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and Debtors in Possession*

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

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	:
In re	:
	:
DITECH HOLDING CORPORATION, et al.,	:
	:
Debtors.¹	:
	:
-----X	

Chapter 11
Case No. 19-10412 (JLG)
(Jointly Administered)

**DECLARATION OF DENIS O'CONNOR OF ALIXPARTNERS LLP,
DEBTORS' FINANCIAL ADVISOR, IN SUPPORT OF THE SALE
TRANSACTIONS AND CONFIRMATION OF THE THIRD AMENDED PLAN**

I, Denis O'Connor, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. I am a Managing Director with AlixPartners LLP in the Financial Advisory Services practice. I joined AlixPartners on May 25, 2004. Prior to joining AlixPartners, I was a partner with PricewaterhouseCoopers LLP in the Financial Advisory Services practice

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.

and then a Senior Managing Director at FTI Consulting, Inc. I have approximately 40 years of experience as a consultant and accountant in the areas of corporate recovery, forensic accounting, dispute analysis, and interim management. With respect to corporate recovery services, I have assisted, advised, and provided strategic advice to debtors, creditors, bondholders, investors, and other entities in numerous chapter 11 cases.

2. I have been a panel speaker at conferences sponsored by the American Bar Association, American Bankruptcy Institute, New York State Society of CPA's, National Association of Credit Managers, The Center for Professional Education, and PricewaterhouseCoopers. I am a Certified Public Accountant, Certified Insolvency and Restructuring Advisor, and Certified in Financial Forensics. I am a member of the bars of the U.S. Supreme Court and New York State, and a member of the Association of the Bar of the City of New York. I am also a member of the National Association of Federal Equity Receivers. I received a Bachelor of Science in Accounting and a Masters of Business Administration in Finance from the University of Maryland and a Juris Doctor in Law from Fordham University School of Law.

3. I also have extensive experience in claims assessment and valuation. This experience includes (a) providing a financial analysis of the value of unsecured and priority holder claims to the Official Committee of Unsecured Creditors and testifying as to the debtors' hypothetical Chapter 7 liquidation analysis in Dynamic International Airlines's Chapter 11 proceedings; (b) providing claim value estimation to the Official Committee of Unsecured Creditors and appointed Trustee in connection with Alamo National Car Rental Corp.'s plan of reorganization; and (c) testifying in arbitrations about the value and amount of damages from payment and accounting treatment of a buyout option of membership interests in hedge funds.

4. In addition, I have significant experience with mortgage and consumer lending companies. For example, I have led an investigation into an alleged mortgage fraud by Taylor Bean & Whitaker, a wholesale mortgage lending firm, and provided forensic accounting services to the Official Committee of Unsecured Creditors in the Residential Capital LLC bankruptcy proceeding. I also represented the secured lenders of ContiFinancial Corp before and after its restructuring. My work included review of ContiFinancial's mortgage origination, servicing and securitizations of its mortgages. From these engagements, I have become familiar with the business and operations of mortgage servicing and lending companies.

5. I also was the court appointed receiver of Condor Capital Corp., an originator and servicer of over 75,000 consumer loans. As receiver, I worked with secured lenders, regulators, and the business owner. I was responsible for analyzing, responding to, and remediating consumer complaints regarding repossessions, pay-offs, and late fees, among other things. I was also responsible for overseeing and settling class action suits which were brought by Condor's customers for alleged loan servicing deficiencies.

6. More detail about my credentials and past relevant experience is provided in my curriculum vitae, attached hereto as **Exhibit A**.

7. I understand that on February 11, 2019, the Debtors commenced the above captioned chapter 11 cases, and that in connection with these cases, a number of consumer creditors have filed proofs of claim. Epiq Corporate Restructuring, LLC ("**Epiq**"), the appointed claims and noticing agent, identified potential Consumer Creditor Claims out of the entire claims population.

8. I understand that the Debtors and the Official Committee of Consumer Creditors (the "**Consumer Creditors' Committee**") have reached a settlement (the "**CCC**

Settlement”), which provides for, among other things, the contribution of \$10,000,000 (as a carve out from the Term Lenders’ collateral or the proceeds or value thereof) to a reserve for the exclusive benefit of holders of Allowed Consumer Creditor Claims, and a fee reserve of \$1,000,000 to satisfy the expenses incurred by the Consumer Representative in connection with its duties.²

9. I understand that on September 11, 2019, the Debtors filed their *Third Amended Joint Chapter 11 Plan of Ditech Holding Corporation and its Affiliated Debtors*, filed contemporaneously herewith (as the same has been or may be amended, modified, supplemented, or restated, the “**Plan**”), which incorporates the CCC Settlement. I have reviewed, and I am generally familiar with, the provisions of the Plan and the Disclosure Statements relating to the Plan, especially those provisions relating to consumer borrower claims.

10. Based on my review of the plan, I understand that Section 5.6(d) provides that claims relating to the correction of Borrowers’ accounts and Borrowers’ defenses and rights of recoupment will flow through to the Buyers. Specifically, Section 5.6(d) preserves a Borrower’s rights to request corrections by the Buyers of any misstated loan accounts transferred to the Buyers, including, but not limited to, the misapplication of payments, interest overcharges, and improper fees and costs.

11. Based on my restructuring experience and my review of the Court’s *Memorandum Decision on Confirmation of the Second Amended Joint Chapter 11 Plan of Ditech Holding Corporation and Its Affiliated Debtors* (ECF No. 1240), I understand that, among other things, confirmation of the Plan is contingent on a showing that the Consumer Creditors are entitled to an equal or greater recovery under the Plan, which incorporates the CCC

² Unless otherwise stated, the terms referenced in this declaration have the same meanings set forth in the Plan.

Settlement, than in the event of a hypothetical liquidation under chapter 7 of the Bankruptcy Code. I also understand that in the event of a hypothetical chapter 7 liquidation, certain holders of Consumer Creditor Claims could theoretically retain their claims and defenses pursuant to section 363(o) of the Bankruptcy Code if the trustee sells the creditor's asset.

12. The Debtors have retained me, and AlixPartners, to provide my opinion on what value, if any, to assign to the potential exposure to 363(o) Claims in a hypothetical chapter 7 liquidation. Claims concerning account corrections, as discussed in paragraph 10, are excluded from my assessment because the claims and defenses relating to the correction of Borrowers' accounts flow through to the Buyers in accordance with section 5.6(d) of the Plan

13. As discussed in more detail below, based on my expert analysis of the potential Consumer Creditor Claims population, among other things, I value the potential exposure to 363(o) Claims in a hypothetical chapter 7 liquidation to be in the range of \$2.1 million to \$2.9 million.

14. In forming my opinion, I reviewed filings in the above-captioned chapter 11 cases as well as numerous publicly available proofs of claim and documents pertaining to ongoing litigations against the Debtors and Debtors' internal documents and data. I also discussed with Debtors' personnel the Debtors' consumer claim review, complaint resolution process, and the historical litigation and non-litigation complaint payout data. The sources I relied on are listed in **Exhibit B**.

15. AlixPartners is being compensated at a rate of \$1,140 per hour for my work on this matter. My compensation is not contingent on my findings or on the outcome of this matter.

16. Except as otherwise indicated herein, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents and other information reviewed by me or AlixPartners professionals under my direction and oversight in the course of our work on behalf of the Debtors, including information provided to us by the Debtors' personnel, and other advisors. Due to the large volume of Consumer Creditor Claims that required review, I supervised and worked closely with my AlixPartners colleagues, and confirmed their findings. If I were called upon to testify, I could and would testify competently as to the facts set forth herein. I am authorized to submit this Declaration on behalf of AlixPartners for the Debtors.

I. Background Facts

A. Debtors' Business

17. The Debtors' businesses are comprised of three primary segments: (1) forward mortgage servicing; (2) forward mortgage originations; and (3) reverse mortgage servicing.

i. Forward Mortgage Servicing Business

18. The Debtors' "forward" mortgage servicing business (the "**Forward Business**") performs loan servicing of mortgage loans that fall into two categories: (i) mortgage loans for which Debtors own the mortgage servicing rights ("**MSRs**"), and (ii) subservicing that the Debtors have been contracted to perform for third party owners of MSRs.

