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By: William P. Rubley, Esquire

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re	
DITECH HOLDING CORPORATION, <i>et al.</i> ,	Chapter 11
Debtors.	Case No.: 19-10412-JLG
	(Jointly Administered)

**NOTICE OF HEARING ON MOTION FOR ORDER GRANTING RELIEF FROM  
STAY**

**PLEASE TAKE NOTICE** that a hearing on the annexed Motion for Stay Relief (the “Motion”), of Creditors, Melissa Rhodes and William Rhodes, by and through their counsel, Subranni Zauber, LLC, for entry of an order pursuant to section 362 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 4001, 4004, 4007, 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and for entry of an order under Rules 4001-1, and 9006-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”) all as more fully set forth in the Motion, will be held before the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, Courtroom 601, One Bowling Green, New York, New York 10004

(the “Bankruptcy Court”) on the **20<sup>th</sup> day of June, 2019**, or as soon thereafter as counsel may be heard.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections (the “**Objections**”) to the Motion shall be in writing, shall conform to the Bankruptcy Rules and the Local Rules, shall be filed with the Bankruptcy Court in accordance with the *Order Implementing Certain Notice and Case Management Procedures*, filed on March 19, 2019, [Doc. 211]

**PLEASE TAKE FURTHER NOTICE** that if no Objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered without further notice or opportunity to be heard.

**PLEASE TAKE FURTHER NOTICE** that any objecting parties are required to attend the Hearing, and failure to appear may result in relief being granted upon default.

**SUBRANNI ZAUBER LLC**  
*Attorneys for Creditors, Melissa Rhodes  
and William Rhodes*

By: /s/ William P. Rubley  
William P. Rubley, Esquire

Dated: May 30, 2019

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re	
DITECH HOLDING CORPORATION, <i>et al.</i> ,	Chapter 11
Debtors.	Case No.: 19-10412-JLG
	(Jointly Administered)

**MOTION FOR RELIEF FROM STAY**

Now comes Melissa Rhodes and William Rhodes (“Movants”), by and through their counsel, Subranni Zauber, LLC, and hereby moves this Court, pursuant to Fed. R. Bankr. P. 4001(a)(1), Local District Rule 4001-1 and 11 U.S.C. § 362 (d) for relief in the automatic stay in the case captioned Melissa Rhodes and William Rhodes v. Marix Servicing, LLC, et al., case no.: 3:12-01636-MAS-DEA, (“District Court Action”) filed in the United States District Court for the District of New Jersey, as provided by 11 U.S.C. § 362(a), for the limited purpose of allowing the New Jersey District Court to enforce a settlement agreement and rule on a motion for attorney’s fees with other defendants who were involved in a civil action with Movants, for cause, and in support thereof, allege as follows:

**PROCEDURAL HISTORY**

On March 15, 2012, Creditors brought claims against Defendants, Debtor Marix Servicing, LLC, (“Debotor” or “Marix”), EMC Mortgage Corporation (“EMC”), Zucker Goldberg &

Ackerman, LLC (“Zucker”) and Residential Credit Solutions, Inc. (“Residential”), (collectively “District Court Defendants”) alleging that District Court Defendants committed multiple violations of the Real Estate Settlement Procedures Act, 12 U.S.C.A. §§ 2601 *et seq.* (“RESPA”), Fair Debt Collection Practices Act, 15 U.S.C.A. §§ 1692 *et seq.* (“FDCPA”), Truth in Lending Act, 15 U.S.C.A. §§ 1601 *et seq.* (“TILA”), Declaratory Judgment Act, 28 U.S.C.A. §§ 2201, Violation of Automatic Stay (11 U.S.C.A. § 362) and/or Discharge Order (11 U.S.C.A. § 524(i)), Breach of Contract, and Breach of Contract – Implied Covenant of Good Faith and Fair Dealing (collectively the “Federal and State law claims”).

