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

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In re	: Chapter 11
	: :
DITECH HOLDING CORPORATION, et al.,	: Case No. 19-10412 (JLG)
	: :
Debtors. <sup>1</sup>	: (Jointly Administered)
	: Related Dkt. Nos. 1760, 3737, 3995
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**JOINT REPLY OF THE CONSUMER CLAIMS TRUSTEE AND PLAN  
ADMINISTRATOR IN SUPPORT OF THE TWENTY-EIGHTH OMNIBUS  
OBJECTION WITH RESPECT TO THE ADMINISTRATIVE EXPENSE CLAIM OF  
LISA JANCO (2585), THE FIFTIETH OMNIBUS OBJECTION WITH RESPECT TO  
THE UNSECURED CLAIM OF LISA JANCO (2916) AND THE EIGHTY-FIRST  
OMNIBUS OBJECTION TO THE ADMINISTRATIVE EXPENSE CLAIM OF LISA  
JANCO (2919)**

<sup>1</sup> On September 26, 2019, the Court confirmed the *Third Amended Joint Chapter 11 Plan of Ditech Holding Corporation and Its Affiliated Debtors* (ECF No. 1404) (the “**Third Amended Plan**”), which created the Wind Down Estates. On February 22, 2022, the Court entered the Order Granting Entry of Final Decree (I) Closing Subsidiary Cases; and (II) Granting Related Relief (ECF No. 3903) (the “**Closing Order**”). Pursuant to the Closing Order, the chapter 11 cases of the following Wind Down Estates were closed effective as of February 22, 2022: 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). Under the Closing Order, the chapter 11 case of Ditech Holding Corporation (the “**Remaining Wind Down Estate**”) (Case No. 19-10412 (JLG)) remains open and, as of February 22, 2022, all motions, notices and other pleadings relating to any of the Wind Down Estates are to be filed in the case of the Remaining Wind Down Estate. The last four digits of the Remaining Wind Down Estate’s federal tax identification number is (0486). The Remaining Wind Down Estate’s principal offices are located at 2600 South Shore Blvd., Suite 300, League City, TX 77573

The Consumer Claims Trustee<sup>2</sup> and the Plan Administrator of Ditech Holding Corporation (f/k/a Walter Investment Management Corp.) and its debtor affiliates (excluding Reorganized RMS), submit this reply (the “**Reply**”): (1) in further support of the Joint *Twenty-Eighth Omnibus Objection to Proofs of Claim (No Basis Consumer Creditor Admin Claims)* (ECF No. 1760) (the “**Twenty-Eighth Omnibus Objection**”) and in opposition to the *Objection to the Twenty-Eighth Omnibus Objection to Proof of Claim (No Basis Consumer Creditor Admin Claims)* filed on February 26, 2020, by Lisa Janco (the “**Claimant**”) (ECF No. 2033) (the “**First Response**”), (2) in further support of the Consumer Claims Trustee’s *Fiftieth Omnibus Objection to Proofs of Claims (Duplicate or Amended)* (ECF No. 3737) (the “**Fiftieth Omnibus Objection**”) and in opposition to the *Objection of Disallowance of Amended Proof of Claim #2585* filed by Claimant on November 9, 2021 (ECF No. 3800) (the “**Second Response**”), (3) in further support of the Joint *Eighty-First Omnibus Objection to Proofs of Claims (No Basis Consumer Creditor Claims)* (ECF No. 3995) (the “**Eighty-First Omnibus Objection**”) and in opposition to the *Objection of Disallowance of Amended Proof of Claim #2919* filed by Claimant (ECF No. 4093) (the “**Third Response**”).

The Consumer Claims Trustee and Plan Administrator respectfully represent as follows:

### **Preliminary Statement**

1. Claimant’s primary contentions are that Debtor Green Tree Servicing, LLC (“**Green Tree**”) and Ditech Financial, LLC f/k/a Green Tree Servicing, LLC (“**Ditech**”) (together “**Debtors**”) (1) required her to pay an excessive amount in escrow, (2) misapplied her 2016

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Tenth Omnibus Objection and Third Amended Plan, as applicable.

payments to her impound account, (3) refused to return funds by the State of California as part of the Property Tax Postponement program, and (4) failed to provide a timely disbursement of her insurance funds. Ms. Janco asserts causes of action against Ditech for violations of the Americans with Disabilities Act (“ADA”), the California Unruh Act, the California Disabled Persons Act (Cal. Civ. Code § 51.4), the Fair Credit Reporting Act (“FCRA”), the Federal Trade Commission Act, the Civil Rights Act, , and the Real Estate Settlement Procedures Act (“RESPA”). She additionally alleges (albeit at best indistinctly) causes of action for (1) personal injury against a disabled person, (2) breach of contract, (3) embezzlement, (4) larceny, and (5) fraud while acting in a fiduciary capacity.

**The Claims, Objection, Response and Amended Claims**

2. Claimant filed three proofs of claim, all of which were filed after the bar date of June 3, 2019.<sup>3</sup>

3. On November 4, 2019, Claimant filed her first claim, Proof of Claim 2585 (“**Claim 2585**”) as an administrative claim for \$100,000 plus unknown and undetermined compensatory and punitive damages, plus interest, asserting Ditech (1) violated RESPA by funneling her payments into her escrow account; (2) committed fraud by refusing to advance her the funds received from the State of California for her property taxes; and (3) committed fraud by withholding her insurance money from CSE Insurance Company. Claim No. 2585 at 1.

4. On January 7, 2020, the Plan Administrator and Consumer Claims Trustee objected to Claim No. 2585 on the basis that the claim lacked sufficient documentation to support the validity of the claim. *Twenty-Eighth Omnibus Objection*.

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<sup>3</sup> Claim 2585 was filed as an administrative expense claim on November 4, 2019 – prior to the bar date for the filing of administrative expense claims. However, as discussed below, the claim does not qualify as an administrative expense claim, and thus fails both substantively and procedurally as it was filed past the bar date for non-priority, unsecured claims.

