mac apprised of its ongoing compliance efforts, and will be entitled to apply for and obtain any extensions as it deems appropriate, which extensions will not be withheld solely on the basis of Ditech's bankruptcy proceedings. As with other lenders, Freddie Mac will acknowledge, but not approve, extension requests and will not assert a breach based solely on such non-compliance for up to 90 days of non-compliance;
 - (i) Ditech shall continue (post-filing) its regularly scheduled meetings and engagements with Freddie Mac, including (without limitation) monthly executive meetings and any and all reviews relating to the servicing of the Freddie Mac servicing portfolio;
 - (j) Ditech shall maintain response times to file requests (for both origination and servicing files) timely (within 30 days), as is current practice, and Ditech will comply with Freddie Mac timelines for appeal letters, and for supplying missing documents, as well as timely addressing aged repurchase issues; and
 - (k) Ditech agrees to comply with the Freddie Selling and Servicing Guide, and specifically Chapter 7101 thereof, to facilitate the orderly transfer of servicing rights to any new servicing agent where applicable.
3. Ditech shall not grant a lien or security interest (including any adequate protection liens) in (a) any cash, accounts, or other collateral (or any proceeds of the foregoing) that has been pledged to Freddie Mac pursuant to any collateral pledge agreement or other security agreement between Ditech and Freddie Mac (including, without limitation, the Amended and Restated Collateral Account Control Agreement, dated as of January 17, 2014, and the Amended and Restated Collateral Pledge Agreement, dated as of January 17, 2014) (collectively, the "**Freddie Mac Pledge Agreements**"), (b) any mortgage servicing rights with respect to mortgages which are now or hereafter serviced by Ditech for Freddie Mac, or (c) the "Servicing Collateral" as defined and referenced in, and except as otherwise expressly authorized by, that certain Second Amended and Restated Acknowledgement Agreement, dated as of October 30, 2015, among Freddie Mac, Ditech, and Credit Suisse AG, Cayman Islands Branch. In addition, Ditech shall not seek to modify or otherwise affect Freddie Mac's rights under the Freddie Mac Pledge Agreements.

Schedule 3

Ginnie Mae Assurances of Future Performance

Ginnie Mae Assurances of Future Performance¹

1. Ditech shall provide Ginnie Mae staff and its designees with regular access to Ditech facilities, including reasonable access to its books, records, and accounts, so as to allow Ginnie Mae to oversee Ditech's performance of its securitization duties.
2. Ditech shall at all times maintain its securitization performance to the standards set forth in that certain Master Servicing Agreement dated as of October 9, 2015 (collectively with the Cross-Default Agreement, that certain Escrow Tri-Party Agreement dated as of January 30, 2019, all guaranty agreements, RMBS prospectus documents, escrow agreements, acknowledgment agreements, supplements, addendums, amendments, and related agreements, the "**Ginnie Mae Master Servicing Agreements**") and the Ginnie Mae Mortgage-Backed Securities Guide (the "**Ginnie Mae Guide**" and, together with the Ginnie Mae Master Servicing Agreements, the "**Ginnie Mae Agreements**") as well as to the following supplemental or existing standards:
 - (a) Ditech shall deliver custodial account reconciliations of all P&I and T&I accounts relating to Ginnie Securitized Loans via tapes to Ginnie Mae on or before the 15th day of the month immediately following the reconciliation period;
 - (b) Ditech shall provide Ginnie Mae with a copy of its key employee retention program and key employee incentive program and updates to form HUD 11702, as applicable;
 - (c) Ditech shall provide notice to Ginnie Mae of senior management departures and updates to form HUD 11702, as applicable, as required under the Ginnie Mae Agreements;
 - (d) Ditech shall provide Ginnie Mae with a report identifying the Critical Vendors for the Ginnie Mae guaranteed RMBS portfolio and a contact list of parties (other than document custodians) to whom loan collateral documents have been or are delivered, including ancillary systems and location of any origination, credit, and servicing files, imaging, and records stored in hard copy format;
 - (e) Ditech shall provide all reporting and other securitization information requested by Ginnie Mae, including such additional reports that may be reasonably requested, as currently permitted under the Ginnie Mae Agreements; and
 - (f) Ditech shall keep Ginnie Mae apprised of its ongoing compliance efforts, and will be entitled to apply for and obtain any extensions from Ginnie Mae, in Ginnie Mae's sole discretion, which extensions will not be withheld solely on the basis of Ditech's bankruptcy proceedings. Ditech may not seek extensions of the statutory requirement to obtain mortgage insurance or guaranty for pooled loans or extensions of regulatory requirements. A request to approve a transfer of issuer responsibility is not an extension request.

¹ Capitalized terms used but not otherwise defined in the Motion shall have the meaning ascribed to such term in the Ginnie Mae Agreements (as defined below).

3. Ditech shall maintain response times to file requests timely as is current practice and Ditech will comply with the requisite timelines pursuant to the Ginnie Mae Agreements.
4. Ditech shall timely comply with the Ginnie Mae Buyout Obligations set forth in the Ginnie Mae Agreements.
5. Ditech shall maintain delinquency rates on outstanding pools and loan packages below the threshold levels described in the Ginnie Mae Guide.
6. Ditech shall comply with all the terms and conditions outlined in the Ginnie Mae Notice of Violation dated as of February 8, 2019.

Yvonne E. Nicholson

Legal Assistant
ynicholson@bradley.com
704.338.6008 direct
704.332.8858 fax

Bradley

May 7, 2019

FEDERAL EXPRESS

Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

RE: *Ditech Financial LLC v. Kevin G. Snyder, et al.*
Case No.: 2010-CP-10-07838

Dear Clerk:

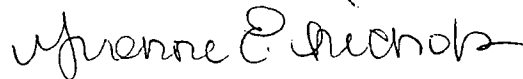
It appears that the enclosed filing was returned to us in error. For your convenience, I am providing the clerk's correspondence that we received stating that the document has e-filing signatures and that the clerk needs the originals, along with Ms. Burton's initial correspondence sending the filing via Federal Express.

In taking a look at the return, it appears that an original (which contains a blue ink signature – flagged for your convenience) along with a copy of an Amended Notice of Bankruptcy Filing and Imposition of Automatic Stay was indeed initially provided, thereby we are resubmitting it, along with a copy for filing and return.

As this appears to be a clerical error, would you be able to file stamp this with the date of the original filing, which appears to be May 8, 2019? If you are not able to, please go ahead and file stamp your date of receipt and return the file-stamped copy to our office in the self-addressed, stamped Federal Express envelope enclosed for your convenience.

If you have any questions or concerns, please do not hesitate to contact our office.

Sincerely,



Yvonne E. Nicholson
Legal Assistant

/yn

Enclosures

cc: Jason Scott Luck
Jonathan Schultz

4821-6818-6775.1



Coren Burton
Legal Assistant
Direct: (704) 338-6102
Fax: (704) 338-8858
cburton@babc.com

May 7, 2019

FEDERAL EXPRESS

Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

RE: Ditech Financial LLC v. Kevin G. Snyder
Case No.: 2010-CP-10-07838

Dear Clerk:

Enclosed please find an original and one copy of an Amended Notice of Bankruptcy Filing and Imposition of Automatic Stay regarding the above referenced matter.

Please file accordingly and return the file-stamped copy to our office in the self-addressed, stamped envelope enclosed for your convenience.

If you have any questions or concerns, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink, appearing to be "Coren Burton", written over a circular scribble.

Coren Burton
Assistant to G. Benjamin Milam

Enclosures

cc: Jason Scott Luck

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

Charleston County Case No. 2010-CP-10-7838

RECEIVED
APR 01 2019
SC Court of Appeals

Ditech Financial, LLC.....Respondent,

v.

Kevin G. Snyder, individually and
As Personal Representative of the
Estate of Mary Snyder.....Appellant.

NOTICE OF APPEAL

Appellant Kevin G. Snyder, individually and as Personal Representative of the Estate of Mary Snyder, appeals the orders of the Honorable Mikell Scarborough dated March 12, 2014, March 18, 2019, March 18, 2019, and March 27, 2019. Appellant received written notice of the entry of the last order on March 28, 2019.

Dated: 3/29/19


Jason Scott Luck
jluck@garrettlawsc.com
Garrett Law Offices, LLC
1075 E. Montague Ave.
North Charleston, SC 29405
843.554.5515 (phone)
843.747.3198 (telefax)
Attorney for Appellant

Other counsel of record:

Michael Griffin
G. Benjamin Milam
Bradley Arant Boult Cummings, L.P.
214 N. Tryon St., Ste. 3700
Charlotte, NC 28202
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

Charleston County Case No. 2010-CP-10-7838

RECEIVED
APR 01 2019
SC Court of Appeals

Ditech Financial, LLC.....Respondent,

v.

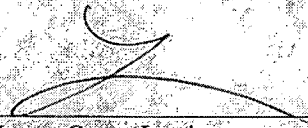
Kevin G. Snyder, individually and
As Personal Representative of the
Estate of Mary Snyder.....Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the Notice of Appeal to the person(s) set forth below
by depositing a copy of it in the United States Mail, postage prepaid, on the date set forth
below:

Michael Griffin
G. Benjamin Milam
Bradley Arant Boult Cummings, L.P.
214 N. Tryon St., Ste. 3700
Charlotte, NC 28202
Attorneys for Respondent

Dated: 3/29/19


Jason Scott Luck
jluck@garrettlawsc.com
Garrett Law Offices, LLC
1075 E. Montague Ave.
North Charleston, SC 29405
843.554.5515 (phone)
843.747.3198 (telefax)
Attorney for Appellant

Garrett Law Offices

Ltd. Co.

Gordon H. Garrett (Ret.)
Gordon H. Garrett
Jason Scott Luck
Ryan A. Love

1075 East Montague Avenue
North Charleston, SC 29405
843.554.5515 (O) 843.747.3198 (F)
office@garrettlawsc.com

29 March 2019

Jenny Abbot Kitchings
Clerk of Court
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
APR 01 2019
SC Court of Appeals

Re: *Ditech Financial, LLC v. Snyder*, 2010-CP-10-7838

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above-captioned case. Also enclosed are (1) proof of service of the notice of appeal on the Respondent, (2) a copy of the orders appealed, and (3) a check for \$100.00.

Please do not hesitate to contact me with any questions.

With Highest Regards,

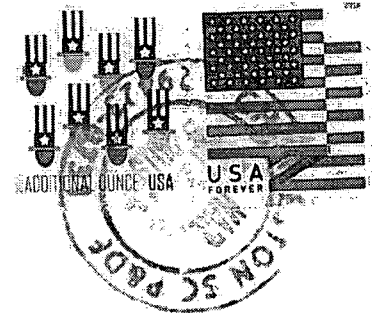


Jason Scott Luck

/JSL
Enclosures

cc: Ben Milam, Attorney for Respondents (via U.S. Mail and email) (w/enc)
Julie J. Armstrong, Charleston County Clerk of Court (via hand delivery) (w/enc)
Martha Dennis, law clerk for Mikell Scarborough (via email only) (w/enc)

Garrett Law Offices, LLC
1075 East Montague Avenue
Charleston, SC 29405



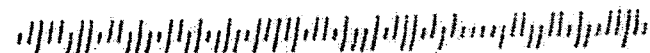
RECEIVED

APR 01 2019

SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

29211\$1629 B512 535



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

Appellate Case No. 2019-000575
Charleston County Case No. 2010-CP-10-7838

RECEIVED
MAY 02 2019
SC Court of Appeals

Ditech Financial, LLC.....Respondent,

v.

Kevin G. Snyder, individually and
As Personal Representative of the
Estate of Mary Snyder Appellant.

AMENDED NOTICE OF APPEAL

Appellant Kevin G. Snyder, individually and as Personal Representative of the Estate of Mary Snyder, appeals the orders of the Honorable Mikell Scarborough dated March 12, 2014, March 18, 2019, March 27, 2019, and April 23, 2019. Appellant received written notice of the entry of the March 27, 2019 order on March 28, 2019. Appellant served the original notice of appeal on March 29, 2019. This amended notice of appeal adds the April 23, 2019, order; Appellant received written notice of the entry of that order on April 29, 2019.

Dated: 4/30/19



Jason Scott Luck
jluck@garrettlawsc.com
Garrett Law Offices, LLC
1075 E. Montague Ave.
North Charleston, SC 29405
843.554.5515 (phone)
843.747.3198 (telefax)
Attorney for Appellant

Other counsel of record:

Jonathan E. Schulz
Bradley Arant Boult Cummings, L.P.
214 N. Tryon St., Ste. 3700
Charlotte, NC 28202
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

RECEIVED
MAY 02 2019
SC Court of Appeals

Appellate Case No. 2019-000575
Charleston County Case No. 2010-CP-10-7838

Ditech Financial, LLC.....Respondent,

v.

Kevin G. Snyder, individually and
As Personal Representative of the
Estate of Mary Snyder Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the Amended Notice of Appeal to the person(s) set forth below by depositing a copy of it in the United States Mail, postage prepaid, on the date set forth below:

Jonathan E. Schulz
Bradley Arant Boult Cummings, L.P.
214 N. Tryon St., Ste. 3700
Charlotte, NC 28202
Attorneys for Respondent

Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Dated: 4/30/19


Jason Scott Luck
jluck@garrettlawsc.com
Garrett Law Offices, LLC
1075 E. Montague Ave.
North Charleston, SC 29405
843.554.5515 (phone)
843.747.3198 (telefax)
Attorney for Appellant

Garrett Law Offices

Ltd. Co.

Gordon H. Garrett (Ret.)
Gordon H. Garrett
Jason Scott Luck
Ryan A. Love

1075 East Montague Avenue
North Charleston, SC 29405
843.554.5515 (O) 843.747.3198 (F)
office@garrettlawsc.com

30 April 2019

Jenny Abbot Kitchings
Clerk of Court
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Ditech Financial, LLC v. Snyder*, 2019-000575
Chas. County Case No.: 2010-CP-10-7838

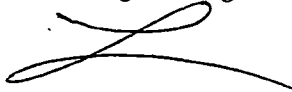
RECEIVED
MAY 02 2019
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing is an amended notice of appeal and certificate of service in the above-captioned appeal. The amended notice of appeal removes a typographical error and a March 20, 2019 order that was included by mistake. It also adds the appeal of the April 23, 2019 order in this matter.

Please do not hesitate to contact me with any questions.

With Highest Regards,



Jason Scott Luck

/JSL

Enclosures

cc: Jonathan Schulz, Attorney for Respondents (via U.S. Mail) (w/enc)
Julie J. Armstrong, Charleston County Clerk of Court (via U.S. Mail) (w/enc)

Garrett Law Offices, LLC
1075 East Montague Avenue
North Charleston, South Carolina 29405



RECEIVED

MAY 02 2019

SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

Appellate Case No. 2019-000575
Charleston County Case No. 2010-CP-10-7838

RECEIVED
MAY 15 2019
SC Court of Appeals

Ditech Financial, LLC.....Respondent,

v.

Kevin G. Snyder, individually and
As Personal Representative of the
Estate of Mary Snyder Appellant.

MEMORANDUM ON APPEALABILITY

Appellant Kevin G. Snyder, individually and as Personal Representative of the Estate of Mary Snyder, submits the following in response to the Clerk of Court's May 6, 2019 letter:

I. The question of appealability is now moot.

On April 23, 2019, the Master-in-Equity issued his Order and Judgment of Foreclosure and Sale. On April 30, 2019, Snyder served an amended notice of appeal that includes this final order, which is immediately appealable. S.C. Code § 14-3-330(1). Assuming, *arguendo*, that the Master-in-Equity's March 27, 2019, order was interlocutory, it may be reviewed upon the appeal of the April 23, 2019 order. *Id.*; *Cox v.*

Woodmen of the World Ins. Co., 347 S.C. 460, 556 S.E.2d 397 (Ct. App. 2001).

II. The Master-in-Equity's March 27, 2019, order was immediately appealable.

Generally speaking, an order that affects an interest in property is immediately appealable, especially if there exists a risk that the underlying property could be lost. See Lebovitz v. Mudd, 289 S.C. 476, 347 S.E.2d 94 (1986) (order dissolving lis pendens immediately appealable); Va.-Carolina Chem. Co. v. Wilkins, 105 S.C. 291, ___, 89 S.E. 659, 661 (1916) (order dissolving an attachment to lumber immediately appealable); Kay v. Meadors, 216 S.C. 483, 486, 58 S.E.2d 893, ___ (1950) (order refusing to dissolve an attachment to automobile immediately appealable). Similarly, without an immediate appeal of the March 27, 2019 order, and the consequential automatic stay, the property at issue in this residential foreclosure could be lost at judicial sale and an appeal would not reinstate ownership.¹

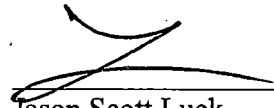
Assuming, *arguendo*, the March 27, 2019, order was not final, it does, however, affect a substantial right, as it effectively strikes Defendant's cause of action for civil compensatory contempt, and does strike the Estate of Mary Snyder's defense of the Attorney Preference Statute. See S.C. Code § 14-3-330(2). Snyder was unable to fully contest Ditech's case at the final hearing; a substantial right was affected. See McLaughlin v. Strickland, 279 S.C. 513, 309 S.E.2d 787 (Ct. App. 1983); see also Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 529 S.E.2d 11 (2000) (immediate

¹ This fact distinguishes this case from Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 393 S.E.2d 176 (1990), which did not involve a property interest. Ashenfelter v. City of Georgetown, 389 S.C. 568, 698 S.E.2d 856 (Ct. App. 2010), did involve an interest in real property, but there was no reasonable risk of the real property being lost after a final order.

appeals under section 14-3-330(2) have been allowed in situations where the substantial right could not be vindicated on appeal after the case).

Accordingly, Snyder asks this Court to allow this appeal to proceed and allow any questions on the immediate appealability of the March 27, 2019, order be determined on the merits after briefing or in Snyder's contemplated petition for a writ of supersedeas.²

Dated: 5/13/19



Jason Scott Luck
jluck@garrettlawsc.com
Garrett Law Offices, LLC
1075 E. Montague Ave.
North Charleston, SC 29405
843.554.5515 (phone)
843.747.3198 (telefax)
Attorney for Appellant

² On May 2, 2019, Snyder filed his application to the lower court as required by Rule 241, SCACR. A decision on that application is pending.

Garrett Law Offices

Ltd. Co.

Gordon H. Garrett (Ret.)
Gordon H. Garrett
Jason Scott Luck
Ryan A. Love

1075 East Montague Avenue
North Charleston, SC 29405
843.554.5515 (O) 843.747.3198 (F)
office@garrettlawsc.com

13 May 2019

V. Claire Allen
Deputy Clerk of Court
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
MAY 15 2019
SC Court of Appeals

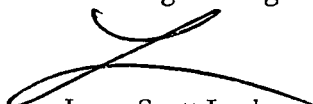
Re: *Ditech Financial, LLC v. Snyder*, 2019-000575

Dear Ms. Allen:

Please find enclosed a memorandum on appealability, as requested by your May 6, 2019 letter.

Please do not hesitate to contact me with any questions.

With Highest Regards,



Jason Scott Luck

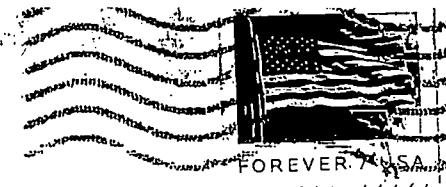
/JSL
Enclosures

cc: Jonathan Schulz, Attorney for Respondents (via U.S. Mail) (w/enc)

Garrett Law Offices, LLC
1075-A East Montague Avenue
North Charleston, SC 29405

CHARLESTON SC 294

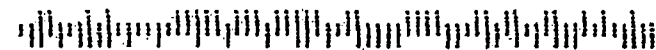
13 MAY 2019 PM 1 L



RECEIVED
MAY 15 2019
SC Court of Appeals

V. Claire Allen
Deputy Clerk of Court
S.C. Court of Appeals
PO Box 11629
Columbia, SC 29211

29211-162929⁵⁴⁵



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

Appellate Case No. 2019-000575
Charleston County Case No. 2010-CP-10-7838

RECEIVED
MAY 17 2019
SC Court of Appeals

Ditech Financial, LLC Respondent,

v.

Kevin G. Snyder, individually and
As Personal Representative of the
Estate of Mary Snyder Appellant.

RESPONDENT'S MEMORANDUM REGARDING APPEALABILITY

Pursuant to the May 6, 2019 Letter from the Clerk of Court, Respondent Ditech Financial, LLC ("Respondent" or "Ditech"), through undersigned counsel, hereby submits the following Memorandum Regarding Appealability.

1. The underlying case before the Court of Common Pleas involves a foreclosure claim by Ditech and counterclaims and defenses to foreclosure alleged in response by Appellant Kevin G. Snyder ("Appellant" or "Snyder").

2. On April 1, 2019, Appellant filed an Initial Notice of Appeal purporting to appeal the orders of the Honorable Mikell Scarborough dated March 12, 2014, March 18, 2019, and March 27, 2019.

3. The Court's March 12, 2014 Order amended the case caption to reflect the proper plaintiff as Green Tree Servicing, LLC (Ditech's former company name).

4. The Court's March 18, 2019 Order denied Appellant's Motion to Compel and vacated an Affidavit of Default entered in error against Appellant.

5. The Court's March 27, 2019 Order recognized the stay of Snyder's breach of contract and unfair trade practices claims imposed by Ditech's February 11, 2019 filing for bankruptcy, granted Ditech partial summary judgment on Appellant's cause of action for Civil Compensatory Contempt, and struck Appellant's defense invoking the Attorney Preference Statute. The Court denied Ditech's Motion for Summary Judgment on its foreclosure claim and Appellant's counterclaim for quiet title, and repeated its denial of Appellant's Motion to Compel.

6. The Court scheduled trial on the non-stayed claims that survived summary judgment, and on April 23, 2019, Appellant lost at trial and an order of foreclosure, denying Appellant's claim for quiet title, was entered in Ditech's favor.

7. On May 2, 2019, Appellant filed an Amended Notice of Appeal repeating his appeal of the three Orders appealed in the Initial Notice, and further appealing the Court's April 23, 2019 Order.

8. On May 6, 2019, the Clerk of this Honorable Court requested briefing as to whether all of the foregoing Orders are in fact immediately appealable.

9. The issue of whether a party is entitled to an immediate appeal is jurisdictional and may be raised *ex mero motu* by the appellate court – if an appealing party has no right to appeal, an appellate court may, on its own, dismiss the appeal. *Levi v. N. Anderson Cty. EMS*, 409 S.C. 374, 379, 384, 762 S.E.2d 44, 47 50 (Ct. App. 2014).

10. S.C. Code Ann. § 14-8-200 provides that the Court of Appeals “shall apply the same scope of review that the Supreme Court would apply in a similar case.” S.C. Code Ann. § 14-3-330 limits the scope of appellate jurisdiction to the following:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330.

11. Because Appellant’s claims for breach of contract and unfair trade practices remain pending, albeit stayed, until Ditech is discharged from bankruptcy, there has been no final judgment resolving all claims yet entered in the case, thus rendering parts of Appellant’s appeal impermissibly interlocutory. *See Ashenfelder v. City of Georgetown*, 389 S.C. 568, 575, 698 S.E.2d 856, 860 (Ct. App. 2010) (quoting SCRCP 54(b) and holding that “when fewer than all claims have been adjudicated, ‘the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties’” and an appeal of the same is only allowed where it involves the merits or a substantial right); *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006) (“Absent a specialized

statute, an order must fall into one of several categories set forth in Section 14–3–330 in order to be immediately appealable.”).

12. Respondent does not dispute the immediate appealability of the portion of the Court’s March 27, 2019 Order granting Ditech partial summary judgment and striking Appellant’s defense, nor does Respondent contest the appealability of the Court’s April 23, 2019 Order with respect to the judgment of foreclosure and judgment in favor of Ditech on Snyder’s quiet title claim.

13. However, the March 12, 2014 Order amending the case caption does not involve the merits, nor any substantial right, and is accordingly not appropriate for review pursuant to S.C. Code § 14-3-330. *See Jefferson by Johnson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988) (holding that where “the judge expressed no opinion on the substantive contents,” a matter is not immediately appealable).

14. Similarly, with respect to Appellant’s motion to compel (referenced in the March 18, 2019 and March 27, 2019 Orders),¹ immediate appeal is inappropriate because the denial of the motion did not discontinue the action nor prevent the case from proceeding to further stages of litigation. *See Estate of King ex rel. King v. Richland Cty.*, No. 2008-UP-274, 2008 WL 9841679, at *2 (S.C. Ct. App. May 21, 2008).

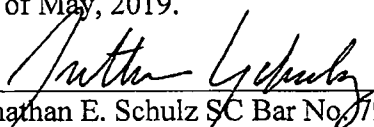
15. Finally, to the extent Appellant is appealing the Order denying him partial summary judgment, it is well-established that orders denying summary judgment are never appealable. *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 168, 580 S.E.2d 440, 444 (2003).

¹ Appellant does not identify from what holdings in the Court’s March 27, 2019 Order he appeals, but to the extent he challenges the Court’s recognition of the automatic stay, an appeal to this Court is inappropriate. Once removed to the federal jurisdiction of the bankruptcy court, the state court lost jurisdiction. *See e.g., Davis v. Davis*, 267 S.C. 508, 511, 229 S.E.2d 847, 848 (1976). Any challenge regarding the applicability of the automatic stay should have been filed in the bankruptcy court. *See In re Gruntz*, 202 F.3d 1074, 1083 (9th Cir. 2000) (“[T]he federal courts have the final authority to determine the scope and applicability of the automatic stay.”).

WHEREFORE, for the reasons stated above, Respondent requests as follows:

- a. That the Court dismiss Appellant's appeal of the following orders:
 - a. the March 12, 2014 Order amending the case caption;
 - b. the March 18, 2019 and March 27, 2019 Orders denying Appellant's motion to compel; and
 - c. the March 27, 2019 Order staying Appellant's counterclaims for breach of contract and unfair trade practices and denying summary judgment (to the extent he is seeking to appeal that portion of the Order); and
- b. That the Court issue such other and further relief as it deems appropriate.

Respectfully submitted this the 16th day of May, 2019.


Jonathan E. Schulz SC Bar No. 79850
Bradley Arant Boult Cummings LLP
214 N. Tryon Street, Suite 3700
Charlotte, NC 28202
Telephone: (704) 338-6127
Facsimile: (704) 332-6076
jschulz@bradley.com

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

Appellate Case No. 2019-000575
Charleston County Case No. 2010-CP-10-7838

RECEIVED
MAY 17 2019
SC Court of Appeals

Ditech Financial, LLC Respondent,

v.

Kevin G. Snyder, individually and
As Personal Representative of the
Estate of Mary Snyder Appellant.

PROOF OF SERVICE

I certify that I have served the foregoing to the person(s) set forth below by depositing a
copy of it in the United States Mail, postage prepaid, on the date set forth below:

Jason Scott Luck
Garret Law Offices, LLC
1075 E. Mantague Ave.
North Charleston, SC 29405

Dated: May 16, 2019


Jonathan E. Schulz SC Bar No. 79850

Jonathan Schulz
Direct Dial: (704) 338-6127
E-mail: jschulz@bradley.com

May 16, 2019

VIA FEDEX OVERNIGHT

Ms. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
MAY 17 2019
SC Court of Appeals

Re: *Ditech Financial, LLC v. Kevin G. Snyder, individually and As Personal Representative of the Estate of Mary Snyder*
Appellate Case No. 2019-000575

Dear Ms. Kitchings:

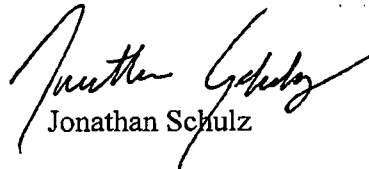
In connection with the above appeal, enclosed for filing please find the following:

- Notice of Appearance of Jonathan E. Schulz on behalf of Respondent, Ditech Financial, LLC; and
- Respondent's Memorandum Regarding Appealability.

By copy of this letter, I am serving same upon all counsel of record.

Thank you for your assistance. Please do not hesitate to contact me should you have any questions or concerns about the above.

Best regards,


Jonathan Schulz

Enclosures

cc: Jason Scott Luck (with encl. via US Mail)
Garret Law Offices, LLC

ORIGIN ID:QWGA (704) 338-6127
JONATHAN SCHULZ
BRADLEY ARANT BOULT CUMMINGS LLP
214 NORTH TRYON STREET
SUITE 3700
CHARLOTTE, NC 28202
UNITED STATES US

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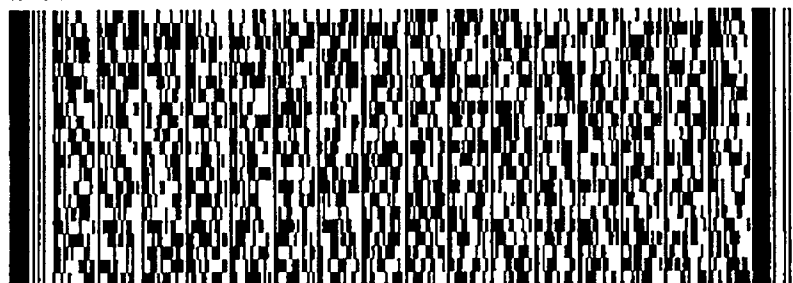
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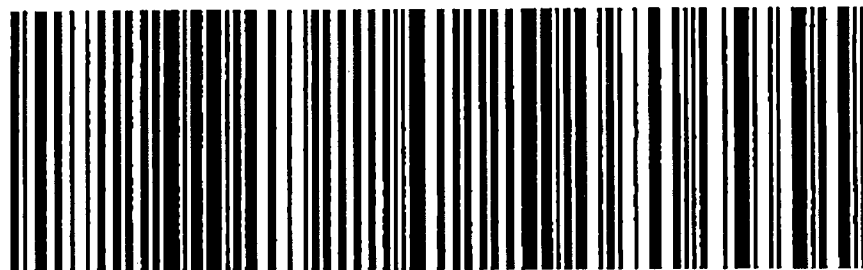
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-7838

DITECH FINANCIAL, LLC)
)
Plaintiff,)
vs.)
)
KEVIN G. SYNDER, individually and as)
Personal Representatives of the Estate of)
Mary Snyder,)
)
Defendant.)
)
)

**DITECH FINANCIAL, LLC'S
RESPONSE TO DEFENDANT'S
MOTION FOR SUPERSEDEAS**

FILED
2019 JUN -3 PM 2:52
JULIE J. ADAMS, PROCL
CLERK OF COURT
BY *[Signature]*

Plaintiff Ditech Financial, LLC ("Ditech") hereby responds to Defendant's Motion for
Supersedeas and states as follows:

PROCEDURAL BACKGROUND

1. Ditech's predecessor-in-interest filed a foreclosure action against Defendant on September 23, 2010. The complaint was subsequently amended October 27, 2010.

2. Defendant ultimately answered the amended pleading and asserted the following four counterclaims: (1) civil compensatory contempt (for alleged violations of South Carolina Supreme Court Administrative Order 2011-05-02-01), (2) breach of contract, (3) unfair trade practices, and (4) quiet title.

3. In March 2019, after a period of discovery, the parties filed cross motions for summary judgment.

a. Ditech moved for summary judgment on its foreclosure action and on Defendant's counterclaims for civil compensatory contempt and to quiet title. (The other

counterclaims – breach of contract and unfair trade practices – were stayed in light of Ditech’s bankruptcy.)

b. Defendant moved for summary judgment on its counterclaims for civil compensatory contempt and to quiet title.

4. In a March 20, 2019 Order, this Court denied Defendant’s motion for summary judgment.

5. The court granted Ditech’s motion with regard to the counterclaim for civil compensatory contempt, but it denied Ditech’s motion on its foreclosure claim and on Defendant’s quiet title counterclaim.

6. Before trial, Defendant filed his first Notice of Appeal, seeking interlocutory appellate review of, *inter alia*, the summary judgment ruling (hereinafter, the “First Notice of Appeal”).

7. A bench trial proceeded, resulting in a Judgment of Foreclosure and Sale dated April 23, 2019.

8. Thereafter, Defendant amended his notice of appeal to include the Judgment of Foreclosure and Sale (hereinafter, the “Second Notice of Appeal”).

9. On May 2, 2019, Defendant filed the underlying Motion for Supersedeas, asking this Court to “suspend[] any and all activity in this case until the appeal is resolved.” Effectively, Defendant seeks a stay of the foreclosure sale pending appeal.¹

¹ To the extent Defendant is also arguing – in the context of his Motion for Supersedeas – that this Court was without jurisdiction to issue the Judgment of Foreclosure and Sale, in light of the First Notice of Appeal, Defendant can make those arguments to the South Carolina Court of Appeals in the course of that court’s substantive review of the trial court proceedings.

LEGAL STANDARD

10. Because the Judgment of Foreclosure and Sale directs the sale of real property, that order is not automatically stayed by Defendant's appeal. *See* SCACR 241(b)(4) (listing as an exception to the automatic stay rule any "Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170"); *see also C-Sculptures, LLC, No. 3 v. Brown*, 393 S.C. 27, 32, 709 S.E.2d 705, 708 (2011) ("The foreclosure decree would be the type of order covered by section 18-9-170 . . .").

11. "In a case subject to an exception [set forth in SCACR 241(b)], any party may move for an order imposing supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal." SCACR 241(c)(1).

12. This Court is the proper Court to address Defendant's Motion for Supersedeas because Defendant is appealing orders issued by this Court and under South Carolina Rule of Civil Procedure 62(g), "[a]n application for such relief should first be made to the trial court under Rule 62(c) or (d) . . .". *See also* SCACR 241(d)(1) (explaining that "an application for an order . . . for supersedeas must first be made to the lower court . . . which entered the order or decision on appeal").

13. In order to obtain a stay, however, Defendant must "giv[e] a supersedeas bond," and the stay is not effective until "the supersedeas bond is approved by the court." S.C.R. Civ. P. 62(d). S.C. Code Ann. § 18-9-170 makes this point clear:

If the judgment appealed from direct[s] the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that *if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof* pursuant to the

judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking.

(emphasis added); *see also Wachesaw Plantation E. Cmty. Serv. Ass'n, Inc. v. Alexander*, 414 S.C. 355, 362 n.6, 778 S.E.2d 898, 902 n.6 (2015) (Pleicones, J., concurring) (noting “the statutory bond *required* by § 18-9-170” (emphasis added)); *Carsten v. Wilson*, 241 S.C. 516, 522, 129 S.E.2d 431, 435 (1963) (construing predecessor statute to § 18-9-170, and finding appeal did not stay “order of sale in foreclosure” since the appellant “did not give such a bond”).

ARGUMENT

14. Ditech acknowledges that an order for supersedeas may be “necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” SCACR 241(c)(2). However, no such order should issue without the posting of an appropriate supersedeas bond.

15. Section 18-9-170 instructs this Court to calculate an appropriate bond amount as follows: “the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment.”

16. Here, the value of the use and occupation of the property from Ditech’s perspective is the monthly mortgage payment it should be, but is not, receiving. The current monthly mortgage amount is \$ 1,396.36.

17. In undersigned counsel’s experience, a typical appeal before the South Carolina Court of Appeals lasts 1.5 years. However, this appeal could certainly last longer.

18. Therefore, Ditech requests that this Court condition an order for supersedeas on Defendant posting a bond equaling the monthly mortgage amount (\$ 1,396.36), multiplied by the anticipated life of the appeal (18 months), which equals \$ 25,134.48.

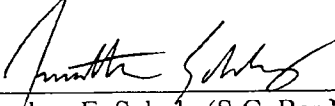
19. In the event that the appeal lasts longer than 18 months, Ditech requests that the Court condition a continued stay on the posting of an additional \$ 1,396.36 for each additional month (beyond 18 months) that the appeal remains pending without resolution.

CONCLUSION

20. For the foregoing reasons, Ditech does not necessarily oppose the issuance of an order for supersedeas. However, that order should be conditioned on the following:

- a. The posting of a supersedeas bond in the amount of \$ 25,134.48, which will stay the underlying foreclosure for a period of 18 months;
- b. An extension of the bond in the amount of \$ 1,396.36 per month for each additional month (beyond 18 months) that the appeal remains pending; and
- c. Such other and further relief as the Court deems just and appropriate.

This the 30th day of May, 2019.


Jonathan E. Schulz (S.C. Bar No. 79850)
jschulz@bradley.com
BRADLEY ARANT BOULT CUMMINGS LLP
Hearst Tower
214 North Tryon Street, Suite 3700
Charlotte, NC 28202
Telephone: 704.338.6127
Facsimile: 704.338.6099

Attorney for Ditech Financial, LLC

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-7838

DITECH FINANCIAL, LLC

Plaintiff,

vs.

KEVIN G. SYNDER, individually and as
Personal Representatives of the Estate of
Mary Snyder,

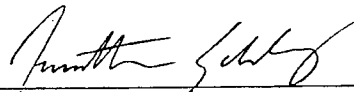
Defendant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **DITECH FINANCIAL, LLC'S RESPONSE TO DEFENDANT'S MOTION FOR SUPERSEDEAS** was served upon counsel for Defendant via email and US Mail as follows:

Jason Scott Luck
Garrett Law Offices, LLC
1075 E. Montague Ave.
North Charleston, SC 29405
jluck@garrettlawsc.com

Dated: May 30, 2019


Jonathan E. Schulz

FILED
2019 JUN -3 PM 2:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY JS



Jonathan Schulz
Direct Dial: (704) 338-6127
E-mail: jschulz@bradley.com

May 30, 2019

VIA FEDEX OVERNIGHT

Julie J. Armstrong
Charleston County Clerk of Court
Judicial Center, Suite 106
100 Broad Street
Charleston, SC 29401-2258

Re: *Ditech Financial, LLC v. Kevin G. Snyder, individually and as Personal
Representatives of the Estate of Mary Snyder* (Case No. 2010-CP-10-07838)

Dear Ms. Armstrong:

Enclosed for filing please find one (1) original and (1) copy of Ditech Financial, LLC's Response To Defendant's Motion for Supersedeas in the above-referenced matter. Please file the original and return the file-stamped copies to my office in the enclosed envelope.

By copy of this letter, I am serving same upon counsel for Defendants.

If you have any questions or concerns, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "Jonathan Schulz", written over the printed name.

Jonathan Schulz

Enclosures

cc: Jason Scott Luck

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Ditech Financial, LLC,
Plaintiff,

vs. CASE NO. 2010-CP-10-7838

Kevin G. Snyder and Kevin G.
Snyder, individually and as
Personal Representative of the
Estate of Mary Snyder,
Defendants.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 10:44 a.m. on
March 18, 2019 at 100 Broad Street, Courtroom 2A,
Charleston, South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
Charleston, South Carolina, 29417
(843) 958-5071
casmith@charlestoncounty.org

1 APPEARANCES OF COUNSEL:

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8 (704) 338-6049
9 Bmilam@bradley.com

7 ATTORNEYS FOR THE DEFENDANT:

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P R O C E E D I N G S

THE COURT: There is the 2010 case. This is Ditech versus Snyder. This is the case of the tortured history, right? First of all, it's a 2010 case. It was originally filed as Bank of America versus Snyder. It went through some assignments it appears. The current Plaintiff is Ditech Financial, LLC, which I am informed is in bankruptcy; is that correct, Mr. Milam?

MR. MILAM: That's correct, Your Honor.

THE COURT: So we've got some relief from the Bankruptcy Court out of New York --

MR. MILAM: Southern District of New York.

THE COURT: -- for them to move forward, but that still protects them on the monetary counterclaims that Mr. Luck has presented on behalf of Mr. Snyder, correct?

MR. MILAM: But not any counterclaims that would be in essence to stop the foreclosure.

