

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

EUGENIA RAPP, *on behalf of herself and all
individuals similarly situated,*

Plaintiff,

v.

DITECH FINANCIAL, LLC,

Defendant.

Civil Action No. _____

COMPLAINT

COMES NOW Plaintiff, EUGENIA RAPP (“Plaintiff”), *on behalf of herself and all individuals similarly situated*, by counsel, and files this Complaint against Defendant, Ditech Financial, LLC (“Ditech”). Plaintiff alleges as follows:

PRELIMINARY STATEMENT

1. As the entities that perform the day-to-day management of loans on behalf of lenders and investors, “servicers can have a direct and profound impact on borrowers.” *See* Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), 78 Fed. Reg. 10696, 10699 (Feb. 14, 2013) (codified at 12 C.F.R. pt 1024) [hereinafter 2013 Regulation X Amendments]. One of the ways mortgage servicers can have a profound and adverse impact on borrowers is through the furnishing of inaccurate information concerning borrowers to credit reporting agencies. As explained by the Federal Trade Commission in a case involving the Defendant: “[t]he loan servicing process depends on accuracy at all stages. Inaccurate servicing practices can throw homeowners into a spin cycle with far-reaching consequences, including errors on their credit reports that can haunt them for years.” Lesley Fair, *Will a \$63 million FTC-CFPB*

settlement encourage Green Tree to turn over a new leaf?, FTC (Apr 21, 2015), <https://www.ftc.gov/news-events/blogs/business-blog/2015/04/will-63-million-ftc-cfpb-settlement-encourage-green-tree>.¹

2. The financial crisis of 2007-2008 exposed pervasive consumer protection problems in the mortgage servicing industry. *See* 2013 Regulation X Amendments, *supra* at 10700. For example, the Government Accountability Office “found pervasive problems in broad segments of the mortgage servicing industry impacting delinquent borrowers, such as servicers who have misled, or failed to communicate with, borrowers, lost or mishandled borrower-provided documents supporting loan modification requests, and generally provided inadequate service to delinquent borrowers.” *Id.*

3. As a part of its response to the 2007-2008 financial crisis, Congress established the Bureau of Consumer Financial Protection (the “Bureau”) and granted it with broad rulemaking, enforcement, and supervisory powers related to Federal consumer financial law, including over the Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. §§ 2601-2617 and the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681-1681x.² 12 U.S.C. §§ 5481-5603. Both RESPA and the FCRA provide protections to borrowers that are designed to protect the furnishing of derogatory, erroneous information by their mortgage servicers. Dodd-Frank, Pub. L. No. 111-203, 124 Stat 1376 (2010).

¹ *See Green Tree is Now Ditech*, Ditech Home Loans, <https://www.ditech.com/green-tree-is-now-ditech/> (last visited July 12, 2017); *see also Company Overview of Ditech Financial LLC*, Bloomberg, <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=276425> (last visited July 12, 2017).

² *See generally* Margaret R.T. Dewar, *Regulation X: A New Direction for the Regulation of Mortgage Servicers*, 63 Emory L. J. 175, 177-80 (2013) (providing background on the establishment of the Bureau and the consumer protection problems exposed by the 2007-2008 financial crisis).

4. Plaintiff's class action claim challenges Ditech's practice of furnishing information to consumer reporting agencies regarding disputed payments after it receives a notice of error from consumers. RESPA and the Bureau's regulations specifically prohibit servicers from furnishing derogatory payment information that has been properly disputed for 60 days. RESPA, 12 U.S.C. § 2605(e)(3); 12 C.F.R. § 1023.35(i)(1). Despite the clear requirements of RESPA, Ditech reported adverse information to the credit bureaus regarding the payments that were the subject of Plaintiff's notice of error. Based on Ditech's conduct, Plaintiff asserts a class claim for Ditech's violations of RESPA, 12 U.S.C. § 2605(e)(3) and 12 C.F.R. § 1023.35(i)(1).

5. Plaintiff also alleges individual claims against Ditech for failing to fully and properly investigate Plaintiff's disputes and to review all relevant information provided by the consumer reporting agencies in violation of the FCRA, 15 U.S.C. § 1681s-2(b)(1).

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, 12 U.S.C. § 2605(f), and 15 U.S.C. § 1681(p).

