LOEB & LOEB LLP
345 Park Avenue
New York, New York 10154
Telephone: (212) 407-4000
Facsimile: (212) 407-4990
Walter H. Curchack
Vadim J. Rubinstein

LOEB & LOEB LLP
901 New York Ave NW Suite 300
Washington, DC 20001
Telephone: (202) 618-5000
Steven S. Rosenthal (*Pro Hac Vice* Application Pending)

Attorneys for THE STATES OF DELAWARE, ILLINOIS, IOWA, AND MONTANA

Objection Deadline: December 1, 2020, 4:00 p.m.
Hearing Date and Time: December 17, 2020 11:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
DITECH HOLDING CORPORATION, *et al.*,	:	**Case No. 19-10412 (JLG)**
Debtors.[1]	:	**(Jointly Administered)**

OBJECTION OF STATES OF DELAWARE, ILLINOIS, IOWA, AND MONTANA TO MOTION OF PLAN ADMINISTRATOR FOR ENTRY OF ORDER IN AID OF EXECUTION OF THIRD AMENDED JOINT CHAPTER 11 PLAN OF DITECH HOLDING CORPORATION AND ITS AFFILIATED DEBTORS (I) AUTHORIZING PLAN ADMINISTRATOR TO RETURN UNCLAIMED BORROWER FUNDS TO ASCERTAINED BORROWERS, IF ANY, (II) ESTABLISHING PROCEDURES FOR REMAINING BORROWERS TO SUBMIT REQUESTS FOR RETURN OF UNCLAIMED BORROWER FUNDS, (III) ESTABLISHING SPECIAL DEADLINE AFTER WHICH WIND DOWN ESTATES WILL CEASE EFFORTS TO LOCATE BORROWERS

[1] The Wind Down Estates, along with the last four digits 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.

Preliminary Statement

The States of Delaware, Illinois, Iowa, and Montana (collectively, the "States") hereby submit their Objection (the "Objection") to the Motion of Plan Administrator for Entry of Order in Aid of Execution of Third Amended Joint Chapter 11 Plan of Ditech Holding Corporation and its Affiliated Debtors (I) Authorizing Plan Administrator to Return Unclaimed Borrower Funds to Ascertained Borrowers, if any, (II) Establishing Procedures for Remaining Borrowers to Submit Requests for Return of Unclaimed Borrower Funds, (III) Establishing Special Deadline After Which Wind Down Estates Will Cease Efforts to Locate Borrowers and to Return Unclaimed Borrower Funds, and (IV) Granting Related Relief [Docket No. 2874] (the "Motion").[2]

The States submit this objection because they believe that the procedures proposed by the Plan Administrator through the Motion may contravene the unclaimed property laws of the States, as well as the unclaimed property laws of other states, many of whom have submitted their own responses to the Motion. Every state has a well-developed system of laws and procedures governing the disposition of unclaimed property owed to individuals who cannot be identified, located, and paid by the holder of the unclaimed funds. The States are well-equipped to administer those laws. Since the Motion was filed, the States have been in ongoing discussions regarding their concerns about the procedures proposed by and through the Motion. As a result, the Plan Administrator has answered many questions posed by the States and made a number of accommodations and adjustments to the procedures to address the concerns

[2] As of the filing of this objection, Loeb & Loeb LLP has been officially retained as counsel for the states of Delaware and Iowa. The states of Illinois Montana are still in the process of formalizing their retention of the firm. However, by the time of any hearing on the Motion, the firm will be fully engaged by each of the four States.

articulated by the States.[3] Accordingly, the States believe that they have made significant progress. Nevertheless, the States continue to have certain reservations that necessitate the filing of this Objection. The Motion contemplates the distribution of many millions of dollars of funds that the States believe is not property of the estate. The States have been informed that there are other creditors that are also of the opinion that the Unclaimed Borrower Funds are not property of the estate. Although many of the States' concerns have been addressed by the Plan Administrator's adjustments to the proposed procedures, the States have carefully scrutinized the proposal because there is a significant amount of money at stake, and because the States are entrusted as fiduciaries to hold unclaimed funds in trust as custodians in perpetuity until the rightful owners come forward to claim those funds. And there are important legal questions that have yet to be sufficiently considered and answered – namely, (1) are the procedures in conflict with the States' unclaimed property laws, and (2) are the funds at issue property of the bankruptcy estate.