19. Regardless of whether the Debtors act as a primary servicer or perform subservicing for a third party, their responsibilities with respect to the underlying mortgage loans are substantially similar and generally include, but are not limited to, the following: collecting mortgage loan payments from borrowers and distributing those funds to the entities responsible

for distributing those payments to holders of residential mortgage backed securities, responding to borrower inquiries, including regarding the terms of their loans, and supervising foreclosures and property dispositions consistent with contractual requirements.

ii. Forward Mortgage Origination Business

20. The Forward Business also originates and purchases forward mortgage loans; substantially all of the mortgage loans the Forward Business originates are sold into Federal National Mortgage Association (“**Fannie Mae**”)–sponsored and Federal Home Loan Mortgage Corporation (“**Freddie Mac**”)–sponsored securitizations or into mortgage pools insured by Government National Mortgage Association (“**Ginnie Mae**”).

21. The Debtors enter into certain agreements with Fannie Mae and Freddie Mac, which generally incorporate the applicable Government Sponsored Enterprise (“**GSE**”) selling and servicing guidelines. In general, when the Debtors originate a mortgage loan, they fund the loan using mainly cash borrowed from a lender in exchange for pledging the loan as security for such borrowings. The Debtors subsequently sell the loans into a GSE-sponsored securitization, and use the proceeds for the sale of the mortgage backed securities to repay the borrowed cash. These loans are not owned by the Debtors.

22. The Debtors pool and securitize certain mortgage loans conforming to Ginnie Mae’s requirements for mortgage backed securities, including continuing recourse obligation imposed on the Debtors.

iii. Reverse Mortgage Servicing Business

23. The Debtors’ “reverse” mortgage servicing business (the “**Reverse Business**”) primarily focuses on servicing and subservicing reverse mortgage loans, the majority of which are home equity conversion mortgages (“**HECMs**”) that are insured by the Federal

Housing Administration. The loans generally become due and payable when one of the following events of default occur: (i) the death of the borrower, (ii) the borrower no longer utilizes the home as his or her principal residence, (iii) title to the property is transferred to a non-borrower, (iv) the borrower fails to meet other requirements of the loans (*e.g.*, paying property taxes, insurance, and homeowner's association fees), or (v) the end of a deferral period for an eligible non-borrowing spouse.

24. The Debtors perform servicing for "reverse" mortgage loans that fall into two categories: (i) mortgage loans that the Debtors own or own the mortgage servicing rights and (ii) mortgage loans for which the Debtors perform servicing and subservicing for third-party owners of loans.

25. The Debtors' "reverse" mortgage servicing activities generally include making monthly installment payments to borrowers; advancing the funds for those payments to borrowers; calculating the new payment amounts and/or lines of credit to borrowers who request payment plan changes; providing account statements to borrowers; disbursing funds for property repairs after inspecting properties or receiving certifications of completion of the repairs; and monitoring borrowers' timely payment of taxes and homeowners' insurance and making servicing advances to cover those payments when needed.

B. The Debtors' Consumer Complaint Resolution Process

26. The Forward Business has established a number of channels through which to resolve consumer borrower complaints, which are defined as any expression of dissatisfaction—even when the complaint relates to the actions of a third party, such as vendor or prior servicer.

27. The first stage of complaint resolution is referred to as “Frontline,” through which consumers can make either verbal or written complaints. Consumers can make verbal complaints by calling in; these calls are recorded and resolved by consumer-facing staff. Complaints that cannot be resolved by staff members are often directed to managers. If a verbal complaint cannot be resolved on the call, consumers generally are provided with information on how to submit a written complaint. A dedicated correspondence team investigates and responds to written consumer complaints. The majority of consumer complaints lodged at the Frontline level are not escalated, but consumers who are not satisfied may escalate their complaints.

28. The second stage of complaint resolution is referred to as “Escalated Complaints.” These are complaints routed to either the Voice of the Customer (“VOC”) or the Legal Department. The VOC, established in June 2018, consists of a consumer advocate team, which operates independently from business operations. The VOC team’s primary responsibility is to investigate and respond to certain types of complaints, including certain repeat consumer complaints, complaints through social media, complaints sent directly to Forward Business executives, and complaints from the Better Business Bureau, among others. Two types of consumer complaints are directed to the Legal Department, consumer complaints that the Forward Business receives from regulators or legislative representatives and pre-litigation complaints from consumers who have retained counsel. These complaints are addressed by attorneys and supervised paralegal staff who investigate and respond to the complaints.

29. Only a small fraction of consumer complaints have historically resulted in litigation against the Forward Business. Again the majority of all consumer complaints are resolved prior to the filing of a regulatory complaint or lawsuit.

30. The Reverse Business employs a similar complaint resolution process with the exception that it does not utilize a VOC team. The consumer complaints are fielded by customer service representative on the phone and in writing. If the Reverse Business receives regulatory or pre-litigation complaints, these complaints are handled by the Legal Department.

C. Claims Database

31. Epiq was appointed by the Debtors as claims and noticing agent in these chapter 11 cases. Epiq's duties include the maintenance, processing, docketing of proofs of claim filed, and the overall claims management. Epiq assisted the Debtors with the preparation of their bankruptcy Schedules of Assets and Liabilities and Statement of Financial Affairs, and prepared and served required notices in this case. Epiq also provided call center services for claimants and interested parties to receive up-to-date and important case information and to have questions answered by Epiq's staff.

32. AlixPartners instructed Epiq to isolate a potential Consumer Creditor Claims population by searching the proofs of claim for (1) key words appearing in the stated "basis of claim" in the proofs of claim,³ (2) any proofs of claim that appeared to be submitted by an individual or by a law firm on behalf of one or more individual borrowers, and (3) any claims that contained loan numbers in the body of the claim. As a result of this search, Epiq identified and provided to AlixPartners 4,218⁴ proofs of claim that could potentially be consumer related.

³ A table of all search terms applied is attached as **Exhibit C**.

⁴ Epiq originally identified a population of 3,909 proofs of claim that met the discussed search criteria. AlixPartners then asked Epiq to include late filed claims, which added 209 claims to the population. Afterwards, AlixPartners conducted a quality control review to review non-identified claims, and determined that 100 additional claims were brought by consumer creditors. Including these additions, in total, the potential Consumer Creditor Claims population is 4,218.

II. Claims Valuation Methodology

33. The Debtors tasked me, and AlixPartners, to estimate the potential exposure of 363(o) Claims. Specifically, I was engaged because of my background and experience in claims valuation and expertise in the consumer loan servicing field. I relied on this experience in considering and deciding on a reliable methodology by which I could value the 363(o) Claims. I considered several methodologies to accomplish this task.

34. First, I contemplated whether it would be viable to rely on the listed values on the proofs of claim as a valuation metric. I determined that the listed values on the proofs were not reliable.

35. As part of AlixPartners's review of the 4,218 claims that were identified as potential Consumer Creditor Claims, my colleagues examined the value claim amount listed on the second page of the proof of claim form (Question 7), as well as the attached supporting documents. Based on this review, AlixPartners determined that the listed claimed amount did not often correspond to the underlying grievance.

36. In addition, I personally reviewed a sample set of these proofs of claim to confirm my AlixPartners colleagues' determination. During the course of my review, I found that the proofs of claim and supporting materials did not substantiate the claimed amounts. As an example, the claimants who filed proofs of claim numbers 22628 and 22631, listed \$119.5 million and \$112.5 million as the claim value, respectively, on a secured basis. However, a review of these proofs of claim reveal that these claimed amounts are untied to the alleged wrongdoing, which is alleged copyright infringement. The claimants appear to believe that the Debtors, by listing the claimants' names in a loan agreement or mortgage, violated the claimants' copyright to exclusive use of the claimants' names. Based on the documents attached to the

proofs of claim, the unpaid balance of these loans was \$52,999.81. Although these proofs of claim exceeded 200 pages, their listed claim values are entirely unsupported by documentation; setting aside the validity of the claim, there is no correlation between the over \$100 million listed claim values and the underlying allegations. Additionally, of the 4,218 potential Consumer Creditor Claims, 2,597 proofs of claim included no support for the claim, and 1,563 proofs of claim listed a claim value of \$0.00.

37. I next considered whether the unpaid principal balance of these claims were a reliable valuation input for my assessment. I reviewed proofs of claims where AlixPartners, with the assistance of the Debtors' servicing team, was able to match the proof of claim to an underlying loan.⁵ Based on my review of these proofs of claim, I determined that the unpaid principal balance also was not a reliable input because the balance was not tied to the alleged fee or damages sought.