THE COURT: Equitable. Let's just say equitable counterclaims.

MR. MILAM: I don't know if it's that broad, but I say that if it would be, in essence, a defense to the foreclosure including anything saying that you

1 can't move forward with the foreclosure or we don't
2 think you have a lien to foreclose, then our position
3 would be that those claims are not stayed.

4 THE COURT: Okay. Mr. Luck, are you in
5 agreement with that?

6 MR. LUCK: Yes, Your Honor. It's a
7 complicated issue here dealing with the Bankruptcy
8 Court -- the Bankruptcy Court's order. I think that
9 the issues of relief that I set forth in the Motion
10 for Partial Summary Judgment are all allowed relief
11 under the Bankruptcy Court's order.

12 THE COURT: Very good. I think that certainly
13 gives us jurisdiction to move forward. It may not
14 take care of all of your issues, but I think they're
15 stayed by virtue of the bankruptcy, right? The
16 bankruptcy was relatively recently, wasn't it?

17 MR. MILAM: February 11th.

18 THE COURT: February 11th? So just over a
19 month ago. Okay. So I have received memoranda for
20 both of you and certainly Motions for Summary
21 Judgment in support of that. I'm going to first turn
22 to the Plaintiff and let Mr. Milam commence, and then
23 I'll hear from Mr. Luck. All right? Mr. Milam?

24 MR. MILAM: Thank you, Your Honor. I don't
25 believe that the basic terms regarding the note and

1 mortgage are in dispute based on reading the brief
2 with Mr. Luck. This loan was originated on
3 April 21st, 2005 in the amount of \$135,000 with a
4 7.5 percent interest rate.

5 The note was signed only by Mr. Snyder, Kevin
6 Snyder. Mr. and Ms. Snyder -- Ms. Snyder being now
7 deceased -- signed a mortgage on their property, the
8 property involved in the dispute, and began making
9 payments on that note. The note went into default in
10 2008 and is currently due for the payment due
11 September 1st, 2008. So it's been out there a little
12 while. The current payoff as of today, as provided
13 by the affidavit and attached payoff statement, is
14 \$292,015.44.

15 Now again, and Mr. Luck may correct me, but I
16 don't believe that those facts are in dispute. What
17 appears to be the disputed issue relates to
18 foreclosure intervention. So the Defendants were
19 originally unrepresented in this case, and Ditech's
20 predecessor, Bank of America, served the Notice of
21 Foreclosure Intervention in December of 2012, I
22 believe, and in April of 2013 submitted a Certificate
23 of Compliance with Justice Toal's administrative
24 order saying that Mr. Snyder had failed to return a
25 complete loss mitigation application and therefore

1 the foreclosure should proceed.

2 Mr. Luck, began representing the Defendants I
3 believe around May of 2013 and was able to get them
4 out of default, file the answer and counterclaims,
5 and at that point the case was restayed again for
6 foreclosure intervention. So even though Bank of
7 America had already complied with the 2011 order and
8 filed a certificate of compliance the parties
9 nevertheless agreed to continue trying to resolve the
10 case through foreclosure intervention.

11 Mr. Snyder has been evaluated multiple times
12 for a modification, and some of those efforts could
13 have borne fruit. In December of 2014 Ditech offered
14 Mr. Snyder a trial payment plan for a permanent
15 modification. The trial payment plan offered would
16 have resulted in a slight reduction in monthly
17 payments, but I would say the most important thing is
18 it would have brought the loan current despite being
19 in default for six years at that point.

20 Ditech got a response from Mr. Luck, and I
21 would ask for permission to hand up a copy of this
22 letter to the Court.

23 THE COURT: Okay.

24 MR. MILAM: May I approach, Your Honor?

25 THE COURT: Certainly. This is dated when?

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MR. MILAM: March 4, 2015.

THE COURT: All right.

MR. MILAM: And in Mr. Luck's letter he explained that the Defendants could not accept the terms of the proposed trial payment plan, and the contemplated terms for a permanent modification on the grounds that it did not significantly reduce the monthly payments and that the terms were otherwise the same as the original loan terms of 7.5 percent interest which was the original interest rate for the loan.

Now, the Defendants were certainly within their rights to decide that those terms were not agreeable to them just as Ditech was within its rights to offer modification terms that it found acceptable, and the parties just failed to agree on what those terms should be.

In terms of compliance with Justice Toal's order, Ditech reviewed the Snyders for a modification in good faith, made an offer that would have reduced their monthly payments, and the parties failed to agree. As the Court knows, Justice Toal's order does not require any particular loss mitigation alternative. It does not require that the terms of any modification be better than the original loan

1 terms.

2 Subsequent to that, probably once that
3 happened, the foreclosure should have just proceeded.
4 That was not what happened. The case remained
5 stayed. Mr. Snyder continued to submit applications
6 for loss mitigation and those continued to be
7 reviewed by Ditech. The most recent iteration of
8 that was in 2017, and in 2017, Ditech found that
9 Mr. Snyder was not eligible for any loan modification
10 program and informed Mr. Luck's office. Mr. Snyder
11 appealed from that decision and the appeal was
12 denied.

13 So on these two instances we have the parties
14 going through the process. In the first instance a
15 solution is offered. It's rejected by the Defendant.
16 In the second -- in the last iteration of that, the
17 lender determines that there are no loan modification
18 options available.

19 So we think that the 2011 order has been
20 complied with on multiple occasions and the
21 foreclosure should proceed. Now, what Mr. Luck has
22 pointed out -- he said that over the course of this
23 five-year process that certain correspondence has
24 been misaddressed. I would note that Mr. Luck's
25 office has changed offices a couple of times over

1 that period which -- the Plaintiff has changed
2 counsel a couple of times over that period of time.

3 THE COURT: It's a moving target.

4 MR. MILAM: But the point that we would make,
5 Your Honor, is that unless -- excepting that some
6 correspondence was misrouted, but in other cases,
7 clearly the parties were able to complete this
8 process. Those errors would only be relevant if they
9 somehow prevented the Defendants from taking
10 advantage of the foreclosure intervention process.
11 In this case it did not have that effect.

12 We would ask the Court to bring an end to this
13 process and allow the foreclosure to proceed.

14 THE COURT: I want to just make sure I'm clear
15 on two aspects of this. The original loss mitigation
16 process was done, I assume, directly with Mr. Snyder
17 or the Snyders?

18 MR. MILAM: That's correct. So in December of
19 2012, one of the prior firms -- it may have been the
20 Korn Law Firm filed -- I believe I have a copy of it
21 here -- filed a notice of foreclosure intervention
22 and served it on the Snyders.

23 THE COURT: Okay. And that denial -- the
24 compliance is saying that they did not submit for
25 whatever reason was in April of '13, and then

1 Mr. Luck appears in May of '13; does that sound
2 correct just procedurally?

3 MR. MILAM: Yes, Your Honor. That's correct.

4 THE COURT: And then as you mentioned Mr. Luck
5 gets the Defendants out of default and we start
6 looking into an additional means of foreclosure
7 intervention; is that right?

8 MR. MILAM: That's correct, Your Honor.

9 THE COURT: When in '17 were they denied for
10 any loss mitigation?

11 MR. MILAM: On May 11th was the initial
12 determination of ineligibility, May 11th of 2017, and
13 then the Defendant appealed from that determination
14 and Ditech again wrote Defendants' counsel to confirm
15 the ineligibility on June 8th of 2017.

16 THE COURT: Okay. In looking at and just so
17 I'm clear again for the record -- for the Plaintiffs'
18 memorandum, the loan was transferred from Green Tree
19 to Ditech in June of '13, so their initial
20 foreclosure intervention would have been done
21 through, I assume Green Tree?

22 MR. MILAM: Well, Green Tree and Ditech are
23 the same company. Green Tree changed its name to
24 Ditech in, I believe 2015. 2013 was when the loan
25 went to Green Tree from Bank of America.

1 THE COURT: What year?

2 MR. MILAM: 2013.

3 THE COURT: 2013. Green Tree and Ditech are
4 one and the same? Yes. I saw the bankruptcy notice.
5 You're right. Okay. So it's been serviced all this
6 time by basically the same servicer, right?

7 MR. MILAM: That's right except the initial
8 loss mitigation was through Bank of America, but the
9 vast majority -- since the stay has been entirely
10 Green Tree/Ditech.

11 THE COURT: Okay. All right.

12 MR. MILAM: So we believe that the
13 requirements of the 2011 administrative order have
14 been fulfilled more than once. We believe that
15 foreclosure should proceed, that there is no issue of
16 material fact in dispute as to the basis for
17 foreclosure itself. To the extent the Court does
18 find some material fact issue as to the foreclosure,
19 we would nevertheless ask that the non-stay
20 counterclaims -- that summary judgment be granted.
21 There is a claim for quiet title. We believe there's
22 no issue that there's a mortgage encumbering the
23 property.

24 And then as far as the counterclaim for civil
25 compensatory contempt, because the claim for money

1 damages is stayed, the only issue is compliance with
2 the 2011 order, can the foreclosure go forward. So
3 we would ask again that if there is some fact issue
4 as to the foreclosure itself we would still ask for
5 the summary judgment on the counterclaim.

6 THE COURT: All right.

7 MR. MILAM: Thank you, Your Honor.

8 THE COURT: All right, Mr. Milam. Thank you.
9 Mr. Luck, do you want to -- why don't you present
10 your argument, and then I would think in presenting
11 it you will cover some of his, but then we will make
12 sure we cover your response to him as well.

13 MR. LUCK: Maybe I will begin with some of the
14 responses there because they do tie together.

15 THE COURT: All right.

16 MR. LUCK: This is something maybe Mr. Milam
17 can explain to me. I need to know how -- maybe a
18 better explanation of how Green Tree, now Ditech,
19 received this mortgage? Something I did note in my
20 brief -- I think it's also cited in the Plaintiff's
21 brief -- it's true on June 17th, 2013, Countrywide
22 Home Loans, Inc. assigned this mortgage to Green
23 Tree, but four years prior, Countrywide Home Loans,
24 Inc., the same entity, had transferred this mortgage
25 to Countrywide Home Loans Servicing, LP.

1 So I don't know how Countrywide could transfer
2 something that is already transferred to another
3 entity. I don't know how that's a standing question.
4 I haven't been able to make that argument until today
5 really. That's something maybe that Ditech can
6 explain, how they did get, for lack of a better
7 word -- how did they get this mortgage?

8 That's a question, I think, that also goes to
9 whether foreclosure can proceed. If you don't have
10 the mortgage you can't foreclose on it. I think it's
11 pretty elementary.

12 THE COURT: Let me stop you right there. I
13 meant to ask that question. Your allegation is that
14 you-all are in possession of the original note?

15 MR. MILAM: That's correct, Your Honor. As of
16 now we would say that the mortgage follows the note.
17 I did notice as I was looking through the assignments
18 the discrepancy that he mentioned that you had
19 Countrywide Home Loans, Inc. to Countrywide Home Loan
20 Servicing, LP. Countrywide Home Loan Servicing, LP
21 became BAC Home Loan Servicing, LP after it was
22 acquired by Bank of America, but then the assignment
23 to Green Tree was from Countrywide Home Loans, Inc.
24 So I did see that under -- I believe it's the Draper
25 case from the Court of Appeals says that the mortgage

1 follows the note. The assignment, it puts the world
2 on notice, but it doesn't determine standing. If you
3 have the original note -- in this case, I believe,
4 the note is endorsed in blank and then you have
5 standing and the mortgage falls in that.

6 THE COURT: And my question, do you have that
7 with you today? Who's got that under lock and key
8 where? Do we know?

9 MR. MILAM: I have conferred with my client
10 that they have it, but I have not confirmed the
11 location, so it sounds like I need to get more
12 information on that if that's --

13 THE COURT: Well, it would clearly answer that
14 question. This question has been asked before, and
15 at least nine times out of ten the Plaintiff's
16 counsel pulls it out and shows it to the other side
17 and that takes care of that issue, but that's an
18 issue that's been raised. Okay?

19 MR. MILAM: Right. And because it wasn't
20 raised until today I did not devote as much energy as
21 I have in other cases where that's been raised early
22 on.

23 THE COURT: Very good.

24 MR. LUCK: Thank you. So I guess going to
25 delays I think is really the gist of what my Motion

1 for Summary Judgment is about. One of the arguments
2 here that we are presenting -- we can't argue for
3 money damages as much as we would like to. We're
4 trying to find some analogous relief that we can get
5 under this order, this 2011 Supreme Court order. I
6 analogized it to a discovery order in that violation
7 of this order has somehow prejudiced the client and
8 certain remedies are available.

9 Here we argue that the prejudice is the delay
10 in proceedings. If foreclosure intervention does
11 fail in 2017, it only failed in 2017 because Ditech
12 and its predecessors made so many mistakes and
13 delayed the process in such a manner that it could
14 have bene -- they could have been denied the
15 foreclosure intervention back in 2014, but the
16 process was never properly followed through. And so
17 due to Ditech's mistakes and the predecessors'
18 mistakes it only -- the process only ended in 2017.
19 During that time interest is running. During that
20 time fees are accruing. I think it's painfully
21 unfair to ask the Snyders -- well, one Snyder now --
22 to pay for interest that accrued that is not due to
23 his actions or reactions. This is the fault of
24 Ditech.

25 That's why in the -- one of the suggested or

1 proposed relief -- if you don't decide to strike the
2 pleadings I have to ask. If you do not decide to
3 strike the pleadings they would be prohibited from
4 entering evidence of that sort of damages, those
5 damages have accrued interest, and the damages have
6 accrued fees because but for the acts of Ditech and
7 its predecessors, these fees would have never been
8 here in the first place. This could have been
9 foreclosed and sold in 2014 and 2015. Instead, now
10 we're looking at almost \$300,000 in a payoff, which
11 is roughly twice the value, the tax value, of the
12 house right now.

13 Had this been dealt with earlier then perhaps
14 Mr. Snyder could have seen some equity getting the
15 house sold. Now, obviously, that will never happen,
16 and he's looking at a deficiency judgment as well.
17 Another issue or another set of proposed relief would
18 be to strike the deficiency judgment.

19 THE COURT: I don't think I have the authority
20 to do that. That's the question. Is deficiency
21 still being sought at this point in time?

22 MR. MILAM: I don't know the answer to that,
23 Your Honor.

24 THE COURT: Sometimes that resolves these
25 cases altogether.

1 MR. MILAM: That's something I can ask --

2 THE COURT: I throw that out there. I just
3 throw that out.

4 MR. LUCK: So Your Honor, a couple of other
5 issues. I believe that civil compensatory contempt
6 constitutes an actual cause of action. I found
7 one case that seems to back me up here. It is
8 Jerrod, J-E-R-R-O-D versus Petoseed, P-E-T-O-S-E-E-D.
9 That's 331 SC 207.

10 Of course my opponent has a case from District
11 Court that says it isn't a cause of action. I need
12 to know going forward, do I have a cause of action or
13 not because if this is not a cause of action please
14 strike it from my counterclaims and I'll proceed as
15 if this were a Motion for Contempt.

16 THE COURT: Right.

17 MR. LUCK: So I just need to know what I'm
18 working with when I go to trial. Is this a cause of
19 action? If not, strike it. The same also -- this is
20 something brought up in an earlier letter. Ditech
21 believes that the Estate of Mary Snyder or Mary
22 Snyder when she was alive, was not able to assert an
23 affirmative defense for violation of the Attorney
24 Preference Statute. That was on the grounds that she
25 was not a borrower.

1 I just need to know as we go forward, is that
2 defense going to be valid or not? If not strike it
3 from my answers so that it's not there. Also, a
4 complete housekeeping issue, I think there's a Motion
5 to Compel still pending. I would assume right now
6 that that's been denied. That was at the last
7 hearing. That Motion to Compel pending -- if it's
8 denied that's fine. I just need to have a record of
9 it being denied.

10 THE COURT: What was it you were seeking? I'm
11 sorry.

12 MR. LUCK: Oh, goodness. Let me pull it up
13 here. It was several corporate records. It was
14 records related to a foreclosure settlement in -- it
15 was another settlement, a consent order entered by
16 the SEC or the Federal Trade Commission against
17 Ditech. There were documents.

18 THE COURT: That would be denied.

19 MR. LUCK: I appreciate that. I think that
20 really covers it. I go into a little more detail in
21 the motion about what I consider the acts and
22 omissions of Ditech and its predecessors that slowed
23 the process down and some other issues that really
24 gummed up the works here.

25 I think one that's really occurred to me

1 recently was interesting. The letter that was handed
2 up to you earlier, which was the March 4, 2015
3 letter, the third paragraph of that is a letter -- is
4 a sentence asking -- this is Green Tree -- asking
5 Green Tree to preserve documents in this matter.
6 Basically this foliation notice.

7 Later on in this case, when I did send a
8 Request to Admit about several issues that I think
9 are material to my contempt issue, a lot of those
10 were denied because they lack sufficient information.
11 I think that's their own fault if they don't have
12 information. They were told in this case four years
13 ago -- this Ditech predecessor was told four years
14 ago to preserve documents relevant to this case. If
15 they don't exist now that's on them. It's not my
16 problem.

17 That was something that was worth bringing up.
18 Also we still have an Affidavit of Default sitting on
19 the record saying I've defaulted or my clients have
20 defaulted on Requests to Admit and that is incorrect.
21 I would love to have that stricken from the record
22 because it is not accurate. We served those
23 responses timely.

24 Other than that there's other issues in the
25 brief I can talk about -- lack of notice of motions.

1 It's all there. You can read it at your leisure.

2 THE COURT: Let me ask you about your letter,
3 Mr. Luck, of 4 March '15, in which you-all clearly
4 reject the offered loan modification. So what
5 happened there? Apparently if the payment went
6 down -- I forget what it was. Let me look at the
7 language in here. We reviewed the proposed terms and
8 modification. The proposed payment is virtually
9 unchanged from prior payments and will likely go up
10 after the trial period.

11 Well, it may or may not, but you typically
12 have to get it to the trial period before you can get
13 into the ultimate thing. That's -- the rate I guess
14 is the same, 7 and a half percent, what Mr. Milam
15 says. You say it's substantially higher than the
16 current market rate.

17 We do not believe the terms are a good faith
18 offer to resolve the dispute. So I don't have any
19 real details in here. I don't have the offer. If
20 you-all have got that --

21 MR. LUCK: It's attached to our memorandum.

22 THE COURT: Well, you have a lot of stuff
23 attached to that memorandum. What's the date of that
24 offer? Let me make sure I've got that.

25 MR. LUCK: It is December of 2014. Let me

1 find the exact date. December 23rd, 2014.

2 THE COURT: So the three payments of \$1,131.37
3 commencing February 1?

4 MR. LUCK: Yes, \$1,131.37. And it is in the
5 correspondence that's attached -- if the affidavit is
6 Exhibit 1, then the sub exhibits -- Exhibit I
7 includes correspondence and includes that letter. I
8 can find it and hand it up if you want me to.

9 THE COURT: I think I have it up on the
10 screen. I wanted to make sure I knew which one it
11 was. So in looking at the December 23, 2014 letter,
12 the trial mod was 1,131.37. That was a 480-month
13 term. That's like 40 years, right?

14 MR. MILAM: That's correct, Your Honor.

15 THE COURT: I'm assuming the original loan was
16 not a 40-year term, was it?

17 MR. MILAM: It was a 30-year term.

18 THE COURT: 30 years.

19 MR. MILAM: I would presume that extending it
20 out to 40 years was a way of lowering the payments.

21 THE COURT: I would think. So that was
22 extended in December to commence in February --
23 February, March, and April of '15, and basically the
24 rejection letter was dated March 4th. I think it's
25 got a stamp date on the side of March 13th. I don't

1 know if that's going to get it or not. Was that some
2 of the communication difficulty you were having,
3 Mr. Luck?

4 MR. LUCK: Yes, Your Honor. That would be
5 another example of that. That's December 23rd. That
6 would have been when we moved from King to Broad
7 Street. I can probably -- I can't right now, but I
8 can probably point out in my correspondence where I
9 have put Green Tree on notice of the new address
10 before this came out. This is kind of par for the
11 course.

12 THE COURT: Okay. You-all just weren't
13 communicating then, huh?

14 MR. MILAM: Well, Your Honor, I have the
15 December 23rd letter with the trial payment plan
16 terms. It's addressed to 127 King Street, Suite 100,
17 which I believe is correct. Mr. Luck clearly
18 received that, and then the denial letter is dated
19 March 10th and was also addressed to 127 King Street,
20 Suite 100. So that appears to be correctly
21 addressed. I did see some other correspondence or
22 other things related to loss mitigation in which it
23 would appear today that they left a digit off and
24 addressed it to 12 King Street, and I'm assuming
25 that's what Mr. Luck -- where he's saying that he

1 didn't receive it. But the correspondence related to
2 that in 2014, appears to be all correctly addressed.

3 MR. LUCK: Your Honor, I think I disagree.
4 Late December of 2014 was exactly when my office
5 moved. I just need to find the notice that I gave
6 with the change of address. So as of late December
7 of 2014 127 King Street, Suite 100, would have been
8 the incorrect address. Like I said, I'm going to
9 check my exhibit here with all my correspondence to
10 see if I can find you the exact date that I put them
11 on notice.

12 THE COURT: Well, it does show -- your letter
13 of March 4th clearly says, We're now at 28 Broad --
14 or 38 Broad -- excuse me. Then on March 25th there's
15 a document from Green Tree to Seibels Law Firm,
16 attention Jason Luck at 38, but that's after this
17 March 4th letter. It appears that they responded --
18 that's just to this letter. I'm not sure what
19 exhibit number this is. They responded to your
20 request for an explanation as to how -- what they
21 came up with and why they came up with it. The last
22 document in Exhibit I was what that was. Then the
23 next one is Exhibit J and is addressed to Mr. Snyder
24 or Mr. Luck at 1075 East Montague, which is your
25 current address, right, Mr. Luck?

1 MR. LUCK: Correct, Your Honor. Your Honor,
2 after looking at my records, I don't know if I had
3 given them notice, them being Green Tree, notice
4 before December 23rd of my change in address. That
5 might have been right about the date that we did
6 move. I think it was around Christmastime.

7 THE COURT: You said late December, and that
8 document's dated late December, so --

9 MR. LUCK: It may have gotten lost in the
10 shuffle between that -- that may have been the
11 correct address for a hot minute, but we were moving.

12 THE COURT: I'm sure the Seibels Firm put a
13 forwarding order on file with the US Postal Service.
14 Of course I did that when I got flooded out of my
15 home, and I found that it took a week to get mail
16 delivered from one house to the next. So for the
17 last 18-plus months I've just been driving to my old
18 home and picking up my mail because I can get my
19 bills paid on time that way. At least I will until I
20 have to tear that house down which is the next step
21 in my personal life process, which I won't burden you
22 with, but anyway, that's what happens when you get
23 flooded.

24 MR. MILAM: Your Honor, I guess I would just
25 say that it appears that Mr. Luck's office did

1 receive the offer, and regardless decided that it was
2 not sufficiently favorable to accept. Ditech denied
3 it after it had been rejected by the Defendant.

4 THE COURT: And then under Exhibit J, that was
5 the May 11th of '17 letter which was, I guess, sort
6 of the last ditch effort to try and modify the
7 mortgage?

8 MR. MILAM: Well, it was the last in a series
9 of efforts, I suppose.

10 THE COURT: All right. And that was appealed
11 on June 8th of '17. All right. Mr. Luck, one of the
12 issues you've raised was this delay. Let's see what
13 specifics we're referencing here. We talked about
14 the mailing address change. Since your entry into
15 the case in '13, in May of '13, you've technically
16 had three. You had the King Street and the Broad
17 Street and now the East Montague Street, right?

18 MR. LUCK: Correct.

19 THE COURT: So we've got that issue. When did
20 you move to East Montague? Do you recall when that
21 was? What year that was?

22 MR. LUCK: It was the very end of 2016. It
23 was actually in the record that I filed a Notice of
24 Transfer. That will be of the record and filed under
25 a caption.

1 THE COURT: In the file?

2 MR. LUCK: Yes, sir.

3 THE COURT: I just wanted to make sure of
4 that. All right.

5 Does your client still reside in the property?
6 Is it still his residence?

7 MR. LUCK: Yes, Your Honor.

8 THE COURT: And so his address has not changed
9 at all during the process?

10 MR. LUCK: Correct. His address has remained
11 the same.

12 THE COURT: Does he get -- I know you've
13 raised the issue about repeated contacts with the
14 mortgagors, but does he get correspondence at all?
15 Or is it all sent to you?

16 MR. LUCK: Not any longer. For a very long
17 time billing statements and sometimes correspondence
18 was sent to him, but since Ditech got involved there
19 was a short period of time when they were sending
20 documents directly to him, and it's mostly or now
21 it's all sent directly to me which is in the order.

22 THE COURT: Okay. And then you raised the
23 issue of the Request to Admit. You said there was a
24 Notice of Default as to the Request to Admit but in
25 fact, they had been admitted; is that correct?

1 MR. LUCK: Your Honor, yes. Actually Guyton
2 Murrell was the affiant of that affidavit. I just
3 realized that now. He was sitting right here
4 earlier.

5 THE COURT: Well, we let him go.

6 MR. LUCK: That was the day I called him.
7 This is in the brief. I had called him that day to
8 discuss foreclosure intervention, and at some point
9 during that day after -- I guess after I got off the
10 phone with him an Affidavit of Default instead was
11 drafted and filed with the Court without any notice
12 to me because I was never copied on it. I didn't
13 find out about it until months and months later.

14 THE COURT: Wasn't this a Korn Law Firm case
15 to start with?

16 MR. LUCK: It was a Korn case, Your Honor.

17 THE COURT: I think, at least for the record,
18 that you-all should be aware that the Korn Law Firm
19 just imploded at some point in time during this
20 process.

21 THE WITNESS: I would imagine that they lost
22 track of what was going on. That firm no longer
23 exists. The lawyer's are there. They still exist.
24 I forget who Mr. Murrell's with now.

25 MR. MILAM: Scott and Corley. I will just

1 say, we have no objection to striking the default
2 evidence. We've sent them several requests for
3 admission and they've been answered last year.

4 THE COURT: So default is withdrawn? To the
5 extent it exists it's withdrawn, right?

6 MR. MILAM: Sure.

7 THE COURT: I just wanted to cover that. Then
8 you raised this issue -- I want to cover this one as
9 well. Plaintiff's prior counsel filed a motion and
10 proposed order February 14th which was granted
11 without a hearing. Was that the amendment of the
12 caption?

13 MR. LUCK: Amendment of the caption, Your
14 Honor.

15 THE COURT: That was post Ms. Snyder's death?
16 Was that the only thing, or was that the Ditech
17 change?

18 MR. LUCK: That was changing the name to
19 Ditech.

20 THE COURT: To Ditech?

21 MR. LUCK: Yes.

22 THE COURT: And you object to that?

23 MR. LUCK: Well, only based on the issue of
24 the mortgage assignments. Now I need to go over the
25 Draper case and make sure I still have an objection.

1 That's something I need to look into.

2 THE COURT: All right.

3 MR. LUCK: If at the time I had been notified
4 of it, I would have probably appeared and tried to
5 object to it in some way or another.

6 MR. MILAM: And I --

7 THE COURT: Well, that's a standing issue more
8 so than a jurisdictional issue; is it not?

9 MR. MILAM: Well, I'm not even sure it's a
10 standing issue. As I understand, I believe, Rule 25
11 governs substitution of parties, and a case can --
12 either notwithstanding a transfer of interest a case
13 can remain in the name of the original party. I
14 think it makes it a lot cleaner to amend the caption.
15 I'm not sure that it affects the merits even if that
16 motion had been denied.

17 THE COURT: Okay. All right.

18 MR. MILAM: Your Honor, if I could be heard
19 briefly in response to the issue -- on the issue of
20 delay?

21 THE COURT: Sure.

22 MR. MILAM: If the Defendant was concerned
23 about reserving his equity and moving the foreclosure
24 along, the clearest way to do that would have been to
25 file an answer admitting the material allegations of

1 the foreclosure. We're asking prior counsel to move
2 forward with foreclosure and put it on uncontested.
3 They would not have had to give up their
4 counterclaims to do that. They could have just said,
5 We want to go forward with the foreclosure. In the
6 absence of some documentation that they asked or
7 tried to push this along that we would contend that
8 the delay is on both sides for why the case has been
9 pending for -- admittedly an excessively long period
10 of time.

11 THE COURT: All right. Very good.

12 MR. LUCK: Your Honor, something I just would
13 like to note. I believe the deadline for objections
14 to discharge in the southern district of New York was
15 around April 12th, so that sort of puts a time
16 constraint on me also depending on how these motions
17 are decided, whether I need to file a
18 dischargeability complaint up there.

19 THE COURT: Okay. And then while we're on
20 that, refresh my memory exactly as to your complaint
21 about the assignment and how that went down. Is it
22 your position that it's in the wrong hands or wasn't
23 properly assigned or not properly noted? That's what
24 I'm trying to figure out. Mr. Boles I'm going to
25 bring you-all you up in just a second.

1 MR. LUCK: This may be a function of my
2 ignorance, Your Honor. I looked at the assignments,
3 and just based on the record that's available, the
4 public record, it shows that the mortgage was
5 assigned to a separate entity before it was assigned
6 to the current Plaintiff in this action.

7 In other words, the current Plaintiff doesn't
8 own anything, at least if you look at the public
9 record. Obviously there could be some other evidence
10 that could change my analysis on that, but if you
11 just look at the record, this loan was assigned to
12 Countrywide Home Loans Servicing, some limited
13 partnership, before it was assigned to Green Tree
14 which means that there was nothing to assign to Green
15 Tree.

16 Again, I may have to amend that argument
17 depending on my reading of Draper.

18 THE COURT: All right. Well, ultimately if
19 they're in possession of the original note, the
20 mortgage does follow the note. I'm trying to read
21 through this assignment. It's signed by
22 Mr. Kelchner, it looks like, and to understand what
23 that is -- this is dated January of '09. It says,
24 The undersigned Countrywide Home Loans, Inc.,
25 transfers to Countrywide Home Loans Servicing, LP.

1 This is the one that you raised, correct?

2 MR. LUCK: Correct.

3 THE COURT: And then it goes on to say, To
4 MERS. That mortgage executed by the Snyders to MERS.
5 So the original note was to MERS as nominee for it?

6 MR. MILAM: The mortgage might have been to
7 MERS. The note was to Gateway --

8 THE COURT: Gateway Funding?

9 MR. MILAM: Gateway Funding Diversified
10 Mortgage Services, LP. From there it was -- just
11 looking at the endorsements on the note it was
12 endorsed to Countrywide Document Custody Services, a
13 Division of Treasury Bank, NA, and it was then
14 endorsed to Countrywide Home Loans, Inc., and then
15 Countrywide Home Loans, Inc. endorsed it in blank.
16 And since then it's been endorsed in blank.

17 THE COURT: Okay. I've got you. And then the
18 assignment in June of 2013, it doesn't say who the
19 assignor is other than the recording as requested by
20 the Bank of America, but it conveys that to Green
21 Tree Servicing, LLC, and that's who's been the
22 servicer since 2013?

23 MR. MILAM: That's correct, Your Honor.

24 THE COURT: All right.

25 MR. LUCK: Your Honor, that 2013 assignment, I

1 read that as it said, the undersigned holder. Then I
2 looked down where the signature was and it was signed
3 by a representative of Countrywide Home Loans, Inc.
4 That's where I got the belief that it was from
5 Countrywide Home Loans, Inc.

6 THE COURT: I've got you. Okay. I do think
7 Countrywide -- Countrywide was purchased by Bank of
8 America; was it not?

9 MR. MILAM: Bank of America, that is correct.
10 That is certainly true for Countrywide Home Loan
11 Servicing, LLC. I know it became BAC Home Loan
12 Servicing and then eventually that merged into Bank
13 of America, NA.

14 THE COURT: Here's what I'm going to do. I've
15 got in front of me Chief Justice Toals' 2011
16 administrative order 2011-05-02-01, which is
17 applicable here on these -- really it's on the
18 counterclaims I believe. So as to actions pending on
19 May 9, 2011, which I find applicable to this case,
20 just having done a 2010 case -- it's not 2019.

21 This one was apparently filed in late 2010 or
22 relatively late in 2010. We had a lot of filings in
23 2010. As a matter of fact, it was the most filings
24 this Court's ever seen. It was over 10,000 that
25 year. This is No. 7838. We were getting swamped at

1 that time. Then as I noted before Korn Law Firm
2 folded and failed.

3 As to actions pending on May 9th, 2011, the
4 effective date of this administrative order, all
5 proceedings and foreclosure actions should be stayed
6 until completion of foreclosure intervention was
7 required and no hearing or sale may move forward
8 until the mortgagee's attorney, that would be the
9 lender, certifies that the mortgagor has been served
10 with notice of the right of foreclosure intervention,
11 which I find that was done. I believe that was in
12 2012, December of 2012.

13 Following this May of 2011 order that the
14 mortgagee has received and examined all documents and
15 records required to be submitted to evaluate the
16 eligibility. Apparently that was done in April of
17 2013. That did not end the inquiry because shortly
18 thereafter, in June of 2013, the loan went from
19 Countrywide/Bank of America to Green Tree/Ditech, and
20 once Mr. Luck appeared in the action sought
21 additional assistance in the form of foreclosure
22 intervention.

23 It was assigned to Ditech in June of '17. In
24 fact, as a result of that, in December of '14 the
25 trial modification plan was, in fact, offered. That

1 offer was then rejected by letter of Counsel dated
2 March 4, 2015 which was after the loan
3 modification -- the trial mod should have started.
4 There was some explanation for that with the transfer
5 of addresses by Mr. Luck at the Seibels Law Firm from
6 King Street over to Broad Street in downtown
7 Charleston. I don't hold it on that, but clearly
8 from the letter of March 4, 2015, submitted as an
9 exhibit, Exhibit I to the Plaintiff's Motion for
10 Summary Judgment, it was rejected.

11 Terms were similar. The amounts were similar.
12 My recollection is they were a little bit less. The
13 reality was that the mortgage was modified for an
14 additional ten-year period, so the payments remained
15 roughly the same but the period of time was extended
16 by 120 months, from a 30-year to a 40-year mortgage.

17 That was then contested, and their explanation
18 was requested and an explanation was given. The
19 mortgagee indicated it received all of the documents,
20 reviewed them, and the mortgagor was given the
21 opportunity to submit additional documentation.

22 Thereafter, the mortgagor was reconsidered for
23 additional loss mitigation, but in the correspondence
24 of May 11, 2017, the Defendant denied -- was denied
25 for any loss mitigation. That was appealed and then

1 in June of '17 that was denied again.

2 So that does allow the Defendant to file its
3 answer. The Defendant filed its answer. The
4 Defendant participated in discovery in the case, but
5 at this time has been -- the default was in September
6 of 2008, so it's been over ten years. It's just
7 going to be almost impossible to clarify this thing
8 at this point in time.

9 The parties have never been able to reach an
10 agreement reduced to writing in which the case has
11 been allowed to go forward. In other words, there's
12 not been a modification of the note. This Court is
13 empowered under the administrative order to determine
14 any dispute concerning compliance with the order
15 and/or to act in good faith in compliance with the
16 order.

17 It does give the Court discretion to impose
18 sanctions including fees and costs against the
19 culpable party, however that is somewhat limited by
20 the bankruptcy petition. However, I find that under
21 the instance of this case that there has been --
22 compliance with the 2011 administrative has been made
23 by the Plaintiff. I find that they did -- they have
24 acted in good faith in attempting to do it. It has
25 been slow and arduous and I understand the

1 Defendant's frustration with the process. I find
2 that there's no lack of good faith in what they have
3 done. On that basis I'm going to grant Plaintiff's
4 Motion for Summary Judgment as to those defenses of
5 civil compensatory contempt.

6 On the issue of quiet title, I'm going to hold
7 that in abeyance, Mr. Milam. What I need you to do
8 is what I indicated earlier. I just need to either
9 see or be provided with the original note. If
10 you-all are in possession of the original note, I
11 think under the Bank of America v. Draper case, you
12 have clear authority to pursue the action. I'm just
13 going to reserve judgment on that one until you can
14 either provide -- locate the thing, provide that
15 information to Mr. Luck. If he's satisfied with it,
16 happy to do it, or you can bring it in here on April
17 Fool's Day and I'll be glad to look at it myself.
18 All right?

19 MR. MILAM: All right.

20 THE COURT: So I'm going to deny the
21 Defendants' motion as to what we've been able to hear
22 today and allow you to go forward if you need to with
23 the other issues for now, the ones that have been
24 stayed. I don't know if there's any left. As to the
25 Plaintiff's right to proceed, you have the right to

1 proceed, but you'll need to see whether or not you
2 need to proceed. The only question I'm leaving open
3 is that question of -- if we close up or button up
4 the issue who's got jurisdiction and who has standing
5 to do it.

6 I would think that you do. There's no
7 other -- the bottom line on that issue for this Court
8 is there's no other lender out there pursuing an
9 action against Mr. Snyder, and that's really what
10 that issue is all about. When the notes get lost and
11 you read some of those old cases, they're always
12 concerned that there's some third party holding some
13 sort of note out there that the person doesn't want
14 to have to respond to later. In the ten-year course
15 of this litigation, no other third party has arisen.
16 There's no question that he entered into the note and
17 mortgage.

18 MR. MILAM: Right. It would be a different
19 set of evidence that you have to prove for that.
20 Just so that I understand for certain, I'm going to
21 locate the original note. Once I get that
22 information presented to Mr. Luck -- then if we're in
23 agreement then we'll notify the Court of that. If
24 not, we'll have a trial on April 1st solely on the
25 issue of standing; is that right?

1 THE COURT: No. We'll have the foreclosure
2 trial that day -- okay -- if you locate it. If you
3 don't locate it Mr. Luck's going to come in here and
4 say you don't have standing.

5 MR. MILAM: If we agree on standing will there
6 still be any other issues to be tried as to the
7 foreclosure, or will that --

8 THE COURT: It doesn't sound like it, but if
9 you check with your client and they're willing to
10 forego the deficiency judgment -- I bet Mr. Luck
11 could try to talk his client into an uncontested
12 calendar or something like that and get this thing
13 resolved. Okay?

14 MR. MILAM: Understood. Thank you.

15 THE COURT: I throw that out to you just for
16 negotiation purposes. All right?

17 MR. LUCK: Your Honor, should Mr. Milam
18 prepare an order for you?

19 THE COURT: Mr. Milam, if you would do that
20 that would be great. I will do a Form 4, but I will
21 note that there's going to be an actual order coming
22 in. Okay?

23 MR. MILAM: Thank you, Your Honor.

24 THE COURT: All right, Mr. Luck. Good to see
25 you.

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MR. LUCK: Good seeing you, too.

(The proceedings were concluded at 11:39 a.m.)

1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 23rd day of May, 2019 at
13 Charleston, Charleston County, South Carolina.
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18 Christine A. Smith
19 Notary Public
20 My Commission Expires
21 May 12, 2021
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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Ditech Financial, LLC,

Plaintiff,

vs. CASE NO. 2010-CP-10-7838

Kevin G. Snyder and Kevin G.
Snyder, individually and as
Personal Representative of the
Estate of Mary Snyder,

Defendants.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 10:15 a.m. on
April 1, 2019 at 100 Broad Street, Courtroom 2A,
Charleston, South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
Charleston, South Carolina, 29417
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1 (PLF. EXH. #1, Note, was marked for
2 identification.)

3 (PLF. EXH. #2, Mortgage, was marked for
4 identification.)

5 (PLF. EXH. #3, Servicing Disc. Statement, was
6 marked for identification.)