On or about May 31, 2018, Zucker made an Offer of Judgment to Creditors pursuant to Fed. R. Civ. P. 68, consisting of \$1,000.00 to William Rhodes and \$1,000.00 to Melissa Rhodes, “together with reasonable attorney’s fees as determined by the Court and any allowable interest.” [District Court Action, ECF No. 153]. Counsel for Creditor Rhodes’ filed a Notice of Acceptance of the Offer of Judgment on June 12, 2018. *Ibid.* On July 30, 2018, Creditors filed a Motion for Attorney’s Fees Pursuant to Offer of Judgment of Defendant Zucker. [ECF No. 184]. The offer of judgment made by Defendant Zucker was for \$4,000.00 plus reasonable attorney’s fees and costs. The Motion was adjourned multiple times by the District Court, and a ruling was never made.

On July 18, 2018, the parties<sup>1</sup> appeared before the Honorable Michael A. Shipp for a settlement conference. The parties were able to settle the matter and the terms of the settlement between the parties were placed on the record. The settlement terms were as follows:

- a. Marix shall pay Sixty Thousand Dollars (\$60,000.00) to Subranni Zauber, LLC, attorneys for Plaintiff;
- b. Plaintiffs would make a good faith payment of \$90,000.00 to EMC through its

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<sup>1</sup> William P. Rubley, Esq., and Christina M. Dewland, Esq., attorneys for Plaintiffs; Evan M. Goldman, Esq., attorneys for Defendant Marix; and Gregg Tabakin, Esq., attorneys for Defendants EMC and Residential were present at the settlement conference. Plaintiffs had already settled with Defendant Zucker prior to the July 18, 2018 settlement conference.

servicer Rushmore;

- c. EMC and the Plaintiffs agreed that the remaining amounts due on the mortgage, \$143,629.58, would be payable at 4% interest per annum over twenty (20) years; and
- d. Defendants and Rushmore shall submit a tradeline deletion request to the three credit reporting agencies, reporting that the Loan as in default was in error and that all prior negative reporting shall be deleted.

Again, all counsel agreed on the proposed settlement agreement (“Settlement Agreement”), except for the Loan Modification Agreement proposed by EMC which was to be attached to the Settlement Agreement. Plaintiffs have rejected EMC’s attempts to unilaterally alter the terms of settlement agreement by including additional amounts due in the Loan Modification Agreement and treating EMC’s attorneys’ fees and costs incurred in this matter, as debt forgiveness to the Plaintiffs.

After the passage of more than Six (6) months since the parties reached a Settlement, on December 28, 2018, Plaintiffs were forced to file the Motion to Enforce Settlement against Defendants EMC and Residential. [ECF No. 195]. Additionally, On January 8, 2019, Debtor Marix also filed a Cross Motion to Enforce the July 18, 2018 settlement. [ECF No. 196].

Subsequently, Ditech Holding Corporation, together with Ditech Financial LLC and other affiliated companies, including Defendant Marix (“Ditech”), filed for Chapter 11 bankruptcy protection in the Southern District of New York on February 11, 2019, under matters captioned as In re Ditech Financial LLC, docket number 19-10414-jlg and In re Ditech Holding Corporation, docket number 19-10412-jlg.

### **LEGAL ARGUMENT**

Creditors, Melissa Rhodes and William Rhodes, respectfully requests that this Court grant them relief from the Automatic Stay in the District Court Action as to Zucker, EMC, and

Residential, as it will not have any impact on Debtor Marix's bankruptcy estate in any way. The only two matters pending in the District Court Action are (1) the Motion for Attorney's fees pursuant to the Offer of Judgment against Defendant Zucker, and (2) the Motion to Enforce Settlement against Defendants EMC and Residential. Furthermore, Debtor Marix also filed a cross motion to enforce the settlement. As such, granting Creditors relief from the automatic stay will not impact Debtor's bankruptcy estate.

Motions for relief from the automatic stay are guided by § 362(d) of the Bankruptcy Code, which provides in pertinent part:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest....

