

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN  
AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2014CA007769 AH

MICHELLE SMITH as PERSONAL  
REPRESENTATIVE of the ESTATE  
of FELTON JACK SMITH, JR.,

Plaintiff,

vs.

DITECH FINANCIAL LLC f/k/a GREEN TREE  
SERVICING, LLC, a Delaware Corporation,

Defendant.

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**AMENDED COMPLAINT**

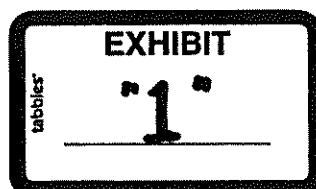
Plaintiff, MICHELLE SMITH as PERSONAL REPRESENTATIVE of the ESTATE OF FELTON JACK SMITH, JR., on behalf of the Estate, by and through her undersigned counsel, hereby sues Defendant, DITECH FINANCIAL LLC f/k/a GREEN TREE SERVICING LLC, and all facts being extant and material hereto alleges:

1. This is a Complaint for damages in excess of Fifteen Thousand (\$15,000.00) Dollars.

2. Plaintiff, MICHELLE SMITH as PERSONAL REPRESENTATIVE of the ESTATE OF FELTON JACK SMITH, JR. (hereinafter "SMITH"), is, in all respects, sui juris.

3. The Defendant, DITECH FINANCIAL LLC f/k/a GREEN TREE SERVICING LLC (hereinafter "DITECH"), is a Delaware corporation authorized to do business and is doing business in Palm Beach County, Florida.

4. Prior to becoming DITECH FINANCIAL LLC, Ditech Mortgage Corporation and Green Tree Servicing LLC were separate subsidiaries of their well-known parent company, Walter Investment Management Corporation, which is traded as "WAC" on the New York Stock



Exchange. However, in August of 2015, Green Tree Servicing LLC merged with Ditech Mortgage Corporation to form a new company, Ditech Financial LLC d/b/a DITECH.

### **General Allegations Regarding Green Tree**

#### **Green Tree's Business Practices**

5. Green Tree Servicing LLC ("Green Tree") and DITECH are mortgage servicing companies, which contract with mortgage lenders who initially extend mortgages to consumers. As the servicer, Green Tree and DITECH are responsible for, among other things, creating and sending monthly statements to borrowers, collecting payments, processing payments, ensuring that the mortgaged property is insured, and processing property tax payments. These companies market themselves to lenders as high-touch servicers and collectors.

6. Prior to becoming DITECH, Green Tree used extremely aggressive collection tactics to rapidly grow its servicing business. Consumers were especially vulnerable to Green Tree's tactics because they believed they were locked into a relationship with the company, and in order to remain in their homes, consumers felt they had to deal with the company for as long as it serviced their loans, regardless of how they were treated by Green Tree or its company employees.

7. Prior to the above-described merger, Green Tree was a prominent servicer of "credit-sensitive" residential mortgage and manufactured-housing loans. Before 2008, Green Tree's operations primarily consisted of originating and servicing loans for manufactured housing. However, beginning in 2008, while Green Tree continued to service manufactured-housing loans, it shifted its focus to servicing residential loans, and it acquired servicing rights to large portfolios of such loans, expanding the portfolio of loans it serviced at a rapid pace.

8. Green Tree's servicing portfolio included a substantial number of mortgages for which consumers have difficulty making payments. Many of the loans that Green Tree serviced were in default at the time that Green Tree acquired them, and the overall delinquency rate for

Green Tree loans was high compared to rates for other servicers. The overall delinquency rate for Green Tree's first lien third-party servicing portfolio at the end of 2012 was 15.68%.

9. After Green Tree acquired servicing rights to a portfolio of loans, it gathered certain information about those loans from the prior servicer. The data gathered is commonly referred to as the "standard servicing data extract."

#### **Green Tree's Loan Servicing and Collection Practices**

10. In its efforts to acquire more servicing business, Green Tree marketed itself as a "high-touch servicer," meaning that it placed collection calls to consumers frequently in an effort to get them to make timely payments on their loans. It also used "behavioral risk scoring," which analyzed consumers' delinquency and payment history, to predict the likelihood that consumers would default on their loans and to determine when and how often to call consumers.

11. Since at least 2008, Green Tree's collections department had been charged with communicating with consumers who have missed their payment due date by at least one day, had not paid before a late fee was assessed, or were already in default on their mortgage. Green Tree's collections department separates collectors into "front-end" and "back-end" collectors. Front-end collectors call consumers who are between one and twenty-nine days late with their mortgage payments. Back-end collectors generally call consumers who are thirty or more days late in making their payments. Back-end collectors typically call consumers more frequently and exert more pressure on consumers than front-end collectors.

12. Although consumers did not have contact with back-end collectors unless and until they were late on their loans, Green Tree assigned every consumer a back-end collector (which Green Tree also called a "single point of contact" or "SPOC") as soon as Green Tree acquired the servicing rights to the consumer's loan. Once consumers were thirty days late on their loans (and sometimes earlier if Green Tree decided that an aggressive approach was needed), a consumer interfaced with Green Tree mainly, if not exclusively, through the assigned back-end collector.

13. Indeed, consumers received many collection calls from their assigned back-end collector. In addition, whenever consumers who were delinquent by 30 days or more called Green Tree's 800 number with questions – including questions about their account status, fees, loss mitigation options, or escrow accounts – they were routed automatically to their assigned back-end collector, or to another available back-end collector if their assigned collector was unavailable.

