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9
10 UNITED STATES BANKRUPTCY COURT
11 SOUTHERN DISTRICT OF NEW YORK
12

13 Ditech)
14) Lead Cases No: 19-10412-jlg Ditech
15) Holding Corporation
16) 19-10411-jlg Green Tree Credit LLC
17) Chapter 11
18)
19) SUR-REPLY TO THE REPLY OF
20) THE OMNIBUS OBJECTION BY
21) CONSUMER CLAIMS TRUSTEE'S
22) TWENTY-SECOND OMNIBUS
23) OBJECTION TO PROOFS OF
24) CLAIMS
25)
26) DATE: October 27, 2022
27) TIME: 11:00 am
28) Judge: James L. Garrity
Courtroom: 602
)

Debtor,

Michael Mc Christian
Creditor,

vs.

DITECH HOLDING
CORPORATION MORTGAGE,
LLC, GREEN TREE CREDIT LLC

Debtor

THE HOMEOWNERS BILLS OF RIGHTS SPECIFICALLY ALLOWS
OWS MONEY DAMAGES FOR A WRONGFUL FORCLOSURE

1
2 Creditor's Michael Mc Christian ("Plaintiff") by and through his
3 attorney of record hereby files this SUR-REPLY to the Reply on the grounds
4 that this courts findings regarding the return of the home are not res judicata as
5 to the issue of dollar damages incurred by Mr. McChristian.

6 The California Homeowner Bill of Rights is a set of laws that provide
7 protections to homeowners who are facing foreclosure. It became law on
8 January 1, 2013, with many sections renewed and modified as of January 1,
9 2019.

10 ***Restrictions on dual tracking:*** A servicer must generally pause the
11 foreclosure process while it is making a decision on your completed loan-
12 modification application and until after it gives you time to appeal a denial. It
13 also cannot foreclose on you while you are complying with the terms of an
14 approved loan modification, forbearance, repayment plan, or other foreclosure-
15 prevention option. (Civil Code sections 2923.6, 2924.11)

16 This is in the key point of Mr. McChristian's claim.

17 He started the modification process, they took his payments. He had no
18 idea that the modification was not going to be approved until after the
19 foreclosure.

20 He lost a substantial amount of equity he had built up through 30 years
21 of work and was left homeless.

22 Like most legislation the California Homeowners bill of rights was a
23 compromise on many fronts once a foreclosure deed of trust was recorded the
24 legislature decided that could not be undone, but the servicer could be liable
25 for damages. But for this Bankruptcy Mr. McChristian could have brought suit
26 against DiTech in California Superior Court.

27 He could have sued the lender/ servicer to recover his actual damages,
28 which are the monetary losses he incurred due to the Homeowner Bill of

1 Rights violation, plus attorneys' fees and costs. In addition, he could have
2 gotten triple damages or \$50,000, whichever is greater, if a court finds that the
3 violation was intentional, reckless, or resulted from willful misconduct. (Cal.
4 Civ. Code § 2924.12, § 29 Di Tech was clearly reckless in its dealings with
5 customers which lead to this bankruptcy.

6
7 **III. CONCLUSION**

8 Creditor Mc Christian has made a good faith claim for damages and it
9 should be allowed.

10
11
12 Respectfully Submitted

13 Dated: OCTOBER 18, 2022

14 By: /s/ Joseph La Costa

15 _____
16 Joseph La Costa

17 Attorney for Creditor
18 Michael McChristian

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25 **PROOF OF SERVICE**

1 I am employed in the County of San Diego, State of California, I am over the age of 18 and
2 not a party to the within action. My business address is: 1855 First Avenue , Suite 102, San
3 Diego, CA 92101.

4 On October 19, 2022 I served the following document(s) described as:

5 SUR-REPLY

6 On all interested parties in this action by placing [X] a true copy [] the original
7 thereof enclosed in sealed envelopes addressed as follows:

8
9 **Richard Levin, Esq.**

10 **Jenner and Block**

11 **919 Third Avenue**

12 **New York NY 10022**

13
14 **Sunny Singh**

15 **Richard W. Slack**

16 **767 Fifth Avenue**

17 **New York, New York 10153**

18
19 **Richard Levin**

20 **Jenner Block by email**

21 [X] BY MAIL- I deposited such envelope in the mail at San Diego, California with postage
22 thereon fully prepaid. I am aware that on motion of the party served, service is presumed in
23 valid in postal cancellation date or postage meter date is more than one day after date of
24 deposit for mailing in affidavit.

25
26 I declare under penalty of perjury under the laws of the State of California that the foregoing
27 is true and correct.
28

1 Executed on September 26, 2022, at San Diego, California.
2

3 /s/ Joseph La Costa_
4

5 _____
6 Joseph La Costa
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