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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
DITECH HOLDING CORPORATION, *et al.*,	:	**Case No. 19-10412 (JLG)**
	:	**(Jointly Administered)**
Wind Down Estates.[1]	:	
	:	**Related Docket: 2438**

OPPOSITION OF THE CONSUMER CLAIMS TRUSTEE AND THE PLAN ADMINISTRATOR TO THE MOTION OF M. SCRANTON, S. JOHNSON, AND B. MARTINEZ FOR ORDERS CERTIFYING THEM AS CLASS REPRESENTATIVES AND AUTHORIZING PROSECUTION OF CLASS PROOF OF CLAIM

The Consumer Claims Trustee ("**Trustee**"), on behalf of the Consumer Creditor Recovery Trust established under the confirmed Plan, and the Plan Administrator ("**Administrator**"), on behalf of the Wind Down Estates,[2] opposes the *Motion By Monique J. Scranton, Stella Johnson, Bernadette Martinez, Individually And As Representative*

[1] The Debtors' *Third Amended Joint Chapter 11 Plan of Ditech Holding Corporation and Its Affiliated Debtors* (ECF No. 1326) (the "**Plan**") was confirmed, which created the Wind Down Estates. The Wind Down Estates, along with the last four digits of each of their 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); Walter Management Holding Company LLC (9818); and Walter Reverse Acquisition LLC (8837). The Wind Down Estates' principal offices are located at 1100 Virginia Drive, Suite 100, Fort Washington, Pennsylvania 19034.

[2] Capitalized terms used herein but not otherwise defined shall have such meanings ascribed to such terms in the Plan.

Claimants For 800 Consumer Creditors, Seeking Orders, Pursuant To Fed.R.Bankr.P. 7023, Certifying Them As A Class And Authorizing Their Prosecuting Their Class Proof Of Claim As A Class Action (the "**Class Certification Motion**") [ECF 2438] and, in support of this Opposition, respectfully represents as follows:

BACKGROUND AND FACTS

1. On February 11, 2019, Ditech Holding Corporation and certain of its affiliates (collectively, the "**Debtors**") each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code. The chapter 11 cases are being jointly administered for procedural purposes only under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure. On September 26, 2019, the Court confirmed the Plan, under which the Debtors sold their forward and reverse mortgage businesses to the Forward Buyer and Reverse Buyer, respectively. The Effective Date of the Third Amended Plan occurred on September 30, 2019. *See Notice of (I) Entry of Order Confirming Third Amended Joint Chapter 11 Plan of Ditech Holding Corporation and Its Affiliated Debtors, (II) Occurrence of Effective Date, and (III) Final Deadline for Filing Administrative Expense Claims* (ECF No. 1449).

2. The Plan provides for the creation and implementation of the Consumer Claims Trust. The Plan and the Trust provide, among other things, for the Trustee to reconcile and resolve Consumer Creditor Claims. Section 7.1 of the Plan grants the Trustee the authority to object to Consumer Creditor Claims.

A. The Walters Claim as a Purported Class Claim.

3. Stella Johnson, Bernadette Martinez, and Monique J. Scranton (the "**Claimants**") filed proof of claim no. 21367 on April 25, 2019, supplemented by documentation added on November 1, 2019 (Claim 21367, at 4 et seq.). The claim purports to be a class claim on behalf of approximately 800 borrowers in Mississippi and Texas, who are listed on an exhibit (Claim 21367, at 14–30) to the proof of claim. Despite being the named claimants,

Mss. Johnson and Scranton are not included on the list of 800, although Ms. Johnson (but not Ms. Scranton) is listed in a later exhibit detailing alleged construction defects.

4. The claim relates to the construction and simultaneous financing of their houses by home builder Jim Walter Homes, Inc.,[3] and the mortgage servicing (and in some cases financing) by the Debtor's predecessor in interest Walter Mortgage Company (the "**Walters Claim**"). All the houses were built and financed before 2009, some as long ago as 1982. *See* Walters Claim at 2084 (house of claimant Betty Arrington).