5. On February 12, 2020, the Claimant filed Adversary Case 20-01051. ECF No. 1863 (the “**Adversary Proceeding**”). On January 13, 2021, the Plan Administrator filed a *Motion to Dismiss Adversary Proceeding of Lisa Janco* (ECF No. 8) in adversary case, *Janco v. Ditech Financial LLC*, Case No. 20-01051 (Bankr. S.D.N.Y. 2021) (the “**Motion to Dismiss**”). A hearing on the matter was held on March 25, 2021. ECF No. 11. The Plan Administrator’s Motion to Dismiss was granted on April 7, 2021. ECF No. 12.

6. On February 26, 2020, the Claimant filed her First Response to the Twenty-Eighth Omnibus Objection.

7. On April 19, 2021, Claimant filed Proof of Claim 2916 (“**Claim 2916**”) amending Claim 2585, asserting a \$659,950.00 unsecured claim for (1) illegal foreclosure, (2) embezzlement of government monies, (3) bad faith, (4) larceny, (5) fraud, (6) actual fraud, (7) ADA violations, and (8) civil rights damages. Claim 2916 at 1.

8. On August 23, 2021, the Claimant filed Claim No. 2919 (“**Claim 2919**”) amending claim 2585, asserting an administrative claim in the amount of \$687,000 plus “personal injury damages and compensatory damages”. Claim 2919 at 2. Claimant alleges (1) “violating ADA federal laws”, (2) California Unruh Act, (3) “discrimination disability act”, (4) “personal injury on a blind person”, (5) “California breach [sic] of contract and unfair business practices dealings act”, (6) larceny, (7) “embezzlement of the state of California property tax program for the blind”, (8) Fair Credit Reporting Act, (9) “Fair Trade Act”, (10) Civil Rights Act, (11) actual fraud while acting in a fiduciary capacity”. Claim 2919 at 2.

9. On October 18, 2021, the Consumer Claims Trustee objected to Claim No. 2916 on the basis it was a duplicate claim. *Fiftieth Omnibus Objection*.

10. On December 6, 2021, the Claimant filed her Second Response.

11. On April 15, 2022, the Plan Administrator and Consumer Claims Trustee jointly objected to Claim No. 2919 on the basis that it lacked merit and was filed after the bar date.

*Eighty-First Omnibus Objection.*

12. On June 1, 2022, the Claimant filed her Third Response.

13. On November 18, 2022, the Claimant filed an *Objection to Erase Records from Servers, and the Right to be Heard at the Hearing* (ECF No. 4387) in opposition to the *Motion of the Wind Down Estates 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 the Wind Down Estates to (A) Abandon and Dispose of Obsolete Physical Records and (B) Not Take Further Action or Incur Further Liability to Maintain Access to Additional Obsolete Electronic Records, and (II) Granting Related Relief* (ECF 4350).

14. Because there are multiple intersecting issues raised by both Claims and Responses, this Reply will address all the allegations concerning Ms. Janco's proofs of claim.

15. Under the procedure established by the Claim Procedures Order, the filing of the Responses caused adjournments of the Objections as to the Claims so that the Court could conduct a Sufficiency Hearing (as defined in the Claim Procedures Order). The Claim Procedures Order dictates that the legal standard of review at a Sufficiency Hearing will be the equivalent to the standard applied upon a motion to dismiss for failure to state a claim upon which relief can be granted. *See* Claim Procedures Order, § 3(iv)(a).

### **Factual Background**

16. All of the relevant facts underlying Ms. Janco's claims arise before the filing of the Bankruptcy. In none of Ms. Janco's filings does she provide an executed note or security instrument demonstrating a contract between her and Green Tree and/or Ditech. Instead, she

provides a litany of allegations surrounding the application of payments she made to Ditech in 2016.

17. On January 21, 2016, Ms. Janco made a payment on her loan, and \$484 was applied to her escrow account, bringing the balance to \$1,328.59. Claim 2919 at 103.

18. On February 12, 2016, Ditech received a payment of \$2,500 from Ms. Janco. Claim 2916 at 62. At the time, Ms. Janco owed her January 2016 payment in the amount of \$1,307.69 and her February 2016 payment in the amount of \$1,370.69 plus late fees in the amount of \$44.33. *Id.* At the time of the payment, she also had \$187.46 held in suspense: Ditech temporarily held the funds as the amount until a full payment was received and could be applied to the account. 12 C.F.R. § 1026.36 (Regulation Z). Ditech first applied the funds to Ms. Janco's January 2016 payment, including \$484.00 to her escrow account; the remaining funds in the amount of \$1,316.67 were held in suspense. Claim 2916 at 64, Claim 2919 at 103.

19. On March 8, 2016, Ditech made a Property Tax Disbursement in the amount of \$1,919.36 bringing Ms. Janco's escrow account balance to -\$106.77. Claim 2919 at 103. Escrow payments of \$484 each were made on March 12, 2016 and March 31, 2016. *Id.* On March 31, 2016, Ditech added \$5.59 to Ms. Janco's account as interest on the escrow account. *Id.*

20. On May 9, 2016, Ms. Janco made a payment of \$1,502. Claim 2916 at 64. This amount was applied to her escrow because the handwritten instructions on the coupon remittance labeled the payment as additional escrow funds. Adversary Proceeding, (ECF No. 1863) at 100. Ditech deposited the funds into Ms. Janco's escrow account per the instructions on the payment coupon remitted with the payment. *Id.* at 89.

21. On July 21, 2016, Ditech ran an escrow analysis on Ms. Janco's account and refunded Ms. Janco \$1,562.46. Claim 2916 at 64. The refund took into account the application of her May 9, 2016 payment in the amount of \$1,502.00 to her escrow account. *Id.*

22. On March 14, 2017, Ms. Janco received a letter from the California State Controller informing her that her 2016-17 Property Tax Postponement ("PTP") was approved. Claim 2916 at 57. The letter states that if the county tax collector receives payment from her lender before the PTP is approved and the State Controller's Office makes a payment, the duplicate property tax payment will be refunded to the PTP Program and applied to her account. *Id.* If her lender made the tax payment after the PTP payment from the State Controller's Office had been received, the county tax collector would refund the lender. *Id.*

23. Ms. Janco's annual escrow analysis was conducted in July 2017, but due to the mortgage's delinquent status, the analysis was not mailed to Ms. Janco. Claim 2916 at 60.