The Motion asks the Court to authorize a process that will affect a sizable amount of property. Through the Motion, the Plan Administrator has disclosed the existence of substantial amounts of uncashed checks due to borrowers – approximately $96 million due to 221,500 borrowers – that were issued prior to the date of the bankruptcy filing. A significant portion of

[3] In particular, many states had serious concerns regarding questions over Georgeson's compensation. Many states have laws prohibiting compensating third-party vendors on a contingency basis. These laws are largely designed to deter contractors from extracting unfair, excessive percentages of monies owed to individuals. Allowing third party vendors to collect a portion of unclaimed property owed to consumers can incentivize predatory practices that are contrary to public policy and the principles of escheat. In this case, the Plan Administrator has assured the States that Georgeson is being compensated by estate funds, and not through any portion of the Unclaimed Borrower Funds. This clarification, in itself, has gone a long way in reassuring the States. Accordingly, the States have already put to rest a number of the concerns that they had originally expressed at the outset of their discussions with the Plan Administrator.

these checks likely should have previously been reported to the States as unclaimed property. Specifically, under priority rules established by the U.S. Supreme Court, unclaimed property associated with an owner address should be reported to the state of the owner's last known address. Checks issued to owners located in the States represented by undersigned counsel account for the following amounts:

State	Number of Checks	Dollar Amount
Delaware	867	$453,432.47
Illinois	9,349	$4,813,024.17
Iowa	1,256	$483,005.04
Montana	668	$256,322.97
TOTAL		**$6,005,784.65**

The Motion may infringe on the States' unclaimed property laws. The Plan Administrator is asking the Court to consider an alternative disposition of the uncashed check funds through a procedure that could potentially undermine the States' ability to administer the remediation of unclaimed property in accordance with their escheat laws.[4] The Plan

[4] Escheat is "a procedure with ancient origins whereby a sovereign may acquire title to abandoned property if after a number of years no rightful owner appears." *Texas v. New Jersey,* 379 U.S. 674, 675 (1965). The U.S. Supreme Court has long recognized that "moneys should escheat to the sovereignty that guards them at the time of abandonment." *Connecticut Mut. Life Ins. Co. v. Moore,* 333 U.S. 541, 548 (1948). Escheat is, therefore, a fundamental aspect of state sovereignty. The Motion implicates states' rights to acquire title to unclaimed property and administer that property in accordance with their escheat laws.

In referring to escheat, it should be noted that property subject to escheat under a state's unclaimed property laws does not always vest in the state full and complete property rights. For example, many states, while they have a right to use unclaimed funds pending location of the true owner, must turn over to the true owner the previously unclaimed funds. In other words, the statute

Administrator is asking the Court to authorize a 180-day process by which the Plan Administrator will undertake a lengthy investigation that will delay the payment of funds to the States and the States' efforts to locate the owners.[5] There is little explanation as to what will happen next, following the conclusion of the 180-day period. The Motion simply indicates that the Plan Administrator "will seek additional relief from this Court with respect to the administration and distribution of any remaining Unclaimed Borrower Funds." Mot. at 20. However, to the extent that the dormancy period has already run – or will run during the 180-day period – the Unclaimed Borrower Funds Motion could result in the violation of the States' unclaimed property laws.[6] Any unclaimed property that could have already been paid to the States should be paid to the States immediately. Even the property that is still within the dormancy period should be turned over because, under the States' unclaimed property laws, the States will ultimately have to administer the processing and payment of the funds anyway. There is no need to go through this time-consuming exercise that will be funded by the estate's creditors when the States are perfectly capable of handling the process now.

