UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

THE GEARY CLASS ACTION'S RESPONSE IN PARTIAL OPPOSITION TO THE CROSS MOTION OF THE CONSUMER CLAIMS TRUSTEE TO CLASSIFY THE GEARY CLASS ACTION CLAIM AS A GENERAL UNSECURED CLAIM (ECF 3037)

Now comes the GEARY CLASS ACTION ("GCA") and sets forth below its Response in Partial OPPOSITION to the Cross Motion of the Consumer Claims Trustee to Classify the GCA's claim as a General Unsecured Claim (ECF 3037). For the reasons articulated, the Consumer Claims Trustee's Motion should be DENIED in so far as it attempts to categorically reclassify the GCA's claim as a Class 5 General Unsecured Claim.

Respectfully submitted,

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[1] The Wind Down Estates, along with the last four digits of each of their federal tax identification number, as applicable, are Ditech Holding Corporation (0486); DF Insurance Agency LLC (6918); Ditech Financial LLC (5868); Green Tree Credit LLC (5864); Green Tree Credit Solutions LLC (1565); Green Tree Insurance Agency of Nevada, Inc. (7331); Green Tree Investment Holdings III LLC (1008); Green Tree Servicing Corp. (3552); Matrix 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 Wind Down Estates' principal offices are located at 1100 Virginia Drive, Suite 100, Fort Washington, Pennsylvania 19034.

I. PRELIMINARY REVIEW OF CERTAIN ASSERTIONS MADE BY THE CCR

The Consumer Creditor Recovery Trust ("CCR") seeks, seemingly in part[2], to reclassify the GCA's class-action consumer claim, to be liquidated and administered by the General Unsecured Creditor Trust ("GUC") as a Class 5 general unsecured claim. Before addressing the merits of the CCR's arguments, the GCA makes the following preliminary observations about CCR's filing. Numbers 2, 3 and 4 below are further discussed in Section II and form the primary legal basis for the GCA's opposition to the CCR's request.

1. Initially, the CCR states:

> This Opposition and Cross-Motion does not seek to address the merits of the Gearys' claim, whether, if the Gearys' claim is classified as a Consumer Creditor Claim, it should be classified as a 363(o) Claim (as that term is defined in the Plan), or the separate motion the Gearys filed under **Bankruptcy Rule 7023 to certify the class they purport to represent**. [The Geary Class Action's Motion To Apply Fed. R. Bankr. P. 7023 To Any Objection, Valuation Or Other Contested Matter Regarding Its Claim Pursuant To Fed. R. Bankr. 9014, ECF 2954.]

ECF 3037 at 2 (pg 8 of 15) (emphasis added). It is important to preliminarily note that the Gearys are not seeking a ruling from this Bankruptcy Court to certify a class or classes, nor are they "purporting" to represent absent class members. The GCA's claim is already predicated upon a pre-bankruptcy conclusive finding by a United States District Court ("S.D. Ohio") certifying six (6) classes of individual borrowers against Green Tree Servicing, LLC ("Green Tree"), which later became Ditech Financial, LLC ("DF"). By the same order issued from the S.D. Ohio, the Gearys represent such absent class members as Class Representatives. Claim 20041 (attachments thereto).

[2] The "Notice" preceding the CCR's Motion suggests that the CCR's request for relief is in the alternative. The Notice indicates that the CCR filed a "Cross-Motion To Classify As General Unsecured Claim Or, In the Alternative, As A Non-363(o) Claim". ECF 3037 at 1 (emphasis added). The GCA takes no issue with the possibility (and probability) that a substantial part of its class action claim will be treated as a Class 6 non-363(o) claim. However, while the CCR's Motion provides such Notice of the CCR's intention to seek alternative relief, the remaining papers attached thereto do not appear to speak to this aspect of the CCR's request. Perhaps the inclusion of the alternative request was editing oversight. The GCA however, only opposes the CCR's motion insofar as it seeks to completely reclassify and abandon administration of the GCA's claim.

Indeed, Green Tree's attempt at interlocutory appeal of the S.D. Ohio's decision to the Sixth Circuit Court of Appeals was also denied before DF, and it joint Debtors, filed this Chapter 11 case. Id. These facts cannot be reasonably disputed.

