

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

IN RE)
) MISCELLANEOUS PROCEEDING
)
DEBORAH JEAN FAZZON, DEBTOR,) NO. _____
CHAPTER 13 CASE NO. 15-20874-JRS,)
and)
OTHER SIMILARLY SITUATED PERSONS)
)
_____)

**STIPULATION FOR ENTRY OF ORDER APPROVING SETTLEMENT BETWEEN
THE UNITED STATES TRUSTEE PROGRAM, CITIBANK, N.A. AND
DEPARTMENT STORES NATIONAL BANK**

Daniel M. McDermott, the Acting United States Trustee for Region 21, the Executive Office for United States Trustees (“EOUST”), the United States Trustees and Acting United States Trustees for Regions 1 through 21 (collectively with EOUST, the “United States Trustee Program”), Citibank, N.A., and Department Stores National Bank (DSNB), by their respective counsel, respectfully request that this Court enter the Order Approving Settlement between the United States Trustee Program, Citibank, N.A., and Department Stores National Bank (the “Order”). As set forth in more detail in the attached Order, the parties’ agreement addresses potential issues relating to the preparation, validation, signing, and filing of DSNB proofs of claim (“POCs”), including a POC filed on DSNB’s behalf in *In re Deborah Jean Fazzon*, Case No. 15-20874 (Bankr. N.D. Ga.) (Claim No. 3-1), as well as in the bankruptcy proceedings of other similarly situated persons. A copy of the proposed Order is attached.

September 17, 2018

Respectfully Submitted,

**DANIEL M. McDERMOTT,
UNITED STATES TRUSTEE
FOR REGION 21**

K & L GATES LLP

/s/ David S. Weidenbaum

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**EXECUTIVE OFFICE FOR
UNITED STATES TRUSTEES**

/s/ Ramona D. Elliott

Ramona D. Elliott
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Deputy Director/General Counsel

I HEREBY CERTIFY that the terms of the copy of the consent order attached to this Stipulation and submitted to the Court are identical to those set forth in the original consent order; and the signatures represented by the /s/ on this copy reference the signatures of consenting parties on the original consent order.

/s/ David S. Weidenbaum

David S. Weidenbaum

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**ORDER APPROVING SETTLEMENT BETWEEN THE
UNITED STATES TRUSTEE PROGRAM, CITIBANK, N.A., AND
DEPARTMENT STORES NATIONAL BANK**

RECITALS

Whereas, Citibank, N.A. (“Citibank”) and its affiliate Department Stores National Bank (“DSNB”) (Citibank and DSNB collectively referred to herein at times as “Citi”) entered into an agreement with Macy’s, Inc. and its affiliate FDS Bank (“FDS”) (Macy’s, Inc. and FDS collectively referred to herein at times as “Macy’s”) under which DSNB issues Macy’s-branded consumer credit card accounts (the “DSNB Credit Card Portfolio”).

Whereas, under the agreement, FDS was responsible for certain account servicing activities for accounts of DSNB customers in active bankruptcy, including, but not limited to, the preparation, validation, signing, and filing of DSNB proofs of claim (“POCs”) and the collection of payments relating to such POCs on DSNB’s behalf (collectively, the “Bankruptcy Services”). In that capacity, FDS entered into an agreement with Total Debt Management, Inc. f/k/a TSYS Total Debt Management, Inc. (“TDM”), through which Transworld Systems, Inc. (“TSI”) was retained to perform certain of the Bankruptcy Services (TDM and TSI collectively referred to herein at times as the “Vendor”).

Whereas, Citibank agreed to take over responsibility for the Bankruptcy Services as of July 2015, and, in connection with the migration of the Bankruptcy Services to Citibank, learned of potential issues with respect to the Vendor’s preparation, validation, signing, and filing of POCs.

Whereas, in or around August 2015, Citi advised the Executive Office for United States Trustees

(“EOUST”) of potential issues with respect to the Vendor’s preparation, validation, signing, and filing of POCs, as such conduct relates to the attestation of POCs and compliance with Bankruptcy Rule 9011 and related authority.

Whereas, Citi entered into discussions with the EOUST to resolve the issues.

Whereas, as a result of their discussions, the EOUST and Citi have reached an agreement as set forth in this Order (the “Order”), subject to the final approval of the Court.

Now therefore, in consideration of the foregoing, and of the mutual promises and compromises between them, the EOUST and the United States Trustees and Acting United States Trustees for Regions 1 through 21 (collectively the “USTP”), Citibank, and DSNB (collectively referred to herein as the “Parties”) do hereby agree, stipulate, and consent as follows, subject to the Court’s entry of this Order and the passage of any applicable appeal period.

ARTICLE I

JURISDICTION AND VENUE

This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue in the United States Bankruptcy Court for the Northern District of Georgia is proper pursuant to 28 U.S.C. § 1409(a).

ARTICLE II

DEFINITIONS

“Bankruptcy Services” shall have the meaning given in the Recitals.

“Citi” shall have the meaning given in the Recitals.

“Citibank” shall have the meaning given in the Recitals.

“Covered Conduct” shall mean the preparation, validation, signing, and filing of POCs during the Relevant Period by the Vendor, as such conduct relates to the attestation of POCs in compliance with Bankruptcy Rule 9011 and related authority.

“Defined Search” shall have the meaning set forth in Article III.

“DSNB” shall have the meaning given in the Recitals.