The Revised Proposed Order [Docket No. 3011] allows for an open-ended procedure that will take six months to play out. At the end of this process, the Plan Administrator will seek additional relief from this Court with respect to the administration and distribution of any

---

provides that the principal balance of any funds turned over to these states is held in perpetuity for the true owner.

[5] Most states maintain publicly accessible lists of individuals and companies for whom they are holding unclaimed property and will periodically publish such lists in newspapers of general circulation in addition to taking other steps.

[6] The dormancy period is the statutory period of time where a holder of unclaimed property has not had contact with the owner of the property. It is typically three or five years. Once a dormancy period has elapsed, property is deemed dormant or abandoned, and the property must be escheated to the appropriate state. The states act in a custodial manner over the property until it is claimed by the rightful owner.

remaining Unclaimed Borrower Funds. The States believe this six-month process is not necessary. It is especially unnecessary in connection with funds that were already escheatable and due and payable to the States under their unclaimed property laws.[7] And in those States whose statutes allow use of unclaimed property, this delay prevents them from using the unclaimed property as well as undertaking their own efforts to locate the true owners. Moreover, the Revised Proposed Order provides that the Plan Administrator will not send notices to Borrowers for checks under the threshold amount of $50.00. Those checks for amounts less than $50.00 should be paid over to the States immediately.

The Motion deals with funds that may not be property of the estate. The States understand that there is a dispute as to whether the Unclaimed Borrower Funds are property of the estate.[8] Other creditors, including the States, disagree. It is inefficient to allow the Plan

---

[7] The States also have concerns that the process may implicate at least some funds that should have already escheated to them by virtue of their respective unclaimed property laws. All states have their own escheat laws that provide that unclaimed property should escheat to the state. Nearly all states have laws that mandate the turn-over of unclaimed property after the property has been unclaimed for a dormancy period of three years or five years and in situations where the business is dissolving, as short as one year. The States have concerns that most of the Unclaimed Borrower Funds may have been unclaimed for at least one year in states with a one year dormancy period for dissolving businesses and some of the unclaimed funds have been dormant for three or five years in states with those dormancy periods. meaning that the dormancy period has already run, and the funds are already due and payable. The States have asked the Plan Administrator to clarify whether this is the case. In the event that a state's dormancy period has already run, those unclaimed funds should be paid immediately to the States. Allowing the Plan Administrator to tie up funds for another six months violates the States' unclaimed property laws and should not be sanctioned by the Court.

[8] While the States assert that the funds in question are not assets of the bankruptcy estate, if as a matter of final adjudication it is determined that the funds are assets of the estate, this would not disqualify the states from making claim to the property as a creditor, in the capacity of conservator for the missing owners. *See In re Drexel Burnham Lambert Grp. Inc.,* 151 B.R. 684, 689 (Bankr. S.D.N.Y. 1993). The States respectfully request the opportunity to argue their standing as a creditor with respect to the funds in question if, upon final adjudication, the funds are determined to be assets of the estate.

Administrator to engage in a lengthy 180-day procedure that could potentially go nowhere and ultimately require the commencement of an entirely new procedure to determine whether such funds were even property of the estate in the first place.

For all of the above reasons, the States continue to have concerns about the procedures proposed by the Motion.

Objection

1. The States Have Laws and Procedures Governing Unclaimed Property Belonging to Residents of the States.

The States have comprehensive statutory schemes in place for reporting and paying unclaimed property pursuant to its escheat laws. Each State's statutory scheme is discussed in detail below, but in general:

a) Money held by a corporation must be turned over to states if it has been "dormant" for a specified period of time. "Dormant" has a specific definition under each state's regulations, but for purposes of the Objection it can be defined as interacting with the money in any fashion. The quintessential example is a checking account – if an owner does not deposit money, withdraw money, write a check, log-in to the online account, visit a teller, etc., for the specified period, then the money is dormant.

b) All money that becomes dormant during a given calendar year is due and payable to the state when that year's report is supposed to be filed to the state; *i.e.*, at the same time as it files its CY2019 annual report with each state, a holder is supposed to turn overf all property that became dormant during CY2019.