5. The claim alleges Ditech, as successor in interest to Green Tree Servicing LLC, who was in turn the successor in interest to Walter Mortgage Company, initiated foreclosure on a number of the mortgages beginning in the 2010s and began actions against the house buyers to gain possession of the houses. In response, some of them—the proof of claim does not say which ones—filed actions or counterclaims against one or more of the Debtors, primarily for alleged construction defects in the houses but some on other, though unspecified in the proof of claim, grounds. Those actions were stayed by the filing on February 11, 2019 of the chapter 11 petitions commencing these cases.

B. The Legal Claims Asserted in the Walters Claim

6. The Walters Claim asserts claims against the Debtors for violation of various statutes relating to real estate financing (not construction):

- deceptive, predatory, and harmful housing scheme, targeting victims on the basis of race, color, and national origin, constituting "reverse redlining" and violating the federal Fair Housing Act ("**FHA**"), 42 U.S.C. § 3601 et seq.,
- the federal Equal Credit Opportunity Act ("**ECOA**"), 15 U.S.C. § 1691 et seq.,
- the federal Truth in Lending Act ("**TILA**"), 15 U.S.C. § 1601 et seq.,

[3] Although the Class Certification Motion characterizes Jim Walter Homes as Ditech's predecessor in interest and asserts that Ditech formed Jim Walter Homes as a shell company, Declaration of Peter Ferraro at ¶¶ 33, 86, at 8, 17, Jim Walter Homes was formed in 1946 and closed its doors in 2009, without any relationship to Ditech. https://www.builderonline.com/money/jim-walter-homes-closes-shop_o.

- violations of the Real Estate Procedures Settlement Act;
- willful and systemic violations of the Fair Debt Collection Practices Act
- violation of MCA §81-19-1, the Consumer Loan Broker Act;
- violation of MCA §81-18-55, the Mississippi S.A.F.E. Mortgage Act, and particularly MCA §81-18- 55(1)(f);
- infliction of emotional distress; and
- other violations of federal and state law.

Walters Claim at 6–7.

7. However, despite attaching over 1,200 pages listing alleged construction defects in the houses, the 3203-page proof of claim does not state any facts that would support any of the alleged bases for liability, only for defects that occurred during construction, all of which occurred before 2009, and that the mortgages were issued in connection with, or to finance, the construction of the houses. The Trustee and the Administrator have filed an objection to the claim and related claims on statute of limitations grounds (the "**Objection**") [ECF 2324].[4] This Opposition addresses only the Claimants' Class Certification Motion but refers to the Objection as one of the grounds for denying the Class Certification Motion.

8. Three weeks after the Trustee and the Administrator filed the Objection, the Claimants filed the Class Certification Motion. The Class Certification Motion recites the requirements of Fed. R. Civ. Proc. 23, including numerosity, commonality, typicality, and adequacy of representation, and claim, with little elaboration, that they meet those requirements and the special requirements of pursuing a class proof of claim in a bankruptcy case, including that class certification benefits are realizable in this bankruptcy case. Class Certification Motion at 5–6. As shown below, the requirements are *not* met, and the Class Certification Motion should be denied.

[4] If necessary, the Trustee and the Administrator will address substantive and procedural defects in the claim in a later objection.

ARGUMENT

I. The Walters Claim Is Not Allowable.

9. A class representative seeking authority to prosecute of a class proof of claim must first have an allowable claim.

> In order to maintain a class action, Plaintiffs must first establish that they have a valid claim with respect to the shares that they purchased. If the named plaintiffs have no cause of action in their own right, their complaint must be dismissed, even though the facts set forth in the complaint may show that others might have a valid claim.

Goldberger v. Bear, Stearns & Co., 2000 WL 1886605, at *1 (S.D.N.Y. Dec. 28, 2000)); *accord In re Initial Pub. Offering Sec. Litig,* 214 F.R.D. 117, 122 (S.D.N.Y. 2002). For the reasons set forth in the Trustee's and Administrator's Omnibus Objection to Claim and in the Reply to the Claimants' Response, the named claimants do not have allowable claims and therefore may not pursue a claim on behalf of a class. *See Omnibus Objection to Claim(s) Number 21367 of Stella Johnson, Bernadette Martinez, & Monique J. Scranton; Reply to Response to Omnibus Objection to Related Claims Nos. 60195, 1745, 1797, 2502, 60239, 2552, 2559, 2574, 2630, 21622*, ECF 2324; *Reply Of The Consumer Claims Trustee And The Plan Administrator To The Response Of M. Scranton, S. Johnson, And B. Martinez And "800 Consumer Creditors" To Objections To Their Proofs Of Claim*, ECF 3781.[5]