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because Plaintiff resides in this District and a substantial part of the events giving rise to Plaintiff's claims occurred in this District.

PARTIES

8. Plaintiff is a natural person residing in this District and Division.

9. Ditech is a foreign limited liability corporation authorized to do business in the Commonwealth of Virginia through its registered offices in Richmond, Virginia. At all times relevant, Ditech was a mortgage loan servicing company governed by RESPA and a furnisher governed by the FCRA.

FACTS

Legal Background

10. “RESPA is a remedial consumer protection statute and imposes obligations upon servicers of federally related mortgage loans.” 2013 Regulation X Amendments, *supra* at 10709.

11. “Specifically, with respect to mortgage servicing, the consumer protection purposes of RESPA include responding to borrower requests and complaints in a timely manner, maintaining and providing accurate information, helping borrowers avoid unwarranted or unnecessary costs and fees, and facilitating review for foreclosure avoidance options.” *Id.*

12. Consistent with these purposes, RESPA sets forth certain procedures and requirements mortgage services must follow in responding to borrower inquiries, including where a borrower disputes the accuracy of their payment histories. *See* 12 U.S.C. § 2605(e).

13. With respect to payment disputes, RESPA expressly prohibits a mortgage servicer from furnishing information to credit bureaus during the 60-day period after receiving a borrower’s written dispute relating to the payment. 12 U.S.C. § 2605(e)(3); 12 C.F.R. § 1024.35(i).

14. A servicer that fails to comply with the requirements of § 2605(e) is liable to the borrower for each failure for actual damages and, in the case of a pattern or practice of noncompliance, additional damages of up to \$2,000. 12 U.S.C. § 2605(f).

15. These requirements and the corresponding civil liability were first added to RESPA in 1990 by the Cranston-Gonzalez National Affordable Housing Act as part of a broader effort to set a national housing policy so that every American family would be able to afford a decent home in a suitable environment. *See* Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101–625, §§ 101, 102, 941, 104 Stat 4079 (1990).

16. In responding to the 2007-2008 financial crisis, Congress further amended § 2605 by increasing penalties that servicers incur for violations of § 2605(e) and authorizing the Bureau to prescribe regulations that are appropriate to carry out the consumer protection purposes of RESPA. *See* 2013 Regulation X Amendments, *supra* at 10709.

17. The Bureau adopted 12 C.F.R. § 1024.35, concerning error resolution procedures, which defines the scope of error resolution and expressly prohibits the “furnish[ing of] adverse information to any consumer reporting agency regarding any payment that is the subject of the notice of error.”

18. The remedial nature of RESPA provides a necessary incentive for mortgage servicers to comply with its requirements. *See* 2013 Regulation X Amendments, *supra* at 10701. Given the unique attributes of the servicing market, servicers are incentivized “to look for opportunities to impose fees on borrowers to enhance revenues.” *Id.* The Bureau observed that servicers “earn revenue from fees assessed on borrowers, including fees on late payments, fees for obtaining force-placed insurance, and fees for services, such as responding to telephone inquiries, processing telephone payments, and providing payoff statements.” *Id.* Thus, the imposition of civil liability on servicers for the damage caused by their violations of the requirements of RESPA is essential to achieve the consumer protection purposes of RESPA.

Ditech’s History

19. Ditech was formerly known as Green Tree Servicing (“Green Tree”).

20. In 2015, Green Tree entered into a settlement agreement with the FTC and the Bureau, agreeing to pay \$63 million to resolve charges “that it harmed homeowners with illegal loan servicing and debt collection practices.” Press Release, National Mortgage Servicing Company Will Pay \$63 Million to Settle FTC, CFPB Charges, FTC (Apr. 21, 2015),

<https://www.ftc.gov/news-events/press-releases/2015/04/national-mortgage-servicing-company-will-pay-63-million-settle>.³

21. The allegations in the 2015 regulatory action alleged that “Green Tree misrepresented the amounts consumers owed or the terms of their loans,” including “telling consumers they owed fees they did not owe, or that they had to make higher monthly payments than their mortgage contracts require.” *See* Press Release, FTC, *supra* ¶ 20.