Delaware

Under Delaware law, entities must report to Delaware any unclaimed property if the last known address of the owner is in Delaware. 12 Del. Code § 1140. Based on the applicable

dormancy period, the property is presumed abandoned – or unclaimed – and must be paid to the state to be held for the resident to claim. In Delaware, property of the type at issue here has a presumption of abandonment period of five (5) years. *See* 104 Del Reg. 2.21; 12 Del. Code §§ 1133. Delaware already has procedures in place for the owner to claim the property and for the State to verify the identity of the claimant.

Specifically, under Delaware's Escheats Law, 12 Del. C. §§ 1101 *et seq*. (commonly referred to as the "UPL"), the value of certain abandoned or unclaimed property escheats to Delaware after a specified period of inactivity. Delaware then holds the funds in trust for the owner in perpetuity.

Illinois

Under Illinois law, property of the type at issue here is normally presumed abandoned after a period of three (3) years. *See* 765 ILCS 1026/15-201(10). But where the business is in dissolution as is the case here, the dormancy period is one year. *See* 765 ILCS 1026/15-201(10) ("When property presumed abandoned. Subject to Section 15-210, the following property is presumed abandoned if it is unclaimed by the apparent owner during the period specified below:…property distributable by a business association in the course of dissolution…one year after the property becomes distributable.")

Like Delaware, the State of Illinois serves as a custodian of unclaimed assets and never takes ownership of them. Rather, upon reporting and payment or delivery of abandoned property to the Illinois Administrator, the State is responsible for the safekeeping thereof. 765 ILCS 1026/15-804. As noted above, the unclaimed property turned over to Illinois is held in perpetuity for the true owner.

Iowa

Under Iowa's unclaimed property laws, the type of property at issue here is deemed abandoned if it has been outstanding for more than three (3) years after it was payable or after its issuance if payable on demand, is deemed abandoned, unless the owner has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization. Iowa Code Section 556.2B. Section 556.11 of the Iowa Code sets forth detailed procedures and requirements for reporting unclaimed property to the Iowa treasurer. "Upon the payment or delivery of property to the treasurer of state, the state assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the treasurer of state in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which may arise or be made in respect to the property." Iowa Code Section 556.14.

Montana

Under Montana's unclaimed property laws, property of the type at issue here is presumed abandoned after a period of three (3) years. *See* Montana Code Section 70-9-803(r). "Upon payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder that pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property." Montana Code Section 70-9-811(2). Section 70-9-808 of the Montana Code sets forth the specific requirements for submitting reports regarding unclaimed property to the State of Montana, including the required contents of any report and the timing for filing such reports. Like Illinois,

Montana also has a statute that provides that where the business is in dissolution as is the case here, the dormancy period is one year. 70-9-803(1)(i), MCA.

Thus, each of the States have robust, well-established laws and procedures in place for administering their unclaimed property programs and ensuring that unclaimed funds are properly and promptly paid to their rightful owners.

Moreover, the States have a proven track record of successfully remediating unclaimed property. All states have their own statutes for administering the payment of unclaimed property to their residents. States are uniquely situated to perform this role. The States should not be required to sit on the sidelines for at least another 180 days to allow the Plan Administrator to engage an unneeded third-party middle man – Georgeson LLC ("Georgeson") – to assist with conducting searches to identify and locate borrowers who could not be located at their last known address or by other identifying records held by the Plan Administrator. In light of the Plan Administrator's agreement to have the Debtor's estate undertake these costs, the States question why the Plan Administrator would incur these costs on the backs of the estate's creditors when the States are well-positioned to take on this task.