2. As further discussed *infra*, the CCR's challenge appears directed only at the Gearys' individual rights, and not at the GCA's class claim. But, the Gearys' individual rights only form part of the GCA's class claim under 15 U.S.C. §1692k(a)(2)(B)(i). Because the Gearys' debt was once boarded on DF's servicing platform, but was not allegedly purchased[3] by the Forward Stalking Horse Purchaser within the plain and full meaning of the Plan, the Gearys' do not dispute they would not maintain an individual "363(o) Claim". ECF 1404-1 at 1 (pg 6 of 82). The Debtors previously represented that 2,299 of the GCA class accounts were purchased. ECF 1325 at 49-59. The GCA has asked for the documentation relating to such accounts to determine which of them maintain rights as a "363(o) Claim", but such documentation has not yet been produced. Nevertheless, even assuming the Gearys maintain a discreet individual claim, a plain and full reading of the Plan establishes that they have a Class 6 claim.

3. As further discussed *infra*, the CCR errantly uses canons of statutory interpretation to narrowly redefine the terms contained in the confirmed Plan[4] against the GCA. Simply put however, the Plan's definitions did not reference or incorporate the federal statute definitions from which the CCR would like borrow. To the contrary, the Plan borrowed the definition of §363(o) and its incorporated statutory definitions. Nevertheless, the GCA did not draft this Plan. The GCA

[3] Thus far, this appears to be true. The Gearys have not heard from New Rez which is promising. But, how could the rights to a paid off debt ever be transferred? It happens. It happened to the Gearys when Green Tree acquired the servicing rights to their paid-off debt from Citifinancial, Inc.

[4] Referring to the Third Amended Joint Chapter 11 Plan of Ditech Holding Corporation and Its Affiliated Debtors, dated September 22, 2019 [ECF 1326] and as attached and incorporated into the Court's ORDER CONFIRMING THIRD AMENDED JOINT CHAPTER 11 PLAN OF DITECH HOLDING CORPORATION AND ITS AFFILIATED DEBTORS [ECF 1404 and ECF 1404-1].

was not even entitled to vote on the Plan. The parties intended that the GCA's claim be treated as a Class 6 claim. But, to the extent there is any ambiguity in the Plan's definitions or terminology, it should not be construed against the GCA as a matter of contract interpretation.

4. As further discussed *infra*, the CCR errantly and narrowly interprets the confirmed Plan to confine Class 6 Consumer Creditor Claims to "Borrower" claims asserted under the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq. "RESPA"). Class 6 was created to broadly deal with "any" consumer claims against the Debtors regardless of the specific federal or state statutory basis supporting them.

II. LAW AND ARGUMENT

A. The GCA Claim Is A "Consumer Creditor Claim" In Class 6 Based Upon A Plain And Full Reading Of The Plan

The focus of the CCR's challenge is on the Gearys' individual rights. Yet, the GCA filed a class claim, and the Debtors treated the GCA's class claim filing and position in the case as such in connection with confirming the Plan. Claim 20041, ECF 1325, ECF 1328, ECF 1330. The CCR's focus is misdirected because the Gearys' individual rights form only part of the GCA's class claim. Claim 20041. 15 U.S.C. §1692k(a)(2)(B)(i). The GCA has already filed a Motion to apply Fed. R. Bankr. P. 7023 to any contested matter regarding its claim ("7023 Motion"). ECF 2954. The CCR has not yet expressed a position on the 7023 Motion nor has it filed an objection the allowance of the GCA's claim. The CCR's current motion seeks to resolve only the issue as to which unsecured creditor trust should be responsible for handling the claim. The GCA seeks to maintain its claim only as a class claim for the reasons explained in the 7023 Motion. The GCA also must ask that the Court apply Rule 7023 as it considers the CCR's current request. It may be appropriate therefore, to first receive the CCR's (and possibly the GUC's) response(s) to the 7023 Motion before determining the merits of which trust will administer the claim.

Assuming not, Article IV of the Plan provides the treatment for "Consumer Creditor Claims." ECF 1404-1 at 24-25 (pgs 29-30 of 82). Generally speaking, to the extent an "Allowed Consumer Creditor Claim" is an "Allowed 363(o) Claim" in Class 6, it can expect to be paid 100% in cash from the "Consumer Creditor Net Proceeds" or, where applicable, through in-kind corrections to the claimant borrower's accounts, before cash distributions are made. To the extent an "Allowed Consumer Creditor Claim" is not an "Allowed 363(o) Claim", it can expect to receive a *pro rata* share of the "Consumer Creditor Net Proceeds" after treatment / payment of the Allowed 363(o) Claims. Finally, each Allowed Consumer Creditor Claim may further expect to receive some *pro rata* share of any remaining "Net Cash Proceeds", although that possibility appears extremely unlikely and remote.