14. As a result of Green Tree's routing system for handling incoming calls, consumers were often unknowingly routed to a collector instead of a customer service representative. In fact, many consumers' only option was to speak with collectors when they have questions or problems with their accounts. Even consumers who had reached customer service representatives were often first asked to schedule a payment before they had the option to receive assistance if they were behind on their mortgage payments.

#### **Green Tree's False or Unsubstantiated Claims**

15. A large number of loans Green Tree acquired from other servicers have contained inaccurate data regarding the status of the loan, fees owed, and corporate advances.

16. In some instances, Green Tree knew or had reason to believe that specific portfolios of loans contained unreliable or missing data about the consumers' loans because, *inter alia*, in many instances, consumers disputed or attempted to dispute the amounts that Green Tree claimed the consumer owed or other aspects of the loan terms. However, in many of these instances, Green Tree refused to consider the disputes.

17. Green Tree's refusal to consider these disputes was troublesome because Green Tree had made false representations about the amounts consumers allegedly owed or the terms of their loans. For the reasons described above, in many instances, Green Tree knew or should have known that the amounts it claimed consumers owed or the loan terms it imposed upon consumers were inaccurate.

18. Nevertheless, Green Tree pursued its collection practices.

### **Green Tree's Unlawful Collection Practices**

19. Prior to the aforementioned merger with DITECH, Green Tree engaged in debt collection activities throughout Florida, and it regularly attempted to collect debts by placing telephone calls to consumers as well as family, friends and/or colleagues of consumers.

20. In numerous instances in which a debt was allegedly already in default at the time Green Tree acquired it, Green Tree called third parties more than once to obtain location information for consumers, even though: (1) the third parties did not request additional calls, and (2) Green Tree had no reason to believe that the information originally obtained from the third parties was inaccurate or incomplete.

21. In numerous instances in which a debt was allegedly already in default at the time Green Tree acquired it, Green Tree revealed debts to third parties, such as family members, employers, co-workers, tenants, and neighbors of consumers. Sometimes, Green Tree encouraged third parties to tell the consumers to get in touch with Green Tree and set up a payment, or encouraged the third parties to help consumers make payments themselves.

22. In numerous instances in which the debt was allegedly already in default at the time Green Tree acquired it, Green Tree called consumers and consumers' family and friends repeatedly with the intent to annoy, harass, or abuse. For example, Green Tree collectors frequently: (1) called consumers multiple times per day, every day, week after week; (2) called consumers and consumers' family and friends over-and-over, despite having already spoken to the consumers or consumers' family or friends earlier that day or week; (3) called consumers and consumers' family and friends again as soon as a call was terminated; and (4) left multiple voicemail messages for consumers and consumers' family and friends in the same day.

23. Green Tree would even make collection calls to law firms, which Green Tree knew were representing consumers with regard to the actions Green Tree was taking.

24. In numerous instances in which a debt was allegedly already in default at the time Green Tree acquired it, Green Tree used obscene, profane, or abusive language in its collection calls, even yelling and cursing at consumers.

25. In numerous instances, Green Tree would represent that nonpayment of consumers' mortgages would result in their arrest or imprisonment, or the seizure, garnishment, attachment, or sale of property or wages, when in fact such actions were not lawful or Green Tree did not intend to take such actions. Green Tree often represented that it would foreclose upon consumers' homes if consumers did not make their payments over the phone immediately. In fact, Green Tree often made such representations even though (1) it was long before it was lawful to initiate foreclosure proceedings; (2) the company lacked authority to arrest or imprison consumers, or (3) it was not company policy to seek a garnishment of consumers' wages.

26. In numerous instances, while attempting to collect a payment, Green Tree pressured consumers to make payments using Speedpay, a payment method that charges consumers a \$12 convenience fee per transaction. Green Tree often represented to consumers, either expressly or by implication, that Speedpay was the only available payment method, or that consumers must use Speedpay in order to avoid incurring a late fee. In fact, Green Tree accepted several other payment methods, some of which did not charge consumers a convenience fee. For example, Green Tree accepted checks and online payments without assessing consumers a convenience fee. In many instances, consumers could have used these other payment methods to make timely payments and avoid a late fee.

#### **Green Tree's Problems with Handling Escrow Accounts**

27. As part of its work as a mortgage servicer, Green Tree administered consumers' escrow accounts. For consumers whose loans include escrow accounts, Green Tree calculated the annual amount necessary to cover required property tax and insurance payment, as applicable, divided that sum into 12 installments, and included the resulting amount in consumers'

required monthly payment. Green Tree generally included an additional amount as a “cushion” to prevent a shortfall in the escrow account.

28. When Green Tree received payments from consumers with escrow accounts, it was to disburse the principal and interest portion of the payment to the appropriate entity. The remaining amount was to be held in a segregated account to be disbursed to the appropriate taxing authority or insurance company when the tax and insurance payments came due.

29. However, in numerous instances, Green Tree failed to timely pay property taxes and/or insurance payments for consumers. Green Tree's failure to make timely tax payments and/or insurance payments jeopardized consumers' continued home ownership.

30. Moreover, in many instances when taking over servicing responsibilities for portfolio of loans acquired, Green Tree received inaccurate data regarding the status of the consumers' escrow account as well as incomplete paperwork from the loan origination to know whether the consumer or Green Tree was responsible for making insurance payments from the consumers' escrow account.

#### **Deceptive Acts and Practices Regarding Account Terms and Status**

31. In numerous instances in the course of servicing mortgage loans and collecting debts from consumers, Green Tree represented to consumers, directly or indirectly, expressly or by implication, that the consumers' mortgage loan had certain unpaid balances, payment due dates, interest rates, monthly payment amounts, delinquency statuses, and unpaid fees or other amounts due.