Here, if the dormancy period has already run with respect to some of the Unclaimed Borrower Funds, the Plan Administrator should be required to report and pay over those funds to the States immediately. The same should occur with respect to funds whose dormancy period expires next year. The Plan Administrator has devised an unnecessary 180-day process that interferes with the States' entitlement to the funds.[9] The States are capable of administering their

[9] Pursuant to paragraph 5 of the Revised Proposed Order, the Plan Administrator will not be required to reissue checks or otherwise return Unclaimed Borrower Funds to Borrowers who are owed less than $50.00, nor will such Borrowers receive any mailings. Some states' laws require outreach sooner and for claims less than the threshold established by the Motion. For example, Delaware law requires outreach no sooner than 60 or longer than 120 days before escheating. 12

own unclaimed property laws, and there is no reason for the Plan Administrator to devise a separate protocol for identifying, locating, and paying residents of the States. There is no reason to require the States to wait 180 days to allow the Plan Administrator to undertake a lengthy due diligence process that is likely to result in the ultimate turnover of at least some of the funds to the States at the conclusion or soon thereafter, as is required under each State's laws.

Because the various States each have slightly varying processes for the reporting of unclaimed property and of the required owner outreach before doing so, the States believe that the processes proposed by the Motion are unnecessary. The States have no objection to the Plan Administrator's efforts to contact owners of funds, but submit that a streamlined process whereby the Plan Administrator immediately escheats all dormant funds to the States is superior to the one proposed. The Plan Administrator can then use Georgeson's services to contact owners to inform them that their funds have been escheated to the States, and can provide information for retrieving that money from the States. Moreover, the States are perfectly capable of administering their own unclaimed property laws and would relieve the estate of this heavy expense.

2. The Unclaimed Borrower Funds Are Held in Trust and Are Not Property of the Estate.

Although the Motion does not take any explicit position on whether the Unclaimed Borrower Funds are or are not property of the estate, it is clear that some creditors **are** taking that

---

Del Code 1148. The States have asked the Plan Administrator to clarify the amount of Unclaimed Borrower Funds that are less than $50.00. While the amount may seem nominal, the States are concerned that, taken together, there may be a significant amount of money at stake. If, for example, there are 100,000 checks in the amount of $40.00, this pool of checks would still represent $4 million in unclaimed funds. And yet, pursuant to the procedures, no mailings will be sent to Borrowers regarding those funds.

position. *See* Motion at p. 5 ("Certain of the creditors have asserted that the funds should be regarded as property of the estate. A certain loan servicer has asserted that it has a right to take custody of such funds and set off any of their claims against the Borrowers related to mortgages in default.").

Upon review of the categories of unclaimed funds that the Plan Administrator proposes to distribute pursuant to the Motion, it is clear that the Unclaimed Borrower Funds are held in trust and are not property of the estate and thus the Plan Administrator should play no role in administering them." "Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 918 (1979).

The Motion specifically refers to holding tax and insurance ("T&I") premium money "in trust in custodial and/or escrow accounts." Motion at p. 11. The Motion also makes reference to Unclaimed Borrower Funds held in "escrow." Motion at pp. 2, 10.

Under New York law,

> a deposit will operate as an escrow if (1) an agreement exists as to the subject matter and delivery of the deposit; (2) the deposit is delivered to a third party depository conditioned upon the performance of an act or occurrence of an event; and (3) the grantor relinquishes control over the deposit.

Keene Corp. v. Acstar Ins. Co. (*In re Keene Corp.*), 162 B.R. 935, 942 (Bankr. S.D.N.Y. 1994) (citing 55 N.Y.Jur. 2d, Escrows § 3, at pp. 589-90 (1986)).

In addition to clearly being referenced as "escrow," the T&I money meets all of the standards for an escrow provided in *Keene*. Namely: (1) borrowers agreed to pay their tax and insurance premiums into escrow, rather than paying those funds directly to the tax authorities

and insurance companies. (2) The T&I moneys were delivered to a third-party depository (DiTech) and were conditioned on the performance of an act or occurrence (payment to the entity to whom the monies were due). (3) The mortgage payer relinquished control over the deposit.

