

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
DEPARTMENT OF THE TRIAL COURT  
CIVIL ACTION NO. 16-2437 E

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In re Ditech Financial LLC

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ASSURANCE OF DISCONTINUANCE

*PURSUANT TO G.L. c. 93A, § 5*

Pursuant to the Massachusetts Consumer Protection Act, G.L. c. 93A, § 6, the Commonwealth of Massachusetts, by and through the Office of Attorney General Maura Healey (hereinafter "the Attorney General"), conducted an investigation of the Debt collection practices of Ditech Financial LLC, formerly known as Green Tree Mortgaging Servicing LLC (hereinafter "Ditech"). To resolve the investigation and in lieu of the Attorney General commencing suit under G.L. c. 93A, § 4, for alleged violations of G.L. c. 93A, § 2, Ditech and the Attorney General hereby enter into this Assurance of Discontinuance (hereinafter the "Assurance") pursuant to G.L. c. 93A, § 5. Ditech and the Commonwealth shall sometimes hereinafter be referred to as the "Parties."

**I. JURISDICTION**

1. The Parties hereto acknowledge the Superior Court of the Commonwealth of Massachusetts has personal jurisdiction over Ditech and subject matter jurisdiction over the Assurance, and shall retain such jurisdiction. This Assurance shall be construed with and governed by the laws of the Commonwealth of Massachusetts.

## **II. PARTIES**

2. The Commonwealth of Massachusetts is represented by the Office of the Attorney General.

3. Ditech means and refers to Ditech Financial Services LLC and its successors and assigns. For the purpose of this assurance, an “assign” means a person who purchases all or substantially all of the assets of Ditech or of Ditech’s division(s) or major business unit(s) that are engaged in the business of servicing residential mortgage loans.

4. Ditech is a limited liability company organized under the laws of Delaware, with a principal place of business at 3000 Bayport Drive, Suite 880, Tampa, Florida 33607. On August 31, 2015, Ditech Mortgage Corp. merged into Green Tree Servicing LLC, and Green Tree Servicing LLC then changed its name to Ditech Financial LLC. Ditech is a continuation of Green Tree Servicing LLC and Ditech remains responsible for any obligations and liabilities of Green Tree Servicing LLC. At all times relevant, Ditech, including when it did business as Green Tree Servicing LLC, engaged in the business of servicing and collecting upon residential mortgage loans in Massachusetts.

## **III. DEFINED TERMS**

5. “Communication” or “Communicating” means conveying information directly or indirectly to any person through any medium excluding non-identifying communications. “Communication” shall include speaking with the Borrower, leaving a voicemail message for the Borrower, or any communication attempt where a Creditor has the opportunity to leave a voicemail message for the Borrower.

6. “Covered Conduct” means Ditech’s compliance with 940 C.M.R. 7.04 and 940 C.M.R. 7.08.

7. “Creditor” has the meaning set forth in 940 C.M.R. 7.03.
8. “Debt” has the meaning set forth in 940 C.M.R. 7.03.
9. “Debtor” or “Borrower” has the meaning set forth in 940 C.M.R. 7.03.

#### **IV. STATEMENT OF ALLEGATIONS**

10. The Commonwealth makes the following allegations contained in Paragraphs 11-17, below, which allegations Ditech neither admits nor denies.

11. Ditech is a servicer of residential mortgage loans in Massachusetts and throughout the country. As a mortgage servicer, Ditech is responsible for all aspects of residential mortgage servicing, including creating and sending monthly statements, collecting and processing payments, processing property tax payments and, in some cases, initiating foreclosure proceedings. Ditech’s mortgage servicing portfolio expanded significantly since 2012, with Ditech acquiring the servicing rights for more than a million residential mortgage accounts from other servicers.

12. From 2012 to the present, Ditech serviced thousands of mortgage accounts in Massachusetts, including over 5,000 accounts that became more than 30-days delinquent. Ditech’s servicing and collection conduct for these accounts were subject to the requirements of 940 C.M.R. 7.00, *et seq.* The Commonwealth alleges that Ditech failed to comply with Massachusetts law restricting the number of times Creditors are permitted to contact Debtors (940 C.M.R. 7.04(f)). The Commonwealth further alleges that Ditech failed to provide notice to Debtors of their right to seek validation of the Debts being collected upon (940 C.M.R. 7.08(1)).