32. In truth and in fact, in numerous instances, the material representations set forth in Paragraph 31 were false or were not substantiated at the time the representations were made, including but not limited to representations made where: (1) Green Tree had knowledge or reason to believe that a specific portfolio contained unreliable data but failed to obtain information substantiating the accuracy of the data prior to collecting or (2) consumers disputed or attempted

to dispute the validity or accuracy of the amount of debt and Green Tree failed to review information substantiating the amount of debt, or failed to consider the consumers' disputes, prior to continuing collection efforts.

33. In many of these instances, Green Tree did not even obtain complete paperwork from the prior Note and/or Mortgage holders; thus, Green Tree was unable to substantiate the alleged unpaid balances, payment due dates, interest rates, monthly payment amounts, delinquency statuses, and unpaid fees or other amounts allegedly due. Instead, Green Tree relied on "estimates", with no substantiating documentation to back up the "estimates".

**General Allegations Regarding SMITH's  
Note, Mortgage and Claims against Green Tree n/k/a DITECH**

34. On August 27, 2007, SMITH and National City Mortgage, a division of National City Bank, executed a note (the "Note") for certain real property in West Palm Beach, Florida wherein SMITH agreed to pay National City Mortgage \$151,200.00 within thirty (30) years, with a fixed interest rate of 7.25%. **(Exhibit "A")**

35. Also, on August 27, 2007, SMITH and National City Mortgage executed a Mortgage (the "Mortgage"), which was publicly recorded on September 17, 2007 in Palm Beach County, Florida in Official Records Book 22116, Pages 1236-1255. The Mortgage described the real property as follows:

Unit No. 117, LAKESHORE CLUB CONDOMINIUM, a condominium according to the Declaration of Condominium of thereof, as recorded in Official Records Book 21550, at Page 388 of the Public Records of Palm Beach County, Florida together with an undivided interest in the common elements appurtenant thereto. [The "Property"]

**(Exhibit "B")**

36. On September 21, 2007, only four (4) days after the Mortgage was recorded, National City Mortgage, a division of National City Bank "sol[d], transfer[ed], set[ ] over, and



assign[ed] to: National City Mortgage Co., a subsidiary of National City Bank” the Note by way of an “ASSIGNMENT OF DEED OF TRUST AND PROMISSORY NOTE”. (**Exhibit “C”**)

37. Thereafter, on October 11, 2007, National City Mortgage Co. “sol[d], transfer[ed], set[ ] over, and assign[ed] to: FANNIE MAE” the Note and Mortgage by way of an “ASSIGNMENT OF MORTGAGE AND PROMISSORY NOTE”. (**Exhibit “D”**)

38. Indeed, as of the filing of this Amended Complaint, Fannie Mae’s website conveys that it currently owns the subject Property and that the “Mortgage Company” is “DITECH FINANCIAL LLC”. (**Exhibit “E”**)

39. Yet, after PNC Financial Services acquired National City Mortgage, in a letter dated October 1, 2009, National City Mortgage advised SMITH that, effective November 7, 2009, National City Mortgage’s name would become PNC Mortgage, a division of PNC Bank, National Association (“PNC Mortgage”). (**Exhibit “F”**)

40. In a letter dated October 15, 2009, National City Mortgage advised SMITH that the conversion of his loan to Green Tree Servicing LLC would become effective on November 2, 2009. SMITH was assured in this letter that the “servicing conversion [would] not affect the original terms or conditions of [his] mortgage loan, only those terms directly related to servicing.” SMITH was also advised that “[a]ll payments made November 2, 2009 and after should be made payable to Green Tree[.]” (**Exhibit “G”**)

41. However, as noted above, National City Mortgage did not own SMITH’s Note or Mortgage as of September 21, 2007; therefore the information in the aforementioned October 1 and 15, 2009 letters was inaccurate and deceptive.

42. Moreover and as illustrated above through Green Tree’s general business practices, when Green Tree purportedly began serving SMITH’s Mortgage, Green Tree relied on inaccurate data regarding the status of the loan and escrow account, which information and amounts were provided to Green Tree as only estimates.

43. Similarly and consistent with Green Tree's business practices as noted herein, Green Tree improperly handled SMITH's escrow account, failed to timely pay SMITH's insurance payments, and did not obtain a complete file to even know what contractual responsibilities it had in that regard.

44. To be sure, prior to Green Tree's involvement with SMITH's Note and/or Mortgage, SMITH had never missed a payment with regard to the Note and Mortgage, and National City Mortgage, National City Mortgage Co. nor Fannie Mae had ever put SMITH on notice that he was past due for any amount or payment(s) whatsoever.

45. Yet, in a letter dated November 13, 2009 – only eleven (11) days after Green Tree had been allegedly servicing SMITH'S Mortgage – Green Tree sent SMITH a "NOTICE OF DEFAULT AND RIGHT TO CURE DEFAULT" letter stating that SMITH was \$3,148.24 in default for failing to "submit [his] monthly payments due 10/1/2009 through 11/02/2009". (**Exhibit "H"**)

46. However, during the course of discovery, DITECH produced a payment history, and although that payment history is only "an estimate based on history trans[actions]" with no substantiating documentation to support the "estimate", DITECH's production shows a "10/01/09" transaction date from a "9/30/09" cash payment in the amount of \$1,470.98. Similarly, DITECH's production shows an "11/30/09" transaction date from an "11/02/09" cash payment in the amount of \$1,470.98.<sup>1</sup>

47. Moreover, even if Green Tree's inaccurate accusation that SMITH failed to submit monthly payments due 10/1/2009 through 11/02/2009 was accepted as true, the sum of those two (2) payments would be only \$2,941.96. Although unsubstantiated, DITECH's production reflects assessments of \$51.57 for late fees; thus, even if Green Tree's false representation included inappropriate assessments of late fees for October and November of 2009, the total sum due

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<sup>1</sup> On Saturday, October 31, 2009, SMITH made his monthly Mortgage payment at the National City branch located at 4520 Broadway, West Palm Beach, FL 33407; however, National City did not process the payment until Monday, November 2, 2009.

would have been only \$3,045.10 (or \$2,941.96 in monthly payments plus \$103.14 in late fee assessments), not \$3,148.24, which amount Green Tree incorrectly alleged SMITH was in default.