Fed. R. Bankr. P. § 362(d).

The Bankruptcy Code provides that the bankruptcy court shall grant relief from the automatic stay “for cause.” 11 U.S.C. § 362(d)(1). However, section 362(d)(1) does not define “cause,” leaving courts to consider what constitutes cause based on the totality of the circumstances in each particular case. In re Sonnox Indus., Inc., 907 F.2d 1280, 1285 (2d Cir. 1990). The burden is on the moving party to make an initial showing of “cause” for relief from the stay. Ibid. Only if the movant makes such a showing does any burden shift to the debtor; absent a showing of cause, the court should simply deny relief from the stay. In re Mazzeo, 167 F.3d 139, 142 (2d Cir. 1999).

In determining whether to grant relief from automatic stay as to permit a party in interest to continue prosecuting a matter in another forum, courts will often rely on the following factors:

(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other

proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms.

In re Mazzeo, 167 F.3d at 143 *citing* In re Sonnox Industries, Inc., 907 F.2d at 1286; In re Mid-Atl. Handling Sys., LLC, 304 B.R. 111, 130 (Bankr. D.N.J. 2003); In re Ice Cream Liquidation, Inc., 281 B.R. 154, 165 (Bankr.D.Conn.2002); In re Curtis, 40 B.R. 795, 799–800 (Bankr.D.Utah 1984) (utilizing same factors). All twelve factors are not necessarily present in a particular case, and a court need not rely on any plurality of factors in deciding whether to lift the automatic stay. Ibid.

In the instant matter, after analyzing the twelve factors, it is clear that the Creditor's Motion for Relief should be granted. First, granting stay relief to the Creditors would result in the complete resolution of the issues between Creditors, Debtor and other District Court Defendants (factor 1); continuation of the District Court Action would not interfere with Debtor Marix's bankruptcy estate in any way (factor 2); the District Court Action primarily involves third parties, i.e., the other District Court Defendants (factor 6); litigation in the District Court Action would not prejudice the interests of other creditors in this bankruptcy matter (factor 7); any judgment obtained by the Creditors would not be subject to equitable subordination (factor 8); any judgment obtained by the Creditors would not result in a judicial lien avoidable by the Debtor (factor 9); the interests of judicial economy and the expeditious and economical resolution of litigation warrants stay relief (factor 10); the parties are ready for settlement (or trial) in the District Court Action (factor 11); and the Creditors and other District Court Defendants cannot continue with the

litigation in the District Court Action absent relief from the stay (factor 12).

Congress has recognized that the automatic stay should be lifted in appropriate circumstances:

[I]t will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from any duties that may be handled elsewhere. H.R.Rep. 95–595, 95th Cong. 1st Sess. 341 (1977); S.Rep. No. 95–989, 95th Cong., 2d Sess. 50 (1978), U.S.Code Cong. & Admin.News 1978, pp. 5787, 5836, 6297.

Here, Debtor’s bankruptcy estate will not be prejudiced in anyway. The only two matters pending in the District Court Action are (1) the Motion for Attorney’s fees pursuant to the Offer of Judgment against Defendant Zucker, and (2) the Motion to Enforce Settlement against Defendants EMC and Residential. Furthermore, Debtor Marix also filed a cross motion to enforce the settlement.

### **CONCLUSION**

For the foregoing reasons, Creditors respectfully request that this Court enter an order granting relief to Creditors from the automatic stay as to allow the continuation of the District Court Action.

**SUBRANNI ZAUBER LLC**

*Attorneys for Creditors, Melissa Rhodes  
and William Rhodes*

By: /s/ William P. Rubley  
William P. Rubley, Esquire

Dated: May 30, 2019



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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re	
DITECH HOLDING CORPORATION, <i>et al.</i> ,	Chapter 11
Debtors.	Case No.: 19-10412-JLG (Jointly Administered)

**AFFIDAVIT IN SUPPORT OF MOTION FOR RELIEF FROM STAY**

Now comes Melissa Rhodes and William Rhodes, Creditors in the above captioned matter,  
being of full age, hereby certify as follows:

1. We make this affidavit as individual Creditors of Debtor Marix Servicing LLC (19-10419-JLG) pursuant to Local Bankruptcy Rule 4001-1(b).