7 (PLF. EXH. #4, Loan Modification, was marked
8 for identification.)

9 (PLF. EXH. #5, Forbearance Agreement, was
10 marked for identification.)

11 (PLF. EXH. #6, Letter, dated 11/23/09, was
12 marked for identification.)

13 (PLF. EXH. #7, Notice/Intent to Accelerate,
14 was marked for identification.)

15 (PLF. EXH. #8, Notice/Service Transfer, was
16 marked for identification.)

17 (PLF. EXH. #9, Debt Validation Letter, was
18 marked for identification.)

19 (PLF. EXH. #10, Loan Payment History, was
20 marked for identification.)

21 (PLF. EXH. #11, Payoff Statement, was marked
22 for identification.)

23 (PLF. EXH. #12, Attorney/Preference Form, was
24 marked for identification but not entered into
25 evidence.)

1 (PLF. EXH. #13, Attorney Preference Checklist,
2 was marked for identification but not entered into
3 evidence.)

4 (PLF. EXH. #14, Trial Plan Notification, was
5 marked for identification but not entered into
6 evidence.)

7 (PLF. EXH. #15, Letter, dated 3/4/15, was
8 marked for identification but not entered into
9 evidence.)

10 (PLF. EXH. #16, Trial Plan Denial Letter, was
11 marked for identification but not entered into
12 evidence.)

13 (PLF. EXH. #17, Letter, dated 3/25/15, was
14 marked for identification.)

15 (PLF. EXH. #18, Letter, dated 5/11/17, was
16 marked for identification but not entered into
17 evidence.)

18 (PLF. EXH. #19, Letter, dated 6/8/17, was
19 marked for identification but not entered into
20 evidence.)

21 (PLF. EXH. #20, Response for Request for
22 Admissions, was marked for identification.)
23
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25

P R O C E E D I N G S

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3 THE COURT: This morning's case is
4 captioned -- originally it was captioned Bank of
5 America, but today I believe it's Ditech versus
6 Snyder. It's a 2010 case, 2010-CP-10-7838. For the
7 Plaintiff we've got Mr. Milam.

8 MR. MILAM: Yes, Your Honor.

9 THE COURT: Good morning. And for the
10 Defendant, Mr. Luck.

11 MR. LUCK: Good morning, Your Honor.

12 THE COURT: Mr. Luck, do we need to have a
13 hearing on whether or not we can or should go forward
14 today? That would be my first question.

15 MR. LUCK: That would be my preference,
16 Your Honor. We have discussed the jurisdiction or
17 lack of jurisdiction this Court may have over the
18 action.

19 THE COURT: Do you want to tell me what's
20 divested this Court of jurisdiction?

21 MR. LUCK: Yes, Your Honor. As we all know
22 the automatic stay applies when a Notice of Appeal is
23 filed. A Notice of Appeal was filed --

24 THE COURT: In certain instances it does, I
25 agree.

1 MR. LUCK: Correct, Your Honor. There are
2 exceptions to the automatic stay, however it is the
3 case law that I have provided which I can give you
4 copies of. I think I cited it earlier in an e-mail,
5 but I have hard copies of two of the cases: State v.
6 Cooper and Kearney, K-E-A-R-N-E-Y, v. Allen.

7 Both of those stand for the proposition that
8 the -- any disputes over the application of the
9 automatic stay need to be taken up with the Court of
10 Appeals, not the lower court.

11 THE COURT: Is that mandatory or is that
12 permissive?

13 MR. LUCK: I look at it as mandatory language,
14 Your Honor.

15 THE COURT: When the rule says, "may" that
16 sounds permissive to me.

17 MR. LUCK: So it would probably be better to
18 look at a couple of the cases, the language in the
19 cases.

20 THE COURT: All right. So one's a criminal
21 case, and clearly certain rights are given to
22 criminal defendants in this country. The other case
23 was a civil case, so let's talk about that one and
24 its applicability. In that case, doesn't it talk
25 about the Supreme Court having jurisdiction?

1 MR. LUCK: Correct, Your Honor.

2 THE COURT: And hasn't that rule been changed?

3 MR. LUCK: That -- I am unaware of that rule
4 being changed. I know the numbers have changed for
5 some of the rules, Your Honor.

6 THE COURT: Right. It used to be that all
7 cases went to the Supreme Court, and now virtually
8 all cases go to the Court of Appeals. Clearly that
9 rule has been changed.

10 What makes this case -- what makes your appeal
11 of the underlying matters that the Court has ruled on
12 such that this case could not go forward? Why is it
13 rendered so -- so defined -- that the result is
14 defined? That's my question.

15 MR. LUCK: So that would be -- you would
16 probably want to look at this Stokes-Craven Holding
17 Corporation case. I don't think I provided that one
18 to you beforehand. I could provide you a copy right
19 now.

20 THE COURT: How about Ashenfelder? Have you
21 looked at Ashenfelder?

22 MR. LUCK: I have not looked at that one, Your
23 Honor. What is the citation for that one?

24 THE COURT: How about Link versus School
25 District of Pickens County; did you take a look at

1 that one?

2 MR. LUCK: Not that one, Your Honor.

3 THE COURT: The Link case is 302 S.C. 1.
4 That's from 1990. And Ashenfelder versus City of
5 Georgetown is from 2010 and that's 389 S.C. 568.
6 Those two, I think, are a little more on point and
7 certainly more recent. How about Breland versus Love
8 Chevrolet; did you find that one?

9 MR. LUCK: I did not. If you look at the
10 Stokes-Craven case, that's the one we really should
11 be looking at today.

12 THE COURT: All right.

13 MR. LUCK: It talks about -- it brings up Rule
14 241 of the Appellate Court Rules. We all agree that
15 it does say an automatic stay applies subject to
16 certain exceptions. It also mentions the interplay
17 between that and Rule 205. That's important because
18 according to Rule 205 and the Stokes-Craven case,
19 under that rule the lower court is divested
20 jurisdiction over matters affected by the appeal.
21 That's the quote right there. That's in italics. It
22 says, In matters affected by the appeal the Court
23 loses jurisdiction over.

24 So how is this hearing today -- how is that a
25 matter that's affected by the appeal? One of the

1 issues we're appealing is the compliance with the
2 Supreme Court administrative order which would
3 necessarily decide whether a Plaintiff in this case
4 can proceed with a foreclosure. So were we to
5 prevail on appeal, if one of the requested forms of
6 relief would be stating that you cannot proceed with
7 the foreclosure or the foreclosure is not allowed.

8 THE COURT: I've ruled on that, right?

9 MR. LUCK: Yes, Your Honor.

10 THE COURT: Why is that not interlocutory
11 allowing the matter to go forward? That would be
12 clearly an interlocutory appeal, would it not?

13 MR. LUCK: There are -- yes. The order is --
14 it is an interlocutory order, Your Honor. You are
15 correct; however, there were final aspects of that
16 order that allows it to be immediately appealed.

17 THE COURT: What would those be? Tell me what
18 those are.

19 MR. LUCK: Well, there is one -- affirmative
20 defense was struck, I believe. The Ruling was that
21 we were not entitled to certain relief under the
22 administrative order. If that was a cause of action
23 then that was, in effect, struck as well.

24 THE COURT: Well, that leads to my next
25 question. Does that give you a private cause of

1 action, the administrative order?

2 MR. LUCK: Your Honor, I would argue it does.

3 I think there's the case that is cited -- one of
4 these others is the Jarrell versus Petoseed case. At
5 least to me, it says that civil compensatory contempt
6 is a cause of action that can be pled as a cause of
7 action. Obviously there is some disagreement with
8 my opponent over that. Based on that, that cause of
9 action was struck or partially struck, so therefore
10 it makes the final order subject to the appeal.

11 Once you have a final order that can be
12 immediately appealed. All interlocutory orders
13 behind it then can be appealed along with it. That's
14 why we are here today. That's why I'm arguing today
15 that this action now has to be decided in the Court
16 of Appeals and not here.

17 THE COURT: All right. Mr. Milam, let me hear
18 from you.

19 MR. MILAM: Thank you, Your Honor. So the
20 text to Rule 205 says, Nothing in these rules shall
21 prohibit the lower court commissioner tribunal from
22 proceeding with matters not affected by the appeal.
23 Now, the cases that Mr. Luck has cited, and we also
24 have an additional case, the Metts versus Mims case,
25 all involve a determination over what was the scope

1 of the stay and whether something was or was not
2 affected by the appeal. In the Metts case the South
3 Carolina Supreme Court looked at an order on an order
4 of contempt and determined that it did not affect
5 other issues to be decided in the case.

6 So the Court just has to determine is this
7 going to be affected by the issue appealed from or is
8 it not. What the cases don't say is that the trial
9 court has to act as if the entire case is stayed
10 until such time as the Court of Appeals decides what
11 the scope of the stay is.

12 Now, I would agree that the Court cannot
13 schedule a judicial foreclosure sale today, at least
14 until the Court of Appeals rules on whether the
15 Defendant's appeal is premature or not. We're not
16 asking the Court to schedule a foreclosure sale
17 today. What we are asking the Court is to decide all
18 of the factual and legal issues that were not
19 determined at Summary Judgment so that the entire
20 case can -- should Defendants choose to appeal from
21 anything else, all that can go up on appeal and be
22 decided at the same time.

23 Mr. Luck, on behalf of the Defendants at the
24 last hearing, argued that his client was prejudiced
25 by the delay in the foreclosure proceedings. The

1 approach that the Defendants are arguing for today
2 would be the one that would cause the maximum delay
3 in the resolution of this case. We would -- I think
4 that should guide the Court's assessment of the
5 credibility of the Defendants' arguments.

6 We're here. We're all gussied up and ready
7 for battle, and we would ask that the Court let us
8 proceed today.

9 THE COURT: All right, Mr. Luck?

10 MR. LUCK: Your Honor, I go back to the State
11 versus Cooper case, and the cases it cites. It says
12 specifically, and very clearly that it is -- when
13 there is a dispute as to whether an automatic stay
14 exists, the authority to resolve that dispute is
15 divested in the -- this says the Supreme Court -- now
16 the Court of Appeals. The authority to decide if the
17 automatic stay applies is not for this Court to
18 decide. It has to be decided in Columbia.

19 Now, that doesn't explicitly say that
20 everything -- the brakes are on everything now, but I
21 think it's fair to assume that if this Court -- only
22 the Court of Appeals has the authority and the
23 jurisdiction to determine if the automatic stay
24 applies, then implicitly the automatic stay applies
25 for right now until the Court of Appeals decides that

1 it doesn't unless there's one of the clearly laid out
2 exceptions. There are ten exceptions in the rule
3 that -- where obviously the automatic stay doesn't
4 apply. Here is --

5 THE COURT: One of which typically applies in
6 foreclosure cases; does it not?

7 MR. LUCK: Yes, Your Honor, the order of sale.

8 THE COURT: An order of sale in a foreclosure
9 case wouldn't stay it, right?

10 MR. LUCK: Correct.

11 THE COURT: You would have to post a bond in
12 order to keep it from going to sale. I'm with you on
13 that one. So let me go back and sort of figure out
14 where we are. Let me just go through some of the
15 cases that I looked at in preparation for today. So
16 there's a statute out there, appellate jurisdiction
17 in law cases. That's 14-3-330(1). Let me make sure
18 I'm current on this one.

19 Most of the cases I've looked at cite to this
20 particular statute. That most recent change -- that
21 would be in law cases. This is a foreclosure case.
22 Really it's a chancery case. 320 talks in terms of
23 appellate jurisdiction chancery cases, i.e. equity.

24 The Supreme Court has appellate jurisdiction
25 only in cases of chancery. In such appeals they

1 shall review the findings of fact as well as the law
2 except when the facts are found by a jury and the
3 verdict is not set aside. Under 330, which is the
4 law -- this is what all the research I've looked at
5 talks about. It does say the Supreme Court has
6 appellate jurisdiction.

7 Review upon an intermediate judgment order or
8 decree in a law case involving the merits provided
9 that no appeal is taken until final judgment. (2)
10 is, I think, really where the focus needs to be.
11 That is an order affecting a substantial right made
12 in an action when such order (a) in effect determines
13 the action and prevents a judgment from which an
14 appeal might be taken. That, I think, is the crux of
15 the matter as to whether or not the matter is
16 immediately appealable or not.

17 So it has to involve the merits of the case,
18 and it has to involve a, quote, "substantial right".
19 So under the recent case law an order, quote,
20 "involving the merits is an order that must finally
21 determine some substantial matter forming the whole
22 or part of some cause of action or defense". That's
23 Stone versus Thompson, South Carolina Court of
24 Appeals from 2016.

25 Determination of whether the Trial Court order

1 is immediately available is governed by statute.
2 That's Dorn versus Cohen also from 2016 Court of
3 Appeals, and in that case the Court says it's
4 determined on a case-by-case basis.

5 So the most recent case that I had found prior
6 to today was the Ashenfelder versus Georgetown case.
7 That talks in terms of -- in that case it was a
8 mistrial. They cite 14-3-330 and discuss matters
9 involving immediate judgments and whether or not a
10 matter affected a substantial right. An order under
11 Section 2 of 14-3-330 -- an order affecting a
12 substantial right made in an action when such order
13 (a) in effect determines the action and prevents a
14 judgment from which an appeal might be taken or
15 discontinues the action, in other words, finality.

16 Any judgment or decree leaving some further
17 act to be done by the Court before the rights of the
18 parties are determined is interlocutory. If it so
19 completely fixes the rights of the parties that the
20 Court has nothing further to do then the action is
21 final.

22 An Appellate Court has jurisdiction to review
23 an order affecting a substantial right when the order
24 has the effect of discontinuing the action or
25 preventing an appealable judgment. There they cite

1 to Breland, which I brought to your attention
2 earlier.

3 The Court does not generally allow immediate
4 appellate review of the denial of motions, for
5 instance the Summary Judgment Motion made, and then
6 finally they turn to this Link versus Pickens County
7 School District case from 1990. They talk about --
8 there they talk about Rule 54(b), which judgment upon
9 multiple claims or involving multiple parties is that
10 now -- in Link the Court noted that an order which is
11 immediately appealable by statute is not rendered
12 unappealable because it has not been certified under
13 Rule 54(b).

14 The Court found the Appellant was entitled
15 pursuant to 14-3-331 to wait until there was a final
16 judgment against him to appeal the partial grant of
17 Summary Judgment. So I just think that the orders
18 that are appealed from are interlocutory. I don't
19 know how they affect the substantial right of this
20 Defendant, but I'm open to hearing from you on that.
21 Clearly the determination that under the Appellate
22 Rule the Supreme Court -- the 2011 rule is a
23 threshold question as to whether or not the case goes
24 forward.

25 If the Court had ruled that it could not go

1 forward, clearly the Plaintiff would be impacted
2 because the case wouldn't go forward. That would be
3 a final appealable order, but it's like granting
4 Summary Judgment versus denying Summary Judgment. If
5 you grant Summary Judgment the case is over. It goes
6 up on appeal. If you deny Summary Judgment, that's
7 an interlocutory order and can't go forward. So I
8 don't see how, under that argument, the matter
9 affects a substantial right that would divest this
10 Court of the jurisdiction to hear the underlying
11 case. That's my point.

12 If you've got something else I'm happy to hear
13 from you.

14 MR. LUCK: No, Your Honor. The final order
15 that it is being appealed from is the grant of
16 Summary Judgment to the Plaintiff. There's an order
17 granting Summary Judgment, on the issue of civil
18 compensatory contempt. It struck one of the
19 affirmative defenses. I don't have those cases in
20 front of me, but there's a large body of law that
21 says any order that strikes a pleading or any portion
22 thereof, is immediately an appealable order, and also
23 I think this is really an argument that should be
24 brought up before the Court of Appeals because
25 they're the ones who are going to decide if they have

1 jurisdiction to hear an appeal. I think they're the
2 ones that will decide, is this substantial right then
3 affected? Is this immediately -- the order is
4 interlocutory. I think they're the ones that will
5 have to issue the order deciding that.

6 THE COURT: So the issue of civil compensatory
7 contempt you've cited, correct?

8 MR. LUCK: Yes.

9 THE COURT: So that's one issue. What's the
10 other?

11 MR. LUCK: There was an attorney preference
12 statute or an attorney preference statute as a
13 defense. That part of the defense was struck as to
14 the Estate of Mary Snyder.

15 Going back to the civil compensatory contempt,
16 or at least the civil contempt, that's going back to
17 that administrative order that is from a condition
18 precedent to proceeding with a foreclosure action.
19 If it's found that that wasn't complied with, then
20 everything gets undone. And then once again we're
21 back in --

22 THE COURT: And then I guess that begs the
23 question: Why doesn't that get caught up in the
24 entire appeal in the event that you're aggrieved from
25 the whole case? Why should it go up in an

1 interlocutory fashion on that question? It's no
2 different from -- in a criminal case you can't appeal
3 from the finding of guilt. You have to wait until
4 sentenced. That's how I would analogize it. I don't
5 think the criminal cases are really as close as the
6 civil cases are. That's what I'm trying to figure
7 out, where we are.

8 MR. LUCK: And so all I can do is go back to
9 the cases that I've cited. I follow those crutches
10 pretty hard, especially the language in State v.
11 Cooper. Yes. It is a criminal case, but really all
12 State v. Cooper does is restate the Rule in Kirby v.
13 Allen and make sure it's clear that now it's the
14 Court of Appeals that can decide if there's a dispute
15 over the extent of the automatic stay.

16 THE COURT: Okay. Mr. Milam?

17 MR. MILAM: Your Honor, again, regardless of
18 how that question is decided as to whether the order
19 was immediately appealed, I think it's likely that
20 ultimately it will be determined not to have been
21 immediately appealable. Regardless of how that
22 question is resolved, that should not prevent the
23 Court today from determining the other factual and
24 legal issues in the case again so that the prior
25 order was appealed and anything decided today can be

1 appealed and it can all be resolved at the same time.

2 THE COURT: Okay. As to the question then of
3 whether or not the administrative order is properly
4 complied with, I find that that is not immediately
5 appealable. It does not affect the substantial right
6 or that they have been denied. The Plaintiff would
7 have been denied a substantial right, but in this
8 instance I don't think the Defendant has. That issue
9 can well be preserved on appeal pursuant to our case
10 law and should and can go forward on appeal if the
11 Defendant appellant seeks to do that. That is
12 certainly subject to review. I think it's clearly
13 interlocutory in the meanwhile.

14 The question of civil contempt and sanctions
15 for that, it seems to me, would impact the issue of
16 damages, whether or not there's any damages.
17 Ultimately that will impact that question. I found
18 that the question of the attorney preference statute
19 was totally inapplicable to the case because as it
20 relates to the estate -- I think my ruling was that
21 Ms. Snyder was not an obligor on the debt. So that's
22 my recollection about that. So I'm prepared based
23 upon that then to move forward. Okay? I'm going to
24 deny that motion. I think the Court's got
25 jurisdiction to proceed.

1 Any other matters we need to take up before we
2 commence then?

3 MR. MILAM: I don't believe so, Your Honor.

4 THE COURT: All right, Mr. Milam. Anything at
5 all, Mr. Luck?

6 MR. LUCK: No, Your Honor.

7 THE COURT: All right thank you. Mr. Milam,
8 are you ready to proceed?

9 MR. MILAM: Yes, Your Honor. We call our
10 first witness or our only witness rather, Stewart
11 Derrick.

12 STEWART DERRICK,

13 being first duly sworn, testified as follows:

14 THE COURT: Your full name and address for the
15 record, please?

16 THE WITNESS: My first name is Stewart,
17 S-T-E-W-A-R-T. My last name is Derrick,
18 D-E-R-R-I-C-K. My address is 2001 Wind Bluff Court,
19 Richmond, Virginia, 23238.

20 THE COURT: 23238?

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you, sir. All right,
23 Mr. Milam?

24 EXAMINATION

25 BY MR. MILAM:

1 Q. Mr. Derrick, would you state where you are
2 employed?

3 A. I'm employed by Ditech Financial.

4 Q. And what is Ditech Financial, LLC?

5 A. It's a mortgage loan servicer and lender.

6 Q. And what is your title with Ditech Financial,
7 LLC?

8 A. Corporate litigation representative.

9 Q. What are your duties as corporate litigation
10 representative?

11 A. As corporate litigation representative I'll
12 assist in discovery, I'll attend mediations, I
13 negotiate settlements and also provide deposition
14 testimony as well as trial testimony.

15 Q. Who is the servicer for this loan?

16 A. Ditech.

17 Q. And do you know when they became the servicer?

18 A. In June of 2013.

19 Q. Who maintains records regarding payments,
20 origination documents, and other documents concerning
21 the loan?

22 A. Ditech, the mortgage servicer.

23 Q. Are those records kept in the regular course
24 of Ditech's business?

25 A. They are.

1 Q. Is it Ditech's regular practice to make and
2 keep records of that nature?

3 A. Yes.

4 Q. And are the records made at or near the time
5 of the events they record?

6 A. Yes.

7 Q. Would you say those records are made from
8 information transmitted by persons who have knowledge
9 of the contents of the record?

10 A. Yes.

11 Q. And have you reviewed the records for
12 Mr. Snyder's loan?

13 A. I have.

14 Q. And that's the loan that's at issue in this
15 case today, correct?

16 A. Yes.

17 Q. And does Ditech ever incorporate records from
18 prior loan servicers into its business records?

19 A. We do.

20 Q. Okay. Would you say that those records are --
21 those prior servicer records are kept in the ordinary
22 course of Ditech's business activities?

23 A. Yes.

24 Q. And is it Ditech's regular practice to rely on
25 those records?

1 A. Yes.

2 Q. Can you tell me about Ditech's process for how
3 it incorporates prior servicer records?

4 A. It's a pretty extensive process, but it begins
5 at a stage prior to acquiring a loan portfolio, but
6 there's a series of processes as we go through
7 that -- electronic data is transferred from one
8 servicing system into Ditech's servicing system as
9 well as fiscal documents may be scanned and imaged
10 into our records.

11 Q. And those are the same steps that would have
12 been followed for Mr. Snyder's loan?

13 A. Yes.

14 Q. Mr. Derrick, I'm going to hand to you what has
15 been marked as Plaintiff's Exhibit 1. Would you
16 please take a look at that document?

17 A. Okay.

18 Q. Do you know what this document is?

19 A. Yes. It's the original note.

20 Q. Okay. And what characteristics signify to you
21 that it's the original note?

22 A. Stamped original as well as wet ink
23 signatures.

24 Q. And is that original note part of the records
25 that you reviewed for this loan?

1 A. Yes.

2 Q. What is the date on the note?

3 A. April 21st, 2005.

4 Q. What is the principal amount of the note?

5 A. \$135,000.

6 Q. \$135,000?

7 A. Yes.

8 Q. And what's the interest rate on that?

9 A. 7.5 percent.

10 Q. What are the monthly principal and interest

11 payments?

12 A. \$934.94.

13 Q. What's the maturity date?

14 A. May 1, 2035.

15 Q. Who signed the note?

16 A. It was signed by Kevin G. Snyder.

17 Q. And are there any endorsements on the note?

18 A. Yes, three.

19 Q. Can you describe those endorsements?

20 A. There's an endorsement from Gateway Funding

21 Diversified Mortgage to Countrywide Document Customer

22 Service Division of Treasury Bank, NA. Then there's

23 an endorsement of Countrywide Document Custody

24 Services, a division of Treasury Bank, NA to

25 Countrywide Home Loans, Inc., and then there's an

1 endorsement in blank from Countrywide Home Loans,
2 Inc.

3 Q. Let me call your attention to Section 6(a) of
4 the note. Does Section 6(a) authorize late charges
5 for failure to make payments timely on the note?

6 A. Yes.

7 Q. And what's the amount of those late charges?

8 A. It indicates the amount of the charge for
9 5 percent by overdue payment and principal interest.

10 MR. MILAM: I move for admission of Exhibit 1,
11 the original promissory note into evidence.

12 THE COURT: Is that the original?

13 MR. MILAM: That is the original, Your Honor.

14 THE COURT: Show that to Mr. Luck, please.

15 MR. LUCK: No objection, Your Honor.

16 THE COURT: Can I take a look? It appears to
17 be the original?

18 MR. LUCK: Yes.

19 THE COURT: Okay. Marked as Plaintiff's 1.
20 All right, Mr. Milam. In evidence without objection,
21 No. 1.

22 Q. (BY MR. MILAM) Mr. Derrick, I'm handing you
23 what's been marked as Plaintiff's Exhibit 2. Can you
24 identify the document that I've handed to you marked
25 as Exhibit 2?

1 A. It's a copy of the mortgage.

2 Q. What's the date of the mortgage?

3 A. April 21, 2005.

4 Q. And does that mortgage identify what property
5 it secures? I would ask you to review Page 3 of the
6 mortgage and tell me if it identifies the street
7 address of the property that is secured?

8 A. Yes. The address is 1752 Orange Grove Shores
9 Drive, Charleston, South Carolina.

10 Q. I would call your attention to the last page
11 of the mortgage. Does the last page also identify
12 that same street address?

13 A. It does.

14 Q. And does it provide a more particular legal
15 description for the land secured by the mortgage?

16 A. It does.

17 Q. Let me call your attention to Section 22 of
18 the mortgage. Does the mortgage authorize any
19 remedies based on default in making payments for the
20 loan secured by the mortgage?

21 A. Yes.

22 Q. And what are those? What remedies are
23 authorized by the mortgagor?

24 A. It states acceleration.

25 Q. Does it authorize foreclosure if default is

1 not secured?

2 A. Within 30 days, yes.

3 Q. Who are the signatories to the mortgage? Who
4 signed the mortgage?

5 A. Kevin G. Snyder and Mary S. Snyder.

6 MR. MILAM: Move for admission, Plaintiff's
7 Exhibit 2, the mortgage.

8 MR. LUCK: No objection.

9 THE COURT: Without objection.

10 MR. MILAM: Would Your Honor like to review?

11 THE COURT: Sure. Original again?

12 MR. MILAM: Not the original, Your Honor.

13 THE COURT: Not the original? Okay. All
14 right, sir. Thank you very much. Exhibit 2 in
15 evidence.

16 MR. MILAM: Thank you, Your Honor.

17 Q. (BY MR. MILAM) Mr. Derrick, I'm going to hand
18 you what's been marked as Plaintiff's Exhibit 3. Can
19 you identify the document I've handed you?

20 A. Yes. It's a servicing disclosure statement.

21 Q. Is that part of the documents that you
22 reviewed as part of the loan records?

23 A. Yes, it is.

24 Q. On Page 1 of the servicing disclosure
25 statement -- let me ask you first -- what is the date

1 on this document?

2 A. February 2, 2005.

3 Q. And was that around the time that the loan was
4 originated?

5 A. Yes.

6 Q. Does the document provide any notification
7 regarding whether the loan might be transferred to
8 another servicer?

9 A. Yes.

10 Q. What does it say about that?

11 A. The right to collect your mortgage. Loan
12 payments may be transferred.

13 Q. On Page 2 of Exhibit 3 is there a signatory to
14 the document?

15 A. There is.

16 Q. And who is that?

17 A. Kevin G. Snyder.

18 Q. And what is the date of that signature?

19 A. February 8, 2005.

20 Q. Turning to Page 3 of the Exhibit, is this also
21 a servicing disclosure statement?

22 A. It is.

23 Q. And does it also contain a disclosure about
24 whether the right to collect mortgage payments can be
25 transferred?

1 A. Yes, it does.

2 Q. And what does it state about that?

3 A. It states it in the first paragraph: Notice
4 first lien mortgage loan applicants reserve the right
5 to collect your mortgage. Loan payments may be
6 transferred.

7 Q. And is this document signed?

8 A. It is.

9 Q. Who signed it?

10 A. Kevin Snyder.

11 Q. What is the date of that signature?

12 A. April 21, 2005.

13 MR. MILAM: I believe Mr. Luck has reviewed --

14 MR. LUCK: Yes.

15 THE COURT: Any objection on that one?

16 MR. LUCK: No objection, Your Honor.

17 THE COURT: Without objection. That's fine.

18 I've got it.

19 Q. (BY MR. MILAM) Mr. Derrick, I'm going to hand
20 you what's been marked as Plaintiff's Exhibit 4. Can
21 you identify this document I've handed you?

22 A. It's entitled loan modification agreement.

23 Q. Is this part of the records that you reviewed
24 for the loan?

25 A. Yes, it is.

1 Q. Does the -- and does this document modify
2 certain terms of Mr. Snyder's loan?

3 A. Yes.

4 Q. And what does it say is the new principal
5 balance of the loan?

6 A. It states in the first paragraph, \$138,189.69.

7 Q. Does it keep the interest rate the same as
8 under the original note?

9 A. Yes, 7 1/2 percent.

10 Q. And does it keep the maturity date the same as
11 under the original note?

12 A. Yes, it is.

13 Q. And is this loan modification agreement signed
14 by Mr. Snyder?

15 A. It is.

16 Q. What's the date of Mr. Snyder's signature?

17 A. October 29th, 2007.

18 MR. MILAM: I move for admission of Exhibit 4,
19 the loan modification agreement, into evidence.

20 MR. LUCK: Without objection.

21 THE COURT: Without objection.

22 Q. (BY MR. MILAM) Mr. Derrick, I'm handing you
23 what's been marked as Plaintiff's Exhibit 5. Can you
24 identify the document I've handed you?

25 A. It's entitled, HomeSaver Payment Forbearance

1 Agreement.

2 Q. And did you review this document as part of
3 the loan records?

4 A. I did.

5 Q. Is this document signed by anyone?

6 A. It's signed by Kevin Snyder.

7 Q. What's the date of that signature?

8 A. It appears to be August 19th or 14th of 2009.

9 Q. Calling your attention to Page 1 of the
10 forbearance agreement, at the top of Page 1, who is
11 identified as the loan servicer?

12 A. BAC Home Loan Servicing, LP.

13 Q. And was that Ditech's predecessor as loan
14 servicer for this loan?

15 A. Yes.

16 Q. On Page 2, of Exhibit 5, under Section 2, what
17 does it state -- does it state whether Mr. Snyder
18 will make any payments during the forbearance period?

19 A. Yes. It provides a series of six payment
20 amounts and six dates.

21 Q. And does the agreement contemplate what
22 happens to foreclosure activity during the time that
23 the forbearance payments are being made?

24 A. Yes. In Section A it states that the servicer
25 will suspend any scheduled foreclosure sale provided

1 I continue to meet the obligations of this agreement.

2 Q. Does the document contemplate that Mr. Snyder
3 will be reviewed for a modification during that time?
4 Or reviewed for loss mitigation during that time?

5 A. It does.

6 Q. And I'll call your attention to Section 2(c).
7 Does Section 2(c) state whether Mr. Snyder will be
8 reviewed for loss mitigation?

9 A. Yes, it does.

10 MR. MILAM: I move to admit Exhibit 5 into
11 evidence.

12 MR. LUCK: Without objection.

13 THE COURT: Without objection.

14 Q. (BY MR. MILAM) Mr. Derrick, I'm handing you
15 what's been marked as Plaintiff's Exhibit 6.

16 THE COURT: Mr. Derrick, hand that up. I want
17 to take a look at that one. Thank you. Go ahead.

18 Q. (BY MR. MILAM) I'm going to hand you what's
19 marked as Exhibit 6. Can you identify the document
20 I've handed you marked as Exhibit 6?

21 A. This is a letter from Bank of America Home
22 Loans to Kevin Snyder. It appears to be a notice of
23 proposed modification.

24 Q. What's the date of that letter?

25 A. November 23, 2009.

1 Q. And does the letter include a proposed loan
2 modification?

3 A. Yes, it does.

4 Q. Is there any record that Mr. Snyder ever -- in
5 Ditech's records is there any record of Mr. Snyder
6 ever accepting that loan modification?

7 A. No.

8 MR. MILAM: Move to admit Exhibit 6 into
9 evidence.

10 MR. LUCK: Without objection.

11 MR. MILAM: Your Honor, would you like to see
12 that?

13 THE COURT: Thank you.

14 Q. (BY MR. MILAM) Mr. Derrick, I'm handing you
15 what's been marked as Plaintiff's Exhibit 7. Can you
16 identify the document I've handed you?

17 A. Yes. This is a notice of intent to accelerate
18 sent to Kevin Snyder by Bank of America.

19 Q. And who is this letter addressed to?

20 A. Kevin G. Snyder.

21 Q. Okay. And is it sent to the property address,
22 1752 Orange Grove Shores Drive?

23 A. Yes.

24 Q. Does this letter notify Mr. Snyder as to
25 whether he's in default?

1 A. Yes.

2 Q. What does it say about that?

3 A. It indicates he has a right to cure the
4 default -- cure the default on or before May 27,
5 2010.

6 Q. Is that 30 days from the date of the letter?

7 A. Yes.

8 Q. Does it state how long -- how many months he's
9 been in default or when he went into default?

10 A. September 1, 2008.

11 MR. MILAM: I move to admit the notice of
12 default, or rather, the notice of intent to
13 accelerate into evidence.

14 MR. LUCK: No objection.

15 THE COURT: Without objection, No. 7. Okay.
16 Let me take a look at that. Thank you.

17 Q. (BY MR. MILAM) Mr. Derrick, I'm going to hand
18 you what's been marked as Plaintiff's Exhibit 8. Can
19 you identify this document?

20 A. I would call this -- it's a notice of
21 servicing transfer sent to Kevin Snyder from Bank of
22 America.

23 Q. What's the date on this notice?

24 A. May 11th, 2013.

25 Q. And does it state when servicing will be

1 transferred?

2 A. Yes, it does. It states June 1, 2013.

3 Q. Okay. And who does it say servicing will be
4 transferred to?

5 A. Green Tree Servicing, LLC.

6 Q. Can you tell me what the relationship is
7 between Green Tree Servicing, LLC and Ditech
8 Financial, LLC?

9 A. Yes. Ditech is formerly known as Green Tree.
10 The two companies merged in August of 2015.

11 Q. When you say the two companies, you mean their
12 parent companies?

13 A. Parent companies, yes, and they changed the
14 name to Ditech.

15 MR. MILAM: Okay. I move to admit Exhibit 8
16 into evidence.

17 MR. LUCK: No objection.

18 THE COURT: Without objection. All right,
19 sir.

20 Q. (BY MR. MILAM) Mr. Derrick, I'm going to hand
21 you what's been marked as Plaintiff's Exhibit 9. Can
22 you identify what I've handed you?

23 A. Yes. It's a letter sent by Green Tree to
24 Kevin Snyder advising him that the servicing was
25 transferred from Bank of America to Green Tree

1 effective June 1st. It also provides them the amount
2 that they owe, the amount of the debt, and the period
3 of time where he can validate that.

4 Q. And what's the date of the letter?

5 A. It's dated June 11, 2013.

6 MR. MILAM: Move to admit Exhibit 9 into
7 evidence.

8 MR. LUCK: No objection.

9 THE COURT: Without objection.

10 Q. (BY MR. MILAM) Mr. Derrick, I'm handing you
11 what's been marked as Plaintiff's Exhibit 10. Can
12 you describe the document that I've handed you?

13 A. Yes. This is referred to as a payment
14 history.

15 Q. Okay. And have you reviewed the payment
16 history for the loan?

17 A. I have.

18 Q. And does the payment history indicate whether
19 Mr. Snyder has made all of the payments to you for
20 this loan?

21 A. It shows the payments that Mr. Snyder made to
22 the loan.

23 Q. And have all of the payments that are due for
24 the loan been made?

25 A. No.

1 Q. And what is the current monthly payment for
2 which Mr. Snyder is due?

3 A. It would be September 1, 2008.

4 Q. And would he also be due for all the payments
5 since September 1st, 2008 as well?

6 A. Yes.

7 Q. And have any payments been made during the
8 time that Ditech has been servicing the loan since
9 2013?

10 A. Has Mr. Snyder made any payments?

11 Q. Has Mr. Snyder made any payments on the loan
12 since Ditech began servicing the loan based on your
13 review of this loan payment history?

14 A. No.

15 MR. MILAM: I move for admission of
16 Exhibit 10, the loan payment history, into evidence.

17 MR. LUCK: No objection.

18 THE COURT: Without objection. 10 is in
19 evidence. Okay. Thank you, sir.

20 Q. (BY MR. MILAM) Mr. Derrick, I'm going to hand
21 you what's been marked as Plaintiff's Exhibit 11.
22 What is the document that I've handed you?

23 A. This is called a payoff statement.

24 Q. Okay. And what is the date of the payoff
25 statement?

1 A. March 29, 2019.

2 Q. Does it state when the payoff statement is
3 good -- what date it is good through?

4 A. April 1st, 2019.

5 Q. Is that today's date?

6 A. Yes.

7 Q. What is the principal balance showing on the
8 payoff statement?

9 A. \$137,020.25.

10 Q. What is the amount of accrued interest on the
11 payoff statement?

12 A. Through today it's \$109,616.64.

13 Q. Is there a final premium shown on the payoff
14 statement?

15 A. It shows \$45.

16 Q. What about -- are there any corporate advances
17 shown on the payoff statement?

18 A. Yes.

19 Q. Does the payoff statement itemize those
20 corporate advances?

21 A. It does.

22 Q. Are some of those corporate advances for
23 foreclosure attorney fees and costs?

24 A. Yes.

25 Q. Are there other items that are in corporate

1 advances as well?

2 A. Yes.

3 Q. Can you tell me what the nature is of the
4 matters that don't relate to foreclosure fees and
5 costs?

6 A. There appear to be several inspection charges.

7 Q. And I believe you said that the payoff
8 statement gives the exact breakdown of what those are
9 for, correct?

10 A. Yes.

11 Q. Are there any late fees on the payoff
12 statement?

13 A. Yes.

14 Q. And what is the amount of those late fees?

15 A. \$396.16.

16 Q. Are there any escrow advances shown on the
17 payoff statement?

18 A. Yes.

19 Q. What is the amount of those escrow advances?

20 A. \$39,816.39.

21 Q. And can you tell me what types of matters
22 would be covered under escrow advances?

23 A. Typically taxes and insurance.

24 Q. So Ditech has been paying the taxes and
25 insurance for Mr. Snyder's property?

1 A. Yes. That's correct.

2 MR. MILAM: I move to admit the payoff
3 statement into evidence. I've provided Mr. Luck the
4 updated payoff statement generated Friday.

5 MR. LUCK: No objection.

6 THE COURT: Okay. Without objection. That
7 was No. 11; was it not?

8 MR. MILAM: No. 11, Your Honor.

9 THE COURT: Thank you.

10 MR. MILAM: No further questions for
11 Mr. Derrick. Please answer any question that the
12 defense attorney has for you.

13 THE COURT: Mr. Luck?

14 MR. LUCK: Thank you.

15 EXAMINATION

16 BY MR. LUCK:

17 Q. Good morning, Mr. Derrick.

18 A. Good morning.

19 Q. I have just a couple of brief questions.
20 Exhibit 1, that was the note, correct?

21 A. Correct.

22 Q. How long has that note been in Ditech's
23 possession?

24 A. I don't know specifically.

25 Q. Can you testify that that note was in Ditech's

1 possession in 2018?

2 A. I don't know the specific date that Ditech
3 possessed the original note.

4 Q. Do you know who possessed that note in 2010?

5 A. I do not know.

6 Q. Okay. Exhibit 3, I noticed there was a
7 mention of a company called Carolina Trust Mortgage
8 Services. What is that company?

9 A. I don't know.

10 Q. Okay. So this action was originally filed by
11 a company called BAC Home Loan Servicing, LP. Are
12 you familiar with that company?