II. The Court Should Not Apply Rule 7023 to the Walters Claim

10. Even if the Walters Claim were allowable as to the individual claimants, the applicability of Rule 7023 to a proof of claim is not automatic or mandatory but is instead a matter of discretion for the Court. *In re Musicland Holding Corp.*, 362 B.R. 644, 650 (Bankr. S.D.N.Y. 2007) ("Federal Civil Rule 23 does not apply automatically to contested matters and

[5] For this reason, the Trustee and Administrator believe that the Objection should be heard and determined before the Class Certification Motion, which would be mooted by disallowance of the Walters Claim.

the decision to extend its application is committed to the Court's discretion.") (citing Fed. R. Bankr. P. 9014); *In re Bally Total Fitness of Greater New York, Inc.*, 402 B.R. 616, 619–20 (Bankr. S.D.N.Y.), aff'd, 411 B.R. 142 (S.D.N.Y. 2009) ("There is no absolute right to file a class proof of claim under the Bankruptcy Code. Rather, courts may exercise their discretion to extend FRCP 23 to allow the filing of a class proof of claim.") (internal citations omitted). That discretion should be exercised narrowly, because class claims are not favored. They "should be used sparingly in bankruptcy." *In re Connaught Grp., Ltd.*, 491 B.R. 88, 96 (Bankr. S.D.N.Y. 2013); *In re USA Gymnastics*, 2020 WL 1932340, at *4 (Bankr. S.D. Ind. 2020) (same); *see In re Ephedra Prod. Liab. Litig.*, 329 B.R. 1, 5 (S.D.N.Y. 2005) ("class certification may be less desirable in bankruptcy than in ordinary civil litigation.") (internal quotation marks omitted).

11. Treatment of the claim as a class proof of claim must meet specific bankruptcy requirements. A claimant seeking allowance of a class proof of claim must first timely seek and obtain an order under Bankruptcy Rule 9014 applying Bankruptcy Rule 7023, which incorporates Federal Rule of Civil Procedure 23 by reference, and then must "show that the benefits derived from the use of the class claim device are consistent with the goals of bankruptcy." *In re Musicland Holdings, Corp.*, 362 B.R. 644, 651 (Bankr. S.D.N.Y. 2007); *accord In re Ephedra Prods. Liab. Lit.*, 329 B.R. 1 (S.D.N.Y. 2005); *In re MF Glob. Inc.*, 512 B.R. 757, 762 (Bankr. S.D.N.Y. 2014). If the court grants a motion to apply Rule 7023, the claimant must then meet the requirements under Rule 23 for certification of a class action.

A. The Claimants Did Not Timely File A Rule 9014 Motion to Apply Rule 7023.

12. The first requirement for class certification in a bankruptcy case is that the claimant timely file a motion under Bankruptcy Rule 9014 to apply Bankruptcy Rule 7023, which incorporates by reference the class action rule, Rule 23. Rule 9014 applies to contested matters, while Rule 7023 applies only in an adversary proceeding, unless the court orders

that Rule 7023 apply. Although a class proof of claim is not *per se* a contested matter until an objection to the claim is filed, known or reasonably foreseeable opposition to a class proof of claim creates an actual dispute. *See In re Epehdra Prods. Liab. Litigation*, 329 B.R. 1, 7 (S.D.N.Y. 2005). Therefore, "a majority of courts reject the notion that class claimants must wait for an objection before they can move for application of Rule 7023." *In re USA Gymnastics*, 2020 WL 1932340, *3 (Bankr. S.D. Ind. Apr. 18, 2020) (citing cases).