22. “Green Tree also allegedly furnished consumers’ credit information to consumer reporting agencies when it knew, or had reasonable cause to believe, that the information was inaccurate, and failed to correct the information after determining that it was incomplete or inaccurate – often when consumers told Green Tree about it.” *Id.*

Fact Specific to Plaintiff

23. In February of 2012, Plaintiff entered into a Home Affordable Modification Program Trial Period Plan with Bank of America, which was servicing her loan at the time.

24. Plaintiff made all of her payments as instructed and was offered and accepted a permanent modification with Bank of America effective July 1, 2012.

25. Plaintiff made all of her permanent modification payments as agreed to with Bank of America.

26. The servicing of Plaintiff’s mortgage account was later transferred from Bank of America to Ditech, which was known as Green Tree at the time.

27. After the transfer, Plaintiff continued to make her permanent modification payments as required.

³ *See also* Fair, *supra* ¶ 1.

28. On or about September 2, 2015, Plaintiff obtained copies of her credit reports. Her credit reports erroneously reflected that her Ditech account was 180 days past due for the period July 2013 through February 2014. The Ditech account was also incorrectly reported as 30 days late for the period May 2015 through July 2015.

29. The derogatory information reported on her credit reports was erroneous as Plaintiff had been making timely modified payments in accordance with her modification agreement with Bank of America.

30. On or around September 2, 2015, Plaintiff sent written disputes letters to the credit bureaus. With her dispute letter, she provided a copy of her Trial Period Plan with Bank of America, acknowledgements of her permanent modification by Bank of America and Ditech, and proof of her payments.

31. Ditech failed to conduct a reasonable investigation of her dispute and the derogatory information continued to be reported on Plaintiff's credit reports.

32. Plaintiff continued making all monthly payments to Ditech in the amount required by the permanent modification.

33. Plaintiff received a formal notice from Ditech, dated January 17, 2017, indicating that she was in default under the terms of the note and deed of trust.

34. Despite the fact that Plaintiff always paid her mortgage each month, Ditech's notice of default erroneously indicated that Plaintiff was in default by the sum of \$4,366.07 on her loan.

35. In January of 2017, Plaintiff issued follow up dispute letters to the credit bureaus that indicated that Ditech was continuing to furnish derogatory and inaccurate information that was being reported on her credit reports.

36. Nonetheless, the derogatory, inaccurate information remained on her credit report.

37. On March 2, 2017, Plaintiff sent a notice of error to Ditech, which explained that she disputed the arrears that Ditech claimed were due on her loan. In this notice, Plaintiff explained that she received a permanent loan modification as of June 1, 2012, and that she had made all of the payments as instructed. Plaintiff also provided copies of her loan modification and proof of payments to facilitate the dispute.

38. Nonetheless, Ditech continued to furnish information regarding the disputed payments to the credit bureaus during the 60 day period following its receipt of Plaintiff's notice of error in violation of RESPA, 12 U.S.C. § 2605(e)(3) and 12 C.F.R. § 1024.35(i).

39. In particular, a credit report from Experian dated March 17, 2017, showed that Ditech continued to report Plaintiff as 180 days past due from August 2013 through February 2014.

40. On April 3, 2017, Plaintiff sent a notice of error to Ditech, which again disputed the arrears that Ditech claimed were due on her loan. In this notice, Plaintiff explained that she received a permanent loan modification as of June 1, 2012, and that she had made all of the payments as instructed. Plaintiff also provided copies of her loan modification and proof of payments to facilitate the dispute.

41. Yet, Ditech still continued to furnish information regarding the disputed payments to the credit bureaus during the 60 day period following its receipt of Plaintiff's notice of error in violation of RESPA, 12 U.S.C. § 2605(e)(3) and 12 C.F.R. § 1024.35(i).

42. For example, a credit report from Equifax dated May 10, 2017, showed that Ditech continued to report Plaintiff's payment history as past due for the following months: December 2013, January 2014, February 2014, and May 2015 through February 2017.

43. Upon information and belief, this inaccurate and unlawful reporting was caused by Ditech's uniform failure to adopt any policies or procedures to comply with 12 C.F.R. § 1024.35(i).

44. Upon information and belief, Ditech had no policy or procedure to cease the furnishing of adverse information regarding a borrower's payment and status of the account to the credit bureaus during the 60-day period following receipt of a notice of error concerning the disputed payment.