13 A. I am.

14 Q. What is or was that company?

15 A. Bank of America Home Loans. It was a division
16 of Bank of America Labor Servicing.

17 Q. Does it still exist?

18 A. I don't know.

19 Q. What was BAC Home Loans Servicing LP's
20 relationship with Green Tree?

21 A. There was no relationship. They were the
22 prior servicer on this particular mortgage.

23 Q. So was there any change as in a merger or
24 purchase between the two companies?

25 A. No.

1 Q. Do you know Green Tree obtained -- for lack of
2 a better word -- obtained this loan from BAC?

3 A. Not as I sit here today.

4 MR. LUCK: Okay. I have no other questions,
5 Your Honor.

6 THE COURT: Nothing further?

7 MR. LUCK: No.

8 THE COURT: Very good. Anything?

9 MR. MILAM: I just have a brief question on
10 Redirect.

11 EXAMINATION

12 BY MR. MILAM:

13 Q. Mr. Derrick, I'm going to again hand you
14 Exhibit 3. Now, Mr. Luck asked you about Carolina
15 Trust Mortgage Services. Is that the name of the
16 entity shown on the first page of Exhibit 3?

17 A. It is.

18 Q. And can you tell me again the date on the
19 first page of Exhibit 3?

20 A. February 2, 2005.

21 Q. And Mr. Snyder signed on Page 2 of this
22 document on February 8, 2005, correct?

23 A. Yes.

24 Q. Let's turn to Page 3 of Exhibit 3.

25 A. Yes.

1 Q. Who is the lender named at the top of Page 3?

2 A. Gateway Funding Diversified Mortgage Services,
3 LP.

4 Q. And what's the date of the signature on --
5 what's the date of the signature on Page 3 of
6 Exhibit 3?

7 A. April 21, 2005.

8 Q. So the first two pages are a separate
9 disclosure statement from the third page?

10 A. Yes.

11 Q. And April 21, 2005, does that correspond with
12 the closing date of the loan?

13 A. Yes.

14 MR. MILAM: All right. No further questions.

15 THE COURT: Anything further?

16 MR. MILAM: Nothing further for this witness.

17 THE COURT: Okay.

18 MR. LUCK: I guess at this point I need to
19 make a motion under Rule 41.

20 THE COURT: Just one second. Mr. Derrick, you
21 may step down. Thank you. Watch your step.

22 (Witness excused.)

23 THE COURT: Mr. Luck?

24 MR. LUCK: Yes, sir. I now need to make a
25 Motion for an Involuntary Nonsuit under Rule 41(b).

1 I have to do that. In this motion I am rearguing and
2 reincorporating all of my arguments from the Motion
3 for Partial Summary Judgment that's already on file.

4 I would also reargue that this Court does not
5 have jurisdiction to hear this matter as we discussed
6 earlier. Further, I would also argue that BAC --
7 that the Plaintiff has not established that they had
8 standing to originally bring this lawsuit. There's
9 no evidence that they actually were in possession of
10 the note at the time the case was filed.

11 Other than that I think a lot of the arguments
12 that I mentioned there are all going to be already on
13 the record and I ask the Court to take judicial
14 notice of the exhibits to the Motion for Summary
15 Judgment which are already part of the record, and I
16 would ask that the case be dismissed with prejudice.

17 THE COURT: You want to restate what the bases
18 are so we are clear?

19 MR. MILAM: Yes. And Your Honor, I didn't
20 mean to ask to admit into evidence the Responses to
21 Requests for Admission.

22 THE COURT: We ought to get there. Let's have
23 the Plaintiff rest. Anything further from the
24 Plaintiff? You wanted Responses to the Request to
25 Admit?

1 MR. MILAM: Just give the Responses to the
2 Request to Admit.

3 THE COURT: That was the item tagged as
4 Plaintiff's Exhibit 20?

5 MR. MILAM: It was tagged in the brief.
6 That's correct. It's now marked as Exhibit 20, which
7 is out of order. I think in order it would be
8 Exhibit 12.

9 THE COURT: Well, let's just leave it marked
10 whatever it's marked. Okay? The Plaintiff would
11 like to put the responses -- the Defendant's
12 Responses to the Requests to Admit into evidence?

13 MR. MILAM: That's correct, Your Honor.

14 THE COURT: And they've already been premarked
15 as Plaintiff's Exhibit 20?

16 MR. MILAM: They have been premarked as
17 Exhibit 20.

18 THE COURT: We will just leave it like that.
19 And then 12 through 19, you don't plan to use those
20 at this point in time; is that correct?

21 MR. MILAM: That's correct, Your Honor. Those
22 involved matters that were covered in the Summary
23 Judgment order, and as for the record I would just
24 like the Summary Judgment order noted for the record
25 as to the issues decided.

1 THE COURT: I'm going to get Mr. Luck to state
2 specifically what we've got, but as far as -- before
3 Plaintiff rests you want Plaintiff's Exhibit 20 in
4 the record?

5 MR. MILAM: Yes, sir.

6 THE COURT: That's all I'm trying to clear up.

7 MR. LUCK: No objection.

8 THE COURT: In evidence without objection.
9 Very good. Thank you, sir.

10 MR. MILAM: May I approach, Your Honor?

11 THE COURT: Yes, sir. Very good. And with
12 that Plaintiff rests?

13 MR. MILAM: With that Plaintiff rests.

14 THE COURT: Very good. Now, Mr. Luck, if you
15 would, go ahead and make your motion, and I'm happy
16 to entertain it. Just for the record just make it so
17 we can address it seriatim. All right, sir?

18 MR. LUCK: We can just preserve it for the
19 record?

20 THE COURT: Yes, sir.

21 MR. LUCK: So I would be -- first of all, it's
22 a Rule 41(b) involuntary nonsuit motion. We look for
23 a directed verdict in nonjury cases. My first
24 argument would be the arguments advanced in the
25 motion for Partial Summary Judgment. It was filed

1 March 11th, 2019. Those arguments being there was
2 noncompliance with the 2011 Supreme Court
3 Administrative Order. In the particulars that are
4 laid out in the motion itself, whether it's failures
5 to communicate, contact with the mortgagors,
6 inappropriate conduct by their attorneys, not the
7 current one of course, spoliation of evidence issue.
8 That's the argument in the motion.

9 Additionally, I would argue that there was --
10 there's an issue of standing. As we mentioned before
11 in the hearing, the issue of the assignments that
12 seem to have -- one assignment seemed to have signed
13 out the mortgage prior to -- it seems like it's been
14 assigned out to another entity and the note and
15 mortgage may have been split and transferred to
16 different entities.

17 So it looks to me like BAC Home Loan Servicing
18 or some other entity may still actually have
19 possession of the mortgage but not the note. It's
20 just a big mess here. That's laid out also in my
21 Motion for Summary Judgment. That's Page 6 of that.

22 THE COURT: You acknowledged that you saw the
23 original note today, correct?

24 MR. LUCK: Yes, I did. Let's see. Of course,
25 we want to reargue about the jurisdictional issues --

1 subject matter jurisdiction. I think we beat that
2 horse to death earlier, but that argument was
3 reincorporated. I think that's -- and then by
4 incorporating my arguments with the partial Summary
5 Judgment Motion I would also incorporate the exhibits
6 to that motion which are just documents that have
7 been authenticated by the Request to Admit. They're
8 all on file with the Court. They're all of record.
9 They're there for you to view. I don't think I have
10 any other arguments to add to it, to this motion. I
11 just needed to make it to preserve it for the record.

12 THE COURT: Very good. Mr. Luck, in
13 particular, the spoliation of evidence, what is
14 missing or you think has not been properly presented?

15 MR. LUCK: So on March 4, 2015, there was a
16 letter I believe I sent. It's on Exhibit A, Page 48
17 to the Requests to Admit. It's been filed with the
18 Court. In that letter I requested that Ditech
19 preserve documents related to this case, and now --
20 later when I -- I think the responses to the third
21 set of interrogatories, there are a lot of things
22 that couldn't be answered because they didn't have
23 documents. So it's -- that is the extent of it.
24 They're unable to admit or deny certain facts because
25 they don't have documents. I told them to preserve

1 documents, so whose fault is it that they can't admit
2 or deny these? Those matters should probably just be
3 deemed admitted. I don't think it really is a huge
4 harm to anybody.

5 Some of those Requests to Admit are just to
6 admit that this was a false -- to admit that this was
7 served on the other side. Because those documents
8 are not on file, they couldn't admit or deny them.
9 So that's the extent of this spoliation argument.

10 THE COURT: All right. Mr. Milam?

11 MR. MILAM: In the Request to Admit, we're
12 asking for admission of the authenticity of certain
13 correspondence over the life of the loan. Some of
14 that correspondence related to -- what was for years
15 prior to Ditech's servicing of the loan, so I believe
16 some of the responses said that Ditech may not have
17 all of these records. They might be in the hands of
18 the prior servicer. That does not provide grounds
19 for spoliation. We haven't destroyed any documents
20 or lost any documents. I would agree with Mr. Luck
21 that if the Court were to find spoliation -- I don't
22 think there's grounds for spoliation, but if the
23 Court were to find spoliation, the only effect of
24 that would be to allow an inference that the
25 documents that were requested to be admitted were, in

1 fact, legitimate. I don't think that the actual
2 documents themselves would make a difference one way
3 or the other in this case. They are, I believe, the
4 same documents that Mr. Luck submitted for the
5 Summary Judgment hearing attached to his motion.
6 Most of those have been attended to. There are just
7 a few that we couldn't admit to because they're not
8 our own records. I don't think it would make much
9 difference one way or the other.

10 THE COURT: At the time Mr. Luck's letter of
11 March 4, 2015 was submitted, Ditech would have been
12 the servicer at that time, correct?

13 MR. MILAM: That's correct and that is in
14 Ditech's records.

15 THE COURT: All right. Are you telling me
16 that not all documents would necessarily transfer
17 over? Is that what I'm hearing you say or not?

18 MR. MILAM: All that Ditech can say is that it
19 does not have a record of that particular item. It
20 can't say whether it ever existed or not because it's
21 not part of Ditech's business records, but we're not
22 saying that the correspondence didn't happen or
23 didn't occur.

24 THE COURT: So in looking at these Responses
25 to the Requests to Admit, I think the only thing I

1 see of significance in here, would be the denial by
2 the Defendant. It seems they admit to the signing of
3 the note, but not to the mortgagor, at least whatever
4 was provided and a copy of the mortgage. Ms. Snyder
5 was not an obligor on the note or the servicing
6 disclosure statement was at issue it looks like.

7 MR. MILAM: It was at issue in the pleadings.
8 We have addressed it because it was raised as an
9 affirmative defense. I don't know whether it's still
10 an issue in the case or not.

11 THE COURT: Okay. Very good. I just wanted
12 to check it out. All right, Mr. Luck. Thank you,
13 sir. I'm going to deny the motion at this point in
14 time.

15 MR. LUCK: Thank you, Your Honor.

16 THE COURT: Nothing further from the
17 Plaintiff?

18 MR. MILAM: Nothing further from the
19 Plaintiff, Your Honor.

20 THE COURT: Does the Defendant have any
21 evidence they wish to submit? Do you want a few
22 minutes?

23 MR. LUCK: Yes.

24 THE COURT: Let's take five minutes and
25 you-all can chat for a little bit. The conference

1 room should be available if you would like some
2 privacy. You can go in there. Let's take about
3 five minutes and we'll come back in. Okay?

4 (A recess transpired.)

5 MR. LUCK: Your Honor, we won't be presenting
6 any witnesses or testimony. We just fall back on our
7 November 29th, 2018 filings with the Court, Request
8 to Admit plus the documents that are authenticated.
9 We would rely on those, and we would also argue -- I
10 was going to argue a few minutes ago that the
11 Plaintiff didn't meet his burden of proof and with
12 that we can rest.

13 THE COURT: Very good. Let me ask, just for
14 the record while we're here, any kind of reply to
15 that?

16 MR. MILAM: As far as the evidence to present
17 Summary Judgment, I certainly think we discussed
18 those issues at Summary Judgment. We feel that we
19 have established all of the elements of the
20 foreclosure, the debt, default, standing, Notice of
21 Right to Cure. The Plaintiff was entitled to
22 foreclose. I also believe there was a quiet title
23 counterclaim outstanding that was not stayed by the
24 foreclosure, and based on the lender's standing under
25 the -- as holder of the original note endorsed in

1 blank, the letter also has standing to enforce the
2 mortgage and we also believe the quiet title is
3 without merit, so we're asking for judgment on all
4 this.

5 THE COURT: Refresh my memory on the quiet
6 title. What was the basis for that? Was that the
7 issue of whether or not there was a valid lien on the
8 property? I'm trying to remember.

9 MR. LUCK: It was that, Your Honor, and I
10 think also it was -- added to that in there is a
11 counterclaim for relief. One form of relief being
12 that if the mortgage was not found to be valid it
13 would be effectively washed out or he would do away
14 with the mortgage. The basis for it was really the
15 basis for the civil compensatory contempt. That sort
16 of argument all sort of rolled together. When it
17 comes to standing I think I already made that
18 argument. It's the various assignments and the
19 mortgage. That's the basis of that.

20 THE COURT: And while I'm on that subject, I'm
21 looking at the original. I think everybody's agreed
22 that this is the original note. It's a 1, 2, 3-page
23 document. The last stamp on here is paid to the
24 order of blank without recourse from Countrywide Home
25 Loans, Inc, signed by David Spector, managing

1 director. It appears to be signed by Mr. Snyder, the
2 last assignment being an assignment in blank. . So the
3 possessor of that note would be entitled to, I
4 believe, to enforce the terms of the note.

5 So that leads to my next question. That is
6 that typically in these cases the Court looks at it,
7 but I don't know that the Court necessarily takes
8 possession of the original note. Would you like to
9 retain possession of the original note and substitute
10 a true copy or a copy for the record?

11 MR. MILAM: We would ask to substitute a
12 redacted copy for the record removing financial
13 account numbers as required by the rule, and given
14 the fact that it is an original is not in dispute.
15 We would ask to retain custody.

16 THE COURT: I'm going to let you-all take a
17 look at that and make sure that that's a true and
18 correct copy of the original -- it does have the
19 original numbers on it. I don't know if there's any
20 Social Security numbers on there. You might check
21 for that.

22 MR. MILAM: I believe we're in agreement,
23 Your Honor, and I will ask the court reporter to
24 mark --

25 THE COURT: Why don't you just replace that

1 Exhibit 1, sheet? Did I give that one back?

2 MR. MILAM: You did, Your Honor.

3 THE COURT: That way we have it in the same
4 format that it came into the Court. Very good.
5 Okay. I'll just clip it to it. Okay?

6 MR. MILAM: Yes, Your Honor.

7 MR. LUCK: Your Honor, there is one case that
8 I mentioned earlier that I don't think I gave you the
9 citation takes for, and it might be worth it for
10 recollection. I provided a copy of it now, a hard
11 copy. That's Stokes Craven Holding Corporation, 416
12 S.C. 517. If I may, I can just hand you the hard
13 copy?

14 THE COURT: Sure. Sure. Is that Austin
15 versus Stokes Craven? Is that the one?

16 (Brief pause.)

17 THE COURT: The case you've handed up is the
18 Stokes Craven versus Robinson case. It's a legal
19 malpractice case in which the Court is trying to
20 decide when the Statute of Limitations would commence
21 in such a case. They say they're going to follow the
22 existing Appellate Court Rules. They talk about Rule
23 205, service of Notice of Appeal divesting the Trial
24 Court of jurisdiction over matters affected by the
25 appeal.

1 Of course things not affected by the appeal
2 would not be stayed. The Court ruled on it based on
3 the outcome of the appeal verdict. You need to take
4 another look. I don't know if that Rule was invoked,
5 but there's a recent case. I think the attorney for
6 Stokes Craven was Drew Epting, and I think he was
7 just named as a Defendant amongst a bunch of other
8 lawyers in town in a recent malpractice claim. The
9 Court found that the statute had run. You might want
10 to take a look at that one. I'm not sure if that's a
11 change in the law or not, but it seems to change when
12 the statute runs, and you have a whole different
13 Court of Appeals -- excuse me, Supreme Court, because
14 this is an appeal from Judge James who is now on the
15 Supreme Court. I'll let you-all look into that one
16 later as well.

17 All right. I'm going to stand by my Ruling.
18 I think the Court had jurisdiction to entertain this
19 case today. You're certainly free to take that
20 matter up on appeal. You'll get a final order.

21 I'm going to grant the Plaintiff's relief.
22 I'm going to find that the debt is the -- it's
23 somewhere around \$295,000, 294 and some change is
24 what I think it was. I think that's what the Court's
25 got to do in a foreclosure action.

1 I find that the Defendant has not paid
2 since -- I think it was September 1 of 2008 in
3 looking through the payment history. September 1,
4 2008, looked to be the last time a payment was made.
5 It's now ten years and six months. That's pretty
6 impressive, I tell you. It's been a long time.
7 \$294,420.69 I think is what the figure is or was.

8 At this point in time is there a deficiency
9 being sought or has that been waived in this case?

10 MR. MILAM: We're willing to waive deficiency
11 in this case, Your Honor.

12 THE COURT: Has that been waived yet? Or is
13 that what you-all plan to do?

14 MR. LUCK: It has not. It has not been waived
15 up to this point, however, the client has decided to
16 waive deficiency.

17 THE COURT: All right. That might go
18 somewhere towards this thing. Anyway, you have some
19 interesting questions to take up on appeal. I'm
20 going to grant the judgment. That's my typical
21 scenario -- once the decree has been issued to set
22 the sale about 60 days out. Today is the 1st day of
23 April. It would seem to me that the sale could be as
24 soon as June. I'm going to let you-all wrestle with
25 that. You have some issues to get through. Okay?

1 Very good.

2 MR. LUCK: Thank you, Your Honor.

3 THE COURT: Mr. Milam, if you will send me an
4 order, but run that by Mr. Luck for sure. Okay?

5 MR. LUCK: Thank you, Your Honor.

6 MR. MILAM: I will do that, Your Honor.

7 THE COURT: All right, gentlemen. Good to see
8 you-all today. Thank you very much.

9 (The proceedings were concluded at 11:58 a.m.)

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1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 23rd day of May, 2019 at
13 Charleston, Charleston County, South Carolina.
14
15
16

17 _____
18 Christine A. Smith
19 Notary Public
20 My Commission Expires
21 May 12, 2021
22
23
24
25

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Keith Curtis and Tyneshia Brooks, *individually
and on behalf of all others similarly situated,*

Plaintiffs,

vs.

Time Warner Entertainment-
Advance/Newhouse Partnership,

Defendant.

C/A No. 3:12-cv-2370-JFA

**ORDER
ON MOTIONS TO COMPEL**

This matter is before the court upon two motions to compel discovery¹ filed by the plaintiffs. *See* ECF Nos. 39, 60. The court heard argument on the first motion on April 15, 2013, the same day the court heard argument from the parties on the plaintiffs' motion for conditional class certification. The second motion to compel was not fully briefed at the time of that hearing, although full briefs have now been received by the court. The court has determined that oral argument on the second motion will not aid in its decision process.

Before delving into the merits of the motions to compel, the court must address two procedural issues. As to the first motion, defendant contends that the motion is defective because plaintiffs have not complied with the requirements of Local Rule 7.02, D.S.C., which requires a moving party to first confer with the opposing party about the subject of its motion before filing the motion. The court has examined the affidavit and emails attached to the plaintiffs' reply memorandum and determines that the meet and confer requirements of Local Rule 7.02 have been met. Although there was no "meet and confer" session denominated as

¹ The first motion additionally seeks sanctions.

such, it is clear that the plaintiffs explored various options and alternatives prior to filing their motion and complied with Local Rule 7.02 in this case.

Next, plaintiffs challenge the fact that the defendant has renumbered some of its interrogatories so as to break out subparts and assign them separate numbers. Plaintiffs' concern in this regard is obviously occasioned by Rule 33, FED. R. CIV. P., which limits a party's interrogatories to no more than twenty-five, unless the court excuses this limitation. This issue may be easily resolved by the court's announcing its intention to exercise its discretion under Rule 33 to relax the limitation on the number of interrogatories a party may make. Because the court has gained some familiarity with the complexity of this litigation at the hearing on the motion for conditional class certification, the court hereby announces that each party will be allowed to propound a total of 100 interrogatories, including all discrete subparts, to the other side in this case. Neither party should attempt to circumvent the clear import of this rule by including subparts to an interrogatory that should count as a numbered interrogatory.

Turning to the merits, in their first motion, plaintiffs point out that the defendant's initial and supplemental responses violate the Federal Rules of Civil Procedure because they raise "generalized, boilerplate objections and fail to identify the information withheld pursuant to an objection or claim of privilege." ECF No. 40, at 4. Defendant then compounds the problem by also providing plaintiffs with *some* response, thus leaving plaintiffs unable to determine what information has been withheld and the specific justification for the withholding. In their second motion, plaintiffs point out that the defendant has employed the same basic tactics in responding to the discovery requests in subsequent interrogatories and requests for production.

Rather than engage in a point-by-point discussion of each bit of information the plaintiffs seek, the court wishes to memorialize, by way of this order, its general philosophy on discovery responses and then provide the defendant an opportunity to submit new answers to all outstanding discovery. The court hastens to add that, by disposing of the motion in this fashion, the court is not at this time determining that the defendant has acted in bad faith or otherwise acted improperly under the Federal Rules of Civil Procedure or the Local Rules of this District. Rather, the defendant has responded to discovery requests in a fashion that is becoming all too common in cases on this court's docket, and the action taken on the present motions is consistent with what this court has directed in other cases.

In order to efficiently resolve discovery disputes, the parties are hereby notified that the following rules apply to discovery objections before this court:

1. Nonspecific, Boilerplate Objections

The parties shall not make nonspecific, boilerplate objections. Objections that state that the discovery request is "vague, overly broad, or unduly burdensome" are, standing alone, meaningless and will be found meritless by this court. A party objecting on these grounds must explain the specific and particular way in which a given request is vague, overly broad, or unduly burdensome. *See* Fed. R. Civ. P. 33(b)(4); *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir. 1982) ("[T]he mere statement by a party that the interrogatory was 'overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful objection to an interrogatory. On the contrary, the party resisting discovery 'must show specifically how . . . each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive.'" (citation omitted)). If a party believes that the request is vague, that party shall attempt to obtain clarification prior to objecting on this ground.

2. Objections Based Upon Scope

If there is an objection based upon an unduly broad scope, such as time frame or geographic location, discovery should be provided as to those matters within the scope which are not disputed. For example, if discovery is sought nationwide for a ten-year period, and the responding party objects on the ground that only a five-year period limited to activities in the State of South Carolina is appropriate, the responding party shall provide responsive discovery falling with the five-year period as to the State of South Carolina and then object to the overage.

3. Irrelevant and Not Reasonably Calculated to Lead to Admissible Evidence

An objection that a discovery request is irrelevant and not reasonably calculated to lead to admissible evidence must include a specific explanation describing why the request lacks relevance and why the information sought will not reasonably lead to admissible evidence. Parties are reminded that the federal rules allow for broad discovery that does not necessarily need to be admissible at trial. *See* Fed. R. Civ. P. 26(b)(1); *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351–52 (1978).

4. Formulaic Objections Followed by an Answer

The parties shall not recite a formulaic objection followed by an answer to the request. It has become common practice for a party to object on the basis of any of the above reasons and then state that, “notwithstanding the above,” the party will respond to the discovery request, subject to or without waiving such objection. Such an objection and answer preserves nothing and serves only to waste the time and resources of both the parties and the court. Further, such practice leaves the requesting party uncertain as to whether the question has actually been fully answered or whether only a portion of the question has been answered. *See* Civil Discovery Standards, 2004 A.B.A. SEC. LIT. 18.

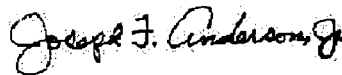
5. Objections Based upon Privilege

Generalized objections asserting the protection of the attorney-client privilege or the work product doctrine also do not comply with the Federal Rules of Civil Procedure. A party objecting on the grounds of privilege must state the specific nature of the privilege being asserted, as well as, *inter alia*, the nature and subject matter of the communication at issue and the sender and receiver of the communication and their relationship to each other. If a general objection of privilege is made without attaching a proper privilege log, the objection of privilege may be deemed waived.

With the foregoing principles in mind, the defendant is directed to submit new responses to outstanding discovery requests. If any disputes arise to the new responses, the parties must comply with the meet and confer requirements of Local Rule 7.02 prior to filing any such motion, and they should earnestly attempt to resolve discovery disputes prior to court involvement if at all possible.

IT IS SO ORDERED.

May 13, 2013
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

1681-1681x; and Section 6 of the Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2605, and its implementing regulation, Regulation X, 12 C.F.R. part 1024, to obtain permanent injunctive relief, restitution, disgorgement, civil money penalties, and other relief for violations of the CFPA, FDCPA, FCRA, and RESPA by Green Tree.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1337(a), and 1345; under 15 U.S.C. §§ 45(a)(1) and 53(b) with respect to FTC Act claims; under 12 U.S.C. § 5565(a)(1) with respect to CFPA claims; under 15 U.S.C. § 1692i with respect to FDCPA claims; under 15 U.S.C. § 1681s with respect to FCRA claims; and under 12 U.S.C. § 2614 with respect to RESPA claims.

4. Venue is proper in the United States District Court for the District of Minnesota because Green Tree is located in and does business in this District, 28 U.S.C. §§ 1391(b) and (c), 15 U.S.C. § 53(b), and 12 U.S.C. § 5564(f).

PARTIES

5. Plaintiff FTC is an independent agency of the United States Government given statutory authority and responsibility by the FTC Act, *as amended*, 15 U.S.C. §§ 41-58.

6. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to address violations of any provision of law enforced by the FTC. 15 U.S.C. § 53(b). The FTC is charged, *inter alia*, with enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce; the FDCPA, 15 U.S.C. §§ 1692-1692p, which prohibits abusive,

deceptive, and unfair debt collection practices; and the FCRA, 15 U.S.C. § 1681-1681x, which imposes duties upon consumer reporting agencies and those who furnish information to a consumer reporting agency or use information obtained from a consumer reporting agency.

7. Plaintiff CFPB is an independent agency of the United States Government charged with regulating the offering and provision of consumer financial products or services under Federal consumer financial laws. 12 U.S.C. § 5491(a).

8. The CFPB is authorized to initiate federal district court proceedings, by its own attorneys, to address violations of Federal consumer financial law, including the CFPA, the FDCPA, the FCRA, and RESPA. 12 U.S.C. § 5564(a)-(b). Sections 1031 and 1036(a) of the CFPA, 12 U.S.C. §§ 5531 and 5536(a), prohibit unfair, deceptive, or abusive acts or practices, or other violations of Federal consumer financial law, by any covered person or service provider.

9. The Defendant, Green Tree, is a Delaware limited liability company, with its principal place of business in St. Paul, Minnesota. At all times material to this Complaint, Green Tree has transacted business in this District and throughout the United States, and has engaged in the business of servicing and collecting payments on residential mortgage loans.

COMMERCE

10. At all times material to this Complaint, Green Tree has maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

GREEN TREE'S BUSINESS PRACTICES

11. Green Tree is a mortgage servicing company. Green Tree contracts with the mortgage lenders who initially extend mortgages to consumers. As the servicer, Green Tree is then responsible for, among other things, creating and sending monthly statements to borrowers, collecting payments, processing payments, ensuring that the mortgaged property is insured, and processing property tax payments. The company markets itself to lenders as a high-touch servicer and collector.

12. Green Tree has used extremely aggressive collection tactics in its rapidly growing servicing business. Consumers are especially vulnerable to Green Tree's tactics because they are locked into a relationship with the company; in order to remain in their homes, consumers must deal with the company for as long as it services their loans, regardless of how they are treated by Green Tree or the company's employees.

Green Tree's Loan Servicing and Collection Practices

13. Green Tree is a prominent servicer of "credit-sensitive" residential mortgage and manufactured-housing loans. Before 2008, Green Tree's operations primarily consisted of originating and servicing loans for manufactured housing. During the past five years, while Green Tree has continued to service manufactured-housing loans, it has shifted its focus to servicing residential loans, and it has acquired servicing rights to large portfolios of such loans.

14. In recent years, Green Tree has expanded the portfolio of loans that it services at a rapid pace. At the end of 2012, Green Tree serviced roughly 900,000 residential mortgage loans, with an unpaid principal balance of approximately \$74

billion. Subsequently, in January 2013, Green Tree acquired servicing rights for 350,000 Fannie Mae loans previously serviced by Residential Capital, LLC. Also in January 2013, Green Tree acquired mortgage-servicing rights for 650,000 Fannie Mae loans from Bank of America.

15. Green Tree's servicing portfolio includes a substantial number of mortgages for which consumers have difficulty making payments. Many of the loans that Green Tree services were in default at the time that Green Tree acquired them, and the overall delinquency rate for Green Tree loans is high compared to rates for other servicers. The overall delinquency rate for Green Tree's first lien third-party servicing portfolio at the end of 2012 was 15.68%.

16. In its efforts to acquire more servicing business, Green Tree has marketed itself as a "high-touch servicer," meaning that it places collection calls to consumers frequently in an effort to get them to make timely payments on their loans. It also has used "behavioral risk scoring," which analyzes consumers' delinquency and payment history, to predict the likelihood that consumers will default on their loans and to determine when and how often to call consumers.

17. Since at least 2008, Green Tree's collections department has been charged with communicating with consumers who have missed their payment due date by at least one day, have not paid before a late fee has been assessed, or are already in default on their mortgage. Green Tree's collections department separates collectors into "front-end" and "back-end" collectors. Front-end collectors call consumers who are between one and twenty-nine days late with their mortgage payments. Back-end collectors generally call

consumers who are thirty or more days late in making their payments. Back-end collectors typically call consumers more frequently and exert more pressure on consumers than front-end collectors.

18. Although consumers do not have contact with back-end collectors unless and until they are late on their loans, Green Tree assigns every consumer a back-end collector (which Green Tree also calls a “single point of contact” or “SPOC”) as soon as Green Tree acquires the servicing rights to the consumer’s loan. Once consumers are thirty days late on their loans (and sometimes earlier if Green Tree decides that an aggressive approach is needed), a consumer interfaces with Green Tree mainly, if not exclusively, through the assigned back-end collector.

19. Consumers receive many collection calls from their assigned back-end collector. In addition, whenever consumers who are delinquent by 30 days or more call Green Tree’s 800 number with questions – including questions about their account status, fees, loss mitigation options, or escrow accounts – they are routed automatically to their assigned back-end collector, or to another available back-end collector if their assigned collector is unavailable.

20. As a result of Green Tree’s routing system for handling incoming calls, consumers have often been routed to a collector instead of a customer service representative. Indeed, many consumers’ only option is to speak with collectors when they have questions or problems with their accounts. Even consumers who have reached customer service representatives have often first been asked to schedule a payment before receiving assistance if they are behind on their mortgage payments.

Green Tree's Loss Mitigation Activities

21. Through Green Tree, consumers who are having difficulty paying their mortgages can seek loss mitigation assistance, which includes loan modifications, deferrals, extensions, and forbearances. Consumers may also arrange a short sale of their house as long as they obtain approval. As a mortgage servicer, Green Tree has the delegated authority from the investors that own the loans to approve short sale requests in some instances. In other cases, Green Tree must seek approval from the investors before a short sale can proceed.

22. Primary responsibility for guiding consumers through the loss mitigation process rests with Green Tree's back-end collectors. The back-end collector assigned to the consumer's account is responsible for sending the consumer application materials, contacting the consumer about any missing documents, and otherwise interacting with the consumer throughout the loss mitigation evaluation process.

23. Green Tree has not always informed consumers that those tasked with providing assistance are back-end collectors. Rather, Green Tree has represented in correspondence to consumers that "customer service" and "account representatives" will assist consumers with loss mitigation options, questions about pending loan modification applications, missing loan modification application documents, and questions about debt validation notices involving delinquencies.

24. But Green Tree's compensation structure has not incentivized back-end collectors to work on loan modifications. The company's performance evaluations and compensation plans have not rewarded back-end collectors for work on loan

modifications. Instead, a back-end collector's primary responsibility has been to handle collection work for the consumer's account if it is more than 30 days delinquent.

25. Green Tree participates in the Making Home Affordable ("MHA") program, which was launched by the United States Department of the Treasury in February of 2009. The MHA program was designed to help eligible homeowners refinance or modify their loans to obtain affordable payments. The Home Affordable Modification Program ("HAMP"), which is part of the MHA program, allows participating mortgage servicers to provide loan modifications under certain terms proscribed by the program in exchange for incentive payments.

26. As a participating mortgage servicer, Green Tree offers loan modifications to consumers under HAMP. Consumers may be eligible for HAMP modifications if they have a financial hardship, are behind on their payments, or default is reasonably foreseeable. Consumers may also be eligible for proprietary modifications offered by the investors who own their mortgage loans. The guidelines for proprietary modifications are set by these groups of investors.

27. HAMP focuses on affordable and sustainable modifications. HAMP also provides consumers and the investors who own the consumers' mortgages financial incentives for successful participation. Additional consumer benefits under HAMP modifications include waiver of late fees and a prohibition on modification fees. Proprietary modifications vary and may not provide similar benefits.

28. The HAMP guidelines prohibit a servicer from requiring a consumer to make any "good faith" payment or up-front cash contribution to be considered for a

HAMP modification. Consumers who are unable to make a payment may, in fact, be considered for a loan modification or otherwise be evaluated for potential loss mitigation options.

29. In numerous instances, however, Green Tree's back-end collectors have represented to consumers that they must make a loan payment before they can be considered for a loan modification.

30. Another loss mitigation option that consumers might explore is a short sale. When a consumer sells a home in a short sale, the proceeds obtained typically fall short of the mortgage balance. The investor group that owns the consumer's mortgage must agree to the short sale, since it typically means they will release their claims on the property for less than the amount they are owed. As the investors' agent, Green Tree either makes the short sale decision if it has authority to do so or facilitates the communication between the investors and consumer if it cannot approve or deny a short sale request itself.

31. In numerous instances, the investors who own consumers' mortgages have an incentive to agree to short sales because the amount they are paid – even if less than the amount owed – is greater than what they would typically recover if the property went into foreclosure. By agreeing to a short sale, they also avoid the fees and costs associated with a foreclosure action.

32. In relation to foreclosure, short sales also can be advantageous to consumers. Although a short sale still will negatively impact a consumer's credit, the impact is generally less severe than that of a foreclosure. In addition, short sales are

usually easier to plan for, as opposed to the unpredictable and frequently lengthy foreclosure process, and typically result in a waiver of deficiency amounts.

33. Some of the loans Green Tree services are owned by participants in the Home Affordable Foreclosure Alternative (“HAFA”) program, which is part of the MHA program. HAFA requires short sale requests to be reviewed within 30-45 days depending on the owner of the loan. Green Tree also services loans for investors that do not participate in HAFA. These loans often have their own short sale requirements that Green Tree must follow.

34. In response to consumer requests for approval of a short sale, Green Tree has represented to consumers in numerous instances that it would review and respond to the request within a set time period, e.g., within 30 days.

35. In numerous instances, however, consumers’ requests to Green Tree for approval of a short sale have met with significant delays. Green Tree’s short sale department frequently has been unreachable and nonresponsive. Despite multiple calls to the short sale negotiators, consumers and those working on their behalf have not received return calls. Negotiator voice mailboxes often have been full and would not accept messages. In numerous instances, Green Tree has taken two to six months to respond to consumers’ short sale requests.

36. In numerous instances, as a result of these misrepresentations, consumers have lost potential buyers who were not expecting to wait months to complete the sale. They also may have forgone other loss mitigation alternatives while their short sale requests were pending and ultimately faced foreclosures they could have avoided.

Green Tree's Failure to Recognize Consumers' "In-Process" Modifications

37. After Green Tree acquires servicing rights to a portfolio of loans, it gathers certain information about those loans from the prior servicer. The data gathered is commonly referred to as the "standard servicing data extract." Detailed loss mitigation data is not part of the standard servicing data extract that Green Tree acquires from prior servicers. In many instances, the loss mitigation data acquired by Green Tree has been incomplete or inaccurate.

38. To obtain a permanent HAMP modification, consumers are required to first enter into a trial period plan ("TPP") with the servicer. HAMP TPPs generally entitle the consumer to a permanent modification so long as the consumer makes all trial payments. Proprietary modifications may also have trial period plans that typically result in permanent modifications upon successful completion of all payments.

39. Many mortgages Green Tree acquires from other servicers have "In-Process Loan Modifications" in place at the time of acquisition. Some of these modifications are trial modifications, including HAMP TPPs, in which the prior servicer agreed to modify the loan payment terms and, in many cases, the consumer began to make the modified monthly payments. Others involve consumers who have completed making the trial payments by the time their loans were transferred to Green Tree but whose permanent modification was not input into the prior servicer's system before the transfer.

40. In many instances, the loss mitigation data Green Tree has acquired regarding these In-Process Modifications has been incomplete or inaccurate. Green Tree employees assigned to work on the acquisition are responsible for requesting specific

data such as the trial payment history and modification documents, but in numerous instances, there has been no process in place to confirm that this data has in fact been requested or received.

41. In numerous instances, Green Tree has learned about In-Process Modifications from consumers during Green Tree's initial "Welcome Call" or subsequent collection calls. Green Tree would not honor an In-Process Modification, however, without conducting its own "validation."

42. As part of its validation process, Green Tree has asked the consumer or the prior servicer to provide a copy of the consumer's modification paperwork.

43. In numerous instances, if Green Tree has learned of an In-Process Modification from a consumer, but the information provided by the consumer does not match the account information provided by the prior servicer, it has not honored the In-Process Modification. In numerous instances, even if Green Tree subsequently has obtained evidence from the prior servicer of an In-Process Modification, it still has not honored the In-Process Modification.

44. When Green Tree has not honored a consumer's In-Process Modification, in numerous instances, the consumer has had to resubmit a loan modification application and Green Tree has conducted its own assessment of the consumer's eligibility for a loan modification. Green Tree has conducted this assessment for proprietary and HAMP modifications alike.

45. But, in numerous instances, Green Tree's validation process has delayed recognition of a consumer's In-Process Modification for months, if it is even ultimately

recognized at all. Green Tree has required many consumers to be re-evaluated for a modification and to resubmit documents several months after beginning or completing their initial trial modification. Consumers also have continued to receive collection calls while their In-Process Modification is being resolved. And Green Tree has continued to seek payments from these consumers under the original, unmodified mortgage loan, and has continued with its foreclosure timeline if consumers do not make payments.

46. In numerous instances, Green Tree has received written inquiries from consumers regarding errors in their accounts related to their In-Process Modifications, including the monthly payment amount, interest rate, and delinquency status.

47. In numerous instances, Green Tree has failed to recognize such inquiries as “qualified written requests” subject to RESPA and has failed to acknowledge receipt within 20 days and to respond to consumers about account errors within 60 days by either correcting erroneous account information or explaining why the account information is not in error.

48. In numerous instances, Green Tree has furnished adverse information regarding payments that were the subject of qualified written requests to consumer reporting agencies during the 60 day period following receipt.

Green Tree’s False or Unsubstantiated Claims

49. A large number of loans Green Tree acquired from other servicers have contained inaccurate data regarding the status of the loan, fees owed, and corporate advances.

50. As described above, a large number of loans acquired from other servicers have contained inaccurate or incomplete data regarding the consumers' in-process loan modifications.

51. In some instances, Green Tree knew or had reason to believe that specific portfolios of loans contained unreliable or missing data about the consumers' loans.

52. In many instances, consumers have disputed or attempted to dispute the amounts that Green Tree claims the consumers owe or other aspects of the loan terms. In many of these instances, Green Tree has refused to consider the disputes.

53. In many instances in which consumers have disputed the amounts that Green Tree claims they owe, Green Tree eventually has admitted that the consumers do not owe the amounts initially claimed.