13. The facts and circumstances of the case determine whether a motion under Rule 9014 to apply Rule 7023 is timely. A motion is not timely if applying Rule 7023 at that stage of a case would "gum up the works" of distributing the estate. *In re Epehdra Prods. Liab. Litigation*, 329 B.R. 1, 9 (S.D.N.Y. 2005). For example, in the *USA Gymnastics* case, the court found that a delay of ten months after filing a proof of claim in filing a Rule 9014 motion to apply Rule 7023 was unwarranted and untimely, even though the case had been pending for only 16 months and a disclosure statement had not yet been approved. *Id.* In the *Ephedra Prods.* case, the court found the Rule 9014 motion untimely where it was filed only after the debtor's assets had been marshalled and liquidated, all other disputed claims had been resolved, and the funds were ready for distribution. *Epehdra Prods.*, 391 B.R. at 8. *See In re Musicland Holdings Corp.*, 362 B.R. 644, 656 (Bankr. S.D.N.Y. 2007) (certification motion untimely once creditors had voted on a plan and the court had begun the confirmation hearing).

14. In this case, the claimants have not yet filed a motion under Bankruptcy Rule 9014 to apply Bankruptcy Rule 7023 to the Walters Claim. The Class Certification Motion seeks only class certification under Bankruptcy Rule 7023, without seeking an order applying Rule 7023 to the claim. The Class Certification Motion just assumes applicability of Rule 7023. ("The Representative Claimants and 800 Creditors ask this Court to enter orders: a.) pursuant to Fed.R.Bankr.P. 23 [sic], made applicable herein by Fed.R.Bankr.P. 7023 and

9014(c) ...." Class Certification Motion ¶ 1, at 2.) Because the Walters Claimants have neither sought nor obtained an order making Bankruptcy Rule 7023 applicable in this contested matter, the Class Certification Motion should be denied.

15. Even if the Class Certification Motion were treated as a motion under Rule 9014 to apply Rule 7023, it should be denied as untimely. The Class Certification Motion was filed on May 30, 2020, eight months after the effective date of the plan, more than a year after the filing of the proposed class proof of claim, and only after the Consumer Claims Trustee filed an objection to the claim. Proposed class counsel actively participated in the chapter 11 case before confirmation and filed the Walters Claim as a class proof of claim, without any support or documentation, early in the case. At the time, counsel had knowledge of all the issues and of the intent to proceed on a class basis but only provided documentation regarding the 800 claimants' claims in a supplemental filing over six months later and after the effective date of the Plan. *See* Walters Claim, at 4. Against that background, a motion to apply Rule 7023 more than a year after filing the proof of claim and months after confirmation and the effective date was not timely.

16. It does not matter that the Debtor and other parties in interest might have known that a purported class proof of claim had been filed. A claimant is not authorized to file on behalf of others in the proposed class unless and until the court certifies the class. *See In re Am. Res. Corp.*, 840 F.2d 487, 493 (7th Cir. 1988). None was filed, and any speculation that one might be filed does not save the untimeliness of the Class Certification Motion.

17. Therefore, the Class Certification Motion, even if generously construed as a motion to apply Bankruptcy Rule 7023 to the Walters Claim, should be denied as untimely.

B. The Benefits, If Any, of Certifying a Class for Claimants' Proof of Claim Are Not Consistent with Bankruptcy Goals.

18. Even if the Class Certification Motion were a timely motion under Rule 9014 to apply Rule 7023 to the Walters Claim, to prevail on such a motion, the claimant must show that the benefits of a class proof of claim are consistent with the goals of bankruptcy. "[B]ankruptcy significantly changes the balance of factors to be considered in determining whether to allow a class action and ... class certification may be 'less desirable in bankruptcy than in ordinary civil litigation.'" *In re Ephedra Prods.*, 329 B.R. at 5 (quoting *In re Am. Res. Corp.,* 840 F.2d 487, 493 (7th Cir.1988)). By its nature, bankruptcy serves much the same function as a class action and at a substantially lower cost: it consolidates all the claims in a single forum, permits claimants to assert their claims on a simple form that does not require a lawyer or a filing fee, and does not subject recoveries to fees of class counsel, which may be substantial. *See In re USA Gymnastics*, 2020 WL 1932340, at *4; *In re Ephedra Prods.*, 329 B.R. at 9; *In re Am. Res.*, 840 F.2d at 490. The bankruptcy system is designed to deal efficiently with the filing hundreds or thousands of claims in a single case. *In re Wildwood Villages, LLC*, , 2021 Bankr. LEXIS 1188, *10 (Bankr. M.D. Fla. May 4, 2021) (subchapter V case). As a result, bankruptcy eliminates any superiority a class action might have in ordinary civil litigation. *In re Ephedra Prods.*, at 9.