In *re O.P.M. Leasing Servs., Inc.*, this Court explained why escrow accounts are beyond the reach of a debtor's estate:

> Thus, the general rule in New York regarding escrow accounts is that unless the judgment debtor, as grantor, retains an interest in the escrowed property over and above the interest of the grantee, the escrow account cannot be reached by the debtor's judgment creditors. *See Jamaica Savings Bank v. Lefkowitz*, 390 F. Supp. 1357, 1363 (E.D.N.Y.), aff'd, 423 U.S. 802, 46 L. Ed. 2d 23, 96 S. Ct. 10 (1975); *Creel v. Birmingham Trust National Bank*, 383 F. Supp. 871, 879 (N.D. Ala. 1974), aff'd, 510 F.2d 1363 (5th Cir. 1975); *In re Simon*, 167 F. Supp. 214, 215 (E.D.N.Y. 1958); *In re Treiling*, 21 B.R. 940, 943 (Bankr. E.D.N.Y. 1982); *Valerio v. College Point Savings Bank*, 48 Misc. 2d 91, 92, 264 N.Y.S. 2d 343, 344 (Sup. Ct. Suffolk Co. 1965).
>
> This rule is consistent with the Code's definition of property of the estate. Section 541 provides that the debtor's "estate is comprised of all of the following property, wherever located: . . . . all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). However, § 541(d) qualifies the otherwise broad scope of this definition by providing that "property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . . becomes property of the estate . . . . only . . . . of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." *Id*. In other words, "to the extent such an interest is limited in the hands of the debtor, it is equally limited in the hands of the estate." 124 Cong. Rec. H11096 (Sept. 28, 1978) (remarks of Sen. DeConcini). *See also In re Treiling,* 21 B.R. 940, 943 (Bankr. E.D.N.Y. 1982).

46 B.R. 661, 667 (Bankr. S.D.N.Y. 1985).

Here, the escrows in which the Unclaimed Borrower Funds are held are limited in the hands of the debtor and so are likewise limited in the hands of the estate. They do not constitute property of the debtor's estate.

Other categories of Unclaimed Borrower Funds, while not expressly labeled by Debtor as "escrows," nevertheless meet the standard of monies held in trust. *See Cassirer v. Herskowitz* (*In re Schick*), 234 B.R. 337, 344 (Bankr. S.D.N.Y. 1999) ("the nature of the account depends on the rights and obligations intended by the parties."). In the case of overpayments of mortgage principal premium, interest, or payoff, the funds were delivered to DiTech, who used the money to satisfy the customer's obligations to DiTech. The customer relinquished control over the money, the obligations to DiTech were satisfied, subject to DiTech's legal obligation to return the excess funds to DiTech.

The very fact that the money remains in denominated accounts where the Plan Administrator has the ability to determine precisely who is owed the Unclaimed Borrower Funds and in what amounts demonstrates that the Unclaimed Property Funds were never assets of the Debtor. As such, the Plan Administrator should not administer them.

3. The Procedures in the Motion May Violate Laws Against "Private Escheat."

The Court should also consider the possibility that the procedures proposed by the Plan Administrator are in conflict with state unclaimed property laws. There is a well-developed body of law that provides that holders of unclaimed property who unilaterally take actions designed specifically to circumvent state unclaimed property laws are void as against public policy. *See, e.g., State v. Jefferson Lake Sulphur Co.,* 178 A.2d 329 (N.J. 1962) (holder amended its certificate of incorporation to provide that any dividends that remained unclaimed for a period of three years would revert back to it after New Jersey had enacted an unclaimed property law permitting New Jersey to escheat unclaimed dividends after five years). In *Jefferson Lake Sulphur Co.*, the New Jersey Supreme Court stated that "[e]scheat of unclaimed dividends serves the important public need of providing revenue to be utilized for the common good." *Id*. at 336.

