

**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.¹ : **(Jointly Administered)**
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-----X **Related Doc No. 4838**

**STIPULATION RESOLVING PROOF OF CLAIM OF THE GEARY CLASS ACTION
CLAIMANTS VIS-À-VIS THE GUC TRUST**

This stipulation (the “Stipulation”) is made and entered into between Ditech Holding Corporation GUC Recovery Trust (the “GUC Trust”) through META Advisors LLC, in its capacity as Trustee of the GUC Trust (the “GUC Trustee”), on the one hand, and Brian and Connie Geary, individually and on behalf of Others Similarly Situated (the “Geary Class Action Claimants”, and together with the GUC Trust, the “Parties”).²

RECITALS

WHEREAS, on February 11, 2019 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

WHEREAS, on September 22, 2019, the Debtors filed the *Third Amended Joint Chapter 11 Plan of Ditech Holding Corporation and Its Affiliated Debtor* [ECF No. 1326] (the “Plan”).

¹ The Debtors’ Third Amended Plan (as defined below) was confirmed, which created the Wind Down Estates. 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); 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.

² Capitalized terms used in this Stipulation but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan (as defined below).

On September 26, 2019, the Bankruptcy Court entered the *Order Confirming Third Amended Joint Chapter 11 Plan of Ditech Holding Corporation and Its Affiliated Debtors* [Docket No 1404] (the “Confirmation Order”). On September 30, 2019, the Effective Date of the Plan occurred.

WHEREAS, pursuant to the Plan, the GUC Trustee, on behalf of the GUC Trust, has the exclusive authority to object to and settle all General Unsecured Claims (the “Class 5 Claims”) without approval of the Bankruptcy Court.

WHEREAS, pursuant to the Plan, the Consumer Claims Trustee, on behalf of the Consumer Creditor Recovery Trust, has exclusive authority to object to and settle all Consumer Creditor Claims (“Class 6 Claims”).

WHEREAS, the Geary Class Action Claimants filed proof of claim number 20041 (the “GCA Claim”) asserting a claim in the estimated amount of \$25,500,000, and asserting rights under 11 U.S.C. §363(o) (the “363(o) Claims”).

WHEREAS, the GCA Claim is based upon a pre-petition class action lawsuit filed in the United States District Court for the Southern District of Ohio entitled *Geary, et al. v. Green Tree Servicing, LLC*, et al., No. 14-cv-522 (the “Class Action Litigation”) seeking statutory and actual damages arising from alleged violations by Debtor Green Tree Servicing, LLC (“Green Tree”) of 15 U.S.C. §1692(g) of the Fair Debt Collection Practices Act (the “FDCPA”) as to loans serviced or owned by the Debtors. A copy of the Complaint is attached to the GCA Claim as Attachment 1 thereto.

WHEREAS, there is a dispute between the GUC Trustee and the Consumer Claims Trustee as to whether the GCA Claim is a General Unsecured Claim or a Consumer Creditor Claim (the “Classification Dispute”).

WHEREAS, on November 13, 2020, the GUC Trustee filed the *Ditech Holding*

Corporation GUC Recovery's Trust's Objection to Classify the Proof of Claim of the Geary Class Action Plaintiffs (Brian and Connie Geary, individually and on behalf of Others Similarly Situated) (Claim No. 20041) as a Consumer Creditor Claim for Distribution, if any, from the Consumer Creditor Recovery Cash Pool [Dkt. No. 2972] (the "GUC Trust Classification Motion").

WHEREAS, on December 1, 2020, the Consumer Claims Trustee filed her *Consumer Claims Trustee's Opposition to GUC Recovery Trust's Objection to Classify Geary Claim (No. 20041) as a Consumer Creditor Claim; Cross-Motion to Classify as a General Unsecured Claim* (the "Consumer Claims Trustee's Cross-Motion") [Dkt. No. 3037].

WHEREAS, on December 10, 2020, the Geary Class Action Claimants filed *The Geary Class Action's Response and Opposition to Cross-Motion of the Consumer Claims Trustee to Classify the Geary Class Action Claim as a General Unsecured Claim (ECF 3037)* [Dkt. 3072] (the "Geary Class Action Response").

WHEREAS, the GUC Recovery Trust's Objection, the Consumer Claims Trustee's Cross-Motion and the GUC Response (collectively, the "Classification Motions") were argued before the Bankruptcy Court on December 17, 2020, at the conclusion of which the Bankruptcy Court took the Classification Motions under submission.

WHEREAS, as of this date, the Bankruptcy Court has yet to rule upon the Classification Motions, such that the Classification Dispute remains unresolved.

WHEREAS, the Parties acknowledge that the GUC Trust has limited resources and in the event the Bankruptcy Court rules that some or all of the GCA Claim is to be classified as a Class 5 Claim, the incurring of legal fees by the GUC Trust to prosecute any objection to the GCA Claim will measurably adversely affect any potential recovery to the Geary Class Action Claimants and the current holders of allowed Class 5 Claims.

WHEREAS, after good faith and arms-length negotiations, the GUC Trust and the Geary Class Action Claimants have agreed to resolve the GCA Claim on the terms and conditions set forth in this Stipulation.