24. On July 8, 2017, the State of California refunded the property tax disbursements made by Ditech on November 28, 2016 in the amount of \$1,941.66 and on March 23, 2017 in the amount of \$1,941.65, for a total credit of \$3,883.31. Claim 2916 at 59. The \$3,883.31 was applied to Ms. Janco's escrow account on July 8, 2017 bringing the balance from a deficiency of \$751.57 to \$3,131.74. Claim 2916 at 52.

25. On July 10, 2017, Ms. Janco was approved for a loan modification Trial Period Plan. Claim 2916 at 27. Under the Trial Period Plan, Ms. Janco was required to make three payments of \$1,553.02 for August, September, and October 2017, which she did. Claim 2916 at 63.

26. On November 4, 2017, the permanent loan modification documents were mailed to Ms. Janco in a standard font size. Claim 2916 at 63. Ms. Janco refused to sign the

permanent loan modification because the agreement included escrow payments for her property taxes. Claim 2919 at 19, 124, 156-157, Claim 2585 at 45.

27. On January 16, 2018, Ditech sent Ms. Janco a year-end history for the year 2017 which showed \$3,256.45 had been deposited into escrow with \$1,739.70 being disbursed resulting in a positive escrow balance of \$2,542.59. Claim 2916 at 52.

28. On January 30, 2018, Ditech acknowledged Ms. Janco's request for a larger font size for her billing statements and stated their print vendor was investigating whether the larger font size would be available. Claim 2916 at 64.

29. On March 7, 2018, Ditech sent Ms. Janco her Annual Escrow Account Disclosure Statement showing an escrow surplus of \$3,671.24. Claim 2919 at 83. The letter informed Ms. Janco that she would receive a separate check for the surplus amount unless her account was past due and then the surplus funds would remain in her escrow account. *Id.*

30. On March 18, 2018, Ditech sent Ms. Janco a mortgage bill statement stating the amount due was \$16,571.47 for unpaid payments from July 2017 to April 2018. Claim 2919 at 85. The statement shows there was \$278.66 being held in suspense and a distribution for County Taxes on March 14, 2018 of \$2,017.35. The account was referred to foreclosure on April 6, 2018. Claim 2916 at 60.

31. On July 23, 2018, Ditech sent a letter to the Los Angeles County Consumer & Business Affairs investigator stating that Ditech had not received any payments from the State of California for property taxes on Claimant's account since March 2017. Claim 2919 at 148. Ditech obtained a copy of an Annual Statement of Postponed Property Taxes from the State of California, showing an accumulated balance on Claimant's account in the amount of \$6,794.97. Claim 2919 at 148, 158. Ditech noted that, because the annual statement was showing property



taxes due on the property, Ditech was unable to remove the property tax escrow from Claimant's account. *Id.* at 148. Ditech further indicated that they had attempted to obtain the necessary information from the taxing authority but needed an executed authorization from Ms. Janco, which she refused to provide. Claim 2919 at 149. Ditech additionally claimed that it had tried to contact Claimant by phone on July 18, 2018 to discuss the authorization, but Claimant refused to speak to them and disconnected the call. *Id.*

32. On July 23, 2018, Ditech followed up with Ms. Janco in large font writing explaining they were unable to remove the property tax escrow without her cooperation. Claim 2919 at 149.

33. On January 30, 2019, the State Controller of the State of California filed a Release of Lien for Postponed Property Taxes. ECF No. 3800 at 212.

34. On July 16, 2019, Ms. Janco paid off her account. Claim 2916 at 60.

35. Ms. Janco also claims Ditech withheld insurance money from CSE insurance. Claim 2916 at 3. But none of the proofs of claim nor responses provide further details on the amount of insurance money, when the money was received, the amount to which she believes she was entitled, or the amount of interest she claims she is entitled to. *Id.*

### **Jurisdiction**

36. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**Reply**

**A. Rule 12(b)(6) of the Federal Rules of Civil Procedure Is the Applicable Pleading Standard**

37. A filed proof of claim is “deemed allowed, unless a party in interest...objects.” 11 U.S.C. §502(a). If an objection refuting at least one of the claim’s essential allegations is asserted, the claimant bears the burden to demonstrate the validity of the claim. *See Residential Capital, LLC*, 2016 WL 796860, at \*9 (S.D.N.Y. 2016); *In re Motors Liquidation Co.*, 2012 WL 1886755, at \*3 (S.D.N.Y. 2012).

38. Additionally, section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law....” 11 U.S.C. § 502(b)(1).

39. Although claims submitted by *pro se* claimants are construed liberally, such claims must nonetheless be supported by specific and detailed factual allegations that provide a fair understanding for the basis of the claim and the legal grounds for recovery against a debtor. *Kimber v. GMAC Mortgage, LLC (In re Residential Capital, LLC)*, 489 B.R. 489, 494 (Bankr. S.D.N.Y. 2013) (citing *Iwachiw v. New York City Bd. of Elections*, 126 Fed. Appx. 27, 29 (2d Cir. 2005)). As such, “conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal.” *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003).

40. Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a claim may be dismissed due to a “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6); *see also* Fed. R. Bankr. P. 7012 (incorporating Rule 12(b)(6)). The adequacy of the Claim should be analyzed in accordance with the standards established under Rule 12(b)(6), which

requires the claimants to allege “enough facts to state a claim for relief that is plausible on its face.” *Vaughn v. Air Line Pilots Ass’n, Int’l*, 604 F.3d 703, 709 (2d Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Owens v. Textron Financial Corp.*, 2014 WL 3887181, at \*4 (S.D.N.Y. July 14, 2014) (“Moreover, because plaintiff has not identified any cognizable legal theory applicable here, the Court cannot reasonably infer defendant is liable under any such theory”).

41. Here, the Claims and the Responses do not support, as a matter of law, any viable claim for recovery against the Consumer Creditor Reserve.