#### ***Debt Collection Calls***

13. For thousands of accounts, Ditech exceeded the limits set by the Attorney General regulation 940 C.M.R. 7.04(f), which prevents Creditors from initiating more than two

Communications in a seven day or thirty day period, depending on the type of the phone number at issue.

14. Ditech did not consider outgoing calls where its collectors decided not to leave a message as a “Communication” regulated by 940 C.M.R. 7.04(f). As a result, Ditech’s collectors often Communicated with Borrowers over four times within a day at multiple numbers. In some cases, Ditech increased the number of Communications made to Borrowers as the end of the month approached in order to satisfy Ditech’s delinquency goals.

15. The Commonwealth alleges that the natural consequence of Ditech’s high-volume of calls to Borrowers, Borrower’s associated third parties, and other telephone numbers associated with Borrower accounts in violation of 7.04(f) was to harass the Borrower, and as such constitutes an unfair business practice in violation of G.L. c. 93A, § 2.

***Debt Validation Notice***

16. Ditech failed to comply with 940 C.M.R. 7.08(1), which requires that Creditors provide to Debtors within five business days after the initial Communication made in connection with the collection of a Debt, notice of:

- (a) The amount of the Debt;
- (b) The name of the Creditor to whom the Debt is owed;
- (c) A statement that unless the Debtor, within 30 days after receipt of the notice, disputes the validity of the Debt, or any portion thereof, the Debt will be assumed to be valid by the Creditor; and
- (d) A statement that if the Debtor notifies the Creditor in writing within 30 days after receipt of this notice that the Debt, or any portion thereof is disputed, the

Creditor will obtain verification of the Debt and provide the Debtor, or an attorney for the Debtor, additional materials described in 940 C.M.R. 7.08(2).

17. Specifically, Ditech failed to provide, or provided late, the notice required under 940 C.M.R. 7.08(1) to over 5,000 Borrower accounts that became over 30-days delinquent after Ditech acquired rights to service the accounts. In many cases, Ditech continued collecting on these accounts and, in some cases, conducted foreclosures without providing timely notice required under 940 C.M.R. 7.08.

## **V. MONETARY PROVISIONS**

18. Within three business days after the execution of this Assurance, Ditech shall, pursuant to G.L. c. 93A § 5, pay to the Commonwealth a total of \$1,400,000. At her sole discretion, and so long as permitted by law, the Attorney General shall distribute this payment, in any amount, allocation or apportionment: (a) for the Attorney General's facilitation of the relief under this Assurance; and/or (b) to the General Fund of the Commonwealth of Massachusetts; and/or (c) to the Local Consumer Aid Fund established pursuant to G.L. c. 12, § 11G; and/or (d) for programs or initiatives designed to address the negative effects of unfair or deceptive practices related to foreclosure, Debt collection or consumer financial products in Massachusetts.

19. Unless otherwise directed by the Attorney General, this payment shall be made by wire transfer or certified check, made payable to the "Commonwealth of Massachusetts," and shall be delivered to Justin J. Lowe and Lisa R. Dyen, Assistant Attorneys General, Consumer Protection Division, Office of the Massachusetts Attorney General, One Ashburton Place, 18th Floor, Boston, MA 02108.

## **VI. DISCONTINUANCE OF CERTAIN BUSINESS PRACTICES**

20. Ditech hereby agrees to the following:

### ***Debt Collection Calls***

21. Ditech shall not place collection calls in excess of the limits prescribed by 940 C.M.R. 7.04(f). Specifically:

- (a) Ditech shall initiate no more than two Communications in any seven-day period to a Borrower's residence, cellular telephone, or other telephone number provided by the Borrower;
- (b) Ditech shall initiate no more than two Communications in any 30-day period to a number other than at the Borrower's residence, cellular telephone or other telephone number.