STIPULATION

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree and stipulate as follows:

1. The foregoing recitals are hereby fully incorporated into and made an express part of this Stipulation.

2. As between the Parties only, and not binding as to any other party, including but not limited to the Consumer Claims Trustee, and subject to Paragraph 6, below, the GCA Claim shall be reduced to and deemed to be allowed in the amount of \$2,000,000 (the “Allowed Amount”) as a General Unsecured Claim. For avoidance of doubt, as between the Parties only, and not binding as to any other party, including but not limited to the Consumer Claims Trustee, no portion of the Allowed Amount shall be deemed or construed to be a 363(o) Claim for the purposes of distribution by the GUC Trust.

3. Following receipt of a single completed IRS Form W-9 for the GCA Claim, the GUC Trustee, as Disbursing Agent, shall make a distribution on account of the GCA Claim upon the later of (i) 10 business days after receipt of a compliant IRS Form W-9 and (ii) the date that the GUC Trustee makes distributions to holders of Allowed General Unsecured Claims. Such distribution shall consist of a single payment to “Nobile & Thompson Co., L.P.A.” at the following address:

7509 E. Main Street
Suite 208
Reynoldsburg, OH 43068

4. Any distribution by the GUC Trust on the GCA Claim shall constitute a “common fund” from which all costs of administration, legal fees and expenses, including but not limited to noticing and distributions to class members, any incentive awards to the Gearys, any required approvals from the District Court with jurisdiction over the Class Action Litigation, shall be paid. The GUC Trust shall not bear, nor shall it be sought to be liable for any such fees or costs. Further, the GUC Trust shall have no responsibility for soliciting IRS Form W-9s or any other tax identification documentation from any of the individual Geary Class Action Claimants.

5. The Geary Class Action Claimants waive the right to recover any amounts above the pro rata distribution based upon the Allowed Amount from the GUC Trust, whether on behalf of the GUC Claim or any other claims that the Geary Class Action Claimants may hold against the GUC Trust.

6. This Stipulation shall be effective upon the execution hereof by the Parties. This Stipulation shall be binding upon, and shall inure to the benefit of each of the GUC Trust, the Geary Class Action Claimants, and each of their respective agents, employees, representatives, assigns, successors in interest, and attorneys, in their capacities as such. Pursuant to this Stipulation, the GCA Claim, as allowed herein, shall not be subject to further objection by the GUC Trust and shall be administered and paid in accordance with the treatment of other similarly situated claims, and as provided in the Plan, **provided, however**, that (a) in the event the Bankruptcy Court enters an order declaring the entirety of the GCA Claim to be solely a Consumer Claim prior to the date of distribution on account of the GCA Claim, the GCA Claim shall receive no distribution based upon the Allowed Amount or any other amount, whatsoever or at all, but (b) in the event the Bankruptcy Court enters an order declaring all or part of the GCA Claim to be a

General Unsecured Claim, the GCA Claim shall remain entitled to a pro rata distribution based upon the Allowed Amount.

7.Nothing in this Stipulation shall be deemed or construed as an acknowledgement, admission or agreement that the GCA Claim constitutes, in whole or in part, a General Unsecured Claim as opposed to a Consumer Creditor Claim to be administered by the Consumer Claims Trustee as a Class 6 Claim. Each Party hereto maintains its position that the GCA Claim is a Consumer Creditor Claim and neither Party waives or otherwise relinquishes its right to pursue classification of the GCA Claim as a Class 6 Claim and this Stipulation shall not be deemed or construed to estop or otherwise bar either Party from pursuing such classification of the GCA Claim as a Class 6 Claim. Although each Party expressly retains the right to appeal an adverse ruling by the Bankruptcy Court with respect to the Classification Motions, neither Party is obligated hereby to do so.

8.The Geary Class Action Claimants represent that they have not transferred their rights under the GCA Claim that is the subject of this Stipulation to any third party and that each is the sole holder of its rights under the GCA Claim.

9.Each of the Parties shall be responsible for its respective costs and expenses incurred by it in negotiating, drafting, and executing this Stipulation and shall not be responsible for the payment of any such fees or expenses incurred by any other Party hereto.

10.This Stipulation constitutes the entire agreement between the Parties and may not be amended or modified in any manner except by a writing signed by all of the Parties or their counsel.

11.This Stipulation shall be governed by and construed in accordance with the laws of the State of New York without regard to any law concerning the conflicts of laws.

12. Each Party and signatory to this Stipulation represents and warrants to each other Party that such Party or signatory has full power and authority to enter into this Stipulation.

Dated: August 8, 2023

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Shirley S. Cho

Shirley S. Cho, Esq.
Mary F. Caloway, Esq. (*admitted pro hac vice*)
780 Third Avenue, 34th Floor
New York, New York 10017

Counsel to the GUC Trust

Dated: August 8, 2023

NOBILE & THOMPSON CO., LPA

/s/ James E. Nobile

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Hilliard, Ohio 43026
Telephone: (614) 529-8600

Counsel to Brian and Connie Geary, individually and on behalf of Others Similarly Situated

SO ORDERED:

Dated: September 15, 2023
New York, New York

/s/ James L. Garrity, Jr.

Honorable James L. Garrity, Jr.
United States Bankruptcy Judge