48. Nevertheless, in a second letter dated November 18, 2009 – only sixteen (16) days into Green Tree’s alleged servicing of SMITH’s Mortgage, Green Tree advised SMITH that it had received a partial payment of \$1,470.98 on “11/17/09”, but if Green Tree did not “receive \$1677.26 before the date set forth in the Notice [sent on November 13, 2009]” SMITH would not satisfy the alleged past due amount of \$3,148.24, therefore, it would proceed with the foreclosure process. **(Exhibits “I”)**

49. However, again and while unsupported by documentation, DITECH’s own production during discovery of this case shows that Green Tree **reversed** SMITH’s November, 2009 payment on November 17, 2009, it did not “receive” payment on that date. As a result, Green Tree’s November 18, 2009 letter does not even comport with DITECH’s own produced records.

50. Further, both the November 13 and 18, 2009 letters advised at the bottom that: *“This is an attempt to collect a debt and any information obtained will be used for that purpose.”* *(Emphasis in original.)* **(Exhibits “H” and “I”).**

51. Additionally, on November 21, 2009, an inspection of SMITH’s property was completed, per an inspection request by Green Tree on November 16, 2009. The Inspection Result conveys Fannie Mae as the loan type and, despite the fact that SMITH had never missed a payment and that Green Tree had allegedly been servicing SMITH’S Mortgage for only two (2) weeks, the Inspection Result noted that SMITH had already been assigned to the “FORECLOSURE” department. **(Exhibit “J”)**

52. On or about December 8, 2009, Green Tree sent another letter to SMITH. This time Green Tree requested evidence of insurance coverage, notwithstanding the fact that National City had been in continuous possession of documentation confirming that SMITH’s Property was

always covered since he entered into the Note and Mortgage with National City more than two (2) years earlier. **(Exhibit “K”)**

53. Regardless, SMITH asked his agent to send Green Tree proof of insurance and personally complied by repeatedly faxing Green Tree the evidence of his insurance coverage. However, Green Tree’s internal policies and procedures did not permit Green Tree employees to accept proof of insurance from consumers; instead, Green Tree would only accept proof of insurance from the consumer’s insurance agent. As a result and pursuant to Green Tree’s policy, SMITH had no way to personally comply with Green Tree’s request for proof of insurance.

54. Further, when SMITH called to inquire as to whether Green Tree received the proof of insurance from him and/or his agent, he was transferred to a third party vendor; however, Green Tree’s policies and procedures specifically directed Green Tree employees to NOT advise consumers, like SMITH, that they were being directed to a third party vendor. Consequently, SMITH was unaware that he was communicating about these issues with an individual not even employed by Green Tree.

55. One (1) week after Green Tree sent its December 8, 2009 letter, Green Tree furthered its concerted effort to foreclose by ordering an appraisal on SMITH’s Property. To wit, on December 15, 2009, Deborah Mengloi, on behalf of Pro Trek Services, completed an appraisal of SMITH’s property pursuant to Green Tree’s request. **(Exhibit “L”)** Green Tree’s action to order the aforementioned inspection result and appraisal – only weeks after it began servicing SMITH’s Mortgage – was part of Green Tree’s intent, from the beginning, to file a foreclosure complaint on SMITH’s Property, regardless of merit, as soon as it allegedly began servicing SMITH’s Mortgage.

56. Thereafter, in a letter dated December 23, 2009, Green Tree advised SMITH that if it did “not receive evidence that [SMITH had] purchased acceptable insurance within forty-five (45) days of the date of this letter, we may exercise our right to obtain insurance coverage . . .” **(Exhibit “M”)**

57. Despite the fact that SMITH'S insurance premiums should have been renewed and paid from the escrow payments SMITH had already made, SMITH purchased a new policy, and the application for that policy was signed by SMITH on December 23, 2009, and SMITH personally submitted payment for that policy the same day. **(Composite Exhibit "N")**

58. Although that new policy was delivered to Green Tree, on or about February 9, 2010, Green Tree sent another letter to SMITH notifying him that it was force placing insurance on the Property because its "records show that we do not currently have evidence of property insurance on the collateral." **(Exhibit "O")**

59. SMITH later learned that American Reliable Insurance Company – the carrier SMITH was wrongfully forced placed with – cancelled SMITH'S forced placed policy as of January 22, 2010 (eighteen (18) days before the February 9, 2010 letter), listing "OTHER INSURANCE" as the "REASON FOR CANCELLATION". **(Exhibit "P")**

60. Green Tree's wrongful act of force placing insurance on SMITH'S property resulted in thousands of dollars of meritless charges to SMITH'S Mortgage and/or Note.

61. Furthermore, on or about March 1, 2010, PNC Bank, National Association purported to assign SMITH's Mortgage to Green Tree and even publicly recorded that Assignment on March 3, 2010 in Palm Beach County, Florida in Official Records Book 23720, Page 1556. **(Exhibit "Q")**

62. However, that Assignment was invalid because, as illustrated above, PNC Mortgage did not own the Note or Mortgage as of September 21, 2007.