COUNT ONE:
VIOLATION OF RESPA, 12 U.S.C. § 2605(e)(3); 12 C.F.R. § 1024.35(i)
(CLASS CLAIM)

45. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

46. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action for herself and on behalf of a Class initially defined as,

All persons residing in the United States (1) who have a federally related mortgage with Ditech; (2) who submitted a notice to Ditech asserting an error regarding a payment that included the name of the borrower and the account number; and (3) about whom Ditech subsequently furnished adverse information regarding the disputed payment to a consumer reporting agency within 60 days of receiving the borrower's notice of error within three years prior to the filing of this case.

Plaintiff is a member of the Class.

47. **Numerosity. Fed. R. Civ. P. 23(a)(1).** Upon information and belief, Plaintiff alleges that the class members are so numerous that joinder of all is impractical. The names and addresses of the class members are identifiable through Ditech's internal business records, and the class members may be notified of the pendency of this action by published and/or mailed notice.

48. **Predominance of Common Questions of Law and Fact. Fed. R. Civ. P. 23(a)(2).** Common questions of law and fact exist as to all members of the putative class, and there are no factual or legal issues that differ between the putative class members. These common questions

predominate over the questions affecting only individual class members. The common questions include (1) whether Ditech's furnishing of adverse information concerning disputed payments is a part of a pattern or practice of noncompliance and (2) whether additional damages are appropriate in light of such a pattern or practice of noncompliance.

49. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiff's claims are typical of the claims of each putative class member. Plaintiff is entitled to relief under the same causes of action as the other members of the putative class. Additionally, Plaintiff's claims are based on the same facts and legal theories as each of the class members.

50. **Adequacy of Representation. Fed. R. Civ. P. 23(a)(4).** Plaintiff is an adequate representative of the putative class because her interests coincide with, and are not antagonistic to, the interests of the other putative class members. Plaintiff has retained counsel competent and experienced in such litigation and intends, with her counsel, to continue to prosecute the action vigorously. Plaintiff and her counsel will fairly and adequately protect the interests of the members of the class. Neither Plaintiff nor her counsel have any interest that might conflict with their vigorous pursuit of this action.

51. **Superiority. Fed. R. Civ. P. 23(b)(3).** Questions of law and fact common to the class members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The damages sought by each member are such that individual prosecution would prove burdensome and expensive. It would be virtually impossible for members of the class individually to effectively redress the wrongs done to them. Even if the members of the class themselves could afford such individual litigation, it would be an unnecessary burden on the courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay

and expense to all parties and to the court system presented by the legal and factual issues raised by Ditech's conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in a case.

52. Plaintiff submitted a written notice of error to Ditech on March 2 and April 3, 2017, disputing the arrears Ditech claimed to have past due on her account and indicating that her mortgage should not be reported as past due.

53. Ditech received Plaintiff's notices of error, which included her full name and account number.

54. Nonetheless, Ditech continued to furnish information regarding the disputed payments to the credit bureaus during the 60 day period following its receipt of Plaintiff's notice of error in violation of RESPA, 12 U.S.C. § 2605(e)(3) and 12 C.F.R. § 1024.35(i).

55. Because of Ditech's conduct, Plaintiff suffered concrete and particularized harm including damage to her creditworthiness and credit scores, damage to reputation, aggravation, and other emotional distress.

56. As a result of Ditech's violations of RESPA, 12 U.S.C. § 2605(e)(3) and 12 C.F.R. § 1024.35(i) Plaintiff and the putative class members are entitled to recover "any actual damages to each of the borrowers in the class," "any additional damages" "in an amount not greater than \$2,000 for each member of the class," their attorneys' fees, and costs. 12 U.S.C. § 2605(f).

COUNT TWO:
VIOLATION OF FCRA, 15 U.S.C. § 1681s-2(b)(1)(A)
(INDIVIDUAL CLAIM)

57. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

58. On one or more occasion within the past two and a half years, by example only and without limitation, Ditech violated 15 U.S.C. § 1681s-2(b)(1)(A) by failing to fully and properly investigate Plaintiff's disputes.