38. Last, I considered whether I could value the 363(o) Claims by relying on the Debtors' historical non-litigation complaint and litigation payout data, a metric which I have used in previous engagements to assess the value of claims. To ensure that this was a workable methodology, I spoke with the Debtors to confirm that this data existed and was kept in a consistent and dependable manner.

39. I learned that in 2017, the Debtors changed internal litigation tracking systems to Legal Tracker, a web-based case and invoice management product provided by Thomson Reuters. Because of this system overhaul, the first year that a full year of litigation data was kept on Legal Tracker was 2018. Prior to Legal Tracker, the Debtors utilized a system called LawTrac, which did not maintain the same level of input consistency or permit the input of

⁵ Of the 632 claims that fit this criteria, 148 claims had an amount within 10% of the unpaid balance of the loan.

invoices, which was documented by paper until about 2016. Due to the inconsistent inputs and the hard copy documentation, litigation data prior to the implementation of Legal Tracker was not entirely reliable. In Legal Tracker, the user can filter through inputted litigation matters by filtering by a number of fields, titles, and pull-down menus. The Debtors' in-house paralegals and counsel input data to the system under internal policies and guidelines to insure data integrity and consistency. Outside counsel may also input data to the system, but has limited access to certain functions such as providing status updates and electronically submit invoices and unbilled accruals. Because the Debtors changed to Legal Tracker in 2018, the data that predated the system is not reliable. This data was kept in hard copy, and only certain of these hard copy documents were manually inputted onto the Legal Tracker system.

40. I also learned that since January 2017, complaints that are escalated—VOC and Legal Department—are maintained on CCM. Earlier complaints, are generally kept on a separate complaint management program database. Prior to January 1, 2017, pre-litigation complaints were maintained on LawTrac.

41. After understanding the protocols and practices of their data collection, I requested the Debtors' pre-litigation complaint and litigation payout data from January 1, 2018 through May 31, 2019.⁶ Specifically, I asked for records reflecting (1) how many non-litigation complaints had been made against the Forward Business and the Reverse Business, (2) what, if any, payout each complainant received, (3) how many complaints were elevated to litigation, (4) how many ongoing and resolved litigations the Forward Business and the Reverse Business were party to during the requested time period, and (5) what, if any, payout—including but not limited to settlement payments—each litigation plaintiff received.

⁶ Based on my experience and prior valuation work, I typically request historical data dating back one year.

42. Because I have found in my experience with class actions that they are outliers and must be valued differently based on the potential class liability, I separately asked to review historical data, for the same time period, reflecting (1) how many class actions had been brought against the Debtors, (2) the number of class actions that had been certified, and (3) what, if any, payout—including but not limited to settlement payments—each certified class or class plaintiff received.

43. The Debtors provided me with the requested statistics. Based on my review of the data, I determined that the Debtors' litigation settlement data and average cost per non-litigation complaint were reliable economic indicators, which I could rely on as to approximate value for the 363(o) Claims.

44. This determination is consistent with my work on prior restructuring assignments as an advisor to a debtor or as an advisor to an official committee of unsecured creditors. For these engagements, I assisted in the preparation of claim estimation and valuation analyses, and reviewed the claim estimation analyses prepared by debtors. In many of these matters, I used historical settlement and payment data to prepare or review the estimated cost of settlement or value of these claims. I decided on this approach for this assignment after considering a number of factors including: (1) the Debtors' historical method of tracking complaint and litigation information; (2) the reasonableness and economic reliability of the realistic alternative values, such as claimed amounts set forth in the proof of claims; and (3) the variability of the amounts historically paid to settle the claims in terms of whether an average or median value be used.

III. 363(o) Claims Valuation

45. To assess the value of 363(o) Claims, I first defined the relevant potential 363(o) Claims population by isolating and removing certain claims that could not potentially be 363(o) Claims. Next, I reviewed the Debtors' historical consumer complaint and litigation payment data to derive average and median payout values that could be applied to the narrowed potential 363(o) Claims population. I then determined the most accurate payout values, and applied them to the identified potential 363(o) Claims population. Separately, I valued Consumer Creditor Claims that were identified as arguably related to a class action. As further detailed below, I ultimately concluded that the 363(o) Claims are valued between approximately \$2.1 and \$2.9 million.

A. Potential 363(o) Claims Population

46. To separate claims identified as potential Consumer Creditor Claims that are not 363(o) Claims, AlixPartners worked with the Debtors' servicing team to identify claims that either facially should be excluded—*e.g.*, claims not filed by a consumer creditor—or that have unique qualities and require different treatment than the general potential Consumer Creditor Claims population. At the outset, AlixPartners identified and removed 16 claims from the population that were flagged as potentially relating to a class action. Based on my experience with class actions, I understand that the settlement or payout value is materially different in class actions than in individual complaints or litigations. I, therefore, will conduct a separate valuation analysis as to these 16 claims.

47. As to the remaining claims, I worked with a team at AlixPartners to categorize the claims into 5 distinct categories: (1) Non-Consumer Claims, (2) Claims Not Matched to a Loan, (3) Claims Matched to Loans Serviced, but Not Owned, by the Debtors, (4)

Claims Matched to a Forward Business Loan, and (5) Claims Matched to a Reverse Business Loan. These categories of claims are summarized in Table 1 below:

TABLE 1

<u>Category</u>	<u>Claim Count</u>
Claims Relating to Class Actions	16
Non-Consumer Claims	27
Claims Not Matched to a Loan	968
Claims Matched to Loans Serviced, but Not Owned by, the Debtors	1,545
Claims Matched to a Forward Business Loan	1,530
Claims Matched to a Reverse Business Loan	132
Total	4,218

48. Non-Consumer Claims. My AlixPartners colleagues identified 27 claims as non-consumer claims based on a review of the proofs of claim, which revealed that the claimant was sought recovery from the Debtors based on a commercial—not consumer—litigation.

49. AlixPartners reviewed the remaining proofs of claims to identify the underlying loan associated with each claim to determine whether these claims corresponded with assets owned by the Debtors as well as to obtain supporting documentation and account details that allow for a closer examination of the alleged errors. Only certain proofs of claim included loan identifying information, such as a loan number; for those that did not, AlixPartners asked the Debtors’ servicing team to search for the loans that matched these claims in their internal loan databases, Bulk Data Export (“BDE”), and Green Tree Application (“GTA”), the Forward Business’s historical loan database. The Debtors’ servicing team searched these databases for loans that matched with each individual claimant’s name—including every combination of first

and last name—or the claimant’s listed address. If a loan could be matched to the claim, AlixPartners, working with the Debtors’ servicing team, identified the owner of the underlying loan. Through this process, we matched 1,530 claims to a Forward Business loan, and 132 claims as matched to a Reverse Business loan. We could not locate a matching loan for 968 claims. 1,545 claims were matched to loans serviced, but not owned, by the Debtors. Importantly, loans not owned by the Debtors cannot be transferred or sold in a section 363 sale in a chapter 7 liquidation, and therefore claims made with respect to those loans cannot be 363(o) Claims.

50. Claims Not Matched to a Loan. After conducting the described search, AlixPartners, working with the Debtors’ servicing team, was unable to match 968 claims to a loan in the BDE and GTA loan databases. In other words, when the Debtors’ servicing team ran the individual searches based on the names and addresses in the proofs of claim, 968 searches returned no results. Thus, we were unable to determine whether the underlying loans to these claims are indeed owned by the Debtors. Notwithstanding the inability to match these claims to a loan, we included these claims in the pool to be valued in order to ensure that our valuation presented a conservative (in this case, higher) estimate. It is very possible that some or all of these 968 claims do not match a loan that can be sold or transferred by the Debtors in a hypothetical chapter 7 liquidation or relate to account corrections (which are not 363(o) Claims) in which case the value assigned to these claims would be \$0.

51. Claims Matched to Loans Serviced, but Not Owned by, the Debtors. On the remaining claims, the search returned 1,545 claims as matched to loans serviced, but not owned, by the Debtors, 1,530 claims as matched to a Forward Business loan, and 132 claims as matched to a Reverse Business loan. The claims that were matched to loans serviced, but not owned by the Debtors corresponded to loans owned by Fannie Mae, Freddie Mac, or private

investors. As noted above, these claims cannot be 363(o) Claims, and as discussed below are not valued.