63. Also, the supposed Assignment of Mortgage was signed by the well-known and recognized "robo-signor" Vilma Castro, as Vice President of PNC Bank, National Association successor by Merger from National City Mortgage, a division of National City Bank, and it was notarized by the well-known and recognized "robo-signor" Christopher Jones. Finally, the document was prepared by Jessica Fretwell, another "robo-signor". Indeed, all three (3) of these

individuals worked for National Title Clearing, and these individuals and their business came under severe scrutiny following the deposition of Ericka Lance, Senior President of Administration for National Title Clearing in a 4th Judicial Circuit, Duval County, Florida case, styled *Bayview Loans Services, LLC v. Corey*, 2009CA016234MA.

64. However, Green Tree overlooked these significant defects in title, and on July 1, 2010, GREEN TREE filed a Notice of Lis Pendens regarding SMITH and the Property and also filed a foreclosure action against SMITH; the case style was GREEN TREE SERVICING, LLC v. FELTON SMITH, JR., et. al., Case No. 50 2010 CA017237 XXXXMB, in the Circuit Court for Palm Beach County, Florida (the "Foreclosure Lawsuit").

65. The Foreclosure Lawsuit was brought by SMITH, HIATT & DIAZ, P.A. on behalf of Green Tree.

66. Upon information and belief, SMITH, HIATT & DIAZ, P.A. did nothing to confirm the accuracy of the allegations within the Foreclosure Lawsuit; instead, they completely relied on the accuracy of Green Tree's records. Likewise, upon information and belief, SMITH, HIATT & DIAZ, P.A. would only consider issues of inaccuracies within the Foreclosure Lawsuit (or any foreclosure claim brought on behalf of Green Tree) when and if the foreclosure defendant, here SMITH, challenged the allegations.

67. If a consumer, like SMITH, did not challenge the allegations, SMITH, HIATT & DIAZ would prosecute the action to final judgment, on behalf of Green Tree, regardless of whether Green Tree's records were accurate or whether the allegations within a foreclosure complaint could be substantiated.

68. Also, upon information and belief, SMITH, HIATT & DIAZ's representation of Green Tree always stemmed from a scenario where Fannie Mae allegedly owed the Note and/or Mortgage, and Green Tree was the alleged contracted servicer for Fannie Mae. Thus, SMITH, HIATT & DIAZ, P.A., on behalf of Green Tree, knew or should have known that the "robo" signed,

March 1, 2010, PNC Bank, National Association purported assignment of SMITH's Mortgage to Green Tree was invalid and inaccurate.

69. Despite all of these issues, including American Reliable Insurance Company's cancellation of the forced placed insurance policy due to "OTHER INSURANCE", on or about July 22, 2010, GREEN TREE sent another letter to SMITH, again stating that it did not have evidence of property insurance for SMITH'S Property. (**Exhibit "R"**)

70. In response, on September 7, 9 and 22, 2010, SMITH again faxed documentation to GREEN TREE'S insurance department. (**Exhibit "S"**)

71. Thereafter, on November 3, 2010, Green Tree filed a Notice of Dismissal Without Prejudice and Discharge of Lis Pendens with regard to the Foreclosure Lawsuit. (**Composite Exhibit "T"**)

72. In the Final Disposition Form, SMITH, HIATT & DIAZ, P.A., on behalf of Green Tree, signed as the "PREVAILING PARTY", which it clearly was not.

73. Green Tree then charged its attorneys' fees and litigation costs from the Foreclosure Lawsuit to SMITH's Mortgage and/or Note, resulting in thousands of dollars of fees and assessments being wrongfully charged to SMITH'S Mortgage and/or Note, and SMITH's account was never properly credited. Instead, Green Tree continued to send debt collection letters to SMITH and SMITH's counsel seeking payment of these unauthorized charges.<sup>2</sup> (**Exhibit "U"**)

74. Finally and as noted through Green Tree's general business practices, during the timeframe identified herein, through the filing of SMITH'S initial Complaint, GREEN TREE called various individuals, including but not limited to SMITH'S family members, threatening repercussions and legal action if SMITH did not pay all fees, debts, attorneys' fees and costs as well as other charges, including, but not limited to, late fees, Speedpay fees and corporate advances that GREEN TREE stated were due and owing on SMITH's Note.

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<sup>2</sup> In at least one (1) instance, Green Tree charged SMITH \$190.00 for attorneys' fees when the invoice reflecting the \$190.00 charge shows "0.00 hr" of work performed. (**Composite Exhibit "V"**)

75. As a result, SMITH has been forced to retain the services of the undersigned counsel and has agreed to pay them reasonable attorneys' fees and costs.

76. All conditions precedent to bringing this action have occurred, been performed or are excused.

### **COUNT I – EQUITABLE ACCOUNTING**

77. Plaintiff incorporates paragraphs 1-76 by reference.

78. The subject Note and/or Mortgage that Green Tree is servicing, involves extensive and complicated transactions.

79. It is not clear that the remedy at law is as full, adequate and expeditious as it is in equity.

80. Further, Green Tree's produced discovery, to date, shows numerous inconsistencies with regard to alleged payments made and amounts due.

81. For example, in numerous correspondences to SMITH, Green Tree represents that SMITH's account has a late fee balance, corporate advance balance, various amounts of unapplied funds and varying figures for total amounts allegedly past due. However, produced monthly statements, which reflect the same timeframe as these just noted correspondences reflect either no late fee and/or corporate advance balance and show different amounts allegedly past due.