22. Where the Borrower requests that Ditech place an outgoing call or make any other Communication attempt, and where such a request is contemporaneously documented by Ditech in its system of record, nothing in this Assurance shall be interpreted so as to prevent Ditech from initiating the requested Communication. This exception specifically includes situations where the Borrower is applying for a loan modification or other loss mitigation assistance, where the Borrower consents to additional phone calls to assist in completing an application or for any other loss mitigation purpose (i.e. gathering sufficient documents to complete an application package). In such cases, Ditech may initiate additional calls for the sole purpose of furthering the loss mitigation assistance but must limit such additional calls to those purposes and time periods to which the Borrower expressly consented.

23. Training: Ditech shall complete in-person training with all Ditech collectors who place calls to Massachusetts residents regarding the requirements of this Assurance and ensure that Ditech's policies and procedural requirements comply therewith.

24. Quality Control: Ditech shall implement an automated quality control system that prevents collectors from placing outgoing Debt collection calls in excess of the limit as defined by 940 C.M.R. 7.04(f) and detailed in paragraphs 21 and 22 except where a Borrower has expressly consented to receiving additional calls.

25. Ditech shall, on a biannual basis (every six months), conduct a random review of a statistically significant sample of its telephone call records to ensure that its call practices are in compliance with the terms of this Assurance.

26. Ditech shall retain a record of all written notices, written reports, or written complaints it receives from Massachusetts consumers or from Ditech employees complaining of conduct in violation of the terms of this Assurance, and 940 C.M.R. 7.04(f) and 7.08(1), including any written notices, written reports, and written complaints of calls in excess of the call limits set forth herein.

### ***Debt Validation Notices***

27. Going forward, Ditech shall provide notice to Borrowers of their right to seek validation of Debt as required by 940 C.M.R. 7.08(1) ("Debt Validation Notice").

28. For Borrowers who did not receive a timely Debt Validation Notice, Ditech shall complete the following, if it has not already so acted:

(a) Accounts More than 30 Days Delinquent, In Active Foreclosure and Charged-Off:

For Borrowers more than 30 days delinquent, in active foreclosure, and/or whose accounts were charged-off, Ditech shall refrain from any further collection or

foreclosure activity until 30 days after it issues a Debt Validation Notice to the Borrower, and until it has validated the Debt for any Borrowers who request validation.

- (b) Completed Foreclosure: For any Borrower accounts where Ditech failed to timely issue a Debt Validation Notice but completed a foreclosure, Ditech shall certify in writing to the Attorney General that it issued a Debt Validation Notice prior to completing the foreclosure.

## **VII. COMPLIANCE REPORTING**

29. For two years from the date of execution of this Assurance, Ditech shall provide written reports to the Attorney General on a biannual basis (every six months) that:

- (a) Reports the results of Ditech's review of its telephone call records relating to compliance with the call volume limits specified in this Assurance as set forth in Paragraphs 21 and 22, above.
- (b) Includes copies of any notice, reports, or written complaints it receives from Massachusetts consumers or Ditech employees related to alleged violations of Massachusetts Debt collection law, as set forth in Paragraph 26 above.
- (c) A summary of Ditech's conduct undertaken pursuant to Paragraph 28, above, including the name, telephone number and address of the Borrowers to whom Ditech issued Debt Validation Notices, whether the Borrower requested validation of Debt, the outcome of Ditech's efforts to validate the Debt, and the status of the account (e.g. whether collection or foreclosure efforts are continuing or suspended pending issuance of the Debt validation notice or validation of Debt).



## **VIII. NOTICES**

30. For the purposes of this Assurance Ditech shall, unless otherwise directed in writing by the Commonwealth's authorized representatives, send by overnight courier all reports and notifications required by this Assurance to the following;

Justin J. Lowe and Lisa Dyen  
Office of the Attorney General  
Consumer Protection Division  
One Ashburton Place, 18th Floor  
Boston, Massachusetts 02108

or as subsequently directed in writing by the Commonwealth. Provided that, in lieu of overnight courier, Ditech may send such reports or notifications by first-class mail, but only if Ditech contemporaneously sends an electronic version of such report or notification to the Commonwealth at;

justin.lowe@state.ma.us and  
lisa.dyen@state.ma.us

or as subsequently directed in writing by the Commonwealth.