The court also concluded that a company such as Jefferson Lake that incorporates in New Jersey becomes subject to this public policy, and thus the "[a]lteration of a charter for the avowed purpose of defeating a relevant aspect of the sovereign's declared public policy cannot achieve judicial approval." *Id*. In reaching this conclusion, the court relied on a number of cases holding that a corporation's charter or bylaws that conflicts with the state's public policy is void. Thus, because the holder's charter was amended for the express purpose of avoiding the escheat laws, the court held that the amendment was invalid. *See also Screen Actors Guild, Inc. v. Cory,* 154 Cal. Rptr. 77 (Cal. App. 1979) (holder amended its bylaws to provide that unclaimed residuals revert back to the holder after six years); *People v. Marshall Field & Co.,* 404 N.E.2d 368 (Ill. App. 1980) (the holder unilaterally amended the terms of its gift certificates to expire them prior to the dormancy period under Illinois's unclaimed property laws).

Here, the Plan Administrator is proposing a unique process of the Plan Administrator's own making that allows the Plan Administrator to hold on to funds that are almost certainly going to be paid to the States at the end of an unnecessary 180-day period, as is required by each State's escheat laws. To the extent that the funds are used to satisfy other obligations of the estate, such use amounts to a private escheat of those funds to Ditech itself rather than to the States which are the proper custodians of these funds. The Court should not rubberstamp the procedures offered in the Motion without a careful examination of the laws against "private escheat."

4. The Procedures in the Motion May Violate the States' Laws Regarding the Applicable Dormancy Period.

As explained above, the States' unclaimed property laws provide that funds that have gone unclaimed for the dormancy period – a period of either three years or five years – must

escheat to the state. It is not completely clear, but is nevertheless likely, that some of the Unclaimed Borrower Funds have gone unclaimed for this length of time. The States have asked the Plan Administrator to clarify whether funds were already payable as a result of the running of the dormancy period, and whether the period ran prepetition or postpetition. Funds that have already been unclaimed pursuant to a State's dormancy period should be immediately turned over. Those funds are already due and payable pursuant to a State's unclaimed property laws.

Moreover, the Motion does not absolve the States of their own duties to administer unclaimed property laws. The Motion simply delays that process for 180 days. The Motion calls for a process that will take six months to administer. If the Plan Administrator's agent – Georgeson – is unable to identify the individuals entitled to the money, the Plan Administrator will need to turn over the Unclaimed Borrower Funds to the respective States as is required by their laws. At that time, the States will then commence their own due diligence and outreach efforts to try to locate the rightful owners of the funds. Accordingly, the process is simply delaying the inevitable. The States will ultimately have to administer the funds themselves anyway; the only question is whether they have to do it now or six months from now. Given the serious concerns regarding the potential violation of laws prohibiting private escheat, the States submit that the funds should not be tied up unnecessarily for another 180 days.

As a potential alternative to the proposed procedures in the Motion, the Plan Administrator could immediately escheat all of the Unclaimed Borrower Funds to the States and issue notices informing the owners to contact the States' unclaimed property departments to claims their property. This solution would alleviate the States' concerns regarding the unnecessary delay of six months.

In any event, the Court should not sanction a process that runs contrary to the States' laws governing the dormancy period. Any property that should have already escheated to the States should be turned over now.

Conclusion

In sum, the Court should not grant the Motion. The States have their own laws in place for administering unclaimed property. There is no reason to allow the Plan Administrator to circumvent those laws through a lengthy, potentially unlawful process that will take 180 days and will eventually result in turnover of the money to the States.

Dated: December 1, 2020
New York, New York

LOEB & LOEB LLP

/s/ Vadim J. Rubinstein
345 Park Avenue
New York, New York 10154
Telephone: (212) 407-4000
Facsimile: (212) 407-4990
Walter H. Curchack
Vadim J. Rubinstein

901 New York Ave NW Suite 300
Washington, DC 20001
Telephone: (202) 618-5000
Steven S. Rosenthal (*Pro Hac Vice* Application Pending)

Attorneys for THE STATES OF DELAWARE, ILLINOIS, IOWA, and MONTANA