82. Moreover, Green Tree has only produced "estimate[s]" of SMITH's monthly payments from before Green Tree began servicing SMITH's mortgage, and Green Tree has not produced any monthly statements or documentation to substantiate the "estimate[s]" reflected in the spreadsheets it produced through discovery.

83. Thus, SMITH is unsure what amount Green Tree claims is due and owing on the Note and/or Mortgage.



84. Consequently, an equitable accounting should be conducted so that SMITH can determine what economic damages, *inter alia*, have been caused by Green Tree.

WHEREFORE, Plaintiff, MICHELLE SMITH as PERSONAL REPRESENTATIVE of the ESTATE OF FELTON JACK SMITH, JR., prays that an accounting be had and taken under the direction of this Court to determine what is due and owing as it relates to the subject Mortgage and SMITH's Note, which is being serviced by the Defendant, DITECH FINANCIAL LLC f/k/a GREEN TREE SERVICING LLC.

**COUNT II – VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, FLORIDA STATUTES, §§ 501.201, et seq.**

85. Plaintiff incorporates paragraphs 1-76 by reference.

86. At all times relevant hereto, Plaintiff, SMITH, was a consumer as defined in Fla. Stat. §501.203(7).

87. At all relevant times, Defendant, DITECH, was engaged in trade or commerce as defined by Fla. Stat. § 501.203(8).

88. Defendant, DITECH, during the course of servicing SMITH's Mortgage and while making debt collection attempts on SMITH committed a deceptive, misleading, and unfair trade practice by, *inter alia*: (1) sending SMITH written correspondences that he was past due on his Mortgage payment(s) when DITECH's own records did not support that representation; (2) directly or indirectly, expressly or by implication, representing to SMITH, SMITH's family and SMITH's friends that nonpayment of SMITH's Mortgage loan would result in the arrest or imprisonment of SMITH or the seizure or sale of SMITH's property; (3) directly or indirectly, expressly or by implication, representing to SMITH that a payment method that entails a convenience fee was the only payment method available or the only payment method that SMITH could use to make timely payments; (4) calling third parties at their place of employment after being advised by the third parties that such calls were not permitted by their employer; and, (5) communicating with third parties' employers and co-workers without SMITH's knowledge or consent, disclosing the

existence and, sometimes, the amount of SMITH's alleged debts to those employers and co-workers of those third parties.

89. However, in truth and in fact, in these instances: (1) SMITH was not past due on his monthly payment(s); (2) nonpayment of SMITH's Mortgage loan would not have resulted in his arrest or imprisonment, or seizure or sale of SMITH's property; (3) SMITH could have made his payments in alternative ways that would not have entailed a convenience fee; and, (4) Green Tree n/k/a DITECH's actions caused or were likely to cause substantial injury to SMITH that SMITH could not reasonably avoid himself, which is not outweighed by countervailing benefits to consumers, like SMITH, or other competition.

90. The damages suffered by SMITH were directly and proximately caused by Defendant's deceptive, misleading, and unfair trade practices, as more fully described herein.

91. Moreover, Defendant's practice and course of conduct, as alleged herein was likely to mislead (and did mislead) SMITH, whom was acting reasonably under the circumstances, causing SMITH to rely to his detriment on Green Tree's n/k/a DITECH's representations.

92. Finally, as thoroughly discussed above, Defendant engaged in unfair practices that offends established public policy, and was one that is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers like SMITH.

93. As a direct and proximate result of such wrongful conduct, SMITH has sustained reasonably foreseeable, consequential and incidental damages, including, but not limited to:

- a) Increased costs on the Note;
- b) Loss of use of money; and
- c) Increased expenditures

94. Plaintiff, SMITH, has also retained the services of the undersigned attorneys who are entitled to a reasonable attorneys' fee upon prevailing, pursuant to Fla. Stat. § 501.2105.

WHEREFORE, Plaintiff, MICHELLE SMITH as PERSONAL REPRESENTATIVE of the ESTATE OF FELTON JACK SMITH, JR., demands judgment for Defendant DITECH FINANCIAL

LLC f/k/a GREEN TREE SERVICING LLC's, violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat., §§ 501.201, *et seq.* in excess of \$15,000.00, plus interest on all liquidated sums, costs and attorneys' fees pursuant to Fla. Stat. § 501.2105, and demands a trial by jury for all issues so triable.

**COUNT III – Violation of the Florida Consumer Collection Practices Act**

95. Plaintiff Incorporates paragraphs 1-76 by reference.

96. This claim is brought against DITECH on behalf of SMITH for damages and injunctive relief on account of its collection practices in violation of the Florida Consumer Collection Practices Act, F.S. § 559.72.

97. In its business of collecting debts and in attempting to collect the debt, DITECH f/k/a Green Tree has used the United States mail and postal services, telephones and other means and instrumentalities of interstate commerce.

98. Fla. Stat. § 559.72(9) states, that in collecting consumer debts, no person shall:

(9) Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist.

99. DITECH f/k/a Green Tree and SMITH are "debtors" and "consumers" as defined by F.S. § 559.55(2).

100. DITECH f/k/a Green Tree is a "debt collector" as defined by F.S. §559.55(6).

101. The debts of SMITH are "consumer debts" as defined by F.S. §559.55(1), in that they are obligations or alleged obligations of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

102. DITECH f/k/a Green Tree, acting as the servicer of the Note and/or Mortgage, asserted in communications to SMITH that he was required to pay for late fees, corporate advance fees, convenience fees, inspection fees, appraisal fees, forced placed insurance

premiums, attorneys' fees and costs from the meritless and voluntarily dismissed Foreclosure Lawsuit as well as other fees associated with his Property.