In relevant part, the confirmed Plan defines "Consumer Creditor Claim" to mean "<u>any</u> Claim asserted by a Borrower against the Debtors <u>including a 363(o) Claim</u>.". ECF 1404-1 at 4 (pg 9 of 82) (emphasis added)[5] . The Plan further defines "Borrower". A "Borrower" under the Plan was said to mean "any individual, as of the Commencement Date, whose current or **former** mortgage loan or reverse mortgage was originated, serviced, sold, consolidated, or owned by any of the Debtors." ECF 1404-1 at 3 (pg 9 of 82) (emphasis added). Unlike certain definitions, the definitional provisions of the Plan did not incorporate or reference any federal statute as the source of this particular definition. Further, the Plan did not independently define the term "consumer" or define the term "mortgage". Nor did the Plan expressly articulate the characteristics of a "non-363(o) claim" except to initially confirm that Class 6 includes "any Claim".

[5] For some reason, the CCR refers to the same definition (but from prior plan, ECF 1287 filed on 9/11/2019), and truncates the definition to omit "including a 363(o) Claim". ECF 3037 at 4 (pg 10 of 15).

The GCA assumes that the CCR's strategy is to narrowly define the Gearys' personal claim out of Class 6 – and then make some future argument that the GCA's claim, as a class claim, should be expunged. These issues have not yet been addressed by the CCR. But, the GCA's claim, as a class claim, involved specific FDCPA claims of approximately 31,000 or more people across six (6) classes. The Gearys, in addition to once having their own individual FDCPA non-class claims, are the appointed Class Representatives of the members of these six (6) classes. During the class certification process, Green Tree admitted that it mailed each of these people the same form letter without timely providing a 30-Day Validation Notice, the very conduct from which the GCA's class claims under the 15 U.S.C. §1692g emerged.[6]

It is undisputed that the debt underlying the Gearys' former loan was a loan secured by a mortgage[7] / lien on a car. However, the vast majority (99%) of the underlying loans of other class members were originally, residential mortgage loans, the claims from which CCR would concede should be part of Class 6. That said, the underlying loan characteristics must not be deemed a singularly dispositive factor for limiting inclusion in Class 6. This conclusion is logically supported by the fact that Class 6 included "363(o) Claims". ECF 1404-1 at 4 (pg 9 of 82).

A 363(o) Claim under Plan:

> means any Claim by a Borrower related to an interest (a) in a consumer credit transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2004), as amended from time to time); and (b) that is purchased by the Forward Stalking Horse Purchaser in accordance with the Forward Stalking Horse Purchase Agreement or that is purchased by the Reverse Stalking Horse Purchaser or assumed by Reorganized RMS in

[6] Green Tree admitted that such letters were mailed, and admitted further that no separate 30-Day Validation Notices, as required by 15 U.S.C. §1692g, were timely mailed to the respective recipients. S.D. Ohio Case ECF 42-2. There were six (6) separate sets of mailings of letters that were substantively identical, but different based upon the former loan portfolio from which they came.

[7] As already argued by the GUC, the term "mortgage", undefined in the Plan, has at least one reasonable meaning in the Black's Law Dictionary, including a "conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms. ECF 2972 at 10 (pg 18 of 21).

> accordance with the Reverse Stalking Horse Purchase Agreement, solely to the extent such Claim would be allowed against the Forward Stalking Horse Purchaser or Reorganized RMS as a successor-in-interest or otherwise under applicable nonbankruptcy law.

Id. (emphasis added). This definition is obviously taken largely from the text of 11 U.S.C. §363(o). Subsection "(a)" refers to "consumer credit transaction", the definition of which is expressly taken from the Truth in Lending Act and its corresponding Code of Federal Regulations at 16 C.F.R. §433.1(i) incorporated into the Plan's definitions. It states:

> i) **Consumer credit contract**. Any instrument which evidences or embodies a debt arising from a "Purchase Money Loan" transaction or a "financed sale" as defined in paragraphs (d) and (e) of this section.