52. In an effort to further assess the potential recovery on the claims matched to Forward Business-owned or Reverse Business-owned loans, AlixPartners conducted a closer review of the corresponding proofs of claim. These claims were then sorted into one of three categories: (1) Claims with Insufficient Information, (2) Claims with Sufficient Information, or (3) Claims Relating to a Potential Account Correction. These categorizations are summarized in Table 2 below:

TABLE 2

<u>Category</u>	<u>Claim Count</u>
Claims Potentially Relating to Class Actions	16
Non-Consumer Claims	27
Claims Not Matched to a Loan	968
Claims Matched to Loans Serviced, but Not Owned, by the Debtors	1,545
Claims Matched to a Forward Business Loan	1,530
<i>Claims with Insufficient Information</i> 1,090	
<i>Claims with Sufficient Information</i> 110	
<i>Claims Related to a Potential Account Correction</i> 330	
<i>Subtotal</i> <i>1,530</i>	
Claims Matched to a Reverse Business Loan	132
<i>Claims with Insufficient Information</i> 96	
<i>Claims with Sufficient Information</i> 19	
<i>Claims Related to a Potential Account Correction</i> 17	
<i>Subtotal</i> <i>132</i>	
Total	4,218

53. Claims with Insufficient Information. AlixPartners, working with the Debtors' servicing team, determined that it had insufficient information to determine the basis of 1,090 claims that matched to a Forward Business loan and 96 claims that matched to a Reverse Business loan. Specifically, AlixPartners could not identify the basis of these Claims because the proofs of claims did not attach supporting documentation, and a review by the Debtors' servicing team of the account file associated with the loans did not reveal an apparent error on the account or any complaints or litigations associated with the account, either open or resolved. We, thus, deemed these claims as having insufficient information.

54. Claims with Sufficient Information. AlixPartners, working with the Debtors' servicing team, determined that it had sufficient information to understand the basis of 110 claims that matched to a Forward Business loan and 19 claims that matched to a Reverse Business loan. AlixPartners reached this conclusion because an examination of the proofs of claims readily identified the basis of these claims or because the Debtors' servicing team, reviewing the underlying account file, was able to identify an error or previously filed complaint or litigation associated with the account. AlixPartners, thus, deemed these claims as having sufficient information.

55. Claims Related to a Potential Account Correction. AlixPartners also determined that 330 claims that matched to a Forward Business loan and 17 claims that matched to a Reverse Business loan were related to a potential account correction. We categorized these claims as such based on our review of the proofs of claims that detailed underlying grievances that are typically associated with adjustments made to a customer's account (*e.g.*, an escrow adjustment, principal adjustment, or fee adjustment).

56. Based on our review of the potential Consumer Creditor Claims population and the classifications discussed above, I categorized the potential Consumer Creditor Claims in four groups—(1) 363(o) Claims Potentially Relating to Class Actions (highlighted in orange), (2) Claims that are Not 363(o) Claims (highlighted in red), (3) Potential 363(o) Claims Where Recovery is Unsubstantiated (highlighted in yellow), and (4) Potential 363(o) Claims Where Recovery is Substantiated (highlighted in green)—summarized in Table 3.

TABLE 3

<u>Category</u>	<u>Claim Count</u>
Potential 363(o) Claims Relating to Class Actions	16
Potential Consumer Creditor Claims that are Not 363(o) Claims	1,919
<i>Non-Consumer Claims</i>	
<i>Claims Matched to Loans Serviced, but Not Owned by, the Debtors</i>	
<i>Claims Related to a Potential Account Correction – Forward Business Loan</i>	
<i>Claims Related to a Potential Account Correction – Reverse Business Loan</i>	
<i>Subtotal</i>	
Potential 363(o) Claims - Recovery is Unsubstantiated	2,154
<i>Claims Not Matched to a Loan</i>	
<i>Claims with Insufficient Information – Forward Business Loan</i>	
<i>Claims with Insufficient Information – Reverse Business Loan</i>	
<i>Subtotal</i>	
Potential 363(o) Claims - Recovery is Substantiated	129
<i>Claims with Sufficient Information – Forward Business Loan</i>	
<i>Claims with Sufficient Information – Reverse Business Loan</i>	
<i>Subtotal</i>	
Total	4,218

57. Potential 363(o) Claims Relating to Class Actions. As discussed in paragraph 46, claims potentially relating to class actions are being addressed separately from the valuation of the individual 363(o) Claims. *See infra*, Section III.B.iii.

58. Potential Consumer Creditor Claims that are Not 363(o) Claims.
AlixPartners identified three types of claims that are not 363(o) Claims. First, the 27 potential Consumer Creditor Claims that were mistakenly identified as consumer claims, but were in fact commercial claims, would not fall within the ambit of section 363(o), as that section contemplates preservation of claims and defenses solely as to *consumer* credit transactions, contracts, and interests. Second, the 1,545 claims that were matched to loans not owned by the Debtors do not match with assets that could be sold in a chapter 7 liquidation, and thus, are not potential 363(o) Claims. Third, the 347 claims that were identified as seeking an account correction (matched to both Forward Business and Reverse Business loans), are not a part of the potential 363(o) Claims population because under Section 5.6(d) of the Plan, the Buyers have committed to investigate and correct account errors; these claims are not a part of this 363(o) Claims assessment. *See supra* ¶¶ 10-12. These 1,919 claims are, therefore, excluded from the potential 363(o) Claims population; no settlement or payout value will apply to these claims.

59. Potential 363(o) Claims – Recovery is Unsubstantiated. AlixPartners categorized 2,299 claims for which it determined that recovery under section 363(o) was unsubstantiated. Despite best efforts by AlixPartners and the Debtors' servicing team, we were unable to determine the alleged error or problem for the 968 claims that were not matched to a loan and the 1,186 claims that were matched to a Forward Business or Reverse Business loan but did not have sufficient information or support. Without more information from the consumer creditor claimants, AlixPartners is unable to determine whether these claims are 363(o) Claims.

Thus, AlixPartners categorized these 2,154 claims as ones where recovery under section 363(o), while possible, was unsubstantiated.

60. Potential 363(o) Claims – Recovery is Substantiated. AlixPartners considered the remaining 129 Claims, which matched to a Forward Business or Reverse Business loan and included sufficient information for AlixPartners to identify the basis of the claim, separately. Given their support and documentation, these claims are more likely to be addressed and obtain potential recovery.

61. I note that these classifications were intended to facilitate a conservative, i.e., higher, valuation of the 363(o) Claims. For the purposes of this assessment, I assume that the holders of the identified potential 363(o) Claims will be able to establish successor liability that will transfer the value of these claims as liabilities to a chapter 7 purchaser in a liquidation. I have not evaluated whether that is actually the case, but am focused solely on applying my expertise and experience to valuing the 363(o) Claims in the event that they are able to bring these claims against a successor purchaser. I understand, however, from the declaration of Jeffrey Naimon filed contemporaneously with this declaration, that in reality, it is unlikely that these claimants will be able to establish liability against a hypothetical chapter 7 purchaser.

B. Valuation of Potential 363(o) Claims

62. To determine what the appropriate values are to apply to the identified potential 363(o) Claims population, I reviewed historical complaint and litigation payout data from January 1, 2018 through May 31, 2019, received from the Debtors. I first examined the data that corresponded to consumer complaints that do not rise to the level of litigation. The Debtors provided lists of all open and closed complaints recorded by the Forward Business—customer service, Voice of the Customer, Regulatory, and pre-litigation attorney—which included how

much money each complainant received as a result of each complaint. Based on this review, and my understanding of the consumer complaint resolution process, I determined that the Consumer Creditor Claims were most akin to the VOC complaints. My examination of the relevant VOC complaint data revealed that the 2,788 VOC complaints received during the relevant time period, 2,599 VOC complaints, or 93% of all VOC complaints received, did not result in any monetary payout.

63. Likewise, the Debtors provided lists of all open and closed complaints recorded by the Reverse Business—including customer service, and pre-litigation escalated complaints. Based on the data, I determined and confirmed with the Debtors that the Reverse Business did not pay out any money for these types of written complaints.

64. From these statistics, I derived both median and average payout values for complaints lodged with the Forward Business and the Reverse Business that did not escalate to litigation; this is summarized in Table 4.