103. However, DITECH f/k/a Green Tree knew, when making these assertions, that SMITH had not missed a payment, already had adequate insurance prior to DITECH f/k/a Green Tree's purchase of force placed insurance and that the Foreclosure Lawsuit it filed against SMITH was unsupported by DITECH's own records, unsubstantiated by the documentation attached to the Foreclosure Lawsuit and without merit; therefore, there was no legal grounds to charge SMITH any attorneys' fees and costs associated with that case. GREEN TREE knew that their claims were not legitimate and that SMITH was not under any legal obligation to pay for the fees, forced placed insurance or attorneys' fees and costs noted herein.

104. DITECH f/k/a Green Tree had actual knowledge that SMITH did not owe the above-referenced amounts to Green Tree, as they were so notified by SMITH; however, as was Green Tree's general practice, Green Tree ignored SMITH's disputes.

105. This intentional and knowing conduct by DITECH f/k/a Green Tree constituted an improper debt collection practice in violation of the Florida Consumer Collection Practices Act, Fla. Stat. § 559.55, et seq. Specifically, this intentional and knowing conduct violated § 559.72(9), which makes it illegal to "[c]laim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist."

106. On account of the foregoing violations, SMITH has retained the undersigned attorneys and has agreed to pay them a reasonable fee for their services.

107. Due to the violations of Florida law by DITECH f/k/a Green Tree, as set forth above, SMITH has been damaged and is entitled to an award of damages (actual and/or statutory) as well as court costs and reasonable attorneys' fees incurred by SMITH and to declaratory and injunctive relief.

WHEREFORE, Plaintiff, MICHELLE SMITH as PERSONAL REPRESENTATIVE of the ESTATE OF FELTON JACK SMITH, JR., prays that this Honorable Court award him damages and equitable relief, together with court costs and attorney's fees, pursuant to Florida Statute § 559.77(2), and such other and further relief as this Court deems just and proper. Additionally, SMITH requests that DITECH FINANCIAL LLC f/k/a GREEN TREE SERVICING LLC be enjoined from any and all further illegal collection practices, and demands a trial by jury for all issues so triable.

#### **COUNT IV – CANCELLATION OF DEED**

108. Plaintiff incorporates paragraphs 1-76 by reference.

109. SMITH is entitled to a rescission or cancellation of the subject deed because DITECH f/k/a Green Tree obtained the deed: (1) through misrepresentation upon which SMITH relied; (2) inadequate consideration; and, (3) an abuse of a confidential or fiduciary relationship.

110. To wit, DITECH f/k/a Green Tree misrepresented to SMITH that it had been contracted to service SMITH's Mortgage as of November 2, 2009; however, the Assignment of Mortgage that Green Tree obtained was invalid because on September 21, 2007, only four (4) days after the Mortgage was recorded, National City Mortgage, a division of National City Bank "sol[d], transfer[ed], set[ ] over, and assign[ed] to: National City Mortgage Co., a subsidiary of National City Bank" the Note by way of an "ASSIGNMENT OF DEED OF TRUST AND PROMISSORY NOTE". (**Exhibit "C"**) Thereafter, on October 11, 2007, National City Mortgage Co. "sol[d], transfer[ed], set[ ] over, and assign[ed] to: FANNIE MAE" the Note and Mortgage by way of an "ASSIGNMENT OF MORTGAGE AND PROMISSORY NOTE". (**Exhibit "D"**) Consequently, the March 1, 2010, purported Assignment of Mortgage from PNC Bank, National Association to Green Tree was legally deficient and invalid as a matter of law. (**Exhibit "O"**)

111. To this point, the consideration paid by Green Tree to PNC Bank, National Association was inadequate.

112. Likewise, DITECH f/k/a Green Tree exploited SMITH, whom trusted and depended

on DITECH f/k/a Green Tree to represent matters truthfully, through its confidential or fiduciary relationship.

WHEREFORE, Plaintiff, MICHELLE SMITH as PERSONAL REPRESENTATIVE of the ESTATE OF FELTON JACK SMITH, JR., demands judgment for a cancellation of the subject deed against the Defendant, DITECH FINANCIAL LLC f/k/a GREEN TREE SERVICING LLC, and demands a trial by jury for all issues so triable.

**COUNT V - MALICIOUS PROSECUTION**

113. Plaintiff incorporates paragraphs 1-76 by reference.

114. On July 1, 2010, Green Tree commenced the Foreclosure Lawsuit against the present Plaintiff, SMITH; the case style was GREEN TREE SERVICING, LLC v. FELTON SMITH, JR., et. al., Case No. 50 2010 CA017237 XXXXMB, in the Circuit Court for Palm Beach County, Florida.

115. The present Defendant, DITECH f/k/a Green Tree, was the legal cause of the original proceeding against the present Plaintiff, SMITH, whom was the defendant in the original proceeding or Foreclosure Lawsuit.

116. Green Tree's November 3, 2010 filing of the Notice of Dismissal Without Prejudice and Discharge of Lis Pendens in the Foreclosure Lawsuit was the termination of that original proceeding and constituted a bona fide termination of that proceeding in favor of the present Plaintiff, SMITH.

117. DITECH's produced records and deposition testimony by the attorney that signed the foreclosure Complaint for the Foreclosure Lawsuit demonstrates that there was an absence of probable cause for the original proceeding or Foreclosure Lawsuit.