**a. The Claimant Fails to State a Claim for Breach of Contract**

42. In Claim 2919, the Claimant alleges there was a “CA Breech [sic] of Contract Laws” but, other than listing this as a cause of action, Ms. Janco does not allege any facts as to what provision of the contract was breached. Claim 2919 at 2.

43. “To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff’s performance of the contract or excuse for nonperformance, (3) the defendant’s breach, and (4) the resulting damage to the plaintiff.” *Richman v. Hartley*, 224 Cal.App.4th 1182, 1186 (Cal.App. 2014).

44. If the action is based on an alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint, or a copy of the written contract must be attached to the complaint and incorporated by reference. *Daniels v. Select Portfolio Servicing, Inc.* 246 Cal.App.4th 1150, 1174 (Cal.App. 2016); *FPI Dev., Inc. v. Nakashima* 231 Cal.App.3d 367, 383 (Cal.App. 1991); *Otworth v. Southern Pac. Transportation Co.*, 166 Cal.App.3d 452, 458-59 (Cal.App. 1985).

45. Claimant's breach of contract claim fails for several reasons. The Claimant has not alleged that she was performing under the contract, nor has she identified any specific provision of the Mortgage Loan breached.

46. Claimant has not sufficiently alleged a breach of contract claim regarding the application of her payment.

**b. The Claimant Fails to Establish a Fraud Claim and Fails to Meet the Elevated Pleading Requirements for Fraud under Rule 9(b) of the Federal Rules of Civil Procedure.**

47. In all three Claims, Claimant repeatedly asserts Ditech committed fraud by (1) withholding the funds from the State of California Property Tax Postponement program and (2) keeping the insurance money from CSE Insurance Company. Claim 2585 at 1, Claim 2916 at 3, and Claim 2929 at 10. Buried within the hundreds of submitted pages of her claims and responses, Claimant makes multiple assertions of Ditech's fraudulent behavior, including that (1) Ditech committed fraud by providing the loan modification paperwork in "microfont" (Claim 2919 at 5), (2) that Ditech "committed Mortgage Fraud all over the states and ran to the Bankruptcy Court of New York" (Claim 2919 at 59), (3) by changing a credit into a debit (Claim 2916 at 5). Claimant separately lists various elements of fraud, but neglects to anchor any of them to the facts of her case.

48. In California, "[a] complaint for fraud must allege the following elements: (1) a knowingly false representation by the defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the plaintiff; and (4) resulting damages." *Service by Medallion, Inc. v. Clorox Co.* 44 Cal.App.4th 1807, 1816 (Cal.App. 1996) (combining misrepresentation and scienter as a single element).

49. Under the Federal Rules of Civil Procedure, in alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent,

knowledge, and other conditions of a person's mind may be alleged generally. Fed. R. Civ. P. 9(b) "[T]here are limits to a court's indulgence, as pro se status does not exempt a party from compliance with relevant rules of procedural and substantive law." *In re Enron Corp.*, 341 B.R. 141, 146-47 (Bankr. S.D.N.Y. 2006) (citing *Traguth v. Zuck*, 710 F.2d 90, 95 (2nd Cir. 1983)) (internal quotations omitted).

50. Claimant fails to allege specific factual allegations to support any of the elements of fraud required under California state law. The Claimant states repeatedly that Ditech withheld property tax payments made by the State of California as part of the Property Tax Postponement program. However, the payment history shows that Ditech received and applied the funds to her account properly, including on July 8, 2017. Claim 2916 at 59.

51. To support her contention that Ditech was fraudulently withholding property tax payments from the State of California, she articulates a theory that Ditech "funneled a mortgage payment into [her] Impounds as so they can receive late penalties and this is as usual how their scheme worked make them late mark up their credit, Check their Equity and if it a lot than they can embezzle and defraud them to eventually take their home." First Response at 1.<sup>4</sup>

52. Claimant additionally suggests that Ditech was "under fraud investigation" by the "CFPB and LA Consumer fraud unit division for mortgage fraud", as de facto evidence of Ditech's fraudulent behavior. Claim 2585 at 1, Claim 2916 at 3, and Claim 2929 at 10. However, these "investigations" were simply responsive to Claimant's own complaints to the Consumer Financial Protection Bureau and Los Angeles County Consumer and Business Affairs. She provides no information to support her insinuation that any agency confirmed that Ditech had engaged in fraud. In fact, she attaches to her claims a copy of the CFPB complaint, which was

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<sup>4</sup> Claimant makes the same unsubstantiated allegation in the Adversary Proceeding. [ECF 1863 at 1].

closed following explanation from Ditech. Claim 2916 at 15. She also attaches to her claims a copy of Ditech's responsive letter to Los Angeles County Consumer and Business Affairs, dated July 23, 2018, which is identical to the letter Ditech supplied to the CFPB. Claim 2916 at 148. Claimant provides no evidence that the Los Angeles County Consumer and Business Affairs took any further action on her behalf.

53. Neither does claimant provide any information to support her contention that Ditech owes her insurance money from CSE Insurance Company. In fact, the only allegation as to an amount being due to her from her insurance proceeds is in a December 6, 2017 communication to Ditech in which she accuses Ditech of withholding "800.00 or more on hold in an account from CSE Insurance". *See* Adversary Proceeding, (ECF No. 1863) at 73. Nowhere within any of the Claims does she provide even the amount of insurance funds received by Ditech from CSE Insurance Company, much less information about when the funds were received by Ditech or for what purpose.

54. Her claims certainly do not rise to the heightened pleading standards required by Fed. R. Civ. P. 9(b). The Ninth Circuit requires more than just general and conclusory allegations of intent. "Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged". *Kearns v. Ford Motor Co*, 567 F.3d 1120, 1124 (9th Cir. 2009). (citations and internal quotation marks omitted). Claimant fails to sufficiently allege the requisite intent. The Ninth Circuit has a two-pronged test to determine scienter, enquiring first whether the stand-alone allegations are sufficient to infer scienter, and if they are not, conducting a holistic review to determine whether the allegations "combine to create a strong inference of intentional conduct or deliberate recklessness". *New Mexico State Investment Council v. Ernst &*

*Young, LLP*, 641 F.3d 1089, 1095 (9th Cir. 2011). (citation omitted). Claimant simply does not meet this rigorous standard.