TABLE 4

<u>Type of Complaint</u>	<u>Complaints Filed</u>	<u>Total Payout</u>	<u>Median Payout</u>	<u>Average Payout</u>
Forward Business	2,788	\$125,552	\$0.00	\$48.00
Reverse Business	425	\$0.00	\$0.00	\$0.00

65. Having calculated both the median and average payouts the complainants received from the Forward Business, I then considered which of these figures was a more reliable input in assessing the value of the potential 363(o) Claims.⁷ To make this determination, I surveyed the underlying data. Based on my review, I found that the median payout amount was skewed by the large number of complaints made to the Forward Business, approximately 93% of

⁷ Because no Reverse Business complaints resulted in a monetary payment, I do not discuss these statistics.

the total population, that did not result in monetary payout. Therefore, based on my review of the data and valuation and claims analysis experience, I determined that in order not to undervalue the 363(o) claims, the median payout was not as reliable a proxy for adjustment amount as the average payout.

66. AlixPartners worked with the Debtors to understand their historical settlement process for ongoing and settled litigations, including why these litigation claims settled, what type of information was exchanged in the settlement of these litigation claims, and the average payout for settled litigation consumer claims. We were provided with historical data of all open and closed litigation matters against the Debtors from January 1, 2018 through May 31, 2019. This data contained all consumer claims that the Debtors classified as consumer litigation matters as well as their ultimate disposition and settlement or judgment payment, if any. Based on these numbers, I derived median and average payments as shown in Table 5.

TABLE 5

<u>Type of Action</u>	<u>Complaints Filed</u>	<u>Total Payout</u>	<u>Median Payout</u>	<u>Average Payout</u>
Forward Business - Litigation	1,120	\$6,196,788	\$0	\$5,533
Reverse Business - Litigation	425	\$637,371	\$0	\$1,500

67. To determine whether the median or the average payout was a more reliable statistic, I again reviewed the underlying raw data. Here, I found the same pattern as with the payouts to non-litigation complainants—the majority of the payouts were \$0, and thus, the median would undervalue the 363(o) claims and therefore was not reflective of the actual money paid. Therefore, I find that the average payout is the more reliable metric and use the average payout for the remaining assessment.

68. Based on my review of the statistics of the number of complaints made and litigations filed, I calculated that for the Forward Business and the Reverse Business, less than 0.5% of all consumer complaints received resulted in any litigation.

i. Valuation of Potential 363(o) Claims where Recovery is Unsubstantiated

69. Having calculated the potential value inputs from the Forward Business's and the Reverse Business's raw historical data, I then turned to determine how to appropriately apply these amounts to the two categories of identified potential 363(o) Claims.

70. Based on my expertise and experience in claim valuation, I determined that although it is not possible to determine the actual merits of claims on a claim-by-claim basis, they should not be assigned no value given the possibility, however small, that these claimants could recover in a hypothetical chapter 7 sale. In my experience dealing with valuing unknown and unsupported claims, I have used historical ratios of outcome to support my analyses. Applying that method here, I treat each of these 2,154 claims as consumer complaints that will or will not be elevated to litigation. Using the historical ratio of non-litigation complaints and elevated litigations, 99.5% of the claims are treated as non-litigation complaints, and 0.5% are treated as elevated litigations. I then apply the corresponding average payouts to determine the value of these claims, as summarized in Table 6.

TABLE 6

<u>Category</u>	<u>Claim Count</u>	<u>Applicable Avg. Historical Payout</u>	<u>Payout Value</u>
Potential 363(o) Claims – Recovery is Unsubstantiated			
<i>Non-Litigation Complaint - 99.5%</i>	2,143	\$ 45	\$ 96,435
<i>Litigation - 0.5%</i>	11	\$ 5,533	\$ 60,863
Total	2,154		\$ 157,298

71. Applying the \$45 historical average payout for non-litigation complaints to the 2,143 claims, or 99.5% of the population, the value of these claims totaled \$96,435.

Applying the \$5,533 historical average payout for escalated litigation matters involving the Forward Business to the 11 claims, or 0.5% of the population, the value of these claims totaled \$60,863. As a result, I valued the 2,154 claims which I categorized as recovery being unsubstantiated at \$157,298.

ii. Valuation of Potential 363(o) Claims Where Recovery is Substantiated

72. I next considered the appropriate valuation for the category of claims where AlixPartners was able to identify the underlying alleged error. In my claim valuation and assessment experience, claims that are supported by documentation or identifiable are more likely to recover than claims that are not supported and for which the underlying grievance cannot be identified. Although support and substantiation does not always correlate with a successful claim, in my experience, a conservative and prudent approach to valuation requires that these types of claims be given a higher value. I, therefore, determined, that it is appropriate to apply the Forward Business and the Reverse Business average litigation payouts to the appropriate claims as summarized in Table 7.

TABLE 7

<u>Category</u>	<u>Claim Count</u>	<u>Applicable Avg. Historical Payout</u>	<u>Payout Value</u>
Claims with Sufficient Information and Matched to a Forward Business Loan	110	\$ 5,533	\$ 608,630
Claims with Sufficient Information and Matched to a Reverse Business Loan	19	\$ 1,500	\$ 28,500
Total	129		\$ 637,130

73. Applying the \$5,533 historical average payout for escalated litigation matters involving the Forward Business to the 110 claims that were matched to a Forward

Business-owned loan and deemed substantiated, the value of these claims totaled \$608,630. Applying the \$1,500 historical average payout for escalated litigation matters involving the Reverse Business to the 19 claims that were matched to a Reverse Business-owned loan and deemed substantiated, the value of these claims totaled \$28,500. In sum, this category of claims is valued at \$637,130.

iii. Valuation of Potential 363(o) Claims Relating to Class Actions

74. Next, I turn to claims identified as potential 363(o) Claims relating to a class action. During the claim-by-claim review discussed above, a team from AlixPartners identified these claims as potentially related to a class action because the creditor claimants included the word “class” in the description or “basis of claims” section in their proofs of claim. Based on this criteria, the team determined that 16⁸ proofs of claim had been filed that purport to relate to a class action.

75. After discussing these 16 claims with the Debtors in an attempt to match the claims to ongoing or resolved class actions, it was determined that of the 16 identified claims, only 2 related to class actions in which a class had been certified prior to the filing of the bankruptcy petition in February of 2019. The remaining 14 claims related to either a class action, for which a pre-petition class had not been certified, or a claim that a consumer creditor appeared to be asserting on behalf of a class.

76. To determine what value I should apply to these 14 claims not involving a certified class, I reviewed the class action-specific historical litigation payout data that the Debtors provided. I examined the Forward Business’s historical dispositions payments made

⁸ The team originally identified 19 proofs of claims as related to class actions, but 3 of the 19 proofs of claims were duplicates. I use the 16 unique proofs of claims in my analysis.

pursuant to settlements or judgments in class action lawsuits.⁹ I identified the amounts that had been paid in class actions, and using the data provided, as summarized in Table 8, I determined that the average payment in a class action was \$39,500.

TABLE 8

<u>Type of Complaint</u>	<u>Complaints Filed</u>	<u>Total Payout</u>	<u>Median Payout</u>	<u>Average Payout</u>
Class Actions	20	\$789,992	\$6,250	\$39,500

77. Applying the \$39,500 average payment value to the 14 potential 363(o) Claims relating to class actions where a class was not yet certified, I valued these claims at \$553,000.

78. It is my experience that valuation of class actions involving certified classes can greatly differ depending on a number of factors, including class size, potential recovery per class members, and type of claim. Therefore, I am specifically discussing each of the claims relating to class actions where a class had been certified.

a. *Geary, et al. v. Green Tree Servicing LLC, et al.*, No. 14-cv-522 (S.D. Ohio 2014) (the “*Geary Class Action*”) (*Claim No. 20041*)

79. The Geary Class Action was filed by Brian and Connie Geary, individually and on behalf of six certified statutory damages subclasses. Geary took out an automobile loan from CitiFinancial which was then sold to, and serviced by, Green Tree, the Forward Business’s predecessor. Geary claims that Green Tree violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 (“**FDCPA**”), by sending allegedly defective billing statements and notices to Green Tree’s consumer borrowers. The district court certified six subclasses on

⁹ I understand that there has not been a class action brought against the Reverse Business in the relevant time period.

the issues of liability and statutory damages, but declined to certify a class as to individual damages.

80. As Geary acknowledges in his proof of claim, statutory damages under the FDCPA are capped at \$500,000. The district court applied that statutory cap applied to each subclass, thus limiting the statutory damages in the Geary Class Action to a maximum of \$3 million (6 subclasses multiplied by \$500,000 per class).¹⁰ Irrespective of the district court's application of the statutory cap and explicit refusal to certify a class as to individual damages, Geary asserts in his proof of claim that his claim is worth \$25.5 million. This overstates the value that the Geary Class Action may have, and in particular, overstates its value as a potential 363(o) Claim.