54. In many instances, Green Tree has made false representations about the amounts consumers owe or the terms of their loans. For the reasons described above in paragraphs 49-53, in many instances, Green Tree knew or should have known that the amounts it claimed consumers owed or the loan terms it imposed upon consumers were inaccurate.

Green Tree's Unlawful Collection Practices

55. From its offices in St. Paul, Minnesota, Tempe, Arizona, Fort Worth, Texas, and Rapid City, South Dakota, and from several smaller regional offices, Green Tree engages in debt collection activities throughout the United States. Green Tree regularly attempts to collect debts by placing telephone calls to consumers.

56. Green Tree's collection activities are governed by Section 5 of the FTC Act and Sections 1031 and 1036(a)(1)(B) of the CFPA, both of which prohibit unfair or deceptive acts or practices. For mortgages in default at the time Green Tree acquired them, Green Tree is a debt collector as defined by the FDCPA and its collection activities are covered by the FDCPA, in addition to the FTC Act and the CFPA.

57. In numerous instances in which the debt was already in default at the time Green Tree acquired it, Green Tree has called third parties more than once to obtain location information for consumers, even though: (i) the third parties have not requested additional calls, and (ii) Green Tree had no reason to believe that the information originally obtained from the third parties was inaccurate or incomplete.

58. In numerous instances, Green Tree has revealed debts to consumers' employers and co-workers. Such disclosures can adversely affect consumers' employment situations, including, among other things, job retention, promotions, compensation, or job assignments.

59. In numerous instances in which the debt was already in default at the time Green Tree acquired it, Green Tree has revealed debts to third parties, such as family members, employers, co-workers, tenants, and neighbors of consumers. Sometimes, Green Tree has encouraged third parties to tell the consumers to get in touch with Green Tree and set up a payment, or has encouraged the third parties to help consumers make payments.

60. In numerous instances in which the debt was already in default at the time Green Tree acquired it, Green Tree has called consumers at unusual times or places, or

times or places which it knew or should have known to be inconvenient to the consumers. For example, Green Tree has called: (i) early in the morning, such as at 5:00 a.m., or late at night, such as at 11:00 p.m.; and (ii) at times or places that consumers have informed Green Tree are inconvenient.

61. In numerous instances, Green Tree has called consumers at work, even though the consumers have previously informed Green Tree that the consumers' employers prohibit them from receiving personal telephone calls at work. In some instances, consumers have been disciplined at work due to the impermissible calls.

62. In numerous instances in which the debt was already in default at the time Green Tree acquired it, Green Tree has used obscene, profane, or abusive language in its collection calls, such as calling consumers "deadbeats" or "worthless," telling them "you should leave your husband if he can't provide for you" or to "get a real job," mocking consumers' illnesses or other struggles, and yelling and cursing at consumers.

63. In numerous instances in which the debt was already in default at the time Green Tree acquired it, Green Tree has called consumers repeatedly with the intent to annoy, harass, or abuse. For example, Green Tree collectors frequently have: (i) called consumers between seven and twenty times per day, every day, week after week; (ii) called consumers again despite having already spoken to the consumers earlier that day; (iii) called consumers again as soon as a call is terminated; and (iv) left multiple voicemail messages for consumers in the same day.

64. In numerous instances, Green Tree has represented that nonpayment of consumers' mortgages will result in their arrest or imprisonment, or the seizure,

garnishment, attachment, or sale of property or wages, when in fact such action is not lawful or Green Tree does not intend to take such action. Green Tree often has represented that it will foreclose upon consumers' homes if consumers do not make their payments over the phone immediately. In fact, Green Tree often has made such representations even though (a) it was long before it was lawful to initiate foreclosure proceedings; (b) the company lacks authority to arrest or imprison consumers, or (c) it is not company policy to seek a garnishment of consumers' wages.

**Green Tree's Representations Regarding
Payments and Use of Unauthorized Withdrawals**

65. In numerous instances, Green Tree has pressured consumers to make payments using Speedpay, a payment method that charges consumers a \$12 convenience fee per transaction. Green Tree often has represented to consumers, either expressly or by implication, that Speedpay is the only available payment method, or that consumers must use Speedpay in order to avoid incurring a late fee. In fact, Green Tree accepts several other payment methods, some of which do not charge consumers a convenience fee. For example, Green Tree accepts checks and ACH payments without assessing consumers a convenience fee. In many instances, consumers could have used these other payment methods to make timely payments and avoid a late fee.

66. In numerous instances, Green Tree has taken payments from consumers' bank accounts without the consumers' authorization. For example, consumers who provide their bank account information to Green Tree to set up one payment through

Speedpay have later discovered that the company used their account information to set up additional, unauthorized payments.

67. In numerous instances, Green Tree has represented that consumers do not have a “grace period” after the due date on their loans, during which they would be able to make a payment without incurring a late fee. In fact, consumers’ promissory notes do recognize a period between the due date and the date on which a late fee is assessed. In other words, the notes contain a “grace period.” In part due to Green Tree’s misrepresentations regarding the grace period, many consumers have used expedited payment methods that charge a convenience fee, under the belief that such methods are the only way to make timely payments without a grace period.

Green Tree’s Inaccurate Reporting to Credit Bureaus

68. In numerous instances, Green Tree has furnished consumers’ credit information to consumer reporting agencies when it knew, or had reasonable cause to believe, that the information was inaccurate. Similarly, in numerous instances, Green Tree has failed to correct information that it furnished to a consumer reporting agency once it determined that the information furnished was not complete or accurate. In many of these instances, consumers have informed Green Tree that it reported incorrect information to the consumer reporting agencies, yet it failed to correct the information.

Green Tree’s Problems with Handling Escrow Accounts

69. As part of its work as a mortgage servicer, Green Tree administers consumers’ escrow accounts. For consumers whose loans include escrow accounts, Green Tree calculates the annual amount necessary to cover required property tax and

insurance payments, as applicable, divides that sum into 12 installments, and includes the resulting amount in consumers' required monthly payment. Green Tree generally also includes an additional amount as a "cushion" to prevent a shortfall in the escrow account. Cushions, if properly calculated, are permissible under RESPA.

70. When Green Tree receives payments from consumers with escrow accounts, it disburses the principal and interest portion of the payment to the appropriate entity. The remaining amount is held in a segregated account to be disbursed to the appropriate taxing authority or insurance company when their tax and insurance payments come due.

71. In numerous instances, however, Green Tree has failed to timely pay property taxes for consumers. Green Tree's failure to make timely tax payments has jeopardized consumers' continued home ownership and, in some instances, also has caused consumers' names to be listed in local publications on the delinquent tax rolls.

VIOLATIONS OF SECTION 5 OF THE FTC ACT AND THE CFPA

72. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

73. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. Acts or practices are unfair under Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

74. Sections 1031 and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531 and 5536(a)(1)(B), prohibit covered persons from engaging “in any unfair, deceptive, or abusive act or practice.” Acts or practices are unfair under the CFPA if “the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers” and “such substantial injury is not outweighed by countervailing benefits to consumers or competition.” 12 U.S.C. § 5531(c).

75. Green Tree is a “covered person” within the meaning of the CFPA, 12 U.S.C. §§ 5481(6).

Deceptive Acts and Practices Regarding Account Terms and Status

76. In numerous instances in the course of servicing mortgage loans and collecting debts from consumers, Green Tree has represented to consumers, directly or indirectly, expressly or by implication, that the consumers’ mortgage loans have certain unpaid balances, payment due dates, interest rates, monthly payment amounts, delinquency statuses, and unpaid fees or other amounts due.

77. In truth and in fact, in numerous instances the material representations set forth in Paragraph 76 were false or were not substantiated at the time the representations were made, including but not limited to representations made where:

- a. Green Tree had knowledge or reason to believe that a specific portfolio contained unreliable data but failed to obtain information substantiating the accuracy of the data prior to collecting;
- b. Green Tree had knowledge or reason to believe that a consumer had an In-Process Loan Modification with the prior servicer of the loan but continued

to seek to collect payments from the consumer under the original, unmodified mortgage loan terms; or

c. Consumers disputed or attempted to dispute the validity or accuracy of the amount of debt and Green Tree failed to review information substantiating the amount of debt, or failed to consider the consumers' disputes, prior to continuing collection.

Count I by Plaintiff FTC

78. Green Tree's representations as set forth in Paragraph 76 are false or misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II by Plaintiff CFPB

79. Green Tree's representations as set forth in Paragraph 76 are false or misleading and constitute a deceptive act or practice in violation of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B).

**Deceptive Acts and Practices Regarding the Requirements
for Loan Modification Consideration**

80. In numerous instances, in connection with servicing mortgage loans, Green Tree employees have represented, directly or indirectly, expressly or by implication, that consumers have to make a payment on their loans before Green Tree would consider them for a loan modification.

81. In truth and in fact, in numerous instances, consumers did not need to make payments on their loans before they could be considered for a loan modification. For

example, the Home Affordable Modification Program (“HAMP”), in which Green Tree participates, does not allow participating servicers to require consumers to make payments before considering them for a loan modification.

Count III by Plaintiff FTC

82. Green Tree’s representations as set forth in Paragraph 80 are false or misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count IV by Plaintiff CFPB

83. Green Tree’s representations as set forth in Paragraph 80 are false or misleading and constitute a deceptive act or practice in violation of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B).

**Deceptive Acts and Practices Regarding Reviewing
and Responding to Short Sale Requests**

84. In numerous instances, in connection with servicing mortgage loans, Green Tree has represented to consumers, directly or indirectly, expressly or by implication, that it will review and respond to consumers’ requests to be considered for a short sale within a set time period (e.g. within 30 days).

85. In truth and in fact, in numerous instances, Green Tree failed to review and respond to consumers’ requests to be considered for a short sale in a timely manner (e.g., within 30 days).

Count V by Plaintiff FTC

86. Green Tree's representations as set forth in Paragraph 84 are false or misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count VI by Plaintiff CFPB

87. Green Tree's representations as set forth in Paragraph 84 are false or misleading and constitute a deceptive act or practice in violation of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B).

Deceptive Acts and Practices Regarding Payment Collection Threats

88. In numerous instances in the course of servicing mortgage loans and collecting debts from consumers, Green Tree has represented to consumers, directly or indirectly, expressly or by implication, that nonpayment of their mortgage loan will result in the arrest or imprisonment of consumers or the seizure, garnishment, attachment, or sale of the consumers' property or wages.

89. In truth and in fact, in numerous instances, nonpayment of a mortgage loan would not have resulted in a consumer's arrest or imprisonment, or seizure, garnishment, or attachment of a consumer's property or wages.

Count VII by Plaintiff FTC

90. Green Tree's representations as set forth in Paragraph 88 are false or misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count VIII by Plaintiff CFPB

91. Green Tree's representations as set forth in Paragraph 88 are false or misleading and constitute a deceptive act or practice in violation of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B).

Deceptive Acts and Practices Regarding Available Payment Methods

92. In numerous instances in the course of servicing mortgage loans and collecting debts from consumers, Green Tree has represented, directly or indirectly, expressly or by implication, that a payment method that entails a convenience fee is the only payment method available or the only payment method that consumers can use to make timely payments.

93. In truth and in fact, in numerous instances, a payment method that entails a convenience fee was not the only payment method available or the only payment method that consumers can use to make timely payments.

Count IX by Plaintiff FTC

94. Green Tree's representations as set forth in Paragraph 92 are false or misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count X by Plaintiff CFPB

95. Green Tree's representations as set forth in Paragraph 92 are false or misleading and constitute a deceptive act or practice in violation of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B).

Unfair Acts and Practices Regarding Unauthorized Withdrawals

96. In numerous instances in the course of servicing mortgage loans and collecting debts from consumers, Green Tree has caused consumers' bank accounts to be debited without having previously obtained consumers' consent.

97. Green Tree's actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

Count XI by Plaintiff FTC

98. Green Tree's practices as described in Paragraph 96 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

Count XII by Plaintiff CFPB

99. Green Tree's practices as described in Paragraph 96 constitute unfair acts or practices in violation of the CFPA, 12 U.S.C. §§ 5531(a) and (c)(1), and 12 U.S.C. § 5536(a)(1)(B).

Unfair Acts and Practices Regarding In-Process Loan Modifications

100. In numerous instances, in connection with servicing mortgage loans, Green Tree has unilaterally breached contracts that consumers negotiated with the prior servicers of their loans by not honoring In-Process Loan Modifications that consumers had obtained from their prior servicers.

101. Green Tree's actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

Count XIII by Plaintiff FTC

102. Green Tree's practices as described in Paragraph 100 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

Count XIV by Plaintiff CFPB

103. Green Tree's practices as described in Paragraph 100 constitute unfair acts or practices in violation of the CFPA, 12 U.S.C. §§ 5531(a) and (c)(1), and 12 U.S.C. § 5536(a)(1)(B).

**Unfair Acts and Practices Regarding Contacting
Consumers' Place of Employment**

104. In numerous instances, in connection with servicing mortgage loans and collecting debts from consumers, Green Tree has: (1) called consumers at their place of employment after being advised by the consumers that such calls were not permitted by their employer; and (2) communicated with consumers' employers and co-workers without consumers' knowledge or consent, disclosing the existence and, sometimes, the amount of consumers' debts to employers and co-workers.

105. Green Tree's actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

Count XV by Plaintiff FTC

106. Green Tree's practices as described in Paragraph 104 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

Count XVI by Plaintiff CFPB

107. Green Tree's practices as described in Paragraph 104 constitute unfair acts or practices in violation of the CFPA, 12 U.S.C. §§ 5531(a) and (c)(1), and 12 U.S.C. § 5536(a)(1)(B).

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

108. In 1977, Congress passed the FDCPA, 15 U.S.C. §§ 1692 *et seq.*, which became effective on March 20, 1978, and has been in force since that date. Section 814 of the FDCPA, 15 U.S.C. § 1692l(a), provides that a violation of the FDCPA shall be deemed an unfair or deceptive act or practice in violation of the FTC Act. Section 814 of the FDCPA, 15 U.S.C. § 1692l(a), also authorizes the Federal Trade Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FDCPA by any debt collector, irrespective of whether that debt collector is engaged in commerce or meets any other jurisdictional tests set by the FTC Act. The authority of the Federal Trade Commission in this regard includes the power to enforce the provisions of the FDCPA in the same manner as if the violations of the FDCPA were violations of an FTC trade regulation rule. In 2010, Congress amended the FDCPA to grant authority to the CFPB, in addition to the FTC, to enforce the FDCPA with respect to any person subject to the CFPA. 15 U.S.C. § 1692l(b)(6).

109. The term "consumer" as defined in Section 803(3) of the FDCPA, 15 U.S.C. § 1692a(3), means "any natural person obligated or allegedly obligated to pay any debt."

110. The term “debt” as defined in Section 803(5) of the FDCPA, 15 U.S.C. § 1692a(5), means “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment.”

111. The term “location information” as defined in Section 803(7) of the FDCPA, 15 U.S.C. § 1692a(7), means “a consumer’s place of abode and his telephone number at such place, or his place of employment.”

112. The term “debt collector” as defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6), includes any person who “regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” It does not include a person collecting debts that were not in default at the time that the person obtained them. 15 U.S.C. § 1692a(6)(F)(iii).

113. Green Tree acquires servicing rights to some mortgages that are in default at the time of transfer and proceeds to collect on those mortgages. With respect to these debts, Green Tree is a debt collector as defined by the FDCPA and its collection activities are covered by the FDCPA.

**Count XVII by Plaintiffs FTC and CFPB:
Unauthorized Communications with Third Parties**

114. Section 804 of the FDCPA, 15 U.S.C. § 1692b, governs the manner in which debt collectors may communicate with any person other than the consumer for purposes of acquiring location information about the consumer. Section 804(3) prohibits

debt collectors from communicating with any person for the purpose of acquiring location information more than once unless so requested by the person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete information.

115. In numerous instances in connection with the collection of debts, Green Tree, directly or indirectly, has communicated more than once with persons other than the consumer for the alleged purpose of obtaining location information about the consumer without a reasonable belief that the earlier response of the person was erroneous or incomplete and the person had subsequently obtained correct or complete location information.

116. The acts and practices alleged in Paragraph 115 constitute violations of Section 804(3) of the FDCPA, 15 U.S.C. §§ 1692b(3).

**Count XVIII by Plaintiffs FTC and CFPB:
Disclosing Debts to Third Parties**

117. Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b), prohibits communications with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector, unless the consumer gives prior consent to the debt collector directly. For the purpose of Section 805(b), Section 805(d) of the FDCPA defines the term “consumer” to include “the consumer’s spouse, parent (if the consumer is a minor), guardian, executor, or administrator.”

118. In numerous instances, in connection with the collection of debts, Green Tree, directly or indirectly, has communicated about a debt with persons other than the consumer; the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator; a consumer reporting agency; the creditor; or their attorneys. Green Tree has engaged in these communications without the permission of the consumer, or as otherwise allowed by Section 804.

119. The acts and practices alleged in Paragraph 118 constitute violations of Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b).

**Count XIX by Plaintiffs FTC and CFPB:
Calling at an Unusual or Inconvenient Time or Place and
Calling a Place of Employment**

120. Section 805(a)(1) prohibits communications with a consumer in connection with the collection of any debt at a time or place known or which should be known to be inconvenient to the consumer, and Section 805(a)(3) specifically prohibits communications with a consumer at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication. For the purpose of Sections 805(a)(1) and (a)(3), Section 805(d) of the FDCPA defines the term "consumer" to include "the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator."

121. In numerous instances, in connection with the collection of debts, Green Tree, directly or indirectly, has communicated with a consumer or the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator in

connection with the collection of debts at a time or place known by Green Tree or which should have been known by Green Tree to be inconvenient to the consumer.

122. In numerous instances, in connection with the collection of debts, Green Tree, directly or indirectly, has communicated with a consumer or the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator at that person's place of employment even though Green Tree knew or had reason to know that the employer prohibited the person from receiving such communication.

123. The acts and practices alleged in Paragraphs 121-122 constitute violations of Section 805(a) of the FDCPA, 15 U.S.C. § 1692c(a).

**Count XX by Plaintiffs FTC and CFPB:
Use of Obscene or Profane Language and
Annoying, Abusive, or Harassing Phone Calls**

124. Section 806 of the FDCPA, 15 U.S.C. § 1692d, prohibits debt collectors from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Section 806(2) specifically prohibits debt collectors from using obscene or profane language or language the natural consequence of which is to abuse the hearer or reader. Section 806(5) prohibits debt collectors from causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

125. In numerous instances in connection with the collection of debts, Green Tree, directly or indirectly, has engaged in conduct the natural consequence of which is to harass, oppress, or abuse persons.

126. In numerous instances in connection with the collection of debts, Green Tree, directly or indirectly, has used obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

127. In numerous instances in connection with the collection of debts, Green Tree, directly or indirectly, has caused telephones to ring or engaged persons in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass the persons at the called numbers, and the natural consequence of such calls has been to harass, oppress or abuse persons.

128. The acts and practices alleged in Paragraphs 125-127 constitute violations of Section 806 of the FDCPA, 15 U.S.C. § 1692d.

Count XXI by Plaintiffs FTC and CFPB:
False or Misleading Representations to Collect a Debt

129. Section 807 of the FDCPA, 15 U.S.C. § 1692e, prohibits debt collectors from using any false, deceptive, or misleading representation or means in connection with the collection of any debt. Section 807(2)(a) specifically prohibits the false representation of the character, amount, or legal status of any debt. Section 807(4) prohibits the representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action. Section 807(10) prohibits debt collectors from using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

130. In numerous instances in connection with the collection of debts, Green Tree, directly or indirectly, has made false representations about the character, amount, or legal status of a debt, including but not limited to false statements:

A. About consumers' loan terms, when it acquired loans that had In-Process Modifications; and

B. That consumers owe fees or other amounts.

131. In numerous instances in connection with the collection of debts, Green Tree, directly or indirectly, has represented that nonpayment of a debt would result in the arrest or imprisonment of consumers or the seizure, garnishment, attachment, or sale of the consumers' property or wages, when in fact such action was not lawful or Green Tree did not intend to take such action.

132. In numerous instances in connection with the collection of debts, Green Tree, directly or indirectly, has falsely represented that a payment method that entails a convenience fee was the only payment method available or the only payment method consumers could use to make timely payments.

133. The acts and practices alleged in Paragraphs 130-132 constitute violations of Section 807 of the FDCPA, 15 U.S.C. § 1692e.

Count XXII by Plaintiffs FTC and CFPB:
Unfair Acts and Practices Regarding Unauthorized Withdrawals and Collection of
Amounts Not Authorized by the Agreement or Permitted by Law

134. Section 808 of the FDCPA, 15 U.S.C. § 1692f, prohibits debt collectors from using any unfair or unconscionable means to collect or attempt to collect any debt.

Section 808(1) specifically prohibits the collection of any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

135. In numerous instances in connection with the collection of debts, Green Tree has caused payments to be taken from consumers' bank accounts without having previously obtained consumers' consent.

136. In numerous instances in connection with the collection of debts, Green Tree unilaterally breached loan modification contracts that consumers negotiated with the prior servicers of their loans when it did not honor In-Process Loan Modifications that consumers were entitled to under these contracts. Green Tree subsequently collected or attempted to collect amounts that were not authorized by the company's contracts with consumers or permitted by law.

137. The acts and practices alleged in Paragraphs 135-136 constitute violations of Section 808 of the FDCPA, 15 U.S.C. § 1692f.

VIOLATIONS OF THE FAIR CREDIT REPORTING ACT

138. The FCRA, 15 U.S.C. § 1681 *et seq.*, was enacted in 1970 and became effective on April 25, 1971. The Act has been in force since that date. In 1996, the FCRA was amended extensively by Congress. Among other things, Congress added Section 623 of the Act, which delineated the responsibilities of furnishers of information to consumer reporting agencies and became effective on October 1, 1997.

139. Section 621 of the FCRA, 15 U.S.C. § 1681s(a), authorizes the Federal Trade Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FCRA by all persons subject thereto except to the extent that

enforcement specifically is committed to some other governmental agency, irrespective of whether the person is engaged in commerce or meets any other jurisdictional tests set forth by the FTC Act. In 2010, Congress amended the FCRA to grant authority to the CFPB, in addition to the FTC, to enforce the FCRA with respect to any person subject to the CFPA. 15 U.S.C. § 1681s(b)(1)(H).

**Count XXIII by Plaintiffs FTC and CFPB:
Furnishing Information Known to Be Inaccurate**

140. Section 623(a)(1)(A) of the FCRA, 15 U.S.C. § 1681s-2(a)(1)(A), prohibits a person from furnishing information relating to any consumer to a consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.

141. In numerous instances in connection with furnishing information relating to a consumer to a consumer reporting agency, Green Tree has furnished such information while knowing or having reasonable cause to believe that the information was inaccurate.

142. The acts and practices alleged in Paragraph 141 constitute violations of Section 623(a)(1)(A) of the FCRA, 15 U.S.C. § 1681s-2(a)(1)(A).

**Count XXIV by Plaintiffs FTC and CFPB:
Failing to Correct Inaccurate Information**

143. Section 623(a)(2) of the FCRA, 15 U.S.C. § 1681s-2(a)(2), provides that a person who (A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer, and (B) has furnished to a consumer reporting agency information that the person determines is not complete and accurate, shall promptly notify the

consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains incomplete or inaccurate.

144. Green Tree regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about Green Tree's transactions or experiences with consumers.

145. In numerous instances in which Green Tree has furnished to a consumer reporting agency information that it determines is not complete and accurate, Green Tree has failed to promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, or thereafter furnishes to the agency any of the information that remains not complete and accurate.

146. The acts and practices alleged in Paragraph 145 constitute violations of Section 623(a)(2) of the FCRA, 15 U.S.C. § 1681s-2(a)(2).

VIOLATIONS OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT

147. The Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2605, covers certain acts and practices related to "federally related mortgage loans," including the servicing of those loans and the administration of their escrow accounts.

148. RESPA covers the conduct of “servicers.” A “servicer,” for purposes of RESPA, is “the person responsible for servicing of a loan.” Under RESPA, “servicing” means “receiving any scheduled periodic payments from a consumer pursuant to the terms of any loan . . . and making the payments of principal and interest and such other payments with respect to the amounts received from the consumer as may be required pursuant to the terms of the loan.”

149. During the relevant time period for our investigation, RESPA required servicers to provide a written response acknowledging receipt of borrower correspondence about errors in their accounts within 20 days. 12 U.S.C. § 2605(e). Effective January 10, 2014, the 20 day requirement was amended to 5 days.

150. During the relevant time period for our investigation, RESPA required servicers to respond to borrower correspondence about errors in their accounts within 60 days by either correcting erroneous account information or explaining to the borrower why the account information was not in error. 12 U.S.C. § 2605(e). Effective January 10, 2014, the 60 day requirement was amended, in most instances, to 30 days with a permissible 15 day extension.

151. Green Tree receives payments from consumers and is responsible for distributing those payments to the investors who own the consumers’ loans and, when the consumers’ loans include escrow accounts, to the consumers’ taxing authorities or insurance companies. Thus, it is a servicer within the meaning of RESPA. 12 C.F.R. § 1024.2(b).

152. The loans that Green Tree services are “secured by a first or subordinate lien on residential real property . . .” and are made in whole or in part by lenders that are regulated by agencies of the Federal Government. Therefore, those loans are “federally related mortgage loans” for the purposes of RESPA. 12 U.S.C. § 2602.

Count XXV by Plaintiff CFPB:
Failure to Timely Respond to Qualified Written Requests

153. Section 6(e)(1) of RESPA, 12 U.S.C. § 2605(e)(1), required servicers to provide a written response acknowledging receipt of a qualified written request from a consumer for information relating to the servicing of the loan within 20 days.

154. Within 60 days of receipt of a qualified written request, Section 6(e)(2) of RESPA, 12 U.S.C. § 2605(e)(2), required servicers to make corrections to a consumer’s account (and notify the consumer of the correction), conduct an investigation and tell the consumer the reason the account is not in error, or conduct an investigation and explain to the consumer why information requested is unavailable or cannot be obtained.

155. A qualified written request is “written correspondence . . . that (i) includes, or otherwise enables the servicer to identify, the name and account of the consumer; and (ii) includes a statement of the reasons for the belief of the consumer, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the consumer.” 12 U.S.C. § 2605(e)(1)(B).

156. Consumers have sent correspondence to Green Tree with sufficient information for Green Tree to identify their names and account numbers regarding issues with their unpaid loan balances, payment due dates, interest rates, monthly payment

amounts, and/or delinquency status. This correspondence constitutes a “qualified written request.”

157. Green Tree has failed to acknowledge receipt of these qualified written requests within 20 days and/or correct account errors or conduct investigations within 60 days. Therefore, it has violated Section 6(e) of RESPA, 12 U.S.C. § 2605(e)(2).

**Count XXVI by Plaintiff CFPB:
Failure to Protect Credit Rating**

158. Section 6(e)(3) of RESPA, 12 U.S.C. § 2605(e)(3), prohibits servicers from providing adverse information regarding any payment that is the subject of a qualified written request to any consumer reporting agency, as such term is defined under section 603 of the FCRA, for 60 days beginning on the date the servicer received the qualified written request.

159. Green Tree has provided adverse information regarding payments that were the subject of qualified written requests to consumer reporting agencies during the 60 day period. Therefore, it has violated Section 6(e)(3) of RESPA, 12 U.S.C. § 2605(e)(3).

**Count XXVII by Plaintiff CFPB:
Failure to Make Timely Escrow Account Disbursements**

160. Section 6(g) of RESPA, 12 U.S.C. § 2605(g), states that “[i]f the terms of any federally related mortgage loan require the consumer to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due.”

161. The requirements of Section 6(g) are further explained in Regulation X, 12 C.F.R. § 1024.17(k), which states that “[i]f the terms of any federally related mortgage loan require the consumer to make payments to an escrow account, the servicer must pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the consumer’s payment is not more than 30 days overdue.”

162. In numerous instances, for consumers whose loans included escrow accounts and who were either current on their mortgage payments or no more than 30 days past due, Green Tree has failed to pay the property taxes on or before the date the consumer would be charged a penalty.

163. Since Green Tree has failed to make payments from consumers’ escrow accounts for property taxes “in a timely manner as such payments become due,” it has violated Section 6(g) of RESPA, 12 U.S.C. § 2605(g).

CONSUMER INJURY

164. Consumers have suffered, and will continue to suffer, substantial injury as a result of Green Tree’s violations of Section 5(a) of the FTC Act, Sections 1031 and 1036(a)(1)(B) of the CFPA, the FDCPA, the FCRA, and RESPA, as set forth above. In addition, Green Tree has been unjustly enriched as a result of its unlawful acts or practices. Absent injunctive relief by this Court, Green Tree is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT’S POWER TO GRANT RELIEF

165. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is empowered to grant permanent injunctive relief and such other relief as the Court may

deem appropriate to halt and redress violations of any provision of law enforced by the FTC, including the FTC Act, the FDCPA, and the FCRA. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, the disgorgement of ill-gotten monies, and the costs of pursuing this action, to prevent and remedy any violation of any provision of law enforced by the FTC.

166. Under Section 1055 of the CFPA, 12 U.S.C. § 5565, this Court has “jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law . . .” including the CFPA, the FDCPA, the FCRA, and RESPA. 12 U.S.C. § 5565(a)(1). This relief includes rescission, refund of moneys, restitution, disgorgement or compensation for unjust enrichment, payment of damages or other monetary relief, public notification regarding the violation, limits on the activities or functions of the person, and civil money penalties. 12 U.S.C. § 5565(a)(2). In addition, the CFPB may recover its costs in connection with the action, if it is the prevailing party. 12 U.S.C. § 5565(b).

PRAYER FOR RELIEF

167. Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), Section 814(a) of the FDCPA, 15 U.S.C. §1692l(a), Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), and the Court’s own equitable powers; and Plaintiff CFPB, pursuant to Sections 1054 and 1055 of the CFPA, 12 U.S.C. §§ 5564 and 5565, Section 814(b)(6) of the FDCPA, 15 U.S.C. §1692l(b)(6), Section 621(b)(1)(H) of the FCRA, 15

U.S.C. § 1681s(b)(1)(H), Section 6 of RESPA, 12 U.S.C. § 2605, and the Court's own equitable powers, request that the Court:

A. Permanently enjoin Green Tree from committing future violations of the FTC Act, the CFPA, the FDCPA, the FCRA, and RESPA;

B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Green Tree's violations of the FTC Act, the CFPA, the FDCPA, the FCRA, and RESPA, including but not limited to rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

C. Award Plaintiff CFPB civil money penalties for Green Tree's violations of the CFPA, the FDCPA, the FCRA, and RESPA;

D. Award Plaintiffs the costs of bringing this action; and

E. Award additional relief as the Court may determine to be just and proper.

Dated: April 21, 2015

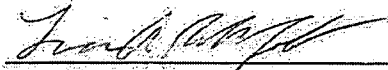
Respectfully submitted,

FEDERAL TRADE COMMISSION:

CONSUMER FINANCIAL PROTECTION
BUREAU:

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**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

FEDERAL TRADE COMMISSION and
CONSUMER FINANCIAL PROTECTION
BUREAU,

Plaintiffs,

v.

GREEN TREE SERVICING LLC, a Delaware
limited liability company,

Defendant.

15-cv-02064 (SRN-JSM)

**STIPULATED ORDER FOR PERMANENT
INJUNCTION AND MONETARY JUDGMENT**

Plaintiffs, the Federal Trade Commission (“Commission”) and the Consumer Financial Protection Bureau (“Bureau”), have filed their Complaint for a permanent injunction and other relief in this matter. The Commission brought this action pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 53(b). The Bureau brought this action pursuant to Sections 1031(a), 1036(a)(1), and 1054 of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5531(a), 5536(a)(1), and 5564, and sought civil penalties pursuant to Section 1055 of the CFPA, 12 U.S.C. § 5565(c). Defendant Green Tree Servicing LLC

(“Defendant” or “Green Tree”) waived service of the summons and the Complaint. The Commission, Bureau, and the Defendant stipulate to entry of this Order for Permanent Injunction and Monetary Judgment (“Order”).

THEREFORE, it is **ORDERED** as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint alleges a claim upon which relief may be granted under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); Sections 1031(a) and 1036(a)(1) of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1); the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692-1692p; the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681-1681x; and Section 6 of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605, and its implementing regulation, Regulation X, 12 C.F.R. part 1024 (formerly codified at 24 C.F.R. part 3500) (collectively “RESPA”).
3. For purposes of this settlement, Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant admits the facts necessary to establish jurisdiction.
4. All parties waive all rights to appeal or otherwise challenge or contest the validity of this Order. Defendant further waives and releases any claim it may have against the Commission or the Bureau, and their employees, representatives, or agents.
5. Defendant waives any claim that it may have under the Equal Access to

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Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear its own costs and attorney fees.

6. The Plaintiffs and Defendant, by and through their counsel, have agreed that entry of this Order resolves all matters in dispute between them arising from the facts and circumstances alleged in the Complaint in this action that have taken place as of the Effective Date, except that the Bureau specifically reserves and does not release any liability arising under any provision of the Bureau's rules relating to mortgage servicing (12 C.F.R. § 1024.30, *et seq.*) as of January 10, 2014.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Collecting on past-due debt(s)" means recovering or attempting to recover, directly or indirectly, debts owed or due or asserted to be owed or due, for which consumers are currently in default, as default is defined in the loan agreement or applicable document creating the debt obligation.

2. "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

3. "Defendant" means Defendant Green Tree Servicing LLC, and its successors and assigns. For purposes of this definition, an "assign" means a person who

purchases all or substantially all of the assets of Green Tree Servicing LLC or of Green Tree Servicing LLC's division(s) or major business unit(s) that are engaged as a primary business in customer-facing servicing of residential mortgage loans.

4. "Effective Date" means the date on which the Order is entered.

5. "Grace period" means the period between the date when a loan payment is due and the date when Green Tree is permitted to assess a late fee under the related loan documents.

6. "In-process loan modification" means a trial or permanent loan modification offered by a servicer that was either accepted by the borrower or for which the time for the borrower to accept the offer has not expired and the offer has not been rejected, but is not finalized as a permanent modification before servicing rights on the loan are transferred to another entity. It includes trial modifications in which the prior servicer agreed to modify the loan payment terms unless Defendant has clear written evidence that the borrower has failed to perform under the trial loan modification terms. It also includes modifications in which the consumer completed making the trial payments before the loan was transferred to Defendant, but the permanent modification was not input into the prior servicer's system before the transfer.

7. "Investigation" means objectively evaluating the circumstances and considering information, including an assessment of the relevance, reliability, accuracy, integrity, and completeness of such information, to determine whether a consumer owes a

debt in the amount asserted or to assess a borrower's notice of error or qualified written request. The information Defendant shall assess in an investigation, where applicable to the dispute, shall include but not be limited to:

- (a) the information that Defendant received from the credit originator or any prior servicer or owner of the debt, such as: (i) the consumer's credit application, (ii) the credit contract between the consumer and the credit originator, (iii) documents with the current or former name, address, and telephone number of the consumer, (iv) documents with the consumer's account number, in whole or in part, and periodic billing statements, (v) payment/transaction history, (vi) documents with the date and outstanding balance, and (vii) servicing notes;
- (b) the information that Defendant received from data aggregators, data brokers, consumer reporting agencies, skip tracers, and other third parties, such as: (i) documents with the current or former name, address, and telephone number of the consumer, (ii) documents with consumer report information, including credit scores and updates to the information in consumer reports, and (iii) the scoring of the debt through the use of a predictive model;
- (c) the information that Defendant created or maintained in collecting

on the debt, such as servicing notes and payment history from the immediately preceding two years; and

- (d) the information the Defendant received from the consumer denying, disputing, or challenging the claim that the consumer owes the debt or the amount of the debt, such as: (i) documents with the consumer's current or former name, address, and telephone number, (ii) receipts or other evidence of payment from the credit originator or any prior servicer or owner of the debt, or a debt collector, (iii) canceled checks, bank account statements, credit card statements, and other documents evidencing payment, and (iv) a consumer dispute relating to the disputed amount.

8. "Involuntary transfer" means a transfer when the transferor servicer is in breach of, or default under, its servicing agreement for loss mitigation related-servicing performance deficiencies, or is in receivership, and is required to transfer servicing to another servicer in thirty (30) days or less by an unaffiliated investor, or a court or regulator with jurisdiction.

9. "Loss mitigation" means modified payment arrangements, trial, permanent and in-process loan modifications, forbearance plans, short sales, deed-in-lieu agreements and any other non-foreclosure home retention or non-retention option offered by the owner or assignee of a mortgage loan that is made available to the consumer through a

prior servicer or Defendant.

10. “Portfolio” means a group of loans for which the mortgage servicing rights are transferred to or from Defendant pursuant to a single contract for the sale or transfer of mortgage servicing rights.

11. “Related consumer action” means a private action by or on behalf of one or more consumers, or enforcement action by another governmental agency, entity, or representative, brought against Defendant based on substantially the same conduct or issues as alleged in the Complaint.

12. “Servicing” means collecting, receiving and applying payments made on a consumer’s account pursuant to the terms of the loan agreement, such as payments of principal, interest, taxes, and fees; administering loan accounts; receiving and processing data and documentation for loan accounts transferred from prior servicers; making loan-related communications; responding to borrower notices asserting an error and qualified written requests; providing periodic billing statements to consumers; maintaining records of the status of consumers’ loan accounts; providing information to and resolving disputes with consumers regarding loan accounts; disbursing payments from consumers’ escrow accounts; providing loss mitigation, including but not limited to loan modifications and short sales; pursuing foreclosure; repossessing property; filing bankruptcy claims; calculating deficiency judgments; using consumer reports and furnishing information to consumer reporting agencies; and collecting or assessing fees in

relation to any of the foregoing.

13. “Transfer,” as it appears in Sections IV, V, and VII of this Order, means the transfer of mortgage servicing rights, or of servicing responsibilities, including through subservicing or whole loan servicing arrangements.

I. ORDER FOR EQUITABLE MONETARY RELIEF

IT IS ORDERED that:

A. Judgment is entered in favor of the Commission and the Bureau against Defendant in the amount of Forty Eight Million Dollars (\$48,000,000) total as follows:

1. Eighteen Million Dollars (\$18,000,000) for alleged violations of the FTC Act, CFPA, and FDCPA with respect to Defendant’s alleged misrepresentations relating to payment methods that entail a convenience fee.
2. Thirty Million Dollars (\$30,000,000) for alleged violations of the FTC Act, CFPA, FDCPA, and RESPA with respect to Defendant’s conduct relating to short sales and in-process loan modifications, including Defendant’s alleged failure to timely respond to qualified written requests relating to in-process loan modifications and with respect to Defendant’s alleged misrepresentations about the time it will take to review short sale requests.

B. Within ten (10) days of entry of this order, Defendant is ordered to pay to

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the Bureau \$48,000,000 dollars in full satisfaction of the judgment in favor of the Commission and the Bureau as set forth in Paragraphs A.1 and A.2 of this Section. Such payment shall be made by wire transfer to the Bureau or to such agent as the Bureau may direct, and in accordance with wiring instructions to be provided by counsel for the Bureau.

C. All money paid to the Bureau pursuant to this Section shall be deposited into a fund or funds administered by the Bureau or its agent in accordance with applicable statutes and regulations to be used for consumer redress, including but not limited to refund of moneys, restitution, or other monetary relief, and for any attendant expenses for the administration of such redress.