**c. The Claimant Fails to Establish a Claim Under the Americans with Disabilities Act**

55. The Claimant further alleges that Ditech violated the Americans with Disabilities Act (the “ADA”) by failing to provide her written communications in large print. Claims.

56. Section 12182 (a) of the ADA provides the general rule that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation”.

57. Mortgage servicing and enforcement are “services” provided by Ditech under 42 U.S.C. §12182 (a), and Title III of the ADA, therefore, applies to the provision of such services. *Webster Bank v. Oakley*, 265 Conn. 539, 572-73 (Conn. 2003); see also *PGA Tour, Inc. v. Martin*, 532 U.S. 674-76 (2001); 42 U.S.C. § 12101 (b).

58. “[D]iscrimination includes ... a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations ....” 42 U.S.C. § 12182 (b)(2)(A)(ii). The United States Supreme Court has noted that “the statute contemplates three enquiries: whether the requested modification is ‘reasonable’, whether it is

‘necessary’ for the disabled individual, and whether it would ‘fundamentally alter the nature of’ the policy, practice or procedure. *PGA Tour, Inc. v Martin*, 532 U.S. 661, 683 n.38 (2001).

59. The Claimant provides no basis to substantiate that Ditech failed to make a reasonable modification after being informed of a medically necessary accommodation. She states Ditech refused to provide larger font format when “dealing with a partially sighted person or legal blind” by sending her May 1, 2016 in regular size font. First Response at 8. But she does not show, anywhere prior to that time, that she informed Ditech that she was visually impaired.

60. Instead, it is not until May 9, 2017 that the Claimant claims her attorney sent a letter to Ditech requesting Ditech provide her monthly statements in a larger font size. First Response at 9. However, the letter makes no such request. Claim 2585 at 62. Instead, the letter requests that her May 2016 payment be applied as a mortgage payment. *Id.*

61. On December 6, 2017, the Claimant did submit a written request in which she stated that she is legally blind and that Ditech has refused to put any and all correspondence in large font. Adversary Proceeding, Docket 1863 at 72. The Claimant also filed a complaint with the Consumer Financial Protection Bureau on December 14, 2017 in which she states Ditech has refused to provide her communications in larger font. Claim 2919 at 58.

62. Ditech responded to the complaint in a letter dated January 30, 2018, in which Ditech acknowledges the Claimant’s request for a larger font size and indicates it was investigating whether the print vendor was able to print her monthly statements in larger font. Claim 2916 at 64. The January 2018 letter as well as subsequent letter from Ditech on July 23, 2018 were in large font. Claim 2919 at 149. The Claimant does provide billing statements dated after her January 2018 requests that are not in larger font; however, the Claimant fails to allege how she was subsequently harmed by the failure to provide communications in a larger font size.



63. Furthermore, there is a limitation in the use of the ADA to address credit discrimination in that, while United States attorneys can seek monetary relief as well as injunctive relief and civil penalties for the victims of discrimination, the remedies for private plaintiffs under the ADA are limited to injunctive relief and attorney fees. 42 U.S.C. § 12188(b)(2). Injunctive relief is moot at this time since Ditech no longer services the mortgage and the Claimant no longer owns the home. Injunctive relief is not available to Claimant through the proof of claim process in any event. Claimant has not established in any of her claims that she incurred attorney fees in connection with her ADA grievances against Ditech. Compensatory damages are not available under the Act, and would thus also be unavailable to Claimant through the bankruptcy claims process. 42 U.S.C. § 12188(a); *A.R. v. Kogan*, 964 F. Supp. 269, 271 (N.D. Ill. 1997).

**d. The Claimant Fails to State a Claim Under California's Unruh Act**

64. The Claimant also alleges that Ditech violated the Unruh Act, and though she fails to state the elements and specific facts to substantiate her claim, she seems to be asserting it on the basis of Ditech's failure to provide notices and monthly statements in larger print font. Claim 2919 at 58.

65. The Unruh Act provides: "All persons within the jurisdiction of this state ... no matter what their ... disability ... are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." (Cal. Civ. Code, § 51, subd. (b).) "A plaintiff can recover under the [Unruh Act] on two alternate theories: (1) a violation of the ADA ( Civ. Code, § 51, subd. (f) ); or (2) denial of access to a business establishment based on intentional discrimination." (*Martinez v. San Diego County Credit Union* (2020) 50 Cal.App.5th 1048, 1059 (Cal.App. 2020), *Martinez v. Cot'n Wash, Inc.*, 81 Cal.App.5th 1026, 1035 (Cal.App. 2022))

66. As articulated above, the Claimant fails to articulate a violation of the ADA. Unless an Unruh Act claim is based on an ADA violation, the act requires a claimant to prove "intentional discrimination." *Koebke v Bernardo Heights Country Club*, 36 Cal.4th 824, 854 (Cal. 2005). Absent an ADA violation, the Unruh Act requires allegations supporting "willful, affirmative misconduct" with the specific intent "to accomplish discrimination on the basis of [a protected trait]." *Id.* at 853, 854. *See also Martinez v. Cot'n Wash, Inc.*, 81 Cal.App.5th 1026, 1036 (Cal.App. 2022). The California Supreme Court has held "that a plaintiff seeking to establish a case under the Unruh Act must **plead** and prove intentional discrimination in public accommodations in violation of the terms of the Act." *Harris v. Capital Growth Investors XIV*, 52 Cal.3d 1142, 1175 (Cal. 1991) "In 2012, in an attempt to deter baseless claims and vexatious litigation, California adopted heightened pleading requirements for disability discrimination lawsuits under the *Unruh Act*. *Dalfio v. P.I.D. Univ., Inc.*, Case No.: 21cv911-CAB-JLB, 3 (S.D. Cal. May. 13, 2021). See Cal. Civ. Proc. Code § 425.50 ; SB 1186, Chapter 383 § 24 (Ca. 2012).". The Claimant has provided no allegations to show that the conduct on the part of Ditech was willful. In fact, Ditech reached out to its print vendor to inquire if the vendor could accommodate the Claimant's request for a larger font size and sent subsequent communications in large print as requested. Claim 2916 at 64.

