UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

	:	Case no. 19-10412 (JLG)
In re:	:	Chapter 11
	:	
Ditech Holding Corporation, et al.,	:	(Jointly Administered)
	:	
Debtors.	:	

REPLY IN SUPPORT OF CLAIMANT'S CORRECTED, SUPPLEMENTAL REQUEST FOR LEAVE TO AMEND NUNC PRO TUNC

Claimant James Beekman, respectfully on his own behalf, files this reply in support of his Corrected, Supplemental Request for Leave to Amend Nunc Pro Tunc (ECF no. 3533) and for and as said reply Claimant shows unto this Honorable Court the following points and authorities:

Shortly prior to a hearing in this cause, Claimant filed, on June 30th, a supplemental reply. It is not believed that the Court had benefit of the persuasive and meritorious legal arguments contained in that submission prior to the hearing. For this reason, Claimant includes certain of these points in this submission, and respectfully requests that the Court consider them.

Given Claimant's status as a pro se litigant, and his good faith in seeking to amend, Claimant asks that the Court take this filing into consideration. To do so would be to construe the rules in the manner most consistent with time-honored concepts of due process and substantial justice.

The joint supplemental submission of the Plan Administrator does not overcome the legal principle that leave to amend is to be freely given where justice requires. Claimant is simply asking that his claim be entertained on the merits.

A motion for leave to amend "should be freely given in the absence of undue delay, bad faith, undue prejudice to the opposing party, repeated failure to cure deficiencies, or futility." *Richardson v. United States,* 193 F.3d 545, 548-49 (D.C. Cir. 1999). "This mandate is to be

heeded." *Foman v. Davis*, 371 U.S. 178, 182(1962); *Davis v. Liberty Mut. Ins. Co.*, 871 F.2d 1134, 1136 (D.C. Cir. 1989). The Supreme Court holds that "if the underlying facts or circumstances relied upon by a plaintiff may be a proper source of relief, he ought to be afforded an opportunity to test his claim on the merits." *Foman*, 371 U.S. at 182.

"Leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile." *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006). None of those grounds are present here. While the Plan Administrator has presented arguments that may be relevant to the ultimate disposition of Claimant's claim, **on the merits**, nothing before the Court establishes that the amendment would definitely be futile.

Nothing before the Court indicates that the amendment would be prejudicial or that Claimant has acted in bad faith.

Claimant has argued that DiTech filed or caused to be filed instruments (assignments of mortgage) in the official records with contain material misrepresentations or false statements. Claimant has filed with this Court assignments of mortgage involving DiTech which state definitively that the mortgage itself (ownership of the mortgage) is being transferred. The Plan Administrator argues to the Court that notwithstanding the express and precise statements on the face of the assignments, ownership was not being transferred. Instead, the Plan Administrator contends that all that was being transferred was "servicing rights." This tends to establish that the instruments contained one or more false statements, which supports Claimant's argument that he should be allowed to amend because he **can** state a claim against DiTech under section 817.535 of the Florida Statutes.

The Plan Administrator attaches excerpts of "privileged and confidential" documents to its Joint Supplemental Submission. (ECF no. 3842). One excerpt is from a Freddie Mac Default-Related Legal Services Reference Guide dated June of 2020. This document does not control the actions of servicers, such as Di-Tech. Instead, it purports to govern the conduct of law firms filing foreclosures. Second, this so-called guide is not law and does not invalidate the Florida statute which makes the recordation of an instrument containing a materially false statement a felony, and which gives "any person" "adversely affected" a private cause of action.

The second page of the guide, found in the record at page 6 of Doc. 3482, says that "all necessary assignments should be executed **prior to commencing a foreclosure** and recorded when required by state law **prior to filing first legal action**." (Emphasis added).

The two foreclosures brought against Claimant were filed in 2008 and 2009. The assignments referencing DiTech were not in compliance with the guide, if it is even applicable, because such assignments were signed and recorded several years after the foreclosure suits were initiated.

The other excerpt attached by the Plan Administrator states that the servicer "ordinarily" appears in the land records as mortgagee. The unadorned claim that a practice occurs ordinarily does not mean that is legal. If a police officer "ordinarily" speeds on his or her way to work, that does not constitute a legal defense to a speeding citation.

This Court previously disallowed Claimant's claim because the actions of which he complained occurred prior to DiTech's involvement with the subject mortgage loans. Now, the Court knows that Claimant can allege wrongdoing directly involving DiTech.

Because none of the grounds to deny amendment are present in this case, Claimant's

motion to amend is due to be granted.

In their Joint Opposition to Claimant's Corrected, Supplemental Request for Leave to Amend Nunc Pro Tunc, the Plan Administrator argues that the change made by Claimant, from "prior servicers" to "DiTech" does not qualify as a scrivener's error. To the contrary, the small change made by Claimant does qualify as such an error under certain definitions provided by the Plan Administrator.

Finally, Claimant's motion is not time-barred, as argued by the Plan Adminstrator, as it relates back to his original motion to amend, and given the application of the benefit of the doubt afforded pro se litigants.

Respectfully submitted this 23rd day of August, 2021.

/s/ *James Beekman*

Certificate of Service

I certify that the foregoing was mailed to the attorneys below, or was electronically served upon them, on this 23rd day of August , 2021.

Sunny Singh, Weil Gotshal etc., 767 Fifth Ave. NY, NY 10153;
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/s/ *James Beekman*