This incorporated definition is not limiting in any way to situations involving real property mortgage debt. To the contrary, and arguably, it would even exclude real property transactions[8]. A "purchase money loan" under the same incorporated regulation applies to "a purchase of goods or services", which clearly indicates inclusion of vehicle loans. 16 C.F.R. §433.1(d). Thus, the Plan itself includes, by incorporation of this definition, more than just residential mortgages in Class 6. The CCR's argument to the contrary, while flawed, presages its expected position regarding the class aspects of the GCA's claim. However, the GCA would ask the CCR to consider the following.

The Gearys' "adequacy" (for the purposes of Fed. R. Civ. P. 23) as class representatives for these 31,000 people is, and has never been, dependent upon the underlying nature of the debt obligation serviced by Green Tree, except to extent that each underlying obligation was a "debt" within the meaning of 15 U.S.C. §1692a(5)[9]. Moreover, the rights and claims of these 31,000

[8] Which explains why both 11 U.S.C. §363(o) and the Plan definition provide the alternative avenue under the Truth in Lending Act for residential mortgages.

[9] Under such section, the term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment. 15 U.S.C. §1692a(5) (emphasis added).

people, including the Gearys, were and remain perfectly common and typical. There are multiple dispositive similarities with respect to each class member's rights against Green Tree under the FDCPA, and with respect to the defenses arguably available to Green Tree *vis a vis* each class member's FDCPA claims. Thus, while the nature of the underlying debt may have one difference – the type of security taken by the original lender – such difference is meaningless to the understanding of why the Gearys' are adequate Class Representatives for the FDCPA class claims, or what the GCA's class claim is about in this Chapter 11 case[10].

In sum, a plain and full reading of the Plan itself does not support the CCR's narrow reasoning or its attempt to incorporate non-Plan definitions. The Plan's relevant definitions call for inclusion of, purchase money, non-real estate mortgage loans by incorporation of the Truth in Lending Act and the Section 433.1 of the Code of Federal Regulations. CCR's Cross-Motion should therefore be DENIED.

B. Contractual Ambiguities Should Be Resolved In Favor Of The GCA

The CCR spends most of its time attempting to employ various canons of *statutory* interpretation to get the Court to associate the confirmed Plan's definitions, and/or absence thereof, to definitions of the term "mortgage" contained, not in incorporated statutes, but in other documents filed in the Chapter 11 case that had little to absolutely nothing to do with the Plan's treatment of the GCA's claim. Simply put, such canons of statutory interpretation should have no place here. We are dealing with a confirmed Plan that permanently altered the rights of the pre-filing relationship between the GCA and the Debtors.

[10] In passing, the Debtors made the same curiously incorrect and wholly unsupported conclusion during confirmation. ECF 1325 at 50-51 ¶92 (pgs 56-57 of 178). What is noteworthy is that in coming to this flawed conclusion, the Debtors still analyzed the issue while treating the GCA's claim as a Class 6 claim – even on an individual basis for the Gearys. Id.

As noted by this Court in this case, for the purposes of plan interpretation, a chapter 11 plan is treated as a new contract between the debtor and its creditors. *In re Ditech Holding Corporation*, 606 B.R. 544, 585-86 (Bankr. S.D.N.Y. 2019) citing *Lawski v. Frontier Ins. Grp., LLC (In re Frontier Insurance Group, Inc.)*, 585 B.R. 685, 693 (Bankr. S.D.N.Y. 2018). Thus, when a dispute arises concerning the language of a confirmed Chapter 11 plan, the principles of contract interpretation should serve as the Court's guide. *In re Trico Marine Services, Inc.*, 450 B.R. 474, 482 (Bankr. D. Del. 2011) ("When construing an agreed or negotiated form of order, such as the Sale Order in this case, the Court approaches the task as an exercise of contract interpretation rather than the routine enforcement of a prior court order.") (citing *City of Covington v. Covington Landing Ltd. P'ship*, 71 F.3d 1221, 1227 (6th Cir. 1995) ("An agreed order, like a consent decree, is in the nature of a contract, and the interpretation of its terms presents a question of contract interpretation."); also citing *Rifken v. CapitalSource Fin., LLC (In re Felt Mfg. Co., Inc.)*, 402 B.R. 502, 511 (Bankr. D.N.H. 2009) ("The terms of court orders, plans of reorganizations, and stipulations between parties are typically examined under principles of contract interpretation.")). See also *O'Dell v. Carolina Internet, Ltd.*, No. 3:14-CV-190, 2015 WL 114255, at *7 (W.D.N.C. Jan. 8, 2015) ("When construing a plan of reorganization, courts apply contract principles.") (citing *In re Shenango Group Inc.*, 501 F.3d 338, 344 (3d Cir. 2007)); *In re 18th Ave. Realty, Inc.*, No. 03-14480 (RDD), 2010 WL 1849403, at *5 (Bankr. S.D.N.Y. May 7, 2010) (same).