D. If the Bureau, in consultation with the Commission, decides that redress to consumers is wholly or partially impracticable or otherwise inappropriate or funds remain after redress is completed, the Bureau may apply any remaining money for such other relief (including consumer information remedies) as it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any funds not used for such relief are to be deposited to the U.S. Treasury as disgorgement. Defendant has no right to challenge any actions the Bureau, the Commission, or their representatives may take pursuant to this Paragraph.

E. Redress provided by Defendant shall not limit consumers' rights in any way or prevent Defendant from asserting in a related consumer action that a consumer

should not recover for any amounts paid under this Order.

F. In light of the monetary relief to be paid to the Bureau, and to avoid double payment, the FTC is subrogating its claim for equitable monetary relief to the Bureau's claim.

II. ORDER TO PAY CIVIL MONEY PENALTIES

A. Under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the alleged violations of law in the Complaint, and taking into account the factors set forth in 12 U.S.C. § 5565(c)(3), Defendant shall pay a civil money penalty of Fifteen Million Dollars (\$15,000,000) to the Bureau, as directed by the Bureau and as set forth herein.

B. Within ten days of the Effective Date, Defendant shall pay the civil money penalty in the form of a wire transfer to the Bureau or to such agent as the Bureau may direct, and in accordance with wiring instructions to be provided by counsel for the Bureau.

C. The civil money penalty paid under this Order shall be deposited in the Civil Penalty Fund of the Bureau in accordance with Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

D. Defendant shall treat the civil money penalty as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Defendant shall not:

1. Claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any civil money penalty that Defendant pays under this Order; or
2. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil money penalty that Defendant pays under this Order.

E. To preserve the deterrent effect of the civil money penalty, in any related consumer action, Defendant shall not argue that Defendant is entitled to, nor shall Defendant benefit by, any offset or reduction of any monetary remedies imposed in the related consumer action, because of the civil money penalty paid in this action (“Penalty Offset”). If the court in any related consumer action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Bureau, and pay the amount of the Penalty Offset to the U.S. Treasury. Such a payment shall not be deemed an additional civil money penalty and shall not be deemed to change the amount of the civil money penalty imposed in this action.

F. In light of the monetary relief to be paid to the Bureau, and to avoid double payment, the FTC is subrogating its claim for civil penalties to the Bureau’s claim.

III. ADDITIONAL MONETARY PROVISIONS

- A. In the event of any default on Defendant’s obligations to make payment

under this Order, interest, computed pursuant to 28 U.S.C. § 1961, as amended, shall accrue on any outstanding amounts not paid from the date of default to the date of payment, and shall immediately become due and payable.

B. Defendant relinquishes all dominion, control, and all legal and equitable right, title, and interest to the funds paid to the fullest extent permitted by law and no part of the funds shall be returned to Defendant.

C. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission or Bureau in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order.

D. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission or Bureau pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

E. Defendant acknowledges that its Taxpayer Identification Number, which Defendant previously submitted to the Commission or Bureau, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

F. For a period of three (3) years from the Effective Date, within thirty (30) days of the entry of a final judgment, consent order, or settlement in a related consumer

action, Defendant shall notify the Bureau Enforcement Director of the final judgment, consent order, or settlement in writing. That notification shall indicate the amount of redress, if any, that Defendant paid or is required to pay to consumers and should describe the consumers or classes of consumers to whom that redress has been or will be paid.

IV. INJUNCTION AGAINST UNSUBSTANTIATED CLAIMS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from:

A. Making any representation, expressly or by implication, that a consumer's account has unpaid balances, payment due dates, interest rates, monthly payment amounts, delinquency statuses, unpaid fees, or other amounts due, unless, at the time of making the representation, Defendant can substantiate such a representation, including but not limited to situations in which:

1. Defendant knows or reasonably should know that a consumer, at the time the consumer's loan was transferred to Defendant, was performing or previously completed performance under a trial or permanent loan modification with the prior servicer of the loan but Defendant continues to attempt collection from the consumer under

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the original, unmodified mortgage loan terms. Defendant reasonably should know that a consumer was performing or previously completed performance under a trial or permanent loan modification with a prior servicer once Defendant receives any information from the prior servicer, the consumer, or any other source substantiating that the consumer was performing or previously completed performance under a trial or permanent loan modification; or

2. Defendant knows or reasonably should know that the information for the account is facially unreliable, materially inaccurate, or missing material information, but Defendant continues to attempt collection on the account without commencing and completing an investigation regarding the account.
3. Nothing in this provision shall be interpreted to preclude Defendant from accurately representing for informational purposes contractual amounts that remain due and owing until a permanent loan modification has been finalized, provided that such representation does not mislead a consumer regarding the amounts due under the modification.

B. Failing, after a consumer orally denies, disputes, or challenges Defendant's claim that the consumer owes a debt or owes a debt in the amount asserted to: (i) provide

the consumer orally and contemporaneously with instructions for submitting the dispute in writing; and (ii) within 14 days of the consumer disputing Defendant's claim, provide the consumer clear and conspicuous written instructions on how to submit the dispute in writing; and

C. Failing, after a consumer denies, disputes, or challenges, in writing, the Defendant's claim that the consumer owes the debt or owes the debt in the amount asserted, to:

1. Within fourteen (14) days after the denial, dispute, or challenge, or when the debt is next reported to a consumer reporting agency, if earlier, report the debt as disputed; and
2. Promptly after the denial, dispute, or challenge:
 - a. Cease collection of any disputed amount, inform the consumer that it has ceased collection of the disputed amount, and, where the decision is within Defendant's control, not transfer servicing to any person or entity other than the creditor to whom the debt is owed, until the Defendant satisfies its obligations to conduct an investigation and respond as set forth in Paragraphs (b) and (c) below or obtains an agreement from the transferee servicer to conduct such an

investigation and respond as set forth in Paragraphs (b) and (c) below;

- b. Commence and complete, within thirty (30) days after a consumer denies, disputes, or challenges Defendant's claim that a consumer owes the debt or that he or she owes the debt in the amount asserted, an investigation of the denial, dispute, or challenge, unless the consumer provides information that is relevant to the investigation during the 30-day time period, in which case the investigation may be extended for no more than fifteen (15) additional days. *Provided that* Defendant shall not be required to investigate any denial, dispute, or challenge if it reasonably determines that the denial, dispute, or challenge is frivolous or irrelevant. A dispute qualifies as frivolous or irrelevant if the Defendant does not have sufficient information to investigate and the consumer does not provide the necessary information when asked, or if Defendant has previously complied with its obligation to investigate and respond and the consumer does not provide to Defendant or Defendant does not otherwise acquire or obtain information, data, or documentation that was not considered

in any prior investigation. Defendant shall notify the consumer within five (5) business days of Defendant's determination if the denial, dispute, or challenge is not investigated under this proviso; and

- c. If Defendant reasonably concludes after its investigation:
 - i. That the consumer owes the debt in the amount asserted, Defendant, within ten (10) days of reaching its conclusion, shall provide verification of the debt to the consumer, inform the consumer of its conclusion, and provide the basis for it, after which it may resume collection of the previously-disputed amount. If the consumer continues to dispute the debt, nothing in this order supersedes the requirement of § 623(a)(3) of the FCRA, 15 U.S.C. § 1681s-2(a)3, that Defendant convey the dispute when furnishing information on the debt to any consumer reporting agency.
 - ii. That the consumer does not owe the debt or the debt cannot be verified, Defendant shall, within five (5) days of reaching its conclusion: (a) inform the consumer of its conclusion and the basis for it; (b)

request that each consumer reporting agency to which Defendant had reported the debt or caused the debt to be reported, delete the item from the consumer's credit reporting file; (c) cease collection; and (d) where the decision is within Defendant's control, not transfer servicing to any person or entity other than the creditor to whom the debt is allegedly owed.

- iii. That the consumer does owe the debt but not in the amount that Defendant asserted, Defendant shall, within five (5) days of reaching its conclusion: (a) inform the consumer of its conclusion and the basis for it; and (b) provide to each consumer reporting agency to which the debt has been reported any correction to the reported information that is necessary to make the information provided by Defendant accurate, after which it may continue collection.

Provided that, if the consumer initiates contact with Defendant by any means, Defendant may respond to the consumer prior to the completion of the investigation.

Provided further that the limitations on transfer in Subsections IV.C.2.a and IV.C.2.c.ii shall not apply when the transfer is between owners of the right to perform

servicing who do not perform the servicing and there is no change in the subservicer.

Provided further that, nothing in this Section IV prohibits Defendant from requiring consumers who deny, dispute, or challenge a debt on the grounds of fraud or identity theft to do so in writing, so long as Defendant clearly and conspicuously discloses these requirements. Once Defendant receives an identity theft report, the requirements of § 623(a)(6)(B) of the FCRA, 15 U.S.C. § 1681s-2(a)(6)(B), apply.

V. DATA INTEGRITY REQUIREMENT

IT IS FURTHER ORDERED that Defendant, in connection with loan servicing and collection activities, shall, no later than one hundred and twenty (120) days after the date of entry of this Order, establish and maintain a comprehensive data integrity program (“Program”) reasonably designed to ensure the accuracy, integrity, and completeness of the data and other information about accounts that Defendant services, collects, or sells, including any accounts acquired by or transferred to Defendant. The Program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to the nature, size, complexity, and scope of Defendant’s loan servicing activities, and shall include:

- A. The designation of an employee or employees to oversee the Program;
- B. The maintenance of sufficient personnel that are adequately trained to perform the Program requirements in a timely and legal manner;

C. The identification of material internal and external risks to the accuracy, integrity, and completeness of loan servicing data that could result in material errors to consumers' accounts and assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment shall consider risks in each relevant area of operation, including, but not limited to (1) employee training and management, (2) information systems, including network and software design, servicing transfer protocols, information processing, storage, transmission, and disposal, and (3) prevention, detection, and response to any systems failure;

D. The completion of due diligence prior to receiving transferred mortgage servicing rights. Specifically, prior to receiving the transfer of mortgage servicing rights, Defendant shall conduct due diligence to understand and implement steps necessary to resolve issues with the type of loan level information and documentation in the transferor's possession and control, the transferor's ability to transfer the information electronically, in images, or only in paper records, material gaps in the transferor's records, and Defendant's ability to promptly process the information to be provided by the transferor, and otherwise ensure that Defendant will be able to comply with its servicing obligations with respect to every loan transferred. Defendant shall seek assurance that the transferor will transfer all material loan level information in its possession or control at or before the time of transfer.

E. The testing, identification, and correction of material errors in the following data fields in Defendant's servicing systems of record: monthly payment amount, principal balance, interest rate, loan term, escrow account balance, suspense account balance, delinquency status, loss mitigation status, and foreclosure status (collectively, the "Tested Data Fields").

1. Portfolios Tested and Timing for Testing Portfolios.

- a. *Testing of Portfolios Transferred After the Effective Date of this Order.* In addition to the requirements in Section VII.A.3 relating to loans in loss mitigation, within twenty (20) days after the transfer of any portfolio transferred after the Effective Date of this Order, or within twenty (20) days after the establishment of the Program, whichever is later, Defendant shall conduct a "Data File Review." A Data File Review shall mean testing to examine the completeness and accuracy of loan information and to identify material errors. This shall include comparing the Tested Data Fields in Defendant's servicing systems of record as of the loan transfer cutoff date for material errors against the electronic data and the loan-level documents provided by the transferor

servicer from which Defendant acquired the servicing rights to the portfolio.

- b. *Previously Acquired Portfolios.* To the extent that Defendant is, as of the Effective Date, servicing mortgage loans in portfolios at risk for widespread or systemic errors in the Tested Data Fields, for which portfolios Defendant acquired the servicing rights after January 1, 2010, Defendant shall perform a Data File Review within 15 days after the establishment of the Program. A portfolio is at risk for widespread or systemic errors if it exhibits any of the following factors: (1) the portfolio was an involuntary transfer, (2) the portfolio transferred under an agreement containing a disclaimer as to the availability of loan account level information and documents, (3) the portfolio transferred from a servicer or owner that Defendant has learned previously provided materially inaccurate information for more than 5% of the portfolio or had missing material information for more than 5% of the portfolio, (4) Defendant has other information about the portfolio's prior owner or servicer and its methods of doing business that suggests that

more than 5% of the portfolio contains material errors or materially incomplete information, or (5) after onboarding, consumers have disputed in writing the accuracy of the information in accounts amounting to more than 2% of a portfolio serviced by Defendant.

2. Percentage of Each Portfolio to be Tested.

- a. All Data File Reviews, as prescribed in Subsection V.E.1, and On-Going Testing, as prescribed in Subsection V.E.4, shall be statistically valid and based on an appropriate sampling methodology, such that the results from the sample can be reliably extrapolated to the loan portfolio as a whole, and shall include both random and risk-based selection criteria.
- b. If a Data File Review performed pursuant to Section V.E.1. of this Order reveals a material error rate of more than 5% with respect to any Tested Data Field(s) in a portfolio, Defendant shall, within thirty (30) days, complete a Data File Review of such field(s) for all loans in the portfolio. In the event that the full-portfolio Data File Review described in this section reveals a material error rate exceeding 5% of all loans in the portfolio with respect to any of the field(s) tested under this

subsection, Defendant shall perform a Data File Review of such field(s) for the entire portfolio every six months until the material error rate falls below 5%.

3. **Correction of Errors.** Upon completion of any Data File Review, Defendant shall correct and remediate any individual account errors identified by the Defendant, including promptly refunding or reversing any overcharges and stopping foreclosure where appropriate.
4. **Ongoing Testing.** Within 180 days of the Effective Date, and every six months thereafter, Defendant shall identify any portfolios serviced by Defendant for which, in the immediately preceding six months, consumers representing more than 2% of the relevant portfolio have disputed in writing the accuracy of the information in the Tested Data Fields. In the event any such portfolios exist, Defendant shall determine whether there exist any systemic issues giving rise to the disputes about errors in the accuracy of the Tested Data Fields in the portfolio and, if any errors are found, Defendant shall develop and implement a plan to correct the errors. *Provided that*, when a consumer orally denies, disputes, or challenges the accuracy of the information contained in a Tested Data Field,

Defendant shall (i) provide the consumer orally and contemporaneously with instructions for submitting the dispute in writing; and (ii) within 14 days of the consumer disputing Defendant's claim, provide the consumer clear and conspicuous written instructions on how to submit the dispute in writing.

Provided that the requirements of this Subsection V.E shall not apply to transfers when the transfer is between owners of the right to perform servicing who do not perform the servicing and there is no change in the subservicer.

F. The design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular auditing or testing or monitoring of the effectiveness of the safeguards' key controls, system, and procedures;

G. The regular auditing, testing, or monitoring of the effectiveness of the Program using statistically valid samples, such that the samples include both random and risk-based selection criteria and the results from the samples can be reliably extrapolated to the Program as a whole; and

H. The evaluation and adjustment of the Program in light of the results of the required auditing, testing, or monitoring, and any material changes to Defendant's operations or business arrangements that may significantly impact the Program, or any other circumstances that Defendant knows or has reason to know may have a material impact on the integrity, accuracy, and completeness of Defendant's loan servicing

process, or data and other information about accounts that Defendant services, collects, or sells.

Provided that, in the event of a conflict between this Section V and the requirements of federal, state, or local laws or the standard provisions imposed on servicers by the Department of Treasury, Fannie Mae, Freddie Mac, Ginnie Mae, the Federal Housing Administration, the Department of Veterans Affairs, the Rural Housing Administration, and any other similar organization that may come into existence after the entry of this Order such that Defendant cannot comply with this Section V without violating these requirements, Defendant shall document such conflicts and notify the Commission and the Bureau that it intends to comply with the requirements to the extent necessary to eliminate the conflict.

Provided further that, in the event of an involuntary transfer to Defendant which results in a delay in the transferor's transfer of relevant information or a volume of errors in the transferor's data that prevents Defendant from being able to comply with the time limits in this Section, Defendant shall submit a written plan to the Bureau and the Commission within ten (10) days after the date of the transfer identifying the cause of the delay and setting forth the specific steps it is taking, the resources it is devoting, and Defendant's expected timeline for complying with the requirements of this Section. If such plan is not objected to by the Bureau or the Commission within ten (10) days of submission of the plan, Defendant must proceed to implement the plan. If the Bureau or

the Commission objects to the plan within ten (10) days of submission, Defendant will make reasonable efforts to amend the plan to address any objection. Defendant shall not take more than 120 days from the date of the transfer to satisfy the requirements of this Section.

VI. ASSESSMENT

IT IS FURTHER ORDERED that:

A. Defendant shall, within one hundred and twenty (120) days after the implementation of the Data Integrity Program required by Section V of this Order, and biennially thereafter for eight (8) years after entry of this Order, obtain an assessment and report (“Assessment”) from a qualified, objective, independent, third-party professional, the identity of which is agreed to by a representative of the Commission and a representative of the Bureau, that, using procedures and standards generally accepted in the profession:

1. Sets forth the specific data integrity program that Defendant has implemented and maintained during the reporting period;
2. Explains how the data integrity program is appropriate to Defendant’s size and complexity, and the nature and scope of Defendant’s activities;
3. Explains how the data integrity program meets or exceeds the protections required by Section V of this Order; and

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4. Certifies that to the best of the certifier's knowledge and belief the data integrity program is operating with sufficient effectiveness to provide reasonable assurance of the material accuracy, integrity, and completeness of Defendant's records.

B. Defendant shall provide a copy of the first Assessment to the Commission within ten (10) days after the Assessment is delivered to Defendant. Defendant shall, within thirty (30) days of a request, provide the Commission with a copy of all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, whether prepared by or on behalf of Defendant, relied upon to prepare such Assessment. All subsequent biennial Assessments shall be retained by Defendant and a copy provided to the Commission within thirty (30) days of request. The Commission will provide to the Bureau a copy of all Assessments and any other materials produced pursuant to this Section VI of this Order.

VII. INJUNCTION RELATING TO MORTGAGE SERVICING

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from:

Limitations on the Transfer of Servicing for Loans in Loss Mitigation

- A. Transferring or acquiring servicing for loans in loss mitigation or with a

loss mitigation application pending, regardless of whether Defendant is the transferor or transferee, unless:

1. The transferor or transferee identifies by loan number the following categories of loans at least thirty (30) days prior to transfer, and updates such information at least five (5) days prior to transfer:
 - a. Loans in any stage of pending loss mitigation, including but not limited to in-process loan modifications;
 - b. Loans approved or converted to a permanent loss mitigation outcome within sixty (60) days of transfer; and
 - c. Loans denied loss mitigation within sixty (60) days of transfer;
2. The transferor agrees to make all reasonable efforts to provide the transferee all the following information in its possession or control, prior to transfer or at a minimum, agrees to provide this information by the date of the transfer: all account-level documents and data relating to loss mitigation, including a copy of the mortgage note, periodic billing statements for the two years prior to the service transfer, payment history for the two years prior to the service transfer, escrow and suspense account information, loss mitigation applications, loss mitigation notices, documentation and information

received from the borrower for purposes of evaluating the borrower for loss mitigation, any net present value or other analysis by a servicer in connection with a borrower's application for loss mitigation, loss mitigation agreements, any written communications or notes of oral communications with the borrower about the loss mitigation, and any other information needed to administer any pending loss mitigation applications or in-process loan modifications; and

3. The contract for the transfer includes the following requirements:
 - a. The transferee will engage in quality control work to validate that the loss mitigation data matches the images and paper documents received, make reasonable efforts to identify missing loss mitigation data, documentation, or information and request missing information from the transferor within fifteen (15) days of transfer; and
 - b. Within ten (10) days of a request from the transferee, the transferor will provide missing or incomplete loss mitigation data, documentation, or information in its possession or control;
4. The contract for the transfer also includes the following

requirements:

- a. The transferee will honor loss mitigation agreements entered into by the prior servicer, including but not limited to in-process loan modifications;
- b. The transferee will continue processing pending loss mitigation requests received in the transfer; and
- c. Within thirty (30) days of transfer, the transferee will finish reviewing and resolve any loss mitigation request that was pending within sixty (60) days of transfer for which the transferee or buyer lacks clear written evidence that such request was denied, and provide the consumer an opportunity to provide any necessary missing information.

Provided, however, that the requirements of Subsections VII.A.1, 2, and 3 shall not apply to transfers when the transfer is between owners of the right to perform servicing who do not perform the servicing and there is no change in the subservicer.

Short Sales

B. Failing to send consumers written confirmation within five business days of receipt of a short sale application. If the short sale application is incomplete, Defendant must include in this written confirmation a list of any missing documents required to complete the short sale application; and

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C. Failing to complete an evaluation of the short sale application and communicate a decision to the consumer prior to the date of a foreclosure sale (provided that Defendant receives the completed short sale application more than 14 days before the foreclosure sale) or within thirty (30) days after receipt of a complete short sale application, whichever is earlier, except that Defendant may have an additional fifteen (15) days to communicate its decision to the borrower when waiting to receive required information from third parties, provided Defendant promptly updates the borrower with the reason for this delay in writing.

Other Loss Mitigation Requirements

D. Failing, within ninety (90) days after entry of this Order, to make Defendant's loss mitigation application available to consumers at no cost by, at a minimum, making it publicly available and readily accessible on Defendant's website and providing it upon request to consumers. The application shall identify all required documentation and information necessary to complete a loss mitigation application;

E. Failing, within ninety (90) days after the date of entry of this Order, to maintain sufficient personnel that are adequately trained to handle loss mitigation requests in a timely and legal manner;

F. Failing, within ninety (90) days after the date of entry of this Order, to implement and maintain a centralized document management system for tracking and storing incoming loss mitigation documents, including those submitted by consumers,

staffed with sufficient personnel that are adequately trained to prevent significant backlogs and lost documents;

G. Failing, within ninety (90) days after the date of entry of this Order, to implement and maintain an online portal linked to Defendant's primary servicing system where consumers can check, at no cost, the status of their loss mitigation requests. The portal must, among other things:

1. Enable consumers to submit documents electronically;
2. Provide an electronic receipt for any documents submitted; and
3. Update the status of pending loss mitigation requests at least every 10 business days;

H. Failing, within ninety (90) days after the date of entry of this Order, to take reasonable steps to ensure that personnel assigned to consumers pursuant to the Bureau's rules relating to continuity of contact (12 C.F.R. § 1024.40):

1. Refer and transfer consumers to a loss mitigation or other appropriate supervisor upon request;
2. Have access to individuals able to stop foreclosure proceedings when necessary to comply with this Order and other applicable requirements; and
3. Are not subject to compensation arrangements that encourage collection over loss mitigation activity.

Provided that, in the event of a conflict between this Section VII and the requirements of federal, state, or local laws or the standard provisions imposed on servicers by the Department of Treasury, Fannie Mae, Freddie Mac, Ginnie Mae, the Federal Housing Administration, the Department of Veterans Affairs, the Rural Housing Administration, and any other similar organization that may come into existence after the entry of this Order such that Defendant cannot comply with this Section VII without violating these requirements, Defendant shall document such conflicts and notify the Commission and the Bureau that it intends to comply with the requirements to the extent necessary to eliminate the conflict.

Provided further that, in the event of an involuntary transfer to Defendant which results in a delay of the transferor's transfer of relevant information and prevents Defendant from being able to comply with the time limits in Section VII.A, Defendant shall submit a written plan to the Bureau and the Commission, within ten (10) days after the date of the transfer, identifying the cause of the delay and setting forth the specific steps it is taking, the resources it is devoting, and Defendant's expected timeline for complying with the requirements of Section VII.A. If such plan is not objected to by the Bureau or the Commission within ten (10) days of submission of the plan, Defendant must proceed to implement the plan. If the Bureau or the Commission objects to the plan within ten (10) days of submission, Defendant will make reasonable efforts to amend the plan to address any objection. In no event shall Defendants fail to honor loss mitigation

agreements entered into by the prior servicer, fail to continue processing pending loss mitigation requests received in the transfer, or take more than 60 days from the date of the transfer to satisfy the requirements of Section VII.A.

VIII. HOME PRESERVATION REQUIREMENT

IT IS FURTHER ORDERED that Defendant shall, no later than sixty (60) days after the date of entry of this Order, establish and implement a home preservation plan (“Plan”) to identify and review Affected Consumers for loss mitigation options, provide for the solicitation and fast-track evaluation of loss mitigation applications, and stop pending foreclosure sales for such consumers to the extent necessary to permit the consumers to be solicited and considered for loss mitigation. The Plan shall remain in effect for a period of five (5) years from the Effective Date. Affected Consumers are consumers with first- or second-lien residential loans that were transferred to Defendant between January 1, 2010 and November 2014 and as of the Effective Date (1) are 45 or more days delinquent or have been referred to foreclosure, but are more than 37 days before a foreclosure sale, or (2) are serviced by Defendant and become eligible for referral to foreclosure at any point from the Effective Date until five years from the Effective Date, provided that Defendant still services the loan at that time.

A. *Convert In-Process Loan Modifications to Permanent Modifications.*

Defendant shall promptly send a permanent modification agreement to Affected Consumers with In-Process Loan Modifications that were fully underwritten prior to the

trial period and received all necessary investor approvals but for which the consumer did not previously enter a permanent modification agreement. Such consumers shall be converted to a permanent modification upon execution of the permanent modification documents, consistent with applicable program and investor guidelines.

B. *Solicitation and Fast-Track Evaluation of Loss Mitigation Applications.*

For all Affected Consumers not accounted for in Paragraph A above, Defendant must:

1. Engage in consumer outreach to obtain complete loss mitigation applications by: (i) Telephone and mail outreach to contact consumers and collect documents; (ii) For incomplete loss mitigation applications, a telephone and mail campaign to notify consumers of the additional documents and information needed to make the loss mitigation application complete; and (iii) Translation services when requested by a consumer or if Defendant has reason to believe that the consumer is not proficient in English.
2. Promptly evaluate consumers for all loss mitigation options available under applicable investor guidelines, including by: (i) Providing a dedicated team of underwriters; (ii) Reviewing complete loss mitigation applications within 20 days of receipt; and (iii) Clearly identifying the terms of any loss mitigation offer (such as interest rate, amortization term, and balloon payments) and

identifying the modified principal balance.

- C. *Stop Pending Foreclosures.* If necessary to permit Defendant to complete the actions described in Paragraphs A and B above before a foreclosure sale, Defendant shall take all available measures to postpone any foreclosure sale scheduled to occur and to prevent the entry of a foreclosure judgment or the entry of an order for foreclosure sale in connection with a foreclosure initiated with respect to the loan under consideration for loss mitigation during the pendency of the actions required in Paragraphs A and B above.
- D. Defendant may resume foreclosure sales for Affected Consumers under any of the following conditions:
1. Despite Defendant's reasonable efforts, including taking all steps described in Paragraph B, the consumer (i) has not responded to Defendant's outreach effort within 30 days of Defendant's most recent attempt to contact the consumer under Section VIII.B, or (ii) the consumer has responded to Defendant's outreach efforts but has not provided Defendant with all materials necessary to permit Defendant to evaluate the consumer for loss mitigation options, notwithstanding Defendant's attempts to obtain such material pursuant to Section VIII.B.1.ii, or (iii) does not execute a loss

mitigation offer prior to or at the expiration of the offer;

2. The consumer states in writing that he or she does not want to be considered for a loss mitigation option; or
3. Defendant has evaluated the consumer's complete loss mitigation application for all available loss mitigation options, and (i) Defendant has determined the consumer does not qualify for any loss mitigation option and the time for appeal has expired or the appeal has been denied, or (ii) the consumer has rejected an offer of loss mitigation.

E. The requirements of this subsection VIII shall not apply to any loan (1) for which Defendant does not own the right to service or sub-service as of the Effective Date; or (2) that is not subject to foreclosure or collection activity because it has been charged off.

Provided that, in the event of a conflict between this Section VIII and the requirements of federal, state, or local laws, the standard provisions imposed on servicers by the Department of Treasury, Fannie Mae, Freddie Mac, Ginnie Mae, the Federal Housing Administration, the Department of Veterans Affairs, the Rural Housing Administration, and any other similar organization that may come into existence after the entry of this Order, the National Mortgage Settlement, or applicable investor guidelines such that Defendant cannot comply with this Section VIII without violating these

requirements, Defendant shall document such conflicts and notify the Commission and the Bureau that it intends to comply with these requirements to the extent possible.

Provided further that, nothing in this Section VIII shall be interpreted to (1) limit or restrict in any way the protections provided to borrowers under the Bureau's rules relating to loss mitigation (12 C.F.R. §§ 1024.41, *et seq.*), or to (2) require Defendant to communicate with a borrower in a manner otherwise prohibited by applicable law, including bankruptcy law or the federal Fair Debt Collection Practices Act or any similar debt-collection-related state law. To the extent any provision of this Section VIII is in conflict with any provision of 12 C.F.R. § 1024.41, 12 C.F.R. § 1024.41 shall apply.

IX. INJUNCTION AGAINST FALSE OR MISLEADING REPRESENTATIONS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from:

A. Making any material misrepresentation or assisting others in making any material misrepresentation, expressly or by implication, including but not limited to misrepresentations:

1. That consumers' loans have certain unpaid balances, payment due dates, interest rates, monthly payment amounts, delinquency

statuses, and unpaid fees or other amounts due;

2. That consumers must make payments under the original, unmodified loan terms when a consumer has an in-process loan modification or other loss mitigation agreement from the prior servicer;
3. That consumers have to make a payment on their loans before Defendant will consider them for a loan modification;
4. That Defendant will review and respond to consumers' requests to be considered for a short sale in a set time period;
5. The existence and length of any "grace period" in consumers' promissory notes; and
6. That a payment method that entails a convenience fee is the only payment method available or only payment method that consumers can use to make timely payments.
7. Nothing in this provision shall be interpreted to preclude Defendant from accurately representing for informational purposes contractual amounts that remain due and owing until a permanent loan modification has been finalized, provided that such representation does not mislead a consumer regarding the amounts due under the modification.

B. Failing, in communications between Defendant and consumers about

Speedpay or other payment methods that involve a convenience fee, to disclose to consumers truthfully, clearly and prominently, and before the consumers agree to pay through Speedpay or any other payment method that entails a convenience fee:

1. That consumers will be charged a convenience fee; and
2. The existence of other payment methods that do not entail a convenience fee.

X. INJUNCTION AGAINST UNAUTHORIZED WITHDRAWALS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from causing payments to be taken from consumers' bank accounts without having previously obtained consumers' consent for any and all such payments.

XI. INJUNCTION AGAINST UNLAWFUL COLLECTION PRACTICES

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with collecting on past-due debt, are permanently restrained and enjoined from:

- A. When communicating with any person other than the consumer for the

purpose of acquiring location information about the consumer:

1. Stating that a consumer owes a debt;
2. Communicating more than once with any such person unless the person requests that the Defendant communicate with him or her again or Defendant has a reasonable belief that the person's denial of knowledge of the consumer or the consumer's location in response to Defendant's first location communication was erroneous or incomplete and the person now has correct or complete location information;
3. Failing to create records documenting that any such person informs Defendant, either orally or in writing, that the consumer that Defendant is trying to contact cannot be reached at that telephone number or the person does not have location information about the consumer that Defendant is trying to reach, and failing to maintain these records for at least five years from the date of last contact with the consumer; and
4. Failing to create records documenting that Defendant had a reasonable belief that a person's statement that the consumer Defendant is trying to contact cannot be reached at that telephone number, or that the person does not have location information about

the consumer, was erroneous, incomplete, or out of date, before calling that telephone number again, and failing to maintain these records for at least five years from the date of last contact with the consumer. ***Provided that,*** for purposes of this Section XI.A, to have a “reasonable belief” that a person’s earlier statements were erroneous or incomplete and that such person now has correct or complete location information, Defendant must have: (1) conducted a thorough review of all applicable records, documents, and database entries for the consumer Defendant is trying to reach to search for any notations that indicate that the consumer cannot be reached at that telephone number or that the person does not have location information about the consumer Defendant is trying to reach; and (2) obtained and considered additional information or evidence beyond the information or evidence previously relied upon by Defendant in attempting to contact the consumer Defendant is trying to reach, and such additional information or evidence substantiates Defendant’s belief that the person’s earlier statements were erroneous or incomplete and that such person now has correct or complete location information;

B. Communicating, except when seeking to acquire location information in

compliance with Section 804 of the FDCPA, 15 U.S.C. § 1692b, with any person other than the consumer, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, the attorney of the debt collector, the consumer's spouse, the consumer's parent (if the consumer is a minor), the consumer's guardian, the consumer's executor, the consumer's administrator, or the consumer's attorney, in connection with collecting on past-due debt, unless Defendant has the prior consent of the consumer given directly to Defendant or the express permission of a court of competent jurisdiction, or Defendant can show that such communication is reasonably necessary to effectuate a post-judgment judicial remedy;

C. With regard to the time and place of communications:

1. Communicating with a consumer in connection with collecting on past-due debt at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. This includes communicating with a consumer before 8 a.m. or after 9 p.m. at the consumer's location, as evidenced by the consumer's zip code and the area code of the consumer's telephone number, unless the Defendant has knowledge that such hours are convenient for the consumer. This also includes communicating with a consumer at a particular time or place after anyone at the telephone number has informed Defendant, either orally or in writing, that it is

- inconvenient for the consumer to receive calls at that particular time or place;
2. Communicating with the consumer at the consumer's place of employment if the Defendant knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication; and
 3. Failing to create and maintain (for at least five years from the date of last contact with the consumer) records documenting that a consumer has informed Defendant, either orally or in writing, that it is inconvenient for the consumer to receive calls at a particular time or place, or that the consumer is prohibited from receiving calls from Defendant at the consumer's place of employment;

D. Engaging in conduct the natural consequence of which is to harass, oppress, or abuse a person, including, but not limited to: (1) the use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader; or (2) causing a telephone to ring, or engaging a person in telephone conversation, repeatedly or continuously with the intent to annoy, abuse, or harass the person at the called number. ***Provided that***, for purposes of this Section XI.D, there shall exist a rebuttable presumption of an intent to annoy, harass, or abuse if Defendant places more than one call to any person about a debt after that person has notified Defendant in

writing that the person refuses to pay such debt or that the person wishes Defendant to cease further communication with the person; except that Defendant may communicate to advise the person that further debt collection efforts are being terminated, that Defendant may invoke specified remedies which are ordinarily invoked by debt collectors and creditors, or, where applicable, that Defendant intends to invoke a specified remedy.

Provided further that, after a borrower has sent Defendant a notification pursuant to FDCPA section 805(c) nothing in this Section XI.D shall prevent Defendant from providing the written notice required by 12 C.F.R. § 1024.39(b) if loss mitigation options are available. ***Provided further that***, when a consumer orally requests that Defendant cease further communication regarding a debt, Defendant shall (i) provide the consumer orally and contemporaneously with instructions for submitting the request in writing; and (ii) within 14 days of the consumer orally requesting that Defendant cease further communication, provide the consumer clear and conspicuous written instructions on how to submit the request in writing;

E. Using any false, deceptive, or misleading representation or means, including but not limited to falsely representing, directly or indirectly, expressly or by implication: (1) the character, amount, or legal status of any debt; or (2) that nonpayment of a debt will result in the arrest or imprisonment of consumers or the seizure, garnishment, attachment, or sale of the consumers' property or wages, when in fact such action is not lawful or Defendant does not intend to take such action;

F. Using any unfair or unconscionable means to collect or attempt to collect any debt, including but not limited to collecting any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law; and

G. Violating any provision of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (a copy of which is attached hereto as Attachment A), including, but not limited to: (1) Sections 804(2)-(3), 15 U.S.C. §§ 1692b(2)-(3); (2) Section 805(a), 15 U.S.C. § 1692c(a); (3) Section 805(b), 15 U.S.C. § 1692c(b); (4) Section 806, 15 U.S.C. § 1692d; (5) Section 807, 15 U.S.C. § 1692e; and (6) Section 808, 15 U.S.C. § 1692f.

XII. INJUNCTION AGAINST UNLAWFUL CONSUMER REPORTING PRACTICES

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from:

A. Furnishing information relating to any consumer to a consumer reporting agency, notwithstanding any alternative compliance methods that may be generally available under Section 623(a)(1)(C) of the FCRA, 15 U.S.C. § 1681s-2(a)(1)(C), if:

1. Defendant knows or has reasonable cause to believe that the information is inaccurate; or

2. Defendant has been notified by the consumer, at the address specified by Defendant for such notices, that specific information is inaccurate, and the information is, in fact, inaccurate;

B. Upon determining that the information Defendant furnished to a consumer reporting agency about a consumer is not complete and accurate:

1. Failing to promptly notify the consumer reporting agency that Defendant has determined the information is not complete and accurate;
2. Failing to provide to the consumer reporting agency any corrections to that information, or any additional information, that is necessary to make the information provided by the Defendant to the agency complete and accurate; and
3. Furnishing to the agency thereafter any of the information that remains incomplete or inaccurate;

C. If the completeness or accuracy of any information about a consumer furnished by Defendant to any consumer reporting agency is disputed to Defendant by a consumer or Defendant is notified by a consumer reporting agency under 15 U.S.C. § 1681i(a)(2) that a consumer has disputed information furnished by Defendant, furnishing the information to any consumer reporting agency without notice that such information is disputed by the consumer; and

D. Violating any provision of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x (a copy of which is attached hereto as Attachment B), including, but not limited to: (1) Section 623(a)(1), 15 U.S.C. § 1681s-2(a)(1); (2) Section 623(a)(2), 15 U.S.C. § 1681s-2(a)(2); and (3) Section 623(a)(3), 15 U.S.C. § 1681s-2(a)(3), in connection with furnishing information about a consumer to a consumer reporting agency.

XIII. INJUNCTION AGAINST UNLAWFUL REAL ESTATE SETTLEMENT PROCEDURES

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the servicing of any loan, are permanently restrained and enjoined from:

- A. Failing to timely acknowledge receipt of, and respond to, consumers' qualified written requests;
- B. Failing to protect any consumer's credit rating by providing adverse information to a consumer reporting agency regarding any payment that is the subject of a notice of error or qualified written request for sixty (60) days after receipt of the qualified written request;
- C. Failing to make timely payments from consumers' escrow accounts for casualty insurance, property taxes, and other charges with respect to the property, when

the loan is escrowed for such amounts; and

D. Violating the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605 (a copy of which is attached hereto as Attachment C), or its implementing Regulation X, 12 C.F.R. §§ 1024.35 and 1024.17(k) (a copy of which is attached hereto as Attachment D).

XIV. COMPLIANCE WITH EXISTING LAW

IT IS FURTHER ORDERED that nothing in this Order affects Defendant's obligation to comply with applicable law, implementing regulations, including but not limited to all applicable provisions of the FDCPA, FCRA, provisions of the accuracy and integrity requirements of the Furnisher Rule, 12 C.F.R. § 1022.42 and Appendix A, RESPA, and the Bureau's rules relating to mortgage servicing (12 C.F.R. § 1024.30, *et seq.*).

XV. CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from failing to provide sufficient consumer information to enable the Bureau to efficiently administer consumer redress. If a representative of the Bureau requests in writing any information related to redress, Defendant must provide it, in the form prescribed by the Bureau, within 21 days.

XVI. NOTICE REQUIREMENTS

IT IS FURTHER ORDERED that:

A. For a period of 5 years from the date of entry of this Order, Defendant, whether acting directly or indirectly, shall on a quarterly basis make the following disclosure in writing indicating clearly and conspicuously to consumers with past-due debts serviced by Defendant:

Federal and state law prohibit certain methods of debt collection, and require that we treat you fairly.

If you have a complaint about the way we are collecting this debt, please write to our CONTACT CENTER, [current physical address], email us at [current email address], or call us toll-free at [current phone number] between 9:00 A.M. and 5:00 P.M. Central Time Monday - Friday.