**e. The Claimant Fails to State a Claim Under the Real Estate Settlement Procedures Act**

67. The Claimant also alleges that Ditech "funneled [her] Mortgage payments into [her] Escrow account breaking the Impound Laws and RESPA Laws". Claim 2919 at 2. However, the Claimant does not describe what subsection of RESPA she believes was violated. Instead, she makes a general allegation that Ditech misapplied her May 9, 2016 to her escrow balance rather than her April payment. However, the Claimant admits the remittance coupon

submitted on May 9, 2016, with the amount of \$1,502, designated the payment as additional escrow funds. Adversary Proceeding, Docket 1863 at 100.

68. Ditech began servicing the Claimant's mortgage on February 1, 2013. Claim 2919 at 172. As required by section 2609 of RESPA, Ditech conducted an escrow analysis each year of the Claimant's escrow account. 12 U.S.C. § 2609(c); Reg. X § 1024.17(g) to (i). Ditech also paid interest on the Claimant's escrow account as follows: \$0.66 in 2013, \$19.41 in 2014, \$14.05 in 2015, \$48.49 in 2016, and \$57.03 in 2017. Claim 2919 at 173.

69. Pursuant to 12 CFR § 1024.17(c)(2), Ditech conducted an annual escrow analysis on July 21, 2016 and determined there was a surplus in the Claimant's escrow account. Claim 2919 at 118. Based on that analysis, Ditech refunded \$1,562.46 to the Claimant on July 21, 2016 in compliance with RESPA. Claim 2916 at 64.

70. The Claimant also states that Ditech withheld the payments made by the State of California as part of the Property Tax Postponement program, yet the payment history shows Ditech made property tax disbursements on November 28, 2016 in the amount of \$1,941.66 and on March 23, 2017 in the amount of \$1,941.65 which brought her escrow balance to a deficit of \$751.57. Claim 2916 at 59. It was not until July 8, 2017 that the State of California refunded the disbursements made by Ditech in the amount of \$3,883.31, which was applied to Ms. Janco's escrow account on July 8, 2017, bringing the balance from -\$751.57 to \$3,131.74. Claim 2916 at 51-58.

71. The next scheduled escrow analysis was scheduled to be run in July 2017, but due to the delinquent status, an analysis was not mailed to the claimant. Claim 2919 at 164. RESPA does not require an annual escrow statement be mailed to the borrower if the borrower is more than 30 days overdue. Reg. X § 1024.17(i)(2).

72. On March 7, 2018, Ditech provided the Claimant with an Annual Escrow Account Disclosure Statement as required by RESPA. Claim 2919 at 151. The escrow statements showed an escrow surplus of \$3,671.24. *Id.*

73. On July 21, 2018, Ditech provided Claimant with an Annual Escrow Disclosure Statement. Claim 2919 at 136. Though the escrow statement was within one year of the last escrow statement, Regulation X permits a servicer, as Ditech did here, to change one escrow account computation year to another if the servicer issues a “short year” annual escrow account statement. Reg. X § 1024.17(i)(4). The effect of a short year statement is to end the escrow account computation year for the escrow account and establish the beginning date of the new escrow account computation year. *Id.*

74. On December 17, 2018, Ditech conducted a review of the Claimant’s escrow account and sent her the annual escrow statement even though the account was delinquent. Claim 2919 at 218. At the time of the analysis, Ditech determined there was an escrow shortage of \$3,284.23. *Id.*

75. On July 16, 2019, the Claimant paid off her account. Claim 2916 at 60.

76. On August 13, 2019, 20 business days after the Claimant’s account was paid in full, Ditech sent a Final Escrow Account Disclosure Statement to the Claimant and refunded the balance as required by section 2506(g) of RESPA. Claim 2919 at 146.

77. Furthermore, the escrow requirements found in section 2609 are not enforceable by an express private right of action under RESPA. Section 2605(g) of RESPA is privately enforceable through the remedies available in 2605(f), but Claimant has failed to establish that Ditech failed to properly refund the escrow balance. The Claimant therefore fails to establish a claim under RESPA.

**f. The Claimant fails to Show Ditech Violated California Civil Code § 2954.8(a)**

78. The Claimant also claims that “Di-Tech is still in possession of the CSE monies which also should have interest applied for as long as they have kept it, fee’s that Di-Tech LLC fraudulently charged to me [sic].” Third Response at 4-5. The Claimant goes on to directly quote the text of Section 2954 of the California Civil Code. *Id.* at 8.

79. The Claimant does not state how much money was being held by Ditech. In fact, the only allegation as to an amount being due to her from her insurance proceeds is in a December 6, 2017 communication to Ditech in which she states Ditech is withholding “800.00 or more on hold in an account from CSE Insurance”. Adversary Proceeding, Docket 1863 at 73.

80. California Civil Code § 2954.8(a) requires a lender "that receives money in advance for payment of taxes and assessments on the property, for insurance, or for other purposes relating to the property" to pay 2% interest per annum on the amount so held. However, Section 2954.8 does not apply to the insurance proceeds—funds received in arrears for past losses and then held for specified purposes—because they are not "received ... in advance" for specified purposes. *Lippitt v. Mortgage*, No. SA CV 19-1115-DOC-DFM, 2020 U.S. Dist. LEXIS 122881, at \*20-21 (C.D. Cal. Apr. 16, 2020) citing *Eisinger v. Fed. Labor Relations Auth.*, 218 F.3d 1097, 1102 (9th Cir. 2000) ("It is a well-recognized rule of statutory construction that '[t]he plain meaning of the statute controls, and courts will look no further, unless its application leads to unreasonable or impracticable results.'" (quoting *United States v. Daas*, 198 F.3d 1167, 1174 (9th Cir.1999)) (citing *Seattle—First Nat'l Bank v. Conaway*, 98 F.3d 1195, 1197 (9th Cir.1996)).