81. To determine the value of Geary's claim as a 363(o) Claim, I first determined how many class members could potentially recover under section 363(o) of the Bankruptcy Code. Working with the Debtors' servicing team, I found that out of the total class member population,¹¹ only 2,299 class members are associated with loans owned by the Debtors. Put simply, only 2,299 individuals out of the entire certified Geary class have assets that could be sold in a hypothetical chapter 7 liquidation, and potentially incur the protection of section 363(o) of the Bankruptcy Code. As 21,924 class members were identified during class discovery, this means that only approximately 10.5% of the Geary class members could have a potential 363(o) Claim.¹²

¹⁰ I mention of the district court's holding as to the application of the FDCPA statutory cap, but take no position as to whether the court's holding was correct.

¹¹ Geary claims, without support, that the potential class size is 45,000 members. However, during class discovery, the Debtors identified the borrowers who received the challenged collection letters. Based on the Debtors' analysis, the class size is approximately 22,000 individuals.

¹² Notably, Geary's car loan is not owned by the Debtors. Therefore, Geary would not have a 363(o)

82. Having identified the potential 363(o) Claims population, I then looked to locate a reliable value adjustment to apply to the population. Based on my experience valuing and assisting in settling class actions, I concluded that given the complexity of this six-subclass case, I would determine a range of values, instead of a determinate amount, that could apply to 363(o) Claims stemming from this action. First, I reviewed the historical class action settlement data—the most reliable value input. While the Debtors had settled only one class action with a certified class, it does provide data which confirms that typical settlements involve compromises where the Company settles at some significant number less than maximum damages.

83. Next, I examined the proof of claim, and supporting documentation including the class certification order, class complaint, and the FDCPA statute, to determine an appropriate value. Geary's counsel estimated, on the proof of claim, that each individual class member would recover approximately \$500 as a result of the class action. I used the \$500, the estimated individual damages amount, as the high end of the valuation range. In addition, to my review of documents, I spoke with Jeffrey Naimon, who is an attorney specialized in the consumer financial services practice, to better understand the general liabilities and damages recovered in FDCPA actions. I multiplied this \$500 amount by the 2,299 potential 363(o) population and concluded that the high end of my valuation range is \$1,149,500. To determine the low end of the valuation range, I determined, based on my experience with class settlements and my review of the underlying support, that at least half of the claims are unlikely to generate damages or where damages would be difficult to establish. Therefore, recovery would be calculated to an average of \$250 per class member. After applying the \$250 to the relevant

Claim in a hypothetical chapter 7 sale.

potential 363(o) Claims population, I determined that the potential 363(o) Claims stemming from the Geary Class Action are valued as between \$574,750 and \$1,149,500.

b. *Tran, et al. v. Green Tree Servicing LLC, et al.*, Case No. 07-2014-00041141 (Cal. Sup. Ct. 2014) (“*Tran Class Action*”) (*Claim No. 20795*)

84. The Tran Class Action was filed by Dieu-Chau Tran and Qui Duong, individual and on behalf of a certified class, alleging that Green Tree violated California’s Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 by leaving voicemails in an attempt to recover debts without adequately disclosing the caller’s identity and purpose (“Class A”) and for sending erroneous mortgage statements to consumer borrowers (“Class B”). The trial court in the Tran Class Action certified Class A, regarding a debt collector’s failure to identify himself and his purpose, but did not certify Class B.

85. To begin my assessment, I again sought to determine the potential 363(o) Claims population out of the certified class members. Working with the Debtors, I determined that out of the 4,312 total class members, only 859 were borrowers to loans owned by the Debtors. Therefore, only about 20% of the class members would fall under section 363(o)’s protections.

86. For the reasons discussed above, I again turned to review the proof of claim, attached support, underlying litigation filing, and relevant statutes for a source for an applicable valuation. I also spoke with Jeffrey Naimon to discuss the general liabilities and recoveries under the state and federal debt collection statutes. Based on this diligence and my experience, I determined that \$500 is a reasonable high value in cases like as this. I applied this to the relevant 859 population, and calculated that the high end of the valuation range is \$429,500. Similar to the Geary Class Action, I also determined that the low end of the valuation

range, should apply a \$250 value per class member. As a result, I value the 363(o) liability stemming from the Tran Class Action as ranging from \$214,750 to \$429,500.

C. Conclusion

87. Based on my review and analysis of the potential Consumer Creditor Claim population, the historical raw data of the Debtors' pre-litigation complaint and litigation payout values, the class action litigations brought against the Debtors, I opine that the total value of the 363(o) Claims is between \$ 2,136,928 and \$ 2,926,428. This sum, and its calculation, is reflected in Table 9 below.

TABLE 9

Category	Claim Count	Avg. Hist. Payout	Total - Low	Total - High
Potential 363(o) Claims – Recovery is Unsubstantiated				
<i>Non-Litigation Complaint - 99.5%</i>	2,143	\$ 45	\$ 96,435	\$ 96,435
<i>Litigation - 0.5%</i>	11	\$ 5,533	\$ 60,863	\$ 60,863
Subtotal	2,154		\$ 157,298	\$ 157,298
Potential 363(o) Claims – Recovery is Substantiated				
<i>Claims with Sufficient Information and Matched to a Forward Business Loan</i>	110	\$ 5,533	\$ 608,630	\$ 608,630
<i>Claims with Sufficient Information and Matched to a Reverse Business Loan</i>	19	\$ 1,500	\$ 28,500	\$ 28,500
Subtotal	129		\$ 637,130	\$ 637,130
Potential 363(o) Claims – Related to Class Action				
Certified Class Claims	2	<i>See declaration</i>	\$ 789,500	\$ 1,579,000
Non-Certified Class Claims	14	\$ 39,500	\$ 553,000	\$ 553,000
Subtotal	16		\$ 1,342,500	\$2,132,000
Total	2,299		\$ 2,136,928	\$ 2,926,428

88. Based on my familiarity with consumer lending claims, and my experience valuing and assessing claims more generally, where possible, I have taken a conservative approach to applying values to the potential 363(o) Claims population.

89. There are at least three instances where I decided on a conservative methodology. First, at the outset, when applying values to the defined potential 363(o) Claims

population, I applied only complaint and litigation settlement values. This assumes that each claim rises, at least, to the level of a consumer complaint. My review of a sample set of claims confirms my understanding that this is likely not the case for many claims. Certain proofs of claims that were filed appear to be filed mistakenly or filed without an understanding as to what the proof of claim meant. Thus, these claims likely would not have been complaints, but in remaining aligned to the conservative valuation approach, I applied complaint payout values to these claims.

90. Second, when considering my evaluation of the 968 proofs of claim that were not matched to a loan (and had no filed support for the claims), I considered these as potential 363(o) Claims even though it is likely that certain of these claims are not likely related to loans that could be transferred in a hypothetical chapter 7 liquidation. There is no support that shows that these claims are in fact, associated with current Debtors' assets.

91. Third, as I noted above, I did not consider whether the claims I identified as potential 363(o) Claims could be asserted against a hypothetical chapter 7 purchaser as a successor to Debtors or otherwise. The Naimon Declaration makes evident that it is unlikely that many, if any, of the claims could be asserted against a chapter 7 purchaser in a hypothetical liquidation. It follows that the range of values I reached would be significantly reduced if the likelihood of establishing successor liability under section 363(o) is lower than what I assumed. Also, the Naimon Declaration, notably, states that all of the class actions, including the Geary Class Actions, raise servicing issues (as opposed to origination issues), for which there is no basis to conclude that successor liability could be asserted against chapter 7 purchaser. If this is true, the value of the class actions claims, would be reduced to \$0.

92. As discussed, based on the foregoing analysis and discussion, I conclude that the 363(o) Claims are conservatively valued between \$ 2,136,928 and \$ 2,926,428.

IV. Greenwald Objection

93. Separately, the Debtors have asked me to review the objection submitted by Wayne Greenwald, an attorney who purports to represent about 800 creditors, filed September 18, 2019 (ECF No. 1302). Based on my review of the objection, although unclear, it appears that Mr. Greenwald asserts his 800 creditor clients have made over \$52,800,000 in unnecessary monthly payments to the Debtors, and ostensibly seeks this amount in damages.¹³ The 2019 Statement also states, without any basis or support, that “[e]ach member of the Group asserts a claim against the Debtors in an amount estimated to be approximately \$100,000.” It is also unclear from the objection whether the alleged “unnecessary” payments were as a result of account errors which could be corrected.