The Federal Trade Commission and the Consumer Financial Protection Bureau enforce the Fair Debt Collection Practices Act. If you have a complaint about the way we are collecting your debt, please contact the FTC or the CFPB. You can reach the FTC online at www.ftc.gov/complaint; by phone at 1-877- FTC-HELP; or by mail at 600 Pennsylvania Ave., NW, Washington, DC 20580. You can reach the CFPB online at www.consumerfinance.gov/complaint; by phone at 1-855-411-2372; or by mail at Consumer Financial Protection Bureau P.O. Box 4503, Iowa City, Iowa 52244.

The above disclosure shall be given in the language(s) that appear in such communications sent to consumers. Defendant shall be responsible for sending the initial, quarterly written notice in accordance with the requirement in this Section XVI.A

thirty (30) days after entry of this Order, or, for loans acquired after entry of this Order, within thirty (30) days of acquisition.

B. Defendant shall be deemed to have complied with the notice requirement of Section XVI.A of this Order if Defendant provides a notice in a specific federal, state, county, or city jurisdiction that (1) is required by the laws or regulations of that jurisdiction, (2) complies with those laws or regulations, and (3) is substantially similar to the notice required in Section XVI.A, above.

C. Defendant, whether acting directly or indirectly, shall provide a written (electronic or paper) copy of the following notice to all officers, agents, and employees having responsibility with respect to collecting on past-due debts, within thirty (30) days of the date of entry of this Order, and to each employee hired for a period of five (5) years after that date, no later than the time the employee assumes responsibility with respect to the collecting on past-due debts, and shall secure from each such person, within forty-five (45) days of delivery, a signed and dated statement acknowledging that he or she has read the notice.

Debt collectors must comply with the federal Fair Debt Collection Practices Act, which limits our activities in trying to collect money from consumers.

Section 804 of the Act says that, when contacting someone to acquire location information about the consumer, you may not state that the consumer owes a debt. You also may not contact this person more than once unless the person asks you to or unless you reasonably believe the person's earlier

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response was wrong or incomplete and that the person now has correct or complete location information to provide to you.

Section 805 of the Act says that, in connection with collecting on past-due debts, you may not communicate with any person other than the consumer for a purpose other than to obtain location information about the consumer. This means that you may not reveal the existence of a debt to anyone other than: (1) the person who allegedly owes the debt; (2) the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator; or (3) the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or Green Tree's attorneys.

Section 805 of the Act also says that you may not communicate with a consumer in connection with collecting on past-due debts: (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer; or (2) at the consumer's place of employment if you know or have reason to know that the employer prohibits the consumer from receiving such communication.

If a consumer notifies you either orally or in writing that the consumer refuses to pay a debt or that the consumer wishes us to cease further communication with the consumer, you shall not communicate further with the consumer with respect to such debt, except: (1) to advise the consumer that our further efforts are being terminated; (2) to notify the consumer that we or the owner of the loan may invoke specified remedies which are ordinarily invoked by debt collectors or creditors; (3) where applicable, to notify the consumer that we or the owner of the loan intends to invoke a specified remedy; or (4) to place one additional call to confirm that the consumer is not interested in loss mitigation.

Section 806 of the Act states that you may not harass, oppress, or abuse any person in connection with collecting on

past-due debts. Among other things, this includes calling someone repeatedly or continuously to annoy, abuse, or harass the person, and using obscene or profane language, or language that is likely to abuse the person.

Section 807 of the Act prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information about a consumer.

Individual debt collectors are liable for their violations of the Act, and may be required to pay penalties if they violate it.

Provided that, for purposes of compliance with Section XVI.C of this Order, the signature required for the employee's statement that he or she has read the notice may be in the form of an electronic signature.

XVII. ACKNOWLEDGMENTS OF ORDER AND RELEVANT STATUTES

IT IS FURTHER ORDERED that Defendant obtain acknowledgments of receipt of this Order and of the FDCPA, the FCRA, and RESPA, in their current codification or as they may hereafter be amended:

A. Defendant, within seven (7) days of entry of this Order, must submit to the Commission and the Bureau an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For five (5) years after entry of this Order, Defendant must deliver a copy of this Order and the FDCPA (attached hereto as Attachment A) to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and

Page 54 of 65

representatives who participate in collecting on past-due debts; and (3) any business entity resulting from any change in structure as set forth in the Section XVIII of this Order. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities. In addition, if the FDCPA is amended within five (5) years after entry of this Order, Defendant must deliver an amended copy of the FDCPA to current personnel who participate in collecting on past-due debts within thirty (30) days after it is amended.

C. For five (5) years after entry of this Order, Defendant, must deliver a copy of this Order and the FCRA (attached hereto as Attachment B) to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in furnishing or reporting information relating to any consumer to any consumer reporting agency; and (3) any business entity resulting from any change in structure as set forth in the Section XVIII of this Order. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities. In addition, if the FCRA is amended within five (5) years after entry of this Order, Defendant must deliver an amended copy of the FCRA to current personnel who participate in furnishing or reporting information relating to consumers to any consumer reporting agency within thirty (30) days after it is amended.

D. For five (5) years after entry of this Order, Defendant, must deliver a copy

of this Order and RESPA (attached hereto as Attachment C) to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in paying property taxes, receiving or responding to notices of error or qualified written requests, or furnishing or reporting information relating to any consumer to any consumer reporting agency; and (3) any business entity resulting from any change in structure as set forth in the Section XVIII of this Order.

Delivery must occur within seven (7) days of entry of this Order for current personnel.

To all others, delivery must occur before they assume their responsibilities. In addition, if RESPA is amended within five (5) years after entry of this Order, Defendant must deliver an amended copy of RESPA to current personnel who participate in paying property taxes, receiving or responding to notices of error or qualified written requests, or furnishing or reporting information relating to any consumer reporting agency within thirty (30) days after it is amended.

E. From each individual or entity to which Defendant delivered a copy of this Order, Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order and of any additional materials received pursuant to this Section of the Order, including copies of the FDCPA, FCRA, or RESPA.

XVIII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant make timely submissions to the Commission:

A. One (1) year after entry of this Order, Defendant must submit a compliance report to the Commission, sworn under penalty of perjury:

1. Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission and Bureau may use to communicate with Defendant; (b) identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant; (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For fifteen (15) years following entry of this Order, Defendant must submit a compliance notice to the Commission, sworn under penalty of perjury, within 14 days of any change in the following: (1) any designated point of contact; or (2) the structure of Defendant or any entity that Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or

affiliate that engages in any acts or practices subject to this Order. The Commission will provide a copy of such notice to the Bureau.

C. Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within fourteen (14) days of its filing. The Commission will provide a copy of such notice to the Bureau.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *Federal Trade Commission and Consumer Financial Protection Bureau v. Green Tree Servicing LLC*, No. XXXX.

F. Unless otherwise directed by a Bureau representative in writing, all submissions to the Bureau pursuant to this Order must be emailed to

Compliance@cfpb.gov or sent by the U.S. Postal Service to: Assistant Director for Enforcement, Consumer Financial Protection Bureau, ATTENTION: Office of Enforcement 1700 G Street, NW, Washington D.C. 20552. For overnight courier send to: Assistant Director for Enforcement, Consumer Financial Protection Bureau, ATTENTION: Office of Enforcement 1625 I Street, 4th Floor, NW, Washington, D.C. 20006. The subject line must begin: *In re* Green Tree Servicing, LLC, File No. XXXX 2014-CFPB-Docket # XXXX.

XIX. RECORDKEEPING

IT IS FURTHER ORDERED that Defendant must create certain records for fifteen (15) years after entry of the Order, and retain each such record for 5 years, unless otherwise indicated. Specifically, Defendant must create and retain the following records:

A. Accounting records maintained in accordance with generally accepted accounting principles in effect from time to time in the United States of America, including records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;

B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;

C. Consumer files containing the names, last known addresses and phone

numbers as of the date Defendant ceased servicing activity, dollar amounts of debt owed, when Defendant serviced the loan, records of Defendant's collection activity, and amounts collected by Defendant;

D. For every consumer complaint to Defendant, whether received directly, indirectly, or through a third party, records that include:

1. Any complaint and the date received, and the nature of the complaint as reflected in any notes, logs, or memoranda, including a description of the conduct alleged; and
2. The basis of the complaint, including the names of any collectors, customer service representatives, or supervisors complained about; the nature of any research conducted concerning the validity of any complaint; all documents relating to the disposition of the complaint, including records of all contacts with the consumer; Defendant's response to the complaint and the response date; whether the complaint was resolved; the date of resolution; and any action taken to correct the conduct complained about.

E. Copies of all scripts and other training materials related to the collection of debts;

F. To the extent permitted by state law, tape recordings of the complete telephone conversation for at least ninety (90) percent of all telephone calls between

Defendant and anyone it contacts in collecting on past-due debts, provided that Defendant must commence making such recordings no later than three (3) months after the date of this Order and must maintain these recordings for two (2) years after they are made;

G. To the extent permitted by state law, tape recordings of the complete telephone conversation for at least ninety (90) percent of all calls in which consumers consent to payment using Speedpay or any other payment method initiated by Defendant in which a convenience fee is charged, provided that Defendant must commence making such recordings no later than three (3) months after the date of this Order and must maintain these recordings for two (2) years after they are made; and

H. All records and documents necessary to demonstrate full compliance with each provision of this Order, including procedures for responding to consumer complaints, documents related to investigations of consumer complaints, all required acknowledgments, notices, and all submissions to the Commission or Bureau.

XX. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant's compliance with this Order:

A. Within fourteen (14) days of receipt of a written request from a representative of the Commission or Bureau, Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of

perjury; appear for depositions; and produce documents, for inspection and copying. The Commission and Bureau are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69, *provided that*, Defendant, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order for one or more of the protections set forth in Federal Rule of Civil Procedure Rule 26(c).

B. For matters concerning this Order, the Commission and Bureau are authorized to communicate directly with Defendant. Defendant must permit representatives of the Commission or Bureau to interview any employee or other person affiliated with Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission and Bureau may use all other lawful means, including posing, through their respective representatives, as consumers, suppliers, or other individuals or entities, to Defendant or any individual or entity affiliated with Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's or Bureau's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, or Section 1052 of the CFPA, 12 U.S.C. § 5562.

Provided that, consistent with the Memorandum of Understanding between the Commission and the Bureau, Plaintiffs shall endeavor to coordinate enforcement of their rights under this Order to minimize duplication of efforts and burden on Defendant.

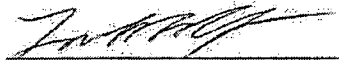
XXI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that although this action will be dismissed, this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this 23rd day of April, 2015.

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Court Judge

FOR PLAINTIFFS:



LISA ROTHFARB

Maryland Bar

DANIEL DWYER

California Bar No. 286701

Federal Trade Commission

600 Pennsylvania Avenue, N.W.

Washington, D.C. 20580

Tel: (202) 326-2602

Fax: (202) 326-3768

Date: 4/21/2015



JAMES SUGARMAN

Washington Bar No. 39107

KIRSTEN IVEY-COLSON

Washington, DC Bar No. 470102

Consumer Financial Protection Bureau

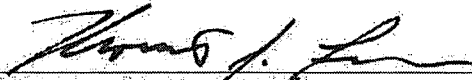
1700 G Street NW

Washington, DC 20552

Tel: (202) 435-7493

Fax: (202) 435-7722

FOR DEFENDANT GREEN TREE SERVICING LLC



THOMAS J. FRANCO

President
Green Tree Servicing LLC
345 St. Peter Street
St. Paul, MN 55102

Date: 2/20/15

STEVEN M. KAPLAN
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K&L Gates LLP
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FOR DEFENDANT GREEN TREE SERVICING LLC

THOMAS J. FRANCO

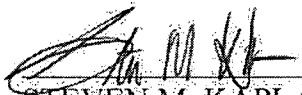
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Tel: (949) 823-7150

Date: 2/20/15

NOTICE REGARDING ALL MOTIONS TO COMPEL:

All Motions to Compel shall be heard on Friday morning October 5 at 10 AM. All Counsel shall bring a proposed Order granting the relief sought. None of this information sought by the court should be of surprise if Counsel has reviewed the Memorandum submitted to the Bar by Judge Roger Young on July 2, 2018 called "Chief Administrative Judge Ramblings." I strongly recommend all Counsel appearing before the court review this Memorandum.

An affidavit detailing the attempts to resolve the motion prior to the hearing shall also be presented. Included with the Affidavit shall be a statement of services rendered which details the time and fees generated from pursuit of the discovery sought in the Motion to Compel. **Affidavits, briefs and proposed Orders** granting the requested relief and leaving a blank for the amount of fees and costs to be awarded **shall be presented to the court at the hearing** and shall also be timely served on opposing counsel prior to the hearing. **Failure to comply will result in denial of the relief.**

As to any objection to discovery on the basis that the information sought is either privileged or work product, the objection party shall prepare and present at the time of the hearing their **privilege log** detailing the basis for the claim to privilege or reason why it should be excluded from production.

At a minimum, the privilege log should detail the date of the communication/statement, who prepared or made the statement, to whom the statement was directed to and finally, the specific basis for the privilege should be included in the log. While this will necessitate much more work on the part of the party claiming the privilege, **failure to prepare and bring this log to the hearing will result in the privilege claimed considered waived** by the court and the **motion to compel shall be granted**.

The Motion to Compel hearing shall constitute a hearing under Rule 37(a) 4, SCRPC.

Mikell R. Scarborough
Special Circuit Court Judge

September 19, 2018
Charleston, SC



State of South Carolina

The Circuit Court of the Ninth Judicial Circuit

Roger M. Young, Sr.
Judge

Charleston County Judicial Center
100 Broad Street, Suite 368
Charleston, SC 29401
Phone: [REDACTED]
Fax: [REDACTED]

MEMORANDUM

To: Members of the Charleston County Bar
From: Judge Roger M. Young, Sr.
Subject: Chief Administrative Judge Ramblings
Date: July 2, 2018

It's my turn to serve as Chief Administrative Judge of Common Pleas Court in Charleston, and as I've gotten older and grumpier I've accumulated a fair number of idiosyncrasies that may affect how you interact with Common Pleas court. In all fairness, you should be aware of them. The good news is that time has proven me right on most of them, and so it would benefit members of the Bar, especially the younger ones, to accept these as gospel and avoid trouble. At least have the good sense to indulge me until it's someone else's turn to be Chief Administrative Judge.

The first group come from my Administrative Assistant Robyn Hills. Robyn has been with me for 15 years now and worked for Judge Vic Rawl before that. There are four main bodies of law you will need to know: (1) the United States and South Carolina Constitutions, (2) the South Carolina Codes of Laws, (3) the South Carolina Rules of Procedure and Evidence, and (4) Robyn's Way of Doing Things. I will leave it to you to decide what's most important to your case but consider which court you petition for relief or assistance.

Group One: Robyn wants you to know stuff

- The submitting party is responsible for filling out dollar amounts for the judgment index on the Form 4. These will be sent back if not filled out. Problems have arisen in the past when filled out by courthouse staff.
- Do not attach a Form 4 to formal orders that do not involve money judgments. Anything else is not required, including an Entry of Default in a civil case. In non-liquidated

damages cases, you will need a Form 4 once you get a money judgment at a subsequent hearing.

- **Status of orders such as any Consent Order, Scheduling Orders, Defaults and Judgments, Reference Orders, etc.** Please do not call regarding the status of your proposed order unless it is extremely time sensitive or it has been over two weeks since it was received by the Clerk's office. We have to stop what we are doing, dig through a stack of orders, look online or walk downstairs to search. This certainly impedes forward progress. Trust me, we do not let orders sit without good reason. (Same goes for the Clerk's office.)
- **Pro Hac Vice Orders.** These will not be signed until the Clerk of Court has received (and has posted online) the acknowledgement that the Supreme Court is in receipt of the application and filing fee.
- If you are asking for attorney's fees in a judgment order, please make sure the 10-day notice has run before my office receives the order for signature.
- **Motions are filed in the Clerk's office. Please do not send them to the judge's chambers for filing.** If there is something in the filing that requires a judge's immediate attention, bring it to the Clerk's attention and they will get it to the judge. (RY note: Send us a copy of post-trial motions as required by Rules 59(g) and 60(a) but do not send us the original for filing). A copy of the motions fees schedule is attached. Remember to attach a check to your motion if required because the Clerk will return it to you without it. That can cause you a problem on a time-sensitive motion.

Group Two: Clerk of Court wants you to know stuff

- Caroline Leonard is the Docket Manager and she can be reached at [REDACTED] or [REDACTED] for jury and non-jury matters.
- If you have motions that resolve before they are settled, please advise the Clerk's office as soon as possible so that they may be closed in the system. This makes room for hearings to be scheduled that might otherwise be postponed.
- Please make sure you provide the Court with Form 4 proposed orders if your matter requires one, i.e. money judgments. A money judgment cannot be filed without a Form 4. If one is not provided, then it will take much longer for the Order to be filed.
- Please be mindful that cases are called on eligibility rather than position number on the Master Roster. The Master Roster reflects pending cases. Trial Not Before dates and attorney protection will knock cases off the trial roster temporarily. If you have doubts about your case, **PLEASE CONFIRM ON THURSDAY MORNING ON THE UPDATE TEXT FEATURE ON THE MASTER ROSTER ON COURT PLUS.** This will have all the cases posted that are going to be called on Friday morning.

- If your case is not on that list, it will not be called for trial and there is no need to attend the roster meeting on Friday morning.
- If you are going to use technology in your trial presentation, please call the Clerk's office at least a week in advance to schedule a time to come to the courthouse to learn about courtroom technology. You will have time to learn how the technology works and hopefully not be caught during trial trying to get your system to work with the Courtroom equipment. (RY note: Have a backup plan! Judges will not delay a trial very long in order to get your computer issues worked out.)
- Juror information is available online. The OnLine Jury information can be accessed by using the following website: jurorsummons.charlestoncounty.org/login.aspx. The Login ID is: [REDACTED] The password is: [REDACTED]
- **Court Plus.** The Charleston County Clerk's office has a case management system on line under the Online Services tab of the Clerk of Court website to provide you with updates on your cases. It is very easy to create an account and it is free! Court Plus will notify you or your staff when there have been filings on your cases. This is an excellent tool to help manage your caseload. (RY note: We are working on a tutorial seminar for lawyers and/or their staff. Pencil in the date of Monday, August 13, 2018 at 2 pm in the Jury Assembly Room of the Courthouse. We will send out more info as soon as we have plans finalized.)

Group Three: Stuff I want you to know

- **Discovery Abuse.** In my 22 years as a judge I have grown to truly loathe discovery motion hearings. Both sides are guilty, as are large and small firms. Computers have made it simple to cut and paste stock objections. The result is a non-jury docket cluttered with motions to compel, a large number of which are settled last-minute. However, a number of them do not, and judges have to sift through some of the most tedious objections you can imagine. It's the only time I ever seriously consider retirement. However, I have discovered I am not alone! The trend is that courts around the country increasingly require litigants provide more than stock objections to discovery requests.
- I draw the reader's attention to an attached unpublished Delaware Chancery Court order of which I have become very fond. The Delaware court bares its judicial teeth at the loathsome practice of responding to discovery requests with boilerplate, generalized objections. The court calls these "inadequate and tantamount to not making an objection at all." The court also harshly criticizes the pervasive practice of asserting privilege without any factual support or privilege log. I read it and am reminded of the scene in the movie "Patton" where Patton overlooks the battlefield action and says, "God help me I do love it so." Please read the attached case before your next appearance in motions week.
- **Don't email a Judge to complain about other lawyers and argue issues**
- As Charlie Brown so famously says, "Good grief."

- I cannot believe I feel compelled to address this issue, but it happens all the time. If you cannot resist emailing a judge to complain about opposing counsel or to argue an issue, at least put it in the form of a letter and attach it to an email. There then exists the possibility that someone in your circle of influence will read it first and talk you down. Whatever satisfaction you derive from sending it is more than offset by the contempt the judicial recipient has for you and all those sucked into the Black Hole you created by the inevitable chain of responses that ensue. Black Holes are governed by the law of physics, and everyone knows you can't argue with physics.
- Last but not least: please reach out to someone if you are struggling. Everyone has times when they think they are the only person dealing with a problem that seems insurmountable. Trust me: you are not the first and you are not alone. The Charleston County Bar enjoys a reputation for helping its members who reach out for help. You only have to ask. I guarantee you will find someone who has been there and knows the way out.

Motion Fees

A. Motions Requiring the \$25.00 Fee

1. Motion for Court Approved Settlement: \$25.00.
2. Motion to be Relieved as Counsel: \$25.00.
3. Consent Orders in pending actions and no final order has been issued: \$25.00. (See Rule 43(k), SCRCP; See also C.14 for special circumstance).
4. Supplemental Pleadings: Rule 15(d), SCRCP: \$25.00.
5. Motion for Default Judgment: Rule 55, SCRCP: \$25.00, regardless of whether damages are liquidated or unliquidated. No further fee required if proposed order presented ten days later.
 - a. Motion to Set Aside Default: Rule 55(c), SCRCP: \$25.00.
6. Motion for New Trial: Rule 59, SCRCP: \$25.00, if made in writing after the conclusion of the trial.
7. Motion to Alter or Amend Judgment: Rule 59(e): \$25.00, if made in writing after the conclusion of the trial.
8. Motion to Amend a Motion: \$25.00.
9. Motion to Intervene: Rule 24, SCRCP: \$25.00.
10. Motion Requesting Physical and/or Mental Examination: Rule 35, SCRCP: \$25.00.
11. Motion for Amendment of Judgment: Rule 52(b), SCRCP: \$25.00.
12. Motion for Summary Judgment: Rule 56, SCRCP: \$25.00.
13. Motion for Relief from Judgment or Order: Rule 60, SCRCP: \$25.00.

14. Motion for Seizure of Person or Property: Rule 64, SCRCP: \$25.00
15. Motion for Execution or Assistance: Rule 70, SCRCP: \$25.00.
16. Motion for Appointment of Receiver: Rule 66, SCRCP: \$25.00.
17. Single Motion Applied to Multiple Cases: \$25.00 Per Case.
18. Subsequent Motions to Master: \$25.00.
19. Motion to Restore to Active Docket After Bankruptcy: \$25.00.
20. Motion for Order Updating Judgment Figures due to Stay Caused by Bankruptcy: \$25.00.
21. Motion for Admission *Pro Hac Vice*: Rule 404, SCACR: \$25.00 Per Case.
22. Rule to Show Cause in Family Court for Non-Payment of Previously Court Ordered Fees: \$25.00.
23. Motion to Reduce or Increase Child Support in a pending action and no final order has been issued: \$25.00.

B. Motions Requiring Fee With Special Conditions

1. Motion for Referral to Master: Rule 53, SCRCP: If referred to Master by Motion or Consent of Parties: \$25.00. If referred to Master by Motion of Court: No Fee.
 - a. § 14-11-310 requires various fees to be collected in Master's Court and retained by County. These fees will be collected in addition to the motion fee.
2. Supplemental Proceedings: If conducted in the Court of Common Pleas: \$25.00. If conducted by Master, refer to #1 above.

3. Amendment of Pleadings: Rule 15(a), SCRCP: When leave of Court is required: \$25.00. With consent of both parties and without leave of court: No Fee.
4. Third Party Practice: Rule 14, SCRCP: Defendant as Third Party Plaintiff bringing in Non-Party, if done within ten days after service of original answer: No Charge. After ten days with leave of Court: \$25.00.
5. Joinder, Permissive Joinder, Misjoinder, and Non-Joinder of Parties: Rules 19, 20, and 21, SCRCP: If by Motion of Party: \$25.00. If by Motion of the Court: No Fee.
6. Depositions before Action or Pending Appeal: Rule 27, SCRCP: If by Petition of Party: \$25.00.
7. Depositions Upon Oral Examination: Rule 30, SCRCP: If leave of Court required: \$25.00.
8. Motion for Dismissal: Rule 41, SCRCP.
 - a. (a)(1)(A): By Plaintiff by Stipulation, without leave of Court: No Fee.
 - b. (a)(1)(B): By Stipulation with Consent of both Parties without Leave of Court: No Fee.
 - c. (a)(2): By Order of Court: \$25.00.
 - d. (b): Involuntary Dismissal, Non-Suit: \$25.00. If made in open court during trial: No Fee.
9. Motion to Consolidate or Sever: Rule 42, SCRCP: If requested by Party: \$25.00 (Only one Fee regardless of number of Cases). Upon Court's own Motion: No Fee.
10. Rule 65, SCRCP: All actions contained in the Rule require separate filing fees; subsequent Motions in same action: \$25.00.
11. Motion to Enforce Settlement: \$25.00, but may be shifted to other Party by judge.

12. Motion to Compel: Rule 26, SCRCP: \$25.00, but may be shifted to other Party by judge.
13. Rule 40, SCRCP.
 - a. (a): Request for Jury or Non-Jury in Pleadings: No Charge.
 - b. (c): Transfer to Jury Trial Roster by Agreement: \$25.00.
 - c. (d): Objection to Transfer: \$25.00.
 - d. (e): Request Transfer to Jury Roster Nine Months to Twelve Months after Filing: \$25.00.
 - e. (g): Motion to Strike from Jury Trial Roster: \$25.00.
 - f. (i): Continuance: \$25.00.
 - g. (j): Requires New Filing Fee and New Case Number: No Motion Fee.
 - h. (k): Alternate Method of Transfer to Jury Roster: \$25.00.
14. Motion for Order of Protection from Discovery; Motion to Quash: Rules 24, 37, and 45, SCRCP: \$25.00, but may be assessed to other Party by judge.
15. Motion for Temporary Relief in Family Court: Rule 21, SCRFC: \$25.00. This Motion may include numerous standard forms of relief, such as temporary custody, visitation, support, etc. However, only one fee charged.
16. Matters Involving Rule to Show Cause in Court Ordered Custody and Visitation Cases: \$25.00.
17. Motion for Appointment of Guardian ad Litem: \$25.00. If by Motion of Court: No Fee.
18. Motion for Substitution of Counsel: If in attorney appointed case or by consent: No fee. Otherwise: \$25.00.
19. Motion for Order of Continuance: \$25.00. If requested pursuant to Rule 601, SCACR, conflict in hearing dates: No fee.
20. Rule 50, SCRCP.
 - a. Motion for Directed Verdict: No fee.

- b. Motion for Judgment Notwithstanding the Verdict if reduced to writing: \$25.00. If made orally in open court: No fee.
 - c. Motion for New Trial if reduced to writing: \$25.00. If made orally in open court: No fee.
- 21. Rule 12, SCRCP Motions: If presented in an answer: No fee. If made by separate motion: \$25.00.
 - 22. Motion for Status Conference: If requested by the Court: No fee. If filed by a party: \$25.00.

C. Motions With No Fee

- 1. **No Fees Shall be Charged for any Motions in the Court of General Sessions.**
- 2. Motions for Orders of Protection of Attorneys from Court Appearances: No Fee.
- 3. Sexually Violent Predator Cases: Regulation exempts filing fee. No subsequent Motion Fees.
- 4. General request for Subpoena: No Fee.
- 5. Matters Involving Rules to Show Cause for Spousal Support: No Fee. No Subsequent Motion Fees.
- 6. Matters Involving Rules to Show Cause for Child Support: No Fee. No Subsequent Motion Fees.
- 7. Juvenile Delinquency Matters in Family Court: No Fee. No Subsequent Motion Fees.
- 8. Matters Involving Indigency in Common Pleas or Family Court where a Party has been allowed to proceed without costs. No Subsequent Motion Fees for that Party.
- 9. Matters Involving Orders of Protection from Domestic Abuse: No Fee. No Subsequent Motion Fees.

10. Matters Involving Abuse and Neglect: No Fee. No Subsequent Motion Fees.
11. Execution on Judgment: Rule 69, SCRCP: No Fee.
12. Matters Involving State Agency v. Party Granted Indigent Status Pursuant to Rule 3(c), SCRCP: No Fee for either party.
13. Motion for Stay Due to Bankruptcy: No Fee.
14. Consent Order filed resolving Motion on which the Fee has been paid: No Additional Fee.
15. Anything Contained in an Answer: No Fee.
16. Motion for Request for Jury Instruction: Rule 51, SCRCP: No fee.
17. Collateral Matters Contained in Rules to Show Cause and Support Cases: No Fee if Relief is directly related to Defendant's Non-Payment of Child or Spousal Support.
18. Motion for Order of Publication: § 15-9-710: No Fee.
19. Motion for Substitution of Parties: Rule 25, SCRCP: No Fee.
20. Post-Conviction Relief: No Fee.
21. Rule 43, SCRCP
 - a. Rule 43(j): Motion for Right to Open and Close: No Fee.
 - b. Rule 43(k): Agreement of Counsel, Consent Order or Written Stipulation **made in Court**: No Fee.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE OXBOW CARBON LLC
UNITHOLDER LITIGATION

) Consol. C.A. No. 12447-VCL
)

MEMORANDUM OPINION

Date Submitted: March 8, 2017

Date Decided: March 13, 2017

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LASTER, Vice Chancellor.

Individuals and entities affiliated with the Crestview private equity complex (collectively, the “Crestview Parties”) have moved to compel discovery from William I. Koch and his affiliates (collectively, the “Koch Parties”).¹ This decision largely grants the motion.

I. LEGAL ANALYSIS

“[P]retrial discovery rules are to be afforded broad and liberal treatment.” *Levy v. Stern*, 687 A.2d 573 (Del. 1996) (TABLE). Rule 26(b)(1) states:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information, or tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Ct. Ch. R. 26(b)(1).

¹ The following individuals and entities comprise the Crestview Parties: Robert J. Hurst, Barry S. Volpert, Crestview-Oxbow Acquisition, LLC, Crestview-Oxbow (ERISA) Acquisition, LLC, Crestview Partners, L.P., Crestview Partners GP, L.P., and Crestview Advisors, LLC.

The following entities and individuals comprise the Koch Parties: William I. Koch, Oxbow Carbon & Minerals Holdings, Inc. (“Koch Holdings”), Ingraham Investments LLC and Oxbow Carbon Investment Company LLC (the “Small Holders”), and Oxbow Carbon LLC (the “Company”).

“The scope of discovery pursuant to Court of Chancery Rule 26(b) is broad and far-reaching” *Cal. Pub. Emps. Ret. Sys. v. Coulter*, 2004 WL 1238443, at *1 (Del. Ch. May 26, 2004) (citation omitted). “[T]he spirit of Rule 26(b) calls for all relevant information, however remote, to be brought out for inspection not only by the opposing party but also for the benefit of the Court” *Boxer v. Husky Oil Co.*, 1981 WL 15479, at *2 (Del. Ch. Nov. 9, 1981). Relevance “must be viewed liberally,” and discovery into relevant matters should be permitted if there is “any possibility that the discovery will lead to relevant evidence.” *Loretto Literary & Benevolent Inst. v. Blue Diamond Coal Co.*, 1980 WL 268060, at *4 (Del. Ch. Oct. 24, 1980). “Discovery is called that for a reason. It is not called ‘hide the ball.’” *Klig v. Deloitte LLP*, 2010 WL 3489735, at *7 (Del. Ch. Sept. 7, 2010).

When a party objects to providing discovery, “[t]he burden is on the objecting party to show why and in what way the information requested is privileged or otherwise improperly requested.”² Generic and formulaic objections “are insufficient.” *Van de Walle*, 1984 WL 8270, at *2.

² *Van de Walle v. Unimation, Inc.*, 1984 WL 8270, at *2 (Del. Ch. Oct. 15, 1984); accord *Prod. Res. Gp., L.L.C. v. NCT Gp., Inc.*, 863 A.2d 772, 802 (Del. Ch. 2004) (Strine, V.C.) (citation omitted). A more accurate description of the discovery process is “a practical form of burden-shifting.” *In re Appraisal of Dole Food Co., Inc.*, 114 A.3d 541, 551 (Del. Ch. 2014). “[T]he party seeking the information must first provide some minimal explanation as to why the discovery satisfies the requirements of relevance and conditional admissibility.” *Id.* Once the party seeking discovery has met that initial burden, “[i]t is then up to the party opposing discovery to show that the explanation is erroneous” or that there are other reasons why discovery should be limited or foreclosed. *Id.*

Ample federal authorities reinforce these points. Because the Court of Chancery Rules are patterned on the Federal Rules of Civil Procedure, it is appropriate to look to federal authorities for guidance. See *Plummer v. Sherman*, 861 A.2d 1238, 1242 (Del. 2004). Recent amendments to the Federal Rules have made clear that the objecting party has the burden to articulate its objections with specificity. See *Committee Notes on Rules—2015 Amendment*, Fed. R. Civ. P. 34 (2015) (“Rule 34(b)(2)(B) is amended to require that objections to Rule 34 requests be stated with specificity.”). Even before this codification, numerous federal decisions made clear that “boilerplate, generalized objections are inadequate and tantamount to not making any objection at all.”³ Summarizing the case law,

³ *Walker v. Lakewood Condo. Owners Ass’n*, 186 F.R.D. 584, 587 (C.D. Cal. 1999); see also *Steed v. EverHome Mortg. Co.*, 308 F. App’x 364, 371 (11th Cir. 2009) (“[B]oilerplate objections may border on a frivolous response to discovery requests.”); *McLeod, Alexander, Powel & Appfel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990) (“[T]o say an interrogatory was overly broad, burdensome, oppressive and irrelevant [is] not adequate to voice a successful objection to an interrogatory.” (internal quotations omitted)); *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir. 1982) (“[T]he mere statement by a party that the interrogatory was ‘overly broad, burdensome, oppressive and irrelevant’ is not adequate to voice a successful objection to an interrogatory.”); *Adelman v. Boy Scouts of Am.*, 276 F.R.D. 681, 688 (S.D. Fla. 2011) (“[B]oilerplate objections [are] legally inadequate or meaningless.”); *Nissan N. Am., Inc. v. Johnson Elec. N. Am., Inc.*, 2011 WL 669352, at *2 (E.D. Mich. Feb. 17, 2011) (“Boilerplate or generalized objections are tantamount to no objection at all”); *Hager v. Graham*, 267 F.R.D. 486, 498 (N.D. W. Va. 2010) (“The objection is only a general statement that does not specify how the [request for production] is vague, ambiguous, and overly broad. Therefore, the objection is improper.”); *Enron Corp. Sav. Plan v. Hewitt Assocs., L.L.C.*, 258 F.R.D. 149, 159 (S.D. Tex. 2009) (“Boilerplate objections are not acceptable; specific objections are required” (internal quotations omitted)); *A. Farber & P’rs, Inc. v. Garber*, 234 F.R.D. 186, 188 (C.D. Cal. 2006) (“[G]eneral or boilerplate objections such as ‘overly burdensome and harassing’ are improper—especially when a party fails to submit any evidentiary declarations supporting such objections.”).

one commentator observed that “[b]oilerplate objections have been considered prima facie evidence of a Rule 26 violation, which causes the objecting party to waive any legitimate objections that they may or may not have had.”⁴ It is particularly evasive for a response to recite broad, generic, and formulaic objections, then purport to answer “subject to the objections.”⁵ Such a response makes it impossible to determine what information a party

⁴ Brian Morris, *The 2015 Proposals to the Federal Rules of Civil Procedure: Preparing for the Future of Discovery*, 41 N. Ky. L. Rev. 133, 152 (2014) (citations omitted). See generally Matthew L. Jarvey, *Boilerplate Discovery Objections: How They Are Used, Why They Are Wrong, and What We Can Do About Them*, 61 Drake L. Rev. 913 (2013) (discussing the issue of boilerplate objections in detail).

⁵ *Guzman v. Irmadan, Inc.*, 249 F.R.D. 399, 401 (S.D. Fla. 2008) (“Parties shall not recite a formulaic objection followed by an answer to the request. It has become common practice for a party to object on the basis of any of the above reasons, and then state that ‘notwithstanding the above,’ the party will respond to the discovery request, subject to or without waiving such objection. Such objection and answer preserves nothing, and constitutes only a waste of effort and the resources of both the parties and the court.”); see Robert K. Wise, *Ending Evasive Responses to Written Discovery: A Guide for Properly Responding (and Objecting) to Interrogatories and Document Requests Under the Texas Discovery Rules*, 65 Baylor L. Rev. 510, 567–68 (2013) (“Many practitioners . . . use [the] evasive method[] in responding to interrogatories and document requests [of having a] section at the beginning of the response entitled ‘general objections,’ which contains every imaginable objection, such as overbreadth, undue burden, relevance, vagueness, ambiguity, harassment, cumulativeness, duplicativeness, and privilege, followed by a separate section with answers to each discovery request that incorporate the ‘general objections’ by reference ‘to the extent’ they apply to the pertinent discovery request.”); *id.* at 568 (explaining that another evasive method of responding to discovery is “to set forth in the response to each discovery request a litany of prophylactic, boilerplate objections, such as those set forth above, and then ‘subject to and without waiving’ the objections state, for example, that ‘non-privileged responsive documents will be produced’”).

has agreed to provide and whether the response is complete; it therefore amounts to a waiver of the objections that purportedly were preserved.⁶

For an objecting party to carry its burden, the objection must be specific, the party making it must explain why it applies on the facts of the case to the request being made, and if the party is providing information subject to the objection, the party must articulate how it is applying the objection to limit the information it is providing.⁷ In short, “[o]bjections should be plain enough and specific enough so that the Court can understand in what way the discovery is claimed to be objectionable.” *Van de Walle*, 1984 WL 8270,

⁶ *Mills v. E. Gulf Coal Preparation Co., LLC*, 259 F.R.D. 118, 132 (S.D. W. Va. 2009) (“Failure to state objections specifically in conformity with the Rules will be regarded as a waiver of those objections.”); *Sabol v. Brooks*, 469 F. Supp. 2d 324, 328 (D. Md. 2006) (“[F]ailure to make particularized objections to document requests constitutes a waiver of those objections.”); *In re Folding Carton Antitrust Litig.*, 83 F.R.D. 260, 264 (N.D. Ill. 1979) (“General objections may result in waiver of the objections.”). See generally *Wise, supra*, at 569 (“[B]ecause general objections are nonspecific and ‘hide the ball’ with respect to what information or material is being provided and what information or material is being withheld and why . . . [they] have been universally condemned by courts for this very reason.”); Mark Kosieradzki & Kara Rahimi, *Keep Discovery Civil: When Opposing Counsel Obstructs or Deflects Your Access to Evidence, Look to the Rules and Long-Settled Case Law for Relief. Both Are on Your Side*, Trial, June 2008, at 32 (“[C]ourts have held that asserting numerous general objections obscures any valid objections and may result in a waiver of the valid objections absent a showing of good cause.”).

⁷ See *Josephs*, 677 F.2d at 992 (explaining that a party’s objections must “show specifically how each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive” (internal quotations and alterations omitted)); *DL v. District of Columbia*, 251 F.R.D. 38, 43 (D.D.C. 2008) (explaining that if party’s objections “are not applied with sufficient specificity to enable this Court to evaluate their merits . . . this Court will overrule [the party’s] objections in their entirety”); *Folding Carton*, 83 F.R.D. at 264 (“Objections to interrogatories must be specific and [be] supported by a detailed explanation why the interrogatories are improper.”).

at *2. *See generally* Kosieradzki & Rahimi, *supra*, at 30–31 (“Objections must be sufficiently particular to advise the requesting party and the court to what extent the discovery request is objectionable.”).

A. Surveillance Information

The Crestview Parties sought discovery into the Koch Parties’ use of surveillance devices and private investigators to obtain information about the Crestview Parties, Christine O’Donnell, and Eric Johnson. The Koch Parties have relied affirmatively on the fruits of these sources of information in pressing their claims, yet they refused to provide information about the sources or to produce the material they obtained. The Koch Parties relied primarily on generic objections about relevance and burden. Those objections are overruled. The Koch Parties will produce the information sought.