81. Claimant fails to plead sufficient information to support her claim that Ditech erroneously withheld insurance proceeds, and the statutory law does not support her contention that Ditech was obliged to pay interest on any such monies.

**g. The Claimant Fails to State a Claim for Relief Under the Fair Credit Reporting Act**

82. The Claimant also alleges that Ditech violated the Fair Credit Reporting Act (the “FCRA”), without providing any specifics as to when the supposed violation occurred or what was misreported. See Claim 2916 at 7, Claim 2919 at 2, 45, 59. The Claimant does provide partial screen captures of her credit report but is difficult to decipher when the credit report was run and whether the October 2017 date is the date of her last payment. Third Response at 37.

83. On February 24, 2017, Ditech sent the Claimant a letter stating it was unable to grant her request to reallocate the funds in the amount of \$1,502.00 deposited into escrow account on May 9, 2016 because the escrow surplus funds in the amount \$1,562.46 had been disbursed to her on July 21, 2016. Adversary Proceeding, Docket 1863 at 99. After investigation, it was determined that the information reported to the credit reporting agencies was true and correct and that \$1,474.07 was due as of February 1, 2017, the outstanding late fee balance was \$50.85, and the unapplied funds balance was \$278.55. *Id.* at 99-101.

84. The Claimant also provides a letter from her attorney to Ditech, dated May 9, 2017, in which her attorney explains that Claimant inadvertently “transferred her entire mortgage payment of [sic] into her impound account”. Claim 2585 at 62. There is no reference in the letter to which payment was mistakenly allocated. *Id.* Assuming this payment in question is the May 9, 2016 payment, the letter fails to acknowledge that Ditech had refunded the escrow shortage on July 21, 2016. *Id.* Instead, Claimant asks that the account be reconciled, late fees removed, and that Ditech “agree to communicate to the major credit bureaus that the reports of payment delinquency were the result of a mistake that does not constitute an intentional failure to make timely mortgage payments”. *Id.* Claimant was, in essence, asking Ditech to rectify her own mistake by covering for her with the credit bureaus. The mistake was not Ditech’s to correct.

85. Claimant provides a document stating that Ditech Financial LLC removed missed payments on her Equifax credit report but the letter is not dated nor is the report itself included. Third Response at 22. In handwriting, Claimant appears to allege that Ditech “left derogatory [sic] remarks trying to delete evidence of missed payments. The missed payments were fraud to do a fraudulent filing of foreclosure”. *Id.* Claimant provides no information to support this contention.

86. The FCRA governs the accuracy of credit reporting information on consumers. See 15 U.S.C. § 1681. However, section 1681s-2(a), the FCRA provision that governs the accuracy of information that a furnisher (such as Ditech) provides to a consumer reporting agency (“CRA”), does not create a private right of action. *Longman v. Wachovia Bank, N.A.*, 702 F.3d 148, 151 (2d Cir. 2012); *Howard v. Mun. Credit Union*, 2008 U.S. Dist. LEXIS 124085, at \*19 (S.D.N.Y. Jan. 24, 2008) (“a furnisher’s duties under Section 1681s-2(a) “are only enforceable by a government agency or official; no private right of action is available under this provision.”).

87. The only provision of the FCRA that is actionable against a furnisher, such as Ditech, arises when the furnisher fails to conduct a reasonable investigation in response to a dispute communicated to it by a consumer reporting agency. See 15 U.S.C. § 1681s-2(b). By itself, a dispute sent directly to the furnisher does not trigger any duties under section 1681s-2(b). Section 1681s-2(b) is implicated only if the consumer submits his or her dispute to a CRA and the CRA then communicates that dispute to the furnisher. *Sprague v. Salisbury Bank & Tr. Co.*, 969 F.3d 95, 99 (2d Cir. 2020) (“Appellants do not even allege that they notified a CRA of the discrepancy. The Amended Complaint alleges only that, after receiving the Report, Sprague directly notified Salisbury of the Report's inaccuracy... This alone is insufficient to state a claim under Section

1681s-2(b).”); see also *Elmore v. N. Fork Bancorporation, Inc.*, 325 F. Supp. 2d 336, 340 (S.D.N.Y. 2004).

88. Even read most favorably to Claimant, this allegation asserts—at most—a violation of section 1681s-2(a), for which there is no private right of action.

89. Notably, however, Claimant does not allege she ever submitted a dispute to a CRA or that Ditech failed to conduct a reasonable investigation in response to a dispute communicated to it by a CRA. As a result, regardless of what she communicated directly to Ditech and how Ditech responded, Claimant has not stated a claim for relief under section 1681s-2(b).

**h. Claimant Fails to Establish Ditech Engaged in Unfair Business Practices Under California’s Unfair Competition Law**

90. The Claimant also alleges that Ditech engaged in unfair business practices. Claim 2919 at 2.

91. Business & Professions Code sections 17200 et seq., also known as California’s Unfair Competition Law (“UCL”), prohibits any “unlawful, unfair or fraudulent business act or practices”. In consumer cases arising under the Unfair Competition Law, a business practice is “unfair” if (1) the consumer injury is substantial; (2) the injury is not outweighed by any countervailing benefits to consumers or competition; and (3) the injury could not reasonably have been avoided by consumers themselves. *Camacho v. Automobile Club of Southern California* (2006) 142 Cal.App.4th 1394, 1403.

92. The Claimant has failed to state any basis on which Ditech operated unfairly or any allegation of any substantial injury as a result of such unfair practice. As outlined above, Ditech appropriately applied the Claimant’s May 9, 2016 payment to escrow as instructed on the remittance coupon. Ditech also appropriately disbursed the Claimants insurance proceeds and



applied the State of California Property Tax Postponement payments to her escrow account as required by RESPA.

**i. Claimant's Other Causes of Actions Are Too Vague and Disjointed to State a Plausible Claim**

93. The Claimant also listed several causes of action in Claim 2919, including personal injury on a blind person, larceny, embezzlement of California Property Tax Program for the Blind, Fair Trade Act, Federal Disability Discrimination Act, California's Rehabilitation Act of 1966, violation of California's Real Estate Act. Claim 2919 at 3.