94. On September 19, 2019—three days before the Debtors’ brief in support of confirmation Mr. Greenwald filed a Fed. R. Bankr. P. 2019 Statement (the “2019 Statement”) purporting to represent a “Group” of approximately “800 Consumer Creditors of the Debtors” identified by name and address in an attached schedule (ECF No. 1309). Despite the late filing, AlixPartners determined that only 23 of the 788 creditors listed in the 2019 Statement filed individual proofs of claim. Further, I asked the Debtors servicing team to determine whether these creditors matched to a loan owned by the Debtors; the Debtors were able to confirm that 431 matched to loan numbers. After additional review of these 431 loans that could be matched to loans, we determined that 353 are Debtors-owned.

¹³ Based on my review of publicly filed documents, I understand that Mr. Greenwald had previously filed motions in this bankruptcy proceeding purportedly on behalf of 800 consumer creditors and Ms. Scranton (*see* ECF. Nos. 465, 560 and 969) and spoke on their behalf at the August 8, 2019 confirmation hearing (*see* ECF. No. 1155 at 156:21-160:25).

95. After these filings, Mr. Greenwald sent the Consumer Creditors' Committee additional information for certain ongoing litigations filed on behalf of his clients. I reviewed these documents and determined that only one of litigations involved a creditor listed in the 2019 Statement, *Green Tree v. Martinez*, No. 2013-0120 (Miss. Cir. Ct. Pearl River Cnty., Aug. 9, 2013) (the "*Martinez Action*").

96. Based on this information, I determined that the potential claims associated with Mr. Greenwald's objection are valued at approximately \$27,745. First, I removed the *Martinez Action* from the 353 potential 363(o) Claims population as it is an identified litigation and applied the average litigation payout value to that claim. Then, I applied the same methodology that I applied for the unsubstantiated potential 363(o) Claims, *see supra* ¶¶ 69-71 to the 353 population, which is summarized in Table 10 below.

TABLE 10

<u>Category</u>	<u>Claim Count</u>	<u>Applicable Avg. Historical Payout</u>	<u>Payout Value</u>
<i>Martinez Action</i>	1	\$ 5,533	\$5,533
Potential 363(o) Claims – Recovery is Unsubstantiated			
<i>Non-Litigation Complaint – 99.5%</i>	351	\$ 45	\$ 15,795
<i>Litigation – 0.5%</i>	2	\$ 5,533	\$ 11,106
Total	354		\$ 27,745

97. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 22, 2019

/s/ Denis O'Connor

Denis O'Connor

Exhibit A

**CURRICULUM VITAE
OF
DENIS O'CONNOR**

POSITION Managing Director- AlixPartners, LLP, New York City

EDUCATION B.S., Accounting, University of Maryland, Magna Cum Laude
M.B.A., Finance, University of Maryland
J.D., Law, Fordham University School of Law

PROFESSIONAL HISTORY

- AlixPartners, LLP – 2004 to present
- FTI Consulting – 2002 to 2004
- PricewaterhouseCoopers – 1979 to 2002

PROFESSIONAL EXPERIENCE FINANCIAL SERVICES CONSULTING

- Condor Capital Corp – Receiver of this sub-prime auto finance company. Condor originated and serviced over 75,000 consumer loans. Our work included working with the secured lenders, the regulators and owner of the business.
- JP Morgan Chase – lead forensic accounting investigation of Chase's acquisition of Bank of New York's credit card operations. Investigation focused on consumers with excessive aging's and related issues.
- ContiFinancial – advised the secured lenders to this sub-prime mortgage lender that originated, serviced and securitized its sub-prime mortgages.
- Residential Capital LLC – provided forensic accounting services to this mortgage and consumer lending and servicing company on behalf the Official Committee of Unsecured Creditors
- Taylor Bean & Whitaker – lead investigation on behalf of lenders and administrators of alleged mortgage fraud by Taylor Bean & Whitaker.
- Colorado Prime – advised secured bank group for this marketer and lender to consumers that purchased appliances and food products.
- One-Hour-Acceptance Corp. – due diligence for an investor of this sub-prime auto lender.
- Served as court-appointed Temporary Supervisor of the Reserve International Liquidity Fund. The Reserve Fund "broke the buck" during the Financial Crisis. Responsible for oversight of fund operations, internal controls and management.
- Confidential investigation of Investment Advisor and Broker Dealer – retained by counsel for investigation of alleged fraud and surrounding internal controls relating to unauthorized and unlawful transactions conducted by a senior executive.

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**PROFESSIONAL
EXPERIENCE
(continued)**

- Served as officer and director of U.S. based subsidiaries of Peregrine Investments Holdings Limited in connection with restructuring of the business and operations of these brokerage and asset management companies. Peregrine Investments was a leading banker in the Asian equity and fixed income markets.
- Provided interim management consulting services to the Board of Directors of Pipeline Trading Systems Inc. a broker dealer that served institutional and banking trading desks.
- Vault Global Opportunity Fund – Issued Expert report outlining audit failures by Hedge Funds’ auditor with respect to verification of assets and related value in connection with dissolution of the fund.
- Knight Trading Group Inc. – Performed a firm-wide Sarbanes Oxley accounting and internal controls review.
- Served as an accounting expert for the Securities and Exchange Commission in litigation against a former officer of a broker dealer for causing false and inaccurate information to be filed in FOCUS Reports with the S.E.C.
- Phoenix Four, Inc. (Arbitration) - Testified on behalf of Phoenix Four (off-shore hedge fund that invested in real estate projects) with regard to accounting and auditing issues
- Couldock & Bohan, Inc. (U.S. District Court, District of Connecticut) - Testified on behalf of Couldock & Bohan (trader of government and other securities) in connection with a business valuation and estimating damages resulting from breach of contract
- Serving as accounting expert for the S.E.C. for claims against fund managers regarding related party transactions.
- Supervised Anti-Money Laundering review for an international unit of a consumer lender.
- Providing consulting services to Depository Trust & Clearing Corporation with regard to member Broker Dealers’ trading and settlement activities.
- Providing consulting services to the court appointed S.I.P.A. Trustee of Bernard L. Madoff Investment Securities LLC, with respect to customer claims, sale of the broker dealer business and ongoing operating matters.
- Cowen & Company – Provided expert witness accounting services for this clearing broker dealer
- Drexel Burnham Lambert Group Inc. – Represented Official Committee of Unsecured Creditors, work included review and monitoring of sale and wind-down of trading operations.

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PROFESSIONAL CORPORATE RECOVERY CONSULTING

EXPERIENCE

(continued)

- Provided insolvency, restructuring, reorganization and turnaround assistance in such areas as: sale and winddown of business operations, investigative support, solvency and liquidation analyses, preference and fraudulent conveyance, collateral reviews, claim resolution and trusteeships. Corporate recovery consulting services for entities in a wide range of industries and businesses including: manufacturing, cruise lines, media and publishing, healthcare, investment banking, sub-prime mortgage origination and sale, insurance, airlines, software, financial institutions and leasing.

Selected Insolvency, Reorganization and Turnaround Consulting

- Served as Trustee of Alamo National Car Rental Liquidating Trust.
- Served as Officer of Twin Labs, a leading vitamin manufacturing company, in connection with their restructuring efforts.
- Served as Officer and Director of U.S. based subsidiaries of Maxwell Communication Corporation, plc, in connection with restructuring and winding down their affairs.
- Served as accountant and financial advisor to Official and Unofficial Committees of Creditors for: American Airlines, Residential Capital LLC, MicroWarehouse; Alamo National Car Rental Corp., ContiFinancial Corp., Midway Airlines, Great American Recreation, Inc., Regency Cruise Lines, Dynamic International Airlines, Consolidated Stainless, Inc., VTX/Vertex Technologies, Macy's, American White Cross, Inc., and Drexel Burnham Lambert.

AUDITING

- Participated in, supervised and managed audits and performed related services for entities in a wide range of industries and businesses. Related services have included acquisition due diligence and consulting projects and reviews of internal controls and compliance with foreign corrupt practices act.
- Select audit engagements include: Consolidated Edison Company of New York Inc., International Business Machines Corp., Exxon Corporation, International Nickel Company, Royal Dutch Shell Group, Billiton Metals Corp, Clairol, Thyssen Bornemizsa Group, Elders IXL, Cadillac Fairview, and Allegheny Power Systems.