Koch has installed security cameras in his houses and in the Company’s offices. The Koch Parties have collected surveillance footage of the Crestview Parties, Johnson, O’Donnell, Michael McAuliffe (Oxbow’s former General Counsel), Steve Fried (Oxbow’s former Chief Operating Officer), and representatives of other parties to the case. The Koch Parties clearly believe that at least some of that footage is relevant to the claims or defenses in this action because they have cited the results of their investigations in various submissions to the court.

Koch also makes extensive use of private investigators and has deployed them in connection with this litigation. For example, in September 2016, former F.B.I. agent Richard “Jim” Elroy tracked down O’Donnell’s nanny and personal assistant, Rachel Corrigan, and asked to meet with her in Boston to discuss O’Donnell. During the meeting,

Elroy provided Corrigan with a business card that identified him as an investigator in the “Oxbow legal department.” The Koch Parties have logged as privileged various communications with Elroy and documents he prepared.

1. Requests Seeking The Surveillance Information

Request 91 sought “[a]ll audio and video recordings, including any transcripts or other documents referring thereto, of communications with Crestview, Load Line, Arclight and any individuals formerly or currently affiliated with those entities.” Request 92 sought “[a]ll documents or audio or video recordings concerning surveillance of or investigations into Crestview, Load Line, Mr. Hurst, Mr. Volpert, Ms. O’Donnell, or Mr. Johnson.”

The Koch Parties responded to these requests with non-substantive and formulaic objections. They first objected to producing surveillance information on grounds of relevance. The objection was generic and therefore no objection at all. Moreover, the information sought was obviously relevant. The Koch Parties have themselves relied on the results of surveillance when making affirmative claims in this case. The Koch Parties also have logged surveillance-related communications on their privilege log, thereby recognizing that the information is relevant. *See Mechel Bluestone, Inc. v. James C. Justice Cos.*, 2014 WL 7011195, at *8 (Del. Ch. Dec. 12, 2014) (“By listing the documents initially on the log, Mechel’s counsel represented that they were responsive.”). The Koch Parties even sought similar materials from Crestview by requesting “[a]ll documents relating to audio or video recordings or transcripts relating to any allegations made in the pleadings.” By asking for the information themselves, the Koch Parties’ attorneys represented that they believed the information was relevant. Most tellingly, the Koch Parties agreed to produce

"non-privileged . . . voice messages," demonstrating that they understood the relevance of the request. The relevance objection could not have been asserted in good faith.

The Koch Parties also objected to these requests as "excessive, overbroad, and unduly burdensome." This is insufficient. "The objecting party must show specifically how each discovery request is burdensome or oppressive by submitting affidavits or offering evidence revealing the nature of the burden." *Oleson v. Kmart Corp.*, 175 F.R.D. 560, 565 (D. Kan. 1997); accord *Roesberg v. Johns-Manville Corp.*, 85 F.R.D. 292, 296-97 (E.D. Pa. 1980) (explaining that an objecting party "must show specifically how . . . each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive . . . by submitting affidavits or offering evidence revealing the nature of the burden" (internal citations omitted)). The responses provided no information whatsoever in support of these assertions. The objections are overruled.

In response to Request 92, the Koch Parties also claimed that the terms "investigations" and "surveillance" were "vague and ambiguous." It is obvious what the Crestview Parties were seeking, and it is not credible for the Koch Parties to pretend that they were flummoxed by these concepts. In any event, the Koch Parties were obligated to construe the terms in the requests reasonably. If they believed these terms were somehow vague or ambiguous in the context of the case, then they should have explained in what way the terms were giving them trouble, interpreted the terms in a reasonable and constructive way, and set out in their responses how they were interpreting them.

The Koch Parties shall file supplemental responses that do not contain non-substantive, general objections and which do not profess confusion about straightforward English concepts. The Koch Parties shall produce the materials sought.

2. The Assertion Of Privilege

In response to Requests 91 and 92, the Koch Parties have asserted claims of privilege and work product protection for approximately 160 items concerning Elroy. The Koch Parties shall produce these documents.

The burden of establishing that otherwise discoverable information is privileged rests “on the party asserting the privilege.”⁸

[A] bare allegation that information and documents are protected from discovery by . . . privilege is insufficient without making more information available. . . . It is incumbent on one asserting the privilege to make a proper showing that each of the criteria [underlying the privilege] exist[s]. . . . A proper claim of privilege requires a specific designation and description of the documents within its scope

⁸ *Moyer v. Moyer*, 602 A.2d 68, 72 (Del. 1992); accord *Sokol Hldgs., Inc. v. Dorsey & Whitney, LLP*, 2009 WL 2501542, at *6 n.28 (Del. Ch. Aug. 5, 2009) (Strine, V.C.); *PharmAthene, Inc. v. SIGA Techs., Inc.*, 2009 WL 2031793, at *4 n.13 (Del. Ch. July 10, 2009); *Rembrandt Techs., L.P. v. Harris Corp.*, 2009 WL 402332, at *5 n.43 (Del. Super. Feb. 12, 2009); *SICPA Hldgs., S.A. v. Optical Coating Lab., Inc.*, 1996 WL 636161, at *7 (Del. Ch. Oct. 10, 1996); *Emerald P’rs v. Berlin*, 1994 WL 125047, at *1 (Del. Ch. Mar. 30, 1994); *Hoechst Celanese Corp. v. Nat’l Union Fire Ins. Co.*, 623 A.2d 1118, 1122 (Del. Super. 1992); *In re Fuqua Indus., Inc. S’holders Litig.*, 1992 WL 296448, at *3 (Del. Ch. Oct. 8, 1992); *Deutsch v. Cogan*, 580 A.2d 100, 107 (Del. Ch. 1990). See generally Donald J. Wolfe, Jr. & Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery* § 7.04 (2012).

as well as precise and certain reasons for preserving their confidentiality.⁹

A party must provide “sufficient *facts* as to bring the identified and described document within the narrow confines of the privilege.” *Int’l Paper*, 63 F.R.D. at 94 (emphasis in original); *accord Reese*, 1985 WL 21127, at *5 (“The documents must be precisely enough described to bring them within the rule . . .”).

The Crestview Parties have established a sufficient evidentiary basis to hold that the privilege and work product doctrine do not extend to these items. When asked about Elroy’s affiliation during a recent Board meeting, the Company’s litigation counsel, Robert Popeo, and its General Counsel, Dave Clark, stated that Elroy was “not being paid by, or in the service of, the Company in connection with this litigation.” Ferraro Aff. Ex. G at Oxbow_00237410.

Separately, the Company has waived any protection for documents relating to Elroy’s investigation by placing the matter “at issue” in this litigation. A party waives the attorney-client privilege by “inject[ing] the communications themselves into the litigation” or “inject[ing] an issue into the litigation, the truthful resolution of which requires an examination of the confidential communications.” *Amirsaleh v. Bd. of Trade of City of New York, Inc.*, 2008 WL 241616, at *3 (Del. Ch. Jan. 17, 2008) (quotation omitted). Here, the Koch Parties have put at issue the results of Elroy’s investigation of O’Donnell by

⁹ *Int’l Paper Co. v. Fibreboard Corp.*, 63 F.R.D. 88, 93–94 (D. Del. 1974); *accord Sokol Hldgs.*, 2009 WL 2501542, at *8; *Deutsch*, 580 A.2d at 107; *Reese v. Klair*, 1985 WL 21127, at *5 (Del. Ch. Feb. 20, 1985).

arguing to the court that the investigation “revealed evidence suggesting that Ms. O’Donnell may have inappropriately used her Renegade administrative assistant (paid for by Renegade) as her personal nanny and house manager.” Dkt. 302 at 14 n.3. Having used the results of the investigation as a sword, the Koch Parties cannot invoke privilege as a shield.

Work product protection is inapplicable because the log does not identify the litigation that was being contemplated. To meet its burden to establish the requirements of privilege, a party typically prepares a privilege log. The log must identify

(a) the date of the communication, (b) the parties to the communication (including their names and corporate positions), (c) the names of the attorneys who were parties to the communication, and (d) [a description of] the subject of the communication sufficient to show why the privilege applies, as well as [the issue to which] it pertains With regards to this last requirement, the privilege log must show sufficient facts as to bring the identified and described document within the narrow confines of the privilege.

Unisuper Ltd. v. News Corp., C.A. No. 1699-N, slip op. at 2 (Del. Ch. Mar. 9, 2006) (internal quotation omitted). Many cases recite these requirements.¹⁰ When a party seeks to invoke the work product doctrine, a party cannot merely recite “in anticipation of litigation” as a formulaic set of magic words. A party must identify the specific litigation that forms the basis of the work product claim. *See, e.g., St. Johns Ins. Co. v. Nautilus Ins.*

¹⁰ *See, e.g., Union Pac. Res. Gp., Inc. v. Pennzoil Co.*, 1997 WL 34655410, at *1–2 (D. Del. Aug. 12, 1997); *Cont’l Gp., Inc. v. Justice*, 536 F. Supp. 658, 664 (D. Del. 1982); *Coastal Corp. v. Duncan*, 86 F.R.D. 514, 520 (D. Del. 1980); *Int’l Paper*, 63 F.R.D. 93–94; *see also Wolfe & Pittenger* § 7.04, at 7-57 to -58.

Co., 2008 WL 1897572, at *2 (M.D. Fla. Apr. 28, 2008) (requiring party to identify specific litigation forming the basis for work product claim); *Elec. Frontier Found. v. Dept. of Justice*, 2016 WL 7406429, at *9 (N.D. Cal. Dec. 22, 2016) (holding that the “mere recitation of the elements” of work product protection without identifying the “current or foreseeable litigation” was insufficient).

The items on the privilege log relating to Elroy also lack sufficient descriptions of their content. Every entry concerning him contains one of five generic descriptions: “prepared in anticipation of litigation regarding” along with one of (1) “employee expenses,” (2) “employee work performance,” (3) “funds spent in connection with the Boston office,” (4) “employee practices” or (5) travel policies.

For one, these are “rote and redundant” privilege justifications that are insufficient under Delaware law. *Klig v. Deloitte LLP*, 2010 WL 3489735, at *6, *8 (Del. Ch. Sept. 7, 2010). Because these repetitive descriptions “fall[] substantially short of [Delaware’s] well-established requirements,” waiver is an appropriate consequence. *Mechel Bluestone*, 2014 WL 7011195, at *6. For another, each topic appears to be a business matter, not a litigation matter. “Routine investigations are generally not protected by the work product doctrine.” *State ex-rel. Brady v. Ocean Farm Ltd. P’ship*, 2002 WL 259955, at *2 (Del. Ch. Feb. 14, 2002). Even “[m]aterials assembled during routine investigations by counsel are not protected as work product.”¹¹ Bolstering the view that the materials are not

¹¹ *Ramada Inns, Inc. v. Drinkhall*, 490 A.2d 593, 596 (Del. Super. 1985); see *United States v. ISS Marine Servs., Inc.*, 905 F. Supp. 2d 121, 137 (D.D.C. 2012) (internal audit report not work product); *Navigant Consulting, Inc. v. Wilkinson*, 220 F.R.D. 467, 477

protected, the only recipient of any of Elroy's communications was Karen Rowe, a human resources employee at Renegade Management, LLC, Koch's family office. Although each entry claims that the work was performed "at the direction of Richard Callahan, Esq.," Callahan was not a sender or recipient of a single communication that has been withheld. Moreover, Callahan is a member of the Company's Board and was appointed to that position by Koch Holdings. There is substantial reason to doubt that he was acting in a legal capacity. "[I]t is the rare case in which a company genuinely anticipating litigation will leave its attorneys on the outside looking in." *ISS Marine Servs., Inc.*, 905 F. Supp. 2d at 138; *see also Morgan v. Conectiv*, 2005 WL 3441362, at *2 (Del. Super. Oct. 7, 2005) (rejecting work product claims).

The claims of privilege and work product for the Elroy documents and communications are overruled. The Koch Parties shall produce these documents.

3. The Interrogatory About The Use Of Private Investigators

Interrogatory 2 calls on the Koch Parties to "[i]dentify each Person who has been retained by Plaintiffs to conduct any surveillance or investigation into Crestview, Load Line, Christina O'Donnell, Eric Johnson, Michael McAuliffe, or Steve Fried and describe the nature of the each such person's surveillance or investigation assignment and the results of same." The Koch Parties responded to this interrogatory with the same non-substantive,

(N.D. Tex. 2004) (internal investigation of employee theft is not work product); *cf. Charles v. Lizer*, 2003 WL 21688306, at *2 (Del. Super. July 10, 2003) (holding that statements given by defendant to an insurance adjuster are not work product).

generic objections on the basis of relevance, burdensomeness, and supposed ambiguity of the terms “surveillance” and “investigation.” The Koch Parties also asserted in conclusory fashion the attorney-client privilege and work product doctrine.

The generalized objections are no objections at all and overruled on that basis. The objections to straightforward English terms are not credible. The invocations of privilege and the work product doctrine are conclusory and inadequate. They are also overruled for the additional reason that neither doctrine protects discovery of “the facts that the adverse party’s lawyer has learned, or the persons from whom he has learned such facts.” *Atkins v. Hiram*, 1993 WL 545416, at *3 (Del. Ch. Dec. 23, 1993) (quoting 8 Charles A. Wright et al., *Federal Practice and Procedure* § 2023 (1970)).

The Koch Parties shall provide a supplemental response to Interrogatory 2 without relying on their objections. The response shall include the basic factual information, including who conducted the investigation, the terms of the engagement, the target of the investigation, the purpose of the investigation, the steps in the investigation (including dates, times, and places when the investigation was conducted), and the facts generated by the investigation.

B. Information About Director Independence

The Crestview Parties sought information regarding whether individuals appointed to the Board by Koch Holdings are independent of Koch. Crestview has asserted that Koch dominates and controls the other directors. A party alleging “domination and control of a company’s board of directors bears the burden of proving such control by showing lack of independence.” *Texlon Corp. v. Meyerson*, 802 A.2d 257, 264 (Del. 2002). Information

regarding the relationships between Koch and the directors appointed by Koch Holdings is plainly discoverable. The Koch Parties' objections to these requests are overruled.

Interrogatory 9 called on the Koch Parties to

[i]dentify each employment position that each [Koch Holdings]-appointed Director of Oxbow has held from 1990 onward, including (i) the name of the entity which employed the Director; (ii) the position held by the Director; (iii) the years in which the position was held; and (iv) the compensation received by the Director.

The Koch Parties advanced a variety of non-substantive, general objections to this interrogatory, which are overruled. The Koch Parties shall serve a supplemental response that does not contain their general objections.

Interrogatory 10 called on the Koch Parties to

[s]tate all business, personal, financial, or professional relationships between each [Koch Holdings]-appointed director of Oxbow and Mr. Koch, including a description of the nature of the relationship, the length of time that the relationship has existed, and the amount of money that each [Koch Holdings]-appointed director has received as a result of the relationship.

The Koch Parties asserted a variety of non-substantive, general objections to this interrogatory, which are overruled. The Koch Parties did not provide an answer to this interrogatory. They shall serve a supplemental response that does not contain their general objections and which provides the information sought.

Request 43 called on the Koch Parties to produce

[a]ll Documents relating to or demonstrating any business, financial, employment, or personal relationships between Mr. Koch and the [Koch Holdings]-appointed Directors of Oxbow,

other than Documents concerning the Directors' role on the Oxbow Board.

The Koch Parties asserted a variety of non-substantive, general objections to this interrogatory, which are overruled. The Koch Parties did not provide an answer to this interrogatory. They shall serve a supplemental response that does not contain their general objections and which provides the information sought.

Request 44 called on the Koch Parties to produce "[a]ll Documents relating to any decision by any Person to nominate or propose any director candidate for selection as a Director." The Koch Parties asserted a variety of non-substantive, general objections to this interrogatory, which are overruled. The Koch Parties did not provide an answer to this interrogatory. They shall serve a supplemental response that does not contain their general objections and which provides the information sought.

C. Information About Personal Use Of Company Resources And Support For Oxbridge Academy

The Crestview Parties have alleged that Koch has breached his contractual obligations and fiduciary duties because he wishes to retain his position with the Company to advance his personal interests. A party may obtain discovery into the motivations behind the conduct of an individual or entity when the motive is relevant to a claim or defense. *See, e.g., Sample v. Morgan*, 914 A.2d 647, 660 (Del. Ch. 2007) (Strine, V.C.); *Van de Walle v. Unimation, Inc.*, 1985 WL 11545, at *2 (Del. Ch. Mar. 20, 1985).

Requests 88 sought documents relating to reimbursement of payments for travel, entertainment, and similar expenses. Request 90 sought documents relating to reimbursement of payments for services, goods, and similar expenses. Interrogatory 25

sought the total amount of reimbursements that Koch received for each year from 2007 onward. Interrogatory 26 sought a breakout of expenses for (i) wine, liquor, and alcoholic beverages, (ii) the use of a private airplane, and (iii) payment of Oxbridge Academy tuition for relatives, present or former employees, and business associates.

In response to these requests, the Koch Parties asserted a bevy of generic, non-substantive objections, which are overruled. They then provided a single table identifying the total amount of expenses reimbursed on an annual basis. This is inadequate.

The Koch Parties have represented that they cannot break out alcohol expenses from food expenses. Accepting that representation, they shall provide a table similar to what was provided in response to Interrogatory 25 but which identifies food expenses. The Koch Parties shall provide a similar table addressing airplane reimbursements. The Koch Parties have represented that Koch was not reimbursed for any Oxbridge Academy tuition. In addition to the summary tables, the Koch Parties shall produce any expense reports and supporting documents that were the basis for the payments to Koch.

Interrogatories 22 and 23 sought information about Oxbridge Academy. The Crestview Parties have sufficiently articulated a theory under which Koch could be motivated to retain control of the Company as a means of supporting Oxbridge Academy. Interrogatory 22 seeks information about "each payment made by or on behalf of Oxbow or any affiliate(s) of Oxbow to Oxbridge Academy from 2007 onward." The Koch Parties have limited their response to tuition payments. That limitation is overruled, as are the non-substantive general objections raised in response to this interrogatory. The Koch Parties shall provide a supplemental response that identifies all payments.

Interrogatory 23 asks the Koch Parties to "[i]dentify each and every current or former Oxbow employee, Oxbow board member, or employee of an entity controlled by William Koch whose child or relative has attended Oxbridge Academy." In light of the privacy concerns raised by the Koch Parties, they shall respond by identifying the total number of employees below the senior executive level whose children or relatives attended Oxbridge Academy. They shall identify by name the board members and senior executives. The parties' senior Delaware counsel shall meet in person to reach agreement on where to draw the line on senior executives.

D. Information About The Failed Gunnison Deal

The Crestview Parties have contended that Koch sought to have the Company acquire one of his affiliates, Gunnison Energy LLC, as a means of enriching himself and diluting the Crestview Parties. The transaction did not close, and while that does not take it outside the scope of discovery, it affects the balancing of factors under Rule 26. It appears to me that the parties have quite enough to litigate in this case without taking on the merits of an unconsummated transaction. The parties may inquire into the Gunnison deal in deposition, and witnesses may testify about it at trial. If the nature of the deposition testimony warrants some limited document production, that can be considered in due course. For present purposes, the Koch Parties need not respond to Request 23 or Interrogatory 28.

II. CONCLUSION

The motion to compel is granted in part. The parties shall proceed as directed in this decision.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

CresCom Bank, successor by merger to)
Community FirstBank,)

Plaintiff,)

v.)

Edward L. Terry; Harris Street, LLC,)
n/k/a CCT Reserve, LLC; Sugarloaf)
Marketplace, LLC; and CCT Reserve,)
LLC,)

Defendants.)

Case No.: 2:12-cv-63-PMD

ORDER

This matter is before the Court on Plaintiff CresCom Bank's motion for supplementary proceedings (ECF No. 102). Seeking to recover a judgment debt from Defendant Edward L. Terry, CresCom asks for several forms of relief against Mr. Terry and his wife, Elaine C. Terry. For the following reasons, CresCom's motion is granted in part and denied in part.

BACKGROUND

After several years of litigation, CresCom obtained a judgment against Mr. Terry in the amount of \$1,987,609.55. To date, he has not paid CresCom any of that amount.

CresCom's motion comes after roughly a year of fruitless efforts to find assets of Mr. Terry that are available for levy. It began in March 2016, when this Court gave CresCom a writ of execution covering Mr. Terry's property in South Carolina. CresCom engaged the United States Marshal's Service to execute the writ. After three unsuccessful attempts to serve the writ on Mr. Terry at the Terrys' house in Fernandina Beach, Florida, a marshal returned the writ to CresCom unsatisfied.

Also in March 2016, CresCom served Mr. Terry with a set of post-judgment interrogatories and requests for production. Several weeks later, he answered some of the interrogatories, produced

documents in response to some of the requests, and objected to the remainder of CresCom's written discovery.

Around that time, CresCom also began seeking information and documents from Mrs. Terry about Mr. Terry's assets. Initially, in April 2016, CresCom's lawyers issued a subpoena from this Court commanding Mrs. Terry to produce documents and then appear for a deposition in Charleston, South Carolina. Mrs. Terry's attorney objected to the subpoena and advised that CresCom would need to serve a Florida-issued subpoena upon Mrs. Terry in Florida.¹

In June 2016, CresCom's attorneys issued another set of subpoenas—one for Mrs. Terry's deposition and another for her to produce documents—that, as demanded, originated in the United States District Court for the Middle District of Florida. CresCom hired a process server to serve Mrs. Terry at a house in Englewood, Florida that Mr. Terry had represented to be their home. As the process server learned, however, the Terrys had actually sold that house. The process server tried several times that summer to serve Mrs. Terry at another of her Fernandina Beach residences, but he was unsuccessful.

In November 2016, CresCom served Mr. Terry with a deposition notice, as well as a subpoena instructing him to appear for a deposition in Charleston and to provide certain information and documents in advance of the deposition. CresCom's requests for information and documents closely tracked the discovery requests CresCom had served on Mr. Terry the previous March. At the end of December, he responded to the subpoena's document request by providing some additional information and documents. He continued, however, to object to most of the requests.

In December 2016, CresCom's counsel issued a third set of subpoenas to Mrs. Terry, this time instructing her to produce documents and appear at a deposition in Charleston the following

1. CresCom had also issued a subpoena to take Mr. Terry's deposition at the same place and date it intended to take Mrs. Terry's deposition. In light of the problems with the April 2016 subpoena to Mrs. Terry, CresCom elected to put off Mr. Terry's deposition until it got Mrs. Terry's deposition in Florida scheduled.

month. A process server handed the subpoenas to Mr. Terry at a house in Charleston the Terrys use from time to time. Mrs. Terry neither complied with nor objected to the subpoenas. Instead, she made a motion to quash them. The Court denied the motion without prejudice because Mrs. Terry filed it without first talking trying to resolve the matter informally with CresCom. *See* Local Civ. Rule 7.02 (D.S.C.). Mrs. Terry and CresCom's attorneys then discussed the subpoenas via email. Mrs. Terry did not renew her motion.

On January 13, 2017, Mr. Terry appeared in Charleston for his deposition, which the parties suspended without conclusion. A week later, CresCom's counsel sent the Terrys' attorneys a letter renewing CresCom's prior requests for certain documents relating to the Terrys' assets. Mr. Terry produced some of the documents requested in that letter. Mrs. Terry did not produce anything.

The documents and testimony Mr. Terry has provided thus far indicate that he has ownership interests, either directly or indirectly, in real estate across the Southeast, that he has participated in several profit-sharing plans over the past several years, and that Mrs. Terry supports him with assets titled either in her name or in the name of entities she owns. Mr. Terry insists, however, that he has no means of paying CresCom because all his property is either already encumbered by other judgment creditors or are otherwise unavailable to CresCom. CresCom believes Mr. Terry manufactured his purported inability to pay by engaging in illegitimate asset transfers involving Mrs. Terry, their children, and a constellation of entities they own. That belief animates the motion at bar.

PROCEDURAL HISTORY

CresCom filed its motion for supplementary proceedings on February 24, asking the Court to order Mr. and Mrs. Terry to produce documents, to enjoin Mr. Terry from alienating or damaging any of his property not exempt from execution, and to provide other relief in aid of its collection efforts. On March 10, Mr. and Mrs. Terry filed separate responses in opposition. After the Court

granted a filing extension, CresCom replied to both of those briefs on March 27. Then, with the Court's permission, Mr. and Mrs. Terry filed a joint sur-reply on March 31.

Meanwhile, on March 22, CresCom filed a motion seeking a writ of attachment for Terry's non-exempt property. With extensions from the Court, the parties' briefing on that related motion concluded on June 1. On June 5, the Court denied that motion without prejudice. However, the Court also found that CresCom had made a *prima facie* showing that supplementary proceedings are appropriate. To maintain the status quo pending further review of CresCom's supplementary proceedings motion, the Court issued a temporary injunction barring Mr. Terry from in any way alienating or damaging any non-exempt property he had at that time or may thereafter acquire.

DISCUSSION

I. Sufficiency of the Execution Attempts

Supplementary proceedings encompass a variety of types of relief. *See Travelers Indem. Co. of Ill. v. Hash Mgmt., Inc.*, 173 F.R.D. 150, 152 (M.D.N.C. 1997) ("Supplementary proceedings in aid of judgment enforcement include garnishment, arrest, mandamus, contempt, appointment of a receiver, and discovery proceedings."). As the Court stated in its June 5 order, CresCom has shown its entitlement to at least some form of relief. Mr. Terry contends, however, that CresCom has not satisfied prerequisites to supplementary proceedings.

Generally, federal courts apply the practice and procedure of the states in which they sit to conduct "proceedings supplementary to and in aid of judgment[] and in proceedings on and in aid of execution." Fed. R. Civ. P. 69(a)(1). In South Carolina, a judgment creditor cannot request supplementary proceedings until a writ of execution is returned unsatisfied. *See S.C. Code Ann. § 15-39-310; Ag-Chem Equip. Co. v. Daggerhart*, 315 S.E.2d 379, 381 (S.C. Ct. App. 1984). It is undisputed that the Marshal's Service returned this Court's writ of execution to CresCom

completely unsatisfied. Mr. Terry, however, contends that what happened here was not a valid attempt to execute on CresCom's judgment.

Mr. Terry first relies on *Cutting Edge Technologies, Inc. v. Nosyuiado*, in which a magistrate judge in Maryland recommended vacating a writ of execution issued in the District of Maryland because it targeted property located in Minnesota. No. WDQ-01-2855, 2012 WL 1327969, at *4 (D. Md. Apr. 17, 2012). The magistrate in *Cutting Edge* found the writ was invalid because neither Maryland law nor federal law permitted a court sitting in Maryland to issue writs to execute on property outside that state's borders. *Id.* Mr. Terry argues that under *Cutting Edge*, the attempted execution here was ineffective because this Court cannot issue a writ of execution for property in Florida. That argument stumbles at its factual premise—the writ this Court issued does *not* cover property in Florida. Rather, it very clearly directs the Marshal's Service in this District to execute on property in this District. Unlike the writ in *Cutting Edge*, this one does not improperly target property outside this Court's territory.

Mr. Terry also relies on Federal Rule of Civil Procedure 4.1(a), which confines the service of process other than summonses to “the territorial limits of the state where the district court is located” unless a federal statute allows service beyond those limits. He argues the attempts to serve the writ on him in Florida violated Rule 4.1, making the execution attempt invalid. The Court need not decide, however, whether the marshal's actions violated Rule 4.1(a) or even whether Rule 4.1(a) applies.² In the months following the unsatisfied execution attempts, Terry willingly responded to CresCom's substantial post-judgment discovery efforts. He answered interrogatories, produced hundreds of pages of documents, and came to Charleston to testify in a deposition. In other words, Terry voluntarily participated in formal examinations—the primary type of relief judgment creditors

2. Under Rule 69(a)(1), federal statutes govern supplementary proceedings to the extent they apply. Courts are divided on whether Rule 4.1 counts as such a statute. *Compare Schneider v. Nat'l R.R. Passenger Corp.*, 72 F.3d 17, 19–20 (2d Cir. 1995) (yes), with *Apostolic Pentecostal Church v. Colbert*, 169 F.3d 409, 414–15 (6th Cir. 1999) (no).

can obtain by applying for supplementary proceedings. A judgment creditor's failure to comply with Rule 4.1(a) is waivable, as are other defects in obtaining supplementary proceedings. *See, e.g., Apostolic Pentecostal Church v. Colbert*, 173 F.R.D. 199, 205 n.20 (E.D. Mich. 1997) (stating judgment debtor waived objection to service of writ of execution by not objecting until after property subject to execution was sold), *aff'd*, 169 F.3d 409 (6th Cir. 1999); *Green v. Bookhart*, 19 S.C. 466, 470 (1883) (stating that a judgment debtor who submits to an examination without objection waives any irregularity in the supplementary proceedings); *cf. Schneider*, 72 F.3d at 19 (holding movant did not waive its objection to service of the writ of execution; motion was filed within days after service of the writ).³ Here, Mr. Terry waived any objection to CresCom's compliance with it by participating, without objection, in CresCom's post-judgment discovery endeavors for months.⁴ *See also* Local Civ. Rule 7.03 (D.S.C.) (stating the Court's expectation that motions should be filed "immediately after the issues raised thereby are ripe for adjudication").

Finally, Mr. Terry cites this Court's decision in *Braunstein v. Pickens* for the proposition that a judgment creditor should not pursue supplementary proceedings until the judgment debtor has failed to voluntarily comply with the judgment. 274 F.R.D. 568, 575 (D.S.C. 2011). To the extent Mr. Terry believes CresCom's motion is premature under *Braunstein*, the Court disagrees. In that case, the plaintiffs requested supplementary proceedings immediately after the judgment became final, leaving the in-debt defendant no time to pay up on his own. *Id.* at 574. Here, in contrast, CresCom's judgment against Mr. Terry has been final for more than a year, and he does not dispute CresCom's assertion that he has failed to pay any of his judgment debt.

3. Courts have also held that, under Federal Rule of Civil Procedure 61, the failure to comply with Rule 4.1(a) in the service of a writ of execution that does not comply with Rule 4.1(a) should also be disregarded if the failure did not prejudice the judgment debtor. *See, e.g., Alejandre v. Republic of Cuba*, 42 F. Supp. 2d 1317, 1342 (S.D. Fla.), *vacated on other grounds sub nom. Alejandre v. Telefonica Larga Distancia, de Puerto Rico, Inc.*, 183 F.3d 1277 (11th Cir. 1999); *Apostolic Pentecostal Church*, 173 F.R.D. at 204–05. This Court sees no prejudice to Mr. Terry in the service attempts made here.

4. The Court recognizes that Mr. Terry asserted objections in his discovery responses. His objections, however, related to the discoverability of some of the documents and information CresCom requested. He did not object to the discovery devices themselves and he made no motion to quash them.

In sum, the Court is satisfied that CresCom should have supplementary proceedings. The Court now turns to CresCom's specific requests for relief.

II. Mr. Terry's Subpoena Responses and Deposition

As mentioned above, Mr. Terry responded in part to CresCom's November 2016 document subpoena but also objected to many of CresCom's requests. CresCom asks the Court to order Mr. Terry to produce the remaining information and documents. Mr. Terry stands by his objections.

Mr. Terry began his responses with two pages of general objections, stating, for example, that he objected to the subpoena to the extent it was unduly burdensome or that it sought information that was either irrelevant or privileged. Such boilerplate objections are improper and thus are overruled. *See, e.g., Patrick v. Teays Valley Trs., LLC*, 297 F.R.D. 248, 256 (N.D. W. Va. 2013) (“[B]oilerplate objections to discovery requests are highly disfavored in the Fourth Circuit.”), *aff'd sub nom. Patrick v. PHH Mortg. Corp.*, 298 F.R.D. 333 (N.D. W. Va. 2014); *Mills v. E. Gulf Coast Preparation Co.*, 259 F.R.D. 118, 132 (S.D. W. Va. 2009) (“[B]oilerplate objections regurgitating words and phrases from Rule 26 are completely unacceptable.”); *Huff v. Huff*, No. CIV.A. 1:04-CV-0172, 2006 WL 2356042, at *1 (N.D. Ga. Aug. 15, 2006) (reciting the “general discovery principle[]” that “objections based on conclusory generalizations [are] insufficient”).

Second, Mr. Terry objected to many of CresCom's requests on the basis that they sought documents regarding Mrs. Terry. Mr. Terry did not assert spousal privilege, but instead relied on the fact that his wife is represented by separate counsel. Mr. Terry has not provided any authority for the proposition that Mrs. Terry's hiring of an attorney relieves him from producing otherwise discoverable materials that relate to her. The objection is overruled.

Third, Mr. Terry objected to several requests on the ground that they were overly broad and unduly burdensome, in that they sought information and documents “for too long a period of time.” (*See generally* Mr. Terry's Resps. CresCom's Subpoena, ECF No. 105-4.) The scope of

examination in post-judgment discovery “is very broad, as it must be if the procedure is to be of any value.” 12 Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 3014 (2d ed. 1997); *see also Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250, 2254 (2014) (stating the rules governing post-judgment discovery are “quite permissive”). With that in mind, the Court finds that, for the most part, Mr. Terry has not shown that the requests to which he objected cover too long a period of time. *See Ashmore v. Allied Energy, Inc.*, No. 8:14-cv-227-JMC, 2016 WL 301169, at *3 (D.S.C. Jan. 25, 2016) (“Generally, the party resisting discovery bears the burden of showing that the requested discovery is irrelevant to the issues or is overly broad, unduly burdensome, unreasonable, or oppressive.” (citation and internal quotation marks omitted)). CresCom has demonstrated that Mr. Terry has long been a sophisticated manager of his assets and that CresCom will likely be unable to adequately identify those assets and determine their status without examining documents that go back for several years. The timeframes in CresCom’s requests—typically seven to ten years—are therefore appropriate in length. Although producing those documents might prove burdensome, the Court sees nothing undue in that potential burden. Nonetheless, the Court agrees with Mr. Terry that two requests—Numbers 14 and 27—go too far by covering certain transactions that occurred “at any time.” The Court finds that those requests should go back no farther than ten years before CresCom issued the subpoena. Thus, Mr. Terry’s overbreadth and undue-burden objections are sustained in part and overruled in part.

Fourth, Mr. Terry objected to several requests on the ground that that they were redundant of others that he had already answered. The Court agrees that requests 31, 33, and 37 are redundant. However, the other requests to which he objects are not redundant at all or merely overlap somewhat with other requests. Therefore, the Court sustains Mr. Terry’s objection as to the three requests identified above but overrules the objection in all other instances.

Fifth, Mr. Terry objected to a request on the ground that it sought information that is a matter of public record. That objection has been so widely rejected that, in most instances, making it borders on frivolity. *See, e.g., Gross v. Guzman*, No. 11-23028-CIV, 2013 WL 12091159, at *5 (S.D. Fla. Jan. 25, 2013) (stating courts have generally held that the “matter of public record” objection usually is inappropriate, and collecting cases); *Jackson v. W. Va. Univ. Hosps., Inc.*, No. 1:10CV107, 2011 WL 1831591, at *2 (N.D. W. Va. May 12, 2011) (stating “courts have unambiguously stated that” the public-record objection “is insufficient to resist a discovery request,” and collecting cases). The objection is therefore overruled.

Finally, Mr. Terry answered several requests with “none.” In one of his briefs opposing supplementary proceedings, Mr. Terry explains he used that answer when he did not possess the documents or information requested. However, in keeping with Federal Rule of Civil Procedure 45(a)(1)(A)(iii), the subpoena stated clearly that Mr. Terry was to produce documents that were in his “possession, custody, [or] control, or are otherwise available to” him. (Subpoena Ex. A, ECF No. 105-3, at 6.) It was flatly inappropriate for Mr. Terry to confine his responses to materials within his possession. He must also produce requested materials within his custody or control.

In sum, CresCom’s request to enforce its document subpoena to Mr. Terry is granted in part and denied in part. With the exception of documents covered by a sustained objection, Terry shall produce all requested documents to CresCom no later than July 21, 2017. Thereafter, Mr. Terry shall appear in South Carolina for the continuation of his deposition no later than July 28, 2017.

III. Subpoenas to Mrs. Terry

CresCom seeks to enforce two subpoenas—one for a deposition and another for the production of documents and other items—it issued to Mrs. Terry last December.

It is not clear whether CresCom is asking this Court to enforce the deposition subpoena. To the extent it is, the issue of whether that subpoena should be enforced is academic. In a telephone

conference on January 5 of this year, CresCom and Mrs. Terry agreed, through counsel, that Mrs. Terry would be deposed at a time and place of her choosing. Nothing before the Court indicates that Mrs. Terry has since affirmatively refused to participate in the taking or planning of such a deposition or that CresCom has tried to compel her deposition at a time or place to which she did not consent. There simply is no active controversy over her deposition.⁵

As for the document subpoena, Mrs. Terry raises several arguments in opposition to it. The Court, however, finds all of them waived. A person commanded via subpoena to produce documents or other items may serve written objections to the subpoena. Fed. R. Civ. P. 45(d)(2)(B). The objections must be served before the earlier of the time specified for compliance or fourteen days after the subpoena is served. *Id.* “The failure to serve written objections to a subpoena within the time specified by Rule 45(c)(2)(B) typically constitutes a waiver of such objections.” *E.g., Wellin v. Wellin*, No. 2:13-cv-1831-DCN, 2014 WL 3496514, at *4 (D.S.C. July 14, 2014) (quoting *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 48 (S.D.N.Y. 1996)).

Nothing in the extensive briefing and record before the Court indicates that Mrs. Terry ever served such objections to CresCom, and the Court sees no reason not to find them waived. To the contrary, the arguments Mrs. Terry now raises in response to CresCom’s motion are near-verbatim recitals of the arguments she made in her defective motion to quash. She was free to reassert those arguments in a renewed motion, but she did not do so. To allow her, months later, to revive those arguments in a response brief would undermine Federal Rule 45(c)(2)(B), its attendant waiver rule, and Local Rule 7.02. Accordingly, the Court grants CresCom’s request to enforce the document

5. CresCom states in its motion that “it has become apparent that Mrs. Terry has now instructed her counsel that she is refusing to have her deposition taken at any time and/or any location.” (Mot. Supp. Proceedings, ECF No. 102, at 4.) The Court does not see support for that assertion. The last communication in the record regarding Mrs. Terry’s deposition appears to be a February 3, 2017 email from one of CresCom’s lawyers proposing that the deposition take place on one of several dates in late February or early March. Nothing in the record shows what, if anything, transpired after that.

subpoena for Mrs. Terry. She shall produce the requested items to CresCom's attorneys no later than July 21, 2017.

IV. Injunction

As mentioned, this Court previously issued an order temporarily enjoying Mr. Terry from alienating or harming any of his property that is not exempt from execution. That injunction shall continue to be in effect until such time that the Court sees cause to modify or dissolve it.

V. Other Relief

CresCom asks that Mr. Terry's property be attached and then applied towards satisfying the judgment debt. The Court declines to order such relief until CresCom identifies specific property subject to attachment and levy. Likewise, the Court declines at this time to order the various forms of contingent relief CresCom has requested. Because CresCom seeks that relief expressly in the event that the Terrys continue not complying with the subpoenas, the request is premature. Thus, the remainder of CresCom's motion is denied without prejudice.

Finally, the Terrys ask the Court to award them attorney's fees and costs in resisting CresCom's motion. Those requests are denied.

CONCLUSION

For the foregoing reasons, CresCom's motion for supplementary proceedings is **GRANTED IN PART** and **DENIED IN PART**. CresCom may renew its requests when appropriate.

AND IT IS SO ORDERED.



PATRICK MICHAEL DUFFY
United States District Judge

July 6, 2017
Charleston, South Carolina