2. We have read the accompanying Motion for Relief from Stay, and upon our personal knowledge, the factual statements therein made are true and accurate, to the best of our knowledge, information and belief.

  
Creditor, Melissa Rhodes

Dated: 5/17/19

  
Creditor, William Rhodes

Dated: 5/17/19

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re	
DITECH HOLDING CORPORATION, <i>et al.</i> ,	Chapter 11
Debtors.	Case No.: 19-10412-JLG
	(Jointly Administered)

**ORDER PURSUANT TO 11 U.S.C. § 362(d)**  
**MODIFYING THE AUTOMATIC STAY IMPOSED BY 11 U.S.C. § 362(a)**

Upon the motion, dated March 30, 2019 (the “Motion”), of William P. Rubley, Esquire, of Subranni Zauber, LLC, attorneys for Creditors Melissa Rhodes and William Rhodes, for an order, pursuant to section 362(d) of title 11 of the United States Code (the “Bankruptcy Code”) vacating the automatic stay imposed in the above-captioned case by section 362(a) of the Bankruptcy Code as to the William and Melissa Rhodes’ interests in (1) the Motion for Attorneys’ Fees pursuant to the Offer of Judgment against Defendant Zucker Goldberg & Ackerman, LLC (“Zucker”); and (2) the Motion to Enforce Settlement against Defendants EMC Mortgage Corporation (“EMC”) and Residential Credit Solutions, Inc. (“Residential”) (“Motions”) in the matter of Melissa Rhodes and William Rhodes v. Marix Servicing, LLC, et al., case no.: 3:12-01636-MAS-DEA, (“District Court Action”) filed in the United States District Court for the District of New Jersey (the “Claim”) to

allow the Creditors' enforcement of its rights in, and remedies in and to, the Claim in the United States District Court for the District of New Jersey against unrelated parties, Zucker, EMC, and Residential, and due and proper notice of the Motion having been made on all necessary parties; and the Court having held a hearing on the Motion on June 20, 2019; and the Court having considered the Debtor's opposition for the relief requested in the Motion (the "Objection"), if any, and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing, it is hereby:

**ORDERED** that the Motion is granted as provided herein; and it is further

**ORDERED** that the automatic stay imposed in this case by section 362(a) of the Bankruptcy Code is vacated under section 362(d) of the Bankruptcy Code as to the Creditor's interests in the Claim, to allow the Creditors to conclude the proceedings upon the Motions pending in the United States District Court for the District of New Jersey, and it is further

**ORDERED** that the Creditor shall promptly report to and file, in this Court any order entered upon conclusion of the New Jersey District Court proceeding for further determination by this Court.

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The Hon. James L. Garrity, Jr.  
United States Bankruptcy Judge

Dated: June \_\_\_\_\_, 2019

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re	
DITECH HOLDING CORPORATION, <i>et al.</i> ,	Chapter 11
Debtors.	Case No.: 19-10412-JLG
	(Jointly Administered)

**CERTIFICATE OF SERVICE FOR CREDITORS RHODES' MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

I, William P. Rubley, Esq., attorney for Creditors, Melissa Rhodes and William Rhodes, certify that on the date listed below, a true and correct copy of the foregoing Motion for Relief from Automatic Stay, was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System ("ECF"). Parties may access this filing through the Court's system:

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I further certify, that on the date listed below, a copy of the foregoing Motion for Relief from Automatic Stay, was mailed by first class, US mail, postage prepaid and properly addressed to the following:

**US Bankruptcy Court**  
Southern District of New York  
One Bowling Green, New York, NY 10004

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By: /s/ William P. Rubley  
William P. Rubley, Esq.

Dated: May 30, 2019