Canons of contract interpretation therefore control. Under New York law:

> When interpreting a written contract, the court should give effect to the intent of the parties revealed by the language and structure of the contract and should ascertain such intent by examining the document as a whole. Effect and meaning must be given to every term of the contract and reasonable effort must be made to harmonize all of its terms. Moreover, the contract must be interpreted so as to give effect to, not nullify, its general or primary purpose.

Reda v. Eastman Kodak Company, 233 A.D.2d 914, 649 N.Y.S.2d 555 to 557. See, also *Postlewaite v. McGraw-Hill, Inc.*, 411 F.3d 63, 67 (2nd Cir. 2005). Moreover, it is settled law in New York that in the event of doubt or ambiguity as to the meaning of the terms of a contract, the language must be construed most strongly against the party who prepared it or supplied a form for the agreement. This is particularly true as to a contract of adhesion. Where there is an inconsistency in verbiage in an instrument, the language must be construed strongly against the drawer of the instrument. Thus where one party has only slight participation in the process by which the agreement is drafted, the court may decline to consider extrinsic evidence and further decline to search out the meaning of ambiguous language, instead reaching a coherent and reasonable interpretation of the ambiguity by construing the agreement against the drafter. As a corollary to the general rule, a contract drawn by one party must be construed, if its meaning is doubtful, most favorably to the other party.

22 N.Y.Jur.2d, Contracts Section 200.

For the purposes of this analysis, the Debtors (and principally DF) and the GCA were the parties to the subject contract. As previously indicated, there can be no meaningful dispute that the Debtors and the GCA both intended to treat the GCA's claim as a Class 6 claim – and more importantly, as a Class 6 class claim. ECF 1296, ECF 1325 at 44-45 and 49-59 (pgs, 50-51 of 178 and 55-65 of 178); ECF 1328 and ECF 1330. But, to the extent the CCR points to an ambiguity in the terms of the Plan – for example the CCR's reference to the undefined "mortgage" term, the Plan should not, as a corollary to New York law, be construed against the GCA. The Debtors and not the GCA drafted the Plan.

C. The GCA's Class Claim Is Governed By The FDCPA Not RESPA

The CCR initially acknowledges that the facts asserted in the materials supporting the GCA's claim are not disputed. The CCR actually recognizes that: "Green Tree continued to seek collection from the Gearys". ECF 3037 at 3 (pg 9 of 15). This admission is unsurprising because during the relevant period, Green Tree acquired the servicing rights to the Gearys' loan as part of three (3) large portfolio servicing acquisitions which included many defaulted debts from prior owners including Citifinancial, Inc. in 2013. Green Tree boarded the Gearys' debt on its servicing platform in the ordinary course of its business, and then sent the Gearys the collection form letter without timely compliance with 15 U.S.C. §1692g which eventually resulted in GCA's class action. But, in the next breath, the CCR then makes the remarkably false and factually unsupportable statement: "Nor was the car loan *serviced* by any of the Debtors". ECF 3037 at 8 (pg 14 of 15) (emphasis added).

The CCR seems to suggest that because the Gearys did not make any payments after they received Green Tree's multiple collection letters, RESPA's limited definition of the term "servicer" (somehow engrafted into FDCPA law) can be used to excuse Green Tree's conduct under the Fair Debt Collection Practices Act (15 U.S.C. §1692 et seq. the "FDCPA"). The simple response is that the GCA's claim is not governed by RESPA. Further, the FDCPA does not borrow its definitions from RESPA except where expressly noted, and the term "servicer" does not have a discreet definition under the FDCPA.