118. Further, there was malice on the part of the present Defendant, DITECH f/k/a Green Tree.

119. As a result of the original proceeding or Foreclosure Lawsuit, the present Plaintiff,

SMITH, suffered damages, including, but not limited to:

- a) Increased costs on the Note;
- b) Loss of use of money;
- c) Increased expenditures; and,
- d) Exemplary [or punitive] damages.

WHEREFORE, Plaintiff, MICHELLE SMITH as PERSONAL REPRESENTATIVE of the ESTATE OF FELTON JACK SMITH, JR., demands judgment for malicious prosecution resulting in damages in excess of \$15,000.00 against the Defendant, DITECH FINANCIAL LLC f/k/a GREEN TREE SERVICING LLC, plus interest on all liquidated sums, and demands a trial by jury for all issues so triable

**COUNT VI – ACTION PURSUANT TO FLORIDA STATUTE §772.104**

120. Plaintiff incorporates paragraphs 1-76 by reference

121. The aforesaid acts and omissions of DITECH f/k/a Green Tree comprise violations of several Florida Statutes, including Mortgage Fraud as defined by Florida Statute §817.545, as well as Florida Statute §772.103.

122. Due to the violations of such Florida Statutes by DITECH f/k/a Green Tree, SMITH has been damaged and is entitled to an award of damages for “threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney’s fees and court costs in the trial and appellate courts.”

WHEREFORE, Plaintiff, MICHELLE SMITH as PERSONAL REPRESENTATIVE of the ESTATE OF FELTON JACK SMITH, JR., demands judgment for damages, pursuant to Florida Statute §772.104, including threefold her actual damages, in excess of \$15,000.00, against the Defendant, DITECH FINANCIAL LLC f/k/a GREEN TREE SERVICING LLC, plus interest on all liquidated sums, costs and attorneys’ fees, and demands a trial by jury for all issues so triable.

## COUNT VII - NEGLIGENT MISREPRESENTATION

123. Plaintiff incorporates paragraphs 1-26 by reference.

124. By virtue of Green Tree's written correspondence to SMITH on November 13, 2009 – only eleven (11) days after Green Tree had been allegedly servicing SMITH'S Mortgage – advising of an alleged "NOTICE OF DEFAULT AND RIGHT TO CURE DEFAULT[,]" which asserted that SMITH was \$3,148.24 in default for failing to "submit [his] monthly payments due 10/1/2009 through 11/02/2009[,]" Green Tree misrepresented a material fact to SMITH. (**Exhibit "G"**)

125. Likewise, by virtue of Green Tree's written correspondence to SMITH on November 18, 2009 – only sixteen (16) days into Green Tree's alleged servicing of SMITH's Mortgage, whereby Green Tree advised SMITH that it had received a partial payment of \$1,470.98 on "11/17/09", but if Green Tree did not "receive \$1677.26 before the date set forth in the Notice [sent on November 13, 2009]" SMITH would not satisfy the alleged past due amount of \$3,148.24, therefore, it would proceed with the foreclosure process, Green Tree misrepresented a material fact to SMITH. (**Exhibits "H"**)

126. Green Tree continued these misrepresentations by sending SMITH additional letters alleging that SMITH remained in default and continued to be past due throughout 2010, 2011 and 2012.

127. The same is true for Green Tree's written correspondence to SMITH on February 9, 2010 – eighteen (18) days after SMITH'S wrongfully instituted forced placed policy was cancelled due to "OTHER INSURANCE" – as well as its July 22, 2010 letter, GREEN TREE misrepresented a material fact to SMITH.

128. Finally, by virtue of all of Green Tree's written correspondences and monthly statements sent to SMITH between November, 2009 through the filing of this Amended Complaint, which relied on the invalid March 1, 2010 Assignment of Mortgage to Green Tree from PNC Bank,



National Association successor by Merger from National City Mortgage, a division of National City Bank, Green Tree misrepresented material facts to SMITH because PNC Bank was not the holder of SMITH's Note or Mortgage as of September, 2007, and the March 1, 2010 Assignment of Mortgage was a sham, "robo" signed document.

129. Indeed, DITECH's produced discovery shows that DITECH's own records reflect that Fannie Mae is the holder of SMITH's Note; however, Green Tree held itself out, and continues to hold itself out, to SMITH as the holder of the Mortgage based on Assignment of Mortgage, in which Fannie Mae was not a named party, entity and/or company.

130. In the same vein and upon information and belief, when representing Green Tree in the aforementioned Foreclosure Lawsuit, SMITH, HIATT & DIAZ, P.A. only represented Green Tree in situations where Fannie Mae was the current holder of the note at issue and Green Tree was servicing the note and/or mortgage for Fannie Mae.

131. Consequently, DITECH f/k/a Green Tree knew of these misrepresentations made these misrepresentations without knowledge of its truth or falsity and/or should have known the representations were false.

132. DITECH f/k/a Green Tree intended to induce SMITH to act on these misrepresentations.

133. Justifiably relying on DITECH f/k/a Green Tree's misrepresentations, the Plaintiff, SMITH, sustained reasonably foreseeable, consequential and incidental damages, including, but not limited to attorneys' fees and costs.

WHEREFORE, Plaintiff, MICHELLE SMITH as PERSONAL REPRESENTATIVE of the ESTATE OF FELTON JACK SMITH, JR., demands judgment for negligent misrepresentation resulting in damages in excess of \$15,000.00 against the Defendant, DITECH FINANCIAL LLC f/k/a GREEN TREE SERVICING LLC, plus interest on all liquidated sums, costs and attorneys'

fees, and demands a trial by jury for all issues so triable.

DATED this 6<sup>th</sup> day of May, 2016.

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