59. When Plaintiff disputed her account with the credit bureaus, Ditech used a dispute system named, "e-Oscar," which has been adopted by the consumer reporting agencies and their furnisher-customers such as Ditech. E-Oscar is an automated system, and the procedures used by the credit reporting agencies are systemic and uniform.

60. When the credit bureaus receive consumer disputes, they (usually via an outsourced vendor) translate each dispute into an automated consumer dispute verification ("ACDV") form.

61. Upon information and belief, the ACDV form is the method by which Ditech has elected to receive consumer disputes pursuant to 15 U.S.C. § 1681i(a).

62. Upon information and belief, Plaintiff alleges that the credit bureaus forwarded Plaintiff's dispute via an ACDV to Ditech.

63. Ditech understood the nature of Plaintiff's disputes when it received the ACDV form.

64. Upon information and belief, when Ditech received the ACDV form containing Plaintiff's dispute, Ditech followed a standard and systemically unlawful process where it only reviews its own internal computer screen for the account and repeats back the same information to the ACDV system that was previously reported to the credit reporting agency.

65. Upon information and belief, when Ditech receives a consumer dispute through e-Oscar, it does not conduct a substantive review of any sort to determine whether or not the information already in their computer system is itself accurate.

66. As a result of Ditech's violations of 15 U.S.C. § 1681s-2(b)(1)(A), Plaintiff suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation, and other emotional distress.

67. Ditech's conduct in violating § 1681s-2(b)(1)(A) was willful, rendering it liable to Plaintiff for punitive damages in an amount to be determined pursuant to 15 U.S.C. § 1681n. In the alternative, Ditech was negligent, entitling Plaintiff to recovery under 15 U.S.C. §1681o.

68. Plaintiff is entitled to recover actual damages, statutory damages, costs, and attorney's fees from Ditech in an amount to be determined pursuant to 15 U.S.C. §§ 1681n and 1681o.

COUNT THREE:
VIOLATION OF FCRA, 15 U.S.C. § 1681s-2(b)(1)(B)
(INDIVIDUAL CLAIM)

69. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

70. On one or more occasion within the past two years, by example only and without limitation, Ditech violated 15 U.S.C. § 1681s-2(b)(1)(B) by failing to review all relevant information provided by the credit bureaus.

71. As Plaintiff detailed in the previous Count, Ditech has elected to use the e-Oscar system for its FCRA disputes received through the consumer reporting agencies.

72. Ditech was aware of the meaning of the several dispute codes used by the consumer reporting agencies in e-Oscar.

73. Ditech does not contend that the ACDV system is an inadequate means to receive FCRA disputes through the consumer reporting agencies.

74. Ditech understood Plaintiff's disputes and that Plaintiff claimed the information was inaccurate.

75. As a result of Ditech's violations of 15 U.S.C. § 1681s-2(b)(1)(B), Plaintiff suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation, and other emotional distress.

76. Ditech's violations of 15 U.S.C. § 1681s-2(b)(1)(B) were willful, rendering it liable for punitive damages in an amount to be determined pursuant to 15 U.S.C. § 1681n. In the alternative, Ditech was negligent, entitling Plaintiff to recover under 15 U.S.C. § 1681o.

77. Plaintiff is entitled to recover actual damages, statutory damages, costs, and attorney's fees from Ditech in an amount to be determined by the Court pursuant to 15 U.S.C. §§ 1681n and 1681o.

COUNT FOUR:
VIOLATION OF FCRA, 15 U.S.C. § 1681s-2(b)(1)(C) and (D)
(INDIVIDUAL CLAIM)

78. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

79. On one or more occasions within the past two years, by example and without limitation, Ditech violated 15 U.S.C. § 1681s-2(b)(1)(C) and (D) by publishing its representations within Plaintiff's credit files without also including a notation that these accounts were disputed and by failing to correctly report results of an accurate investigation to each credit reporting agency.

80. Specifically, Ditech failed to add the "XB" code to the CCC (Compliance Condition Code) field in the ACDV dispute forms when it responded to the credit reporting agencies, which would have indicated that the account was disputed.

81. Upon information and belief, Plaintiff alleges that Ditech rarely, if ever, added the XB code or other notation that an account was disputed when it responded to ACDV forms.

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