Instead, the FDCPA regulates the conduct of "debt collectors" and has its own self-contained set of exceptions, none of which expressly reference "servicers" as narrowly defined in 12 U.S.C. § 2603(i)(3). It is recognized that mortgage debt servicers, like Green Tree / DF here are "debt collectors" under the FDCPA for servicing conduct related to debts acquired after default.

Roth v. Citimortgage, Inc., 756 F.3d 178, 183 (2nd Cir. 2014), citing *Alibrandi v. Fin. Outsourcing Servs., Inc.*, 333 F.3d 82, 85-86 (2d Cir.2003) (per curiam). See, also, *Bridge v. Ocwen Federal Bank, FSB*, 681 F.3d 355, 359 (6th Cir. 2012). The Gearys' debt and the debts of each of the 31,000 class members were acquired by Green Tree after default – Green Tree admitted to these facts during the class certification process.

This is true even if a debt was never owed or due – by mistake or some other reason. Green Tree was a "debt collector" under the FDCPA at the time it engaged in the conduct as to the members of these (6) classes. 15 U.S.C. §1692a(6). Unlike the narrowly interpreted RESPA section cited by the CCR, the FDCPA regulates collection of "debts owed or due or asserted to be owed or due another". Id. (emphasis added). There is no dispute that Green Tree attempted to collect a debt which it unequivocally asserted was owed – regardless of the fact that the Gearys did not actually owe or pay the debt[11].

The CCR would have this Court rule that Class 6 only consists of consumer claims of account debtors of the Debtors who originally provided residential mortgages as security. Aside from a tortured attempt to borrow statutory exceptions to a binding contract, the CCR offers no evidence to prove that the Debtors ever intended to confirm the Plan with such a narrow

[11] Green Tree made a similarly obtuse argument under 15 U.S.C. §1692a(6)(F) during motions practice before the S.D. Ohio. S.D. Ohio Case ECF. Green Tree argued that in spite of its continuous collection efforts against the Gearys seeking to collect what Green Tree treated as a defaulted debt, its conduct should be excused because, in reality, the Gearys did not owe any money and there was no actual defaulted debt. The S.D. Ohio rejected Green Tree's argument, stating:

> The Sixth Circuit has clarified, however, that, in light of the breadth of the FDCPA, "the definition of debt collector pursuant to §1692a(6)(F)(iii) includes any non-originating debt holder that either acquired a debt in default or *has treated the debt as if it were in default at the time of acquisition*. It matters not whether such treatment was due to a clerical mistake, other error, or intention." *Bridge*, 681 F.3d at 364 (emphasis added); see also *In re Rostorfer*, 497 B.R. 873, 874-76 (Bankr. S.D. Ohio 2013) ("An entity acting in its capacity a loan servicer is not a debt collector for purposes of the FDCPA unless the debt was in default or treated as though it were in default when the entity obtained the loan for servicing.").

S.D. Ohio ECF 14 at 9.

interpretation. Nevertheless, for the overwhelming majority of the members of the six (6) classes in the GCA, even this narrow construction would not serve as an impediment to the GCA's claim being included as a Class 6 claim.

III. DOCUMENTATION AND EVIDENCE TO BE RELIED UPON

- All filings and documentation in the S.D. Ohio case of *Geary v. Green Tree Servicing, LLC*, Case No. :14-cv-00522-ALM-EPD (S.D. Ohio 2014).
- All filings and documentation in the above captioned Chapter 11 case.
- Claim 20041 and all of its filed attachments
- Testimony of one or more persons at Weil, Gotshal & Manges LLP who prepared and filed the documentation in the above captioned Chapter 11 case for the Debtors.
- Testimony of the undersigned counsel, as Class Counsel for the claimant, GCA.

IV. CONCLUSION

Based upon the foregoing, the GCA respectfully that the Court apply Fed. R. Bankr. P. 7023 to the CCR's contest matter and DENY the CCR's Cross-Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing THE GEARY CLASS ACTION'S RESPONSE IN PARTIAL OPPOSITION TO THE CROSS MOTION OF THE CONSUMER CLAIMS TRUSTEE TO CLASSIFY THE GEARY CLASS ACTION CLAIM AS A GENERAL UNSECURED CLAIM (ECF 3037) was electronically filed with the Clerk of the Court using CM/ECF on DECEMER 10, 2020. I also certify that the foregoing document is being served this day on the following counsel of record via email transmission:

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