19. In light of the advantages bankruptcy possesses compared to an ordinary class action, courts look to three factors to determine whether to apply Rule 7023 to a proposed class proof of claim: whether the class was certified prepetition, whether members of the putative class received actual or constructive notice of the bar date, and whether class certification would adversely affect the administration of the case. *In re Musicland Holdings Corp.*, 362 B.R. 644, 654 (Bankr. S.D.N.Y. 2007); *In re USA Gymnastics*, at *4. The Walters Claim fails each of these three requirements.

1. The Class Was Not Certified Prepetition.

20. No class action was certified prepetition. Indeed, the Walters Claim itself identifies various individual actions, but identifies no action that was even asserted as a class action.

2. The Putative Class Members Received Notice of the Bar Date.

21. Because bankruptcy provides a simple, no-cost, pro se means of pursuing a claim against the debtor—filing a short and simple proof of claim—there is no need for a class action to permit numerous claimants to participate. Thus, where potential class members have notice of the bar date and are able to file a proof of claim, a class action is not necessary to protect their interests. *Sacred Heart Hosp.*, 177 B.R. 16, 22 (Bankr. E.D. Pa. 1995); *see In re Musicland Holding Corp.*, 362 B.R. 644, 654 (Bankr. S.D.N.Y. 2007).

22. Here, the potential class members had adequate notice of the bar date and the extended bar date. The record in this case shows notice of the initial bar date being sent to over 70,000 entities, including Peter Ferraro, Esq., in his own behalf and on behalf several claimants, including Stella Johnson, his client and one of the named claimants in the Walters Claim. *Affidavit of Service* [ECF 392], at Ex. H, 33, 46, 69, 92 of 133. Mr. Ferraro has represented to this Court that he personally represents all 800 claimants listed on the Walters Claim. Class Certification Motion, Declaration of Peter Ferraro, ECF 2438-3, ¶ 104, at 20. Mr. Ferraro and his New York Counsel Wayne M. Greenwald, Esq. appeared in this case to request an extension of time to file proofs of claim on behalf of their clients. *Motion to Extend Time to File Proofs of Claim* [ECF 460]. They had actual notice of the initial and the extended bar dates. Notice to counsel suffices as notice to a potential claimant. *In re Residential Cap., LLC*, 2015 WL 2256683, at *7 (Bankr. S.D.N.Y. May 11, 2015); *In re Worldcom, Inc.*, 2005 WL 3875192, at *3 (Bankr. S.D.N.Y. Oct. 27, 2005) *Vicenty v. San*

Miguel Sandoval (San Miguel Sandoval), 327 B.R. 493, 508 (B.A.P. 1st Cir. 2005); *see Irwin v. Veterans Admin.*, 498 U.S. 89, 92, 111 S. Ct. 453, 112 L. Ed. 2d 435 (1990).

23. In addition, the Affidavit of Service of the Extended Deadline for Consumer Borrowers to File Proofs of Claim says that approximately 1,563,242 entities were sent notice of the Extended Bar Date. *Affidavit of Service* [ECF 586], at 1. Such broad notice should have reached many, if not all, of the 800 claimants listed on the Walters Claim. And the fact that several of the 800 claimants filed their own proofs of claim also strongly suggests that they received direct notice of the bar date, in addition to the notice their counsel received.