31. For purposes of the compliance reporting and monitoring required by this Assurance, the Commonwealth is authorized to communicate directly with Ditech through its legal counsel and identified the name and contact information for said counsel. All communications to Ditech related to this Assurance should be sent to:

Brent R. Lindahl  
Ditech Financial LLC  
345 St. Peter Street  
Suite 1400  
St. Paul, MN

## **IX. RECORDKEEPING**

32. For three years from the date of execution of this Assurance, Ditech is required to create and retain the following records:

- (a) All communications sent to and received from Borrowers relating to the validation of Debt as referenced in 940 C.M.R. 7.08(1);
- (b) All telephone call records and reports relating to compliance with 940 C.M.R. 7.04(f) and the limits on the permissible number of calls set forth therein.

33. Upon written request by the Attorney General, Ditech shall produce the documents set forth above, and all non-privileged documents related to Ditech's compliance with this Assurance.

## **X. RELEASE AND COOPERATION**

34. The Attorney General fully and finally releases Ditech Financial LLC, its successors and assigns from any and all civil liability arising out of the Covered Conduct occurring prior to the execution of this Assurance.

35. Ditech shall fully cooperate with the Attorney General in the implementation of this Assurance. Upon execution of this Assurance, Ditech will have no continuing obligation to provide documents or information to the Attorney General pursuant to CID 2014-CPD-34, issued August 25, 2014, and Supplemental CID (Set One), issued April 12, 2016.

## **XI. GENERAL PROVISIONS**

36. This Assurance shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, and the Superior Court of the Commonwealth shall retain jurisdiction over this Assurance.

37. This Assurance constitutes the entire agreement between the Commonwealth and Ditech and supersedes any prior communication, understanding, or agreements, whether written or oral, concerning the subject matter of this Assurance, including the March 8, 2016 Tolling Agreement, which shall be terminated upon entry of this Assurance.

38. This Assurance can be amended or supplemented only by a written document signed by all parties or by court order. Amendments or supplements may be executed in separate counterparts, with signatures conveyed by mail or by facsimile, electronic mail, or other electronic means.

~~39.~~ It is the intent of the Parties that Ditech's conduct shall be governed by the same law applying to all Creditors in Massachusetts. Accordingly, if, at any time, the regulations at issue herein (940 C.M.R. §§ 7.04(f) and 7.08(1)) are amended, repealed or otherwise modified so as to require lesser conduct than what is required by this Assurance, the Parties shall, in good faith, amend the Assurance to reflect such a change.

40. This Assurance does not resolve, settle or otherwise affect any actual or potential claims against Ditech by third parties.

41. Ditech waives all rights to appeal or otherwise challenge or contest the validity of this Assurance.

42. Ditech shall not argue that because of this Assurance it is entitled to any offset or reduction of any compensatory monetary remedies imposed in any related consumer or government action.


43. This Assurance may be signed in multiple counterparts, each of which will be considered an original and all of which, when considered together, will constitute a whole. This Assurance will be effective upon its execution by all parties hereto and shall thereafter be filed by the Attorney General in the Superior Court for Suffolk County, Commonwealth of Massachusetts.

44. Signatories for Ditech Financial LLC represent and warrant that they have the full legal power, capacity, and authority to bind Ditech Financial LLC.

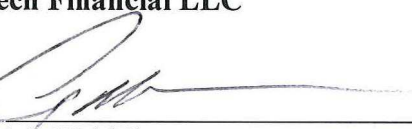
45. By signing below, Ditech agrees to comply with all of the terms of this Assurance.

DATED: 8/4/16

**Office of the Massachusetts Attorney  
General, Maura Healey**

By:   
Justin J. Lowe (BBO # 624857)  
Lisa R. Dyen (BBO # 676264)  
Assistant Attorneys General  
Consumer Protection Division

**Ditech Financial LLC**

By:   
Patricia Hobbib  
Senior Vice President and General Counsel