94. Claimant's allegations are too vague and disorganized to state a plausible claim. In many instances, she merely provides a narrative without applying the facts of the matter to the required elements. ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice". *Ashcroft v. Iqbal*, 129, S. Ct. 1937, 1949 (2009). Second Response at 8 – 15.

95. Many of the allegations made by Claimant appear to be criminal in nature, such as larceny and embezzlement, in which there is no right to recovery. Third Response at 75-83, 88- 91, 94-134, 153-162, 165-173, 203-205, 215-217, 219-226]. In fact, the Claimant lists the elements as the "Crime of Embezzlement". Third Response at 69. She also provides the criminal penalties available. *Id.* at 44.

96. Similarly, the documents attached to her Claims provide no plausible facts to support her allegations. Most of the documents include complaints she filed with other governmental agencies, including a police report to the Los Angeles County Sheriff's Department. Third Response at 16- 18, 21-34. However, none of these allegations states a legal claim against Ditech for which she can or should be compensated. Nor do the documents support any of the allegations of wrongdoing asserted in her Responses.

**B. The Amount Asserted in the Claim Should be Re-characterized as a General Unsecured Claim or Consumer Creditor Claim**

97. All of the underlying allegedly wrongful conduct occurred before Ditech filed for bankruptcy protection. Claimant nevertheless baldly asserts that the Claim qualifies as an administrative expense under section 503(b)(9) of the Bankruptcy Code. A claimant that asserts a priority bears the burden of establishing their entitlement to priority. See, e.g., *In re Bethlehem Steel Corp.*, 479 F.3d 167, 172 (2d Cir. 2007) (“The burden of proving entitlement to priority payment . . . rests with the party requesting it”); *In re Drexel Burnham Lambert Grp. Inc.*, 134 B.R. 482, 489 (Bankr. S.D.N.Y. 1991) (“The burden of establishing entitlement to priority rests with the claimant and should only be granted under extraordinary circumstances”) (quotation omitted).

98. Section 503(b)(9) of the Bankruptcy Code provides that “the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the good have been sold to the debtor in the ordinary course of such debtor’s business” shall be allowed as administrative expenses. 11 U.S.C. 503(b)(9). In other words, a claimant seeking allowance and payment of an administrative expense claim under section 503(b)(9) of the Bankruptcy Code must prove that (a) the claim arises from the sale of goods to the debtor; (b) the claimant sold the debtor goods in the ordinary course of the debtor’s business; (c) the goods were received by the debtor within 20 days of the bankruptcy filing; and (d) the value of the goods.

99. Here, the Claimant merely checked the box for administrative expense claims on the proof of claim form, but otherwise failed to allege any facts to support an administrative expense claim under section 503(b)(9) of the Bankruptcy Code. Based on the

Response, Claimant is basing her claims on a purported breach of the “mortgage contract” and the servicing of the mortgage.

100. Pursuant to the Plan, “[a]ny claim asserted by a Borrower against the Debtors” is a Consumer Creditor Claim. Plan § 1.36. Under the Third Amended Plan, holders of Allowed Consumer Creditor Claims “shall receive such holder’s Pro Rata share of the Consumer Creditor Net Proceeds” in accordance with the Plan. Plan § 4.6. Furthermore, under the Plan, the Plan Administrator is required to reserve an amount sufficient to pay holders of Disputed Claims “the amount such holders would be entitled to receive under the Plan if such Claims were to become Allowed Claims.” Plan § 6.3(b). The misclassification of Consumer Creditor Claims as Administrative Expense Claims or Other Secured Claims is a significant impediment to the effective implementation of the Plan because it requires the Plan Administrator to maintain reserves on account of disputed administrative expense, priority, and other secured claims, which in turn improperly reduces and delays distributions to holders of Term Loan Claims under the Plan.

101. Accordingly, in the event the Court does not disallow the Claims entirely, the Claims should be reclassified as Consumer Creditor Claims, subject to further determination of their status as a Section 363(o) or non-Section 363(o) claim, and any recovery should be limited to the Consumer Creditor Reserve in accordance with the Plan.

### **C. The Claims Should Be Disallowed Because They Are Untimely**

102. In addition to being deficient on the merits, the Claims are untimely and should therefore be barred. The Extended General Bar Date for the filing of consumer borrower claims was June 3, 2019. ECF 496. The Claimant filed Claim No. 2585 on November 4, 2019. As argued above, there is no basis for the Claimant to have filed an administrative claim, and Claimant

was not entitled to categorize Claim 2585 as such simply to circumvent the Extended General Bar Date.

103. Claimant subsequently filed Claim No. 2916 on April 19, 2021, amending Claim 2585 as an unsecured claim. Claimant then filed Claim No. 2919 amending her unsecured claim as an administrative claim on August 31, 2021. Even if these claims relate back to Claim No. 2585, they would not have been timely, and they should be barred. See *In re Lehman Bros. Holdings Inc.*, 433 B.R. 113, 122 (Bankr. S.D.N.Y. 2010), *aff'd sub nom. CVI GVF (Lux) Master Sarl. v Lehman Bros. Holdings Inc.*, 445 B.R. 137 (S.D.N.Y. 2011) (“Missing the bar date applicable to all claims is fatal.”).

104. Claimant has failed to make a showing of excusable neglect. See *In re Enron Corp.*, 419 F.3d 115, 121 (2d. Cir. 2005). “The Second Circuit strictly observes bar dates ... [and] the equities will rarely if ever favor a party who fails to follow the clear dictates of a court rule”. *In re Lehman Bros. Holdings Inc.*, 433 B.R. at 119. Claimant makes no mention of the timeliness of the Claims, nor does she provide any explanation as to why the Claims were late filed.

#### **Reservation of Rights**

105. The Consumer Claims Trustee and Plan Administrator hereby reserve the right to amend, modify, or supplement this Reply.

WHEREFORE the Consumer Claims Trustee and the Plan Administrator respectfully request entry of an order denying the request for relief in the Claims, disallowing and expunging the Claims, and granting such other or relief as is just.

Dated: April 17, 2023  
New York, New York

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