DENIS O'CONNOR

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**PROFESSIONAL
EXPERIENCE
(continued)**

- Participated on the audits of Investment, Private Equity, and Hedge Funds, Broker Dealers, and Futures Commission Merchant. Select engagements include: Sentinel Funds, Transcontinental Services Group, M.O.N.Y. Funds, Elders IXL, Investors Central Management and Quantum Fund.

INVESTIGATIVE ASSIGNMENTS

- Conducted numerous financial investigations emphasizing investigations into financial reporting irregularities, including stock option backdating, the propriety of related party activities and alleged fraudulent transactions. Assisted in the related financial restatements and evaluated the internal control environment surrounding the activities in question and recommended enhancements to such controls.

LITIGATION

- Provided litigation consulting assistance and expert witness testimony in such areas as: damage assessment, business valuations, accounting issues, audit failures, financial institution failures, insurance claims and construction contract disputes. The assistance has generally included analysis of financial, economic, accounting and damage issues in each phase of litigation. Litigation consulting services for entities in a wide range of industries and businesses including: retail, media and publishing, stock brokerage, mortgage brokerage and securitization, construction, freight forwarding and customs brokerage, financial institutions and leasing.

ARBITRATION

- Assignments as the Neutral Arbitrator include resolution of purchase price adjustments/earn-out disputes arising from asset/stock sale contracts. Also provided consulting services, including testimony, on behalf of companies involved in arbitrations. The industry and businesses of these companies included media and publishing, management consulting, broadcasting, satellite manufacturer, financial institutions, insurance, consumer goods, specialty chemicals, computer software and manufacturing.

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**PROFESSIONAL
AND BUSINESS
AFFILIATIONS**

Member, New York State Society of Certified Public Accountants
Member, American Institute of Certified Public Accountants and
Certified in Financial Forensics, Member, Association of the Bar of the
City of New York and American Bar Association, Member of the U.S.
Supreme Court and New York Bars, Certified Insolvency and
Restructuring Advisor and Member, National Association of Federal
Equity Receivers

SPEECHES

Mr. O'Connor's public speaking engagements during the previous 10
years were as follows:

SEC Conference: An Accounting & Reporting Update for Public
Companies – SEC Enforcement: The Current Landscape (The Center for
Professional Education – 2018)*

Who Will Be There To Shut Out The Lights, (A.B.A. Business Law
Section Spring Meeting-2015)*

Card Declined? Here Try This One -
Hard Asset Issues That Keep Estates from Being Closed
(International Association of Insurance Receivers - 2014)*

Who's Running the Company?
(American Bankruptcy Institute Conference - 2013)*

Wildcard Claim Valuation
(Distressed Investing Conference - 2012)*

*Panel Discussion

**EXPERT
TESTIMONY**

Mr. O'Connor has served as an expert witness in various engagements
including the following:

Securities and Exchange Commission v. Mohammad Ali Rashid (U.S.
District Court, S.D.N.Y.) 2019, testified with regard to travel and expense
controls and reporting.

In Re Dynamic International Airways, LLC, Debtor (U.S. Bankruptcy
Court for the Middle District of North Carolina Greensboro Division)
2017, testified with regard to the Debtor's hypothetical Chapter 7
Liquidation analysis.

Erie Logistics LLC and C&S Wholesale Grocers, Inc. v. New York
Teamsters Conference Pension and Retirement Fund (Arbitration) 2017,
testified in connection with assessment of the financial condition of a

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**EXPERT
TESTIMONY
(continued)**

regional grocery chain.

Patricia Cohen v. Steven Cohen, Donald Cohen, and Brett Lurie – (U.S. District Court, S.D.N.Y.) 2015, testified in connection with reported assets and sources of income.

Robert K Citrone v. Rogerio Chequer, et al. (Arbitration) – 2011, testified in connection with the value and amount of damages from payment and accounting treatment of a buyout option of membership interests in hedge funds.

In Re Comverse Technology, Inc. Securities Litigation – 2009, testified in connection with accounting issues and damages related to stock option backdating and inappropriate earnings management.

Phoenix Four, Inc. v. BDO Seidman (Arbitration) – 2008, testified on behalf of Phoenix Four (off-shore hedge fund) with regard to accounting and auditing issues and related damages.

Lava Trading, Inc. v. Hartford Fire Insurance Company (U.S. District Court, S.D.N.Y.) – 2004, provided testimony on behalf of Lava Trading (software provider for market making and trading activities) with respect to damages incurred as a result of the September 11th terrorist attacks.

Lehman Brothers Commercial Corporation et al. v. Minmetals International Non-Ferrous Metals Trading Company, et al (U.S. District Court, S.D.N.Y.) – 2001, provided testimony on behalf of Lehman Brothers with respect to the type of accounting records maintained by companies engaged in international trading activities.

Exhibit B

Sources Relied on in Denis O'Connor Declaration

1. Analysis of Geary Class Members, Loans Moving to NRZ, and POC Verification
2. Analysis of Tran Class Members, Loans Moving to NRZ, and POC Verification
3. Class Action Settlements from January 1, 2018 to May 31, 2019
4. Declaration of Gerald A. Lombardo, CFO of Ditech Holding Corporation
5. Declaration of James Nelson of AlixPartners LLP, Debtors' Financial Advisor, in Support of the Sale Transactions and Confirmation of the Third Amended Plan
6. Ditech Plan of Reorganization and Disclosure Statement
7. Epiq Claims Database Containing All Claims and Supporting Documents
8. Exhibits from Southern District of Ohio Opinion and Order for Geary Class Action
9. Geary Class Action Complaint, with Related Pleadings and Decision
10. Geary Class Action Objection to Debtors' Third Amended Plan
11. Greenwald Objection to Plan of Reorganization
12. Memorandum Decision on Confirmation of the Second Amended Joint Chapter 11 Plan of Ditech Holding Corporation and Its Affiliated Debtors, dated August 28, 2019
13. Spreadsheet of Ditech Closed Litigation Matters from January 1, 2018 to May 31, 2019
14. Spreadsheet of RMS Closed Litigation Matters from January 1, 2018 to May 31, 2019
15. Spreadsheet of VOC Complaints Data from June 2018 to May 31, 2019
16. Tran Class Action Complaint, with Related Pleadings and Decision
17. Tran Class Action Docket

Exhibit C

Category

ADR Claim-Alternative Dispute Resolution, Borrower
ADR Claim-Alternative Dispute Resolution, Possible Borrower
Appraisal, Borrower
Appraisal, Possible Borrower
Bank Debt/Credit Facility, Borrower
Bank Debt/Credit Facility, Possible Borrower
Bank Overdraft, Borrower
Bondholder/Noteholder, Borrower
Bondholder/Noteholder, Possible Borrower
Borrower
Borrower, Borrower
Borrower, Fines/Penalties
Borrower, Litigation
Complaint, Borrower
Complaint, Possible Borrower
Contract/Executory Contract, Borrower
Contract/Executory Contract, Possible Borrower
Customer Claims
Customer Claims, Borrower
Customer Claims, Possible Borrower
Customer Claims, Reclamation Demands / 546(c) Claims
Customer Fee
Customer Fee, Borrower
Deposits
Deposits, Borrower
Deposits, Possible Borrower
Equity Fraud/510(b) Claims, Borrower
Equity Fraud/510(b) Claims, Possible Borrower
Escheatment Funds, Borrower
Fines/Penalties, Borrower
Fines/Penalties, Possible Borrower
First Lien Agent, Borrower
Goods Sold/Services (Trade Claim), Borrower
Goods Sold/Services (Trade Claim), Possible Borrower
Home Equity Line
Home Equity Line, Borrower
Home Equity Line, Possible Borrower
Indemnification (Non-Employee)
Indemnification (Non-Employee), Borrower
Insurance, Borrower
Insurance, Possible Borrower
Litigation
Litigation, Borrower
Litigation, Possible Borrower
No Basis Indicated, Borrower
No Basis Indicated, Possible Borrower
Other Basis, Borrower
Other Basis, Possible Borrower
Possible Borrower
Purchase Agreement, Borrower
Purchase Agreement, Possible Borrower
Real Estate Lease, Borrower
Real Estate Lease, Possible Borrower
Rejection Damages, Borrower

Rejection Damages, Possible Borrower
Tax Claims, Borrower
Term Loan, Borrower
Term Loan, Possible Borrower