3. Class Certification Would Adversely Affect Administration.

24. The third requirement for applying Rule 7023 to a proof of claim is that doing so would not adversely affect the administration of the bankruptcy case. Courts recognize that "class litigation is inherently more time-consumer than the expedited bankruptcy procedure for resolving contested matters." *In re Ephedra Prods. Liability Litigation*, 329 B.R. 1, 5 (S.D.N.Y. 2005). They have not developed any hard and fast rule in applying this factor, but they are in general agreement that a motion filed after plan confirmation is too late and would "gum up the works" of distributing the estate. *In re Musicland Holding Corp.*, 362 B.R. 644, 654-55 (Bankr. S.D.N.Y. 2007) (motion file after plan confirmation); *In re Ephedra Prods. Liability Litigation*, 329 B.R. 1 (S.D.N.Y. 2005); *In re Woodward & Lothrop Holdings*, 205 B.R. 365, 370, 376 (Bankr. S.D.N.Y. 1997) (motion filed after plan confirmation in response to objection to the claim); *see In re USA Gymnastics*, 2020 WL 1932340, at *6 (Bankr. S.D. Ind. Apr. 20, 2020) (adverse effect on administration where Rule 9014 motion was made 10 months after claim filing and significant progress had been made in a large and complex case).

25. In this case, the Plan was confirmed and became effective over two years ago. The Court has been processing claims objections and resolving them since then. The Class

Certification Motion was filed during that process, eight months after the Effective Date. To start a class action now would substantially delay that process and the distribution of the estate. Therefore, granting the Class Certification Motion would delay administration of the case and does not meet the requirements to apply Rule 7023 to the Walters Claim.

C. The Walters Claim Does Not Meet the Requirements of Rule 23.

26. Even if this Court were to determine that Rule 7023 should apply to the Walters Claim, the claim would not meet the requirements for class certification under Fed. R. Civ. P. 23. That Rule separates the requirements to maintain a class action to two parts: subsection (a) specifies whether the claimant may sue as a representative party, and subsection (b) specifies whether the proceeding may be maintained as a class action.

1. The Walters Claim Does Not Meet Rule 23(a)'s Prerequisites to Sue As A Representative Party.

27. Rule 23(a) imposes four prerequisites to suing as a representative party on behalf of a class:

> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. Proc. 23(a). The Walters Claim does not meet these prerequisites.

a) The Class Does Not Meet the Numerosity Requirement for this Chapter 11 Case.

28. The Walters Claim and the Class Certification Motion assert that there are approximately 800 individual claimants, attaching a list of the potential claimants' names and addresses. While some bankruptcy courts have certified classes with fewer claimants, the fact that the claim lists all 800 claimants' names and addresses strongly suggests that

the class is so numerous that joinder is impracticable. As the court noted in *In re Woodmoor Corp.*, 4 B.R. 186, 189 (Bankr. D. Colo. 1980):

> Their approximately 900 claims are presently pending before the Court demonstrating that the claims are not so numerous that the individual joinder of each to the bankruptcy proceeding is impracticable. Their claims can be conveniently and expeditiously managed by following normal bankruptcy procedures. It is not unusual for large numbers of claims to be filed, objected to and allowed or disallowed in bankruptcy cases. The Bankruptcy Act and Rules are perfectly suited to effect the efficient handling of these landowner claims. Thus, the numerosity requirement of Rule 23(a)(1) has not been met.

29. The same is true here, since all 800 claimants have been identified and contacted, and some have filed proofs of claim. As proposed class counsel says in his Declaration, the two law firms who filed the Class Certification Motion "already represent and communicate with the 800 Creditors." *Declaration Of Peter Ferraro Supporting The Motion By Stella Johnson, Bernadette Martinez, And Monique J. Scranton As Representatives Of 800 Consumer Creditors For Orders Pursuant To Fed.R.Bankr.P. 7023, Certifying Them As A Class And Authorizing Their Prosecuting Their Class Proof Of Claim As A Class Action*, ECF 2438-3, ¶ 116, at 23.

30. Moreover, in this case, the claims register maintained by Epiq Corporate Restructuring, LLC, the court-appointed claims and noticing agent, shows that 7,875 proofs of claim have been filed in these chapter 11 cases. As of August 25, 2021, the Court had already resolved over 6,950 of them. *See Fifth Joint Motion of Plan Administrator, GUC Recovery Trustee, and Consumer Representative for Entry of Order Extending Deadline to Object to Claims Under the Third Amended Plan*, ECF 3647, ¶ 18, at 6–7. Under these circumstances, 800 claims are not too numerous for this Court to determine.

b) The Walters Claim Does Not Meet the Commonality and Typicality Prerequisites of Rule 23(a)(2) and (3).

31. To sue as a class representative, the claimant must show common questions of fact or law and that the representative claim is typical of the claims of the putative class members. Here, the claims involve real estate transactions, each of which is unique by its nature. In addition, the Walters Claim alleges marketing practices by Ditech separately directed toward each of the 800 claimants and suggests those practices were personal contacts and oral communications. Therefore, each personal marketing pitch likely differed, and each claimant would be required to establish the contents of the pitch. The Walters Claim also attaches details about the alleged construction defects in each of the 800 houses, and each one differs. And the Claimants' Response to the Objection to Claim asserts equitable principles as the basis for permitting the Claim to proceed despite the expiration of all the statutes of limitations. Resolution of claims based on equitable principles requires examination of the individualized circumstances of each claimant, not a class-wide determination. For these reasons, the claims do not necessarily involve common questions of fact or law, and the three named claimants' claims are not necessarily typical of the claims of the members of the putative class.

c) The Proposed Representative Parties Are Not Appropriate Representatives.

32. For the same reasons that the Walters Claim Claimants do not meet the commonality and typicality requirements, they are not appropriate class representatives. Each claim, each construction defect, each oral representation, each equitable ground asserted for avoiding the statute of limitations bar is unique, and none of the Claimants can stand as representative for all of the 800 claimants.

2. The Walters Claim Does Not Meet Rule 23(b)'s Requirements To Be Maintained as Class Action.

33. In addition to meeting the prerequisites of Rule 23(a) to sue as a class, a class action may not be maintained unless one of the following three requirements of Rule 23(b) (summarized) are met:

> (1) separate actions would risk:
> (A) inconsistent adjudications that would establish incompatible standards for the Debtor; or
> (B) adjudications that, as a practical matter, would dispose of the interests of other putative class members or would substantially impair their ability to protect their interests;
> (2) the Debtor has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or
> (3) common questions of law or fact predominate, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy, considering:
> (A) the class members' interests in individually controlling the prosecution or defense of their claims;
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
> (C) the desirability or not of concentrating the litigation of the claims in the particular forum; and
> (D) the likely difficulties in managing a class action.

The Walters Claim does not meet any of these requirements.

a) Prosecuting Separate Actions Would Not Create a Risk of Inconsistent Adjudications or Impair The Claimants' Rights.

34. When many potential plaintiffs would have to prosecute individual actions in multiple courts or before many different judges, as is typically the case in the absence of a class action, there can be a substantial risk of inconsistent adjudications or the establishment of inconsistent standards and could set precedents in one court that would be binding or even persuasive in other courts, thereby impairing the interests of putative class members in prosecuting their own claims. However, that risk is not present here. All the claims would be adjudicated in a single court before a single judge, obviating any risk of inconsistent adjudications or different standards of conduct. Moreover, a decision on any single claim

would not impair other claimants' ability to adjudicate their claim, because each claimant would have the right to assert the claim before this Court and, to the extent the claim shared common issues with a claim that had been previously determined, one can presume that the Court would have reached the same result, whichever claim were addressed first.

b) The Debtor's Alleged Actions Do Not Apply Generally To The Class.

35. Certification under the second alternative, Rule 23(b)(2), is appropriate only if the class claimant seeks primarily injunctive or declaratory relief. 5 Moore's Federal Practice–Civil § 23.43[3] (2021). An action seeking primarily money damages is not appropriate for certification under this prong. *Id.* Because the Walters Claim seeks money damages and does not seek injunctive relief or a declaratory judgment against the Debtor for any continuing actions, and because the Debtor stopped serving mortgage loans after March 2020, the Walters Claim may not be certified under the second alternative,

c) A Class Action is Not Superior to Other Available Methods for Fairly and Efficiently Adjudicating the Walters Claim.

36. As noted above, common questions of fact or law do not predominate. And as many courts have already recognized, the nature of a bankruptcy case eliminates the potential advantages of a class action for fairly and efficiently adjudicating a claim. *Supra*, at 9.

CONCLUSION

37. For all the foregoing reasons, the Class Certification Motion should be denied.

WHEREFORE, the Trustee and the Administrator respectfully request entry of an order denying the Class Certification Motion and granting such other and further relief as is just and proper.

DATED: December 10, 2021

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