“DSNB Credit Card Portfolio” shall have the meaning given in the Recitals.

“EOUST” shall have the meaning given in the Recitals.

“FDS” shall have the meaning given in the Recitals.

“Independent Compliance Risk Management - Compliance Assurance” or “Compliance Assurance” shall mean the independent internal compliance testing department of Citigroup Inc. Compliance Assurance supports Citigroup Inc.’s compliance and risk functions by independently assessing

compliance risks and controls implemented by Citigroup Inc., including by the performance of risk assessments, independent assurance activities such as testing and on-going monitoring, and validation of the adequacy of remediation measures.

“Macy’s” shall have the meaning given in the Recitals.

“Match Criteria” shall have the meaning set forth in Article III.

“Matched POC Accounts” shall have the meaning set forth in Article III.

“Parties” shall have the meaning given in the Recitals.

“POCs” shall have the meaning given in the Recitals.

“POC Account” shall have the meaning set forth in Article III.

“Released Parties” shall have the meaning given in Article VI, Paragraph 21.

“Remediation Fund” shall have the meaning set forth in Article IV.

“Relevant Period” shall mean the time period between January 1, 2012 and July 31, 2015.

“Settlement Share” shall have the meaning set forth in Article IV.

“TSI” shall have the meaning given in the Recitals.

“USTP” shall have the meaning given in the Recitals.

“Vendor” shall have the meaning given in the Recitals.

ARTICLE III

FACTS AS THEY RELATE TO THE COVERED CONDUCT

Without waiving any privilege, Citi represents that it was not responsible for the Bankruptcy Services for the DSNB Credit Card Portfolio during the Relevant Period, and that it has limited knowledge of the underlying facts and data, which facts and data are primarily within the possession and control of the Vendor. The following representations are made to the best of Citi’s knowledge, information, and belief:

1. As part of the Bankruptcy Services, FDS operated the data processing platform for the DSNB Credit Card Portfolio. In late 2014, Citi and Macy’s agreed to transfer DSNB’s data processing platform from FDS’ system of record to Citibank’s system of record, and further agreed that Citibank would take over responsibility for the Bankruptcy Services for the DSNB Credit Card Portfolio.

2. In connection with planning the data migration over the subsequent months, Citibank learned that, for POCs filed during the Relevant Period, the person whose name was affixed to POCs as signatory may not have always personally reviewed the POCs and/or may not have always had knowledge of their contents. Further, on information and belief, POCs may have been filed using the e-filing credentials of persons who did not review or otherwise did not possess knowledge of the underlying POCs.

3. In or around August 2015, the DSNB Credit Card Portfolio was transferred to Citibank's system of record, and Citibank thereafter began performing the Bankruptcy Services.

4. Citibank began filing POCs on DSNB's behalf in or around October 2015. As part of its POC operations, Citibank does comply, and at all relevant times has complied, with applicable bankruptcy signing and filing requirements.

5. On information and belief, the Vendor took steps to identify the accounts within the DSNB Credit Card Portfolio for which the Vendor filed a POC on DSNB's behalf during the Relevant Period (the "POC Accounts"). Citi does not have direct knowledge of the steps that the Vendor undertook to identify the POC Accounts. The Parties agree that the population of POC Accounts is 80,316.

6. To confirm whether the POC Accounts identified by the Vendor were in fact accounts in the DSNB Credit Card Portfolio, Citibank used three defined data points provided by the Vendor for the POC Accounts: (a) the first name of the debtor, (b) the last name of the debtor, and (c) the last four digits of the social security number of the debtor (collectively, the "Match Criteria"). Citibank electronically cross-referenced the Match Criteria against Citibank's system of record to identify instances where all three Match Criteria were an exact match across the Vendor's data and Citibank's system of record (the "Defined Search"). The Defined Search resulted in 71,448 accounts where all three Match Criteria matched Citibank's system of record ("Matched POC Accounts"). Some POC Accounts identified by the Vendor did not result in a match.¹

ARTICLE IV

CORRECTIVE ACTION

7. Citi will undertake the corrective action described below to address the Matched POC Accounts.

8. Citi will fund \$5 million in full and final settlement of this matter (the "Remediation Fund"). The Remediation Fund will comprise the entire pool of available settlement funds. The Remediation Fund will be divided into equal shares among the Matched POC Accounts (each share referred to as a "Settlement Share"). Each Matched POC Account will receive one (1) Settlement Share.

9. Citi shall mail a written notice for each Matched POC Account. The notice, the form of which has been approved by the USTP, will enclose payment in the form of a check and advise of the reason for the payment. Mailing and payment shall be executed as set forth in Paragraphs 10 and 11.

10. Payment of the Settlement Shares shall be made by check payable to the individual first listed by the Vendor for each Matched POC Account. Settlement Shares shall be paid in this fashion regardless of the number of accountholders or authorized users on the Matched POC Account, regardless of any other debtors listed by the Vendor for the Matched POC Accounts, and regardless of the number of debtors in the bankruptcy case in which the POC was filed. Citi has no obligation to make payment, for example, to any non-debtor co-obligors or non-debtor accountholders. Once payment has been made pursuant to Paragraph 9, in no event shall Citi be required under this Order to make any additional payment or take any other action with respect to a Matched POC Account or any of the POC Accounts. For the avoidance of doubt, only one payment shall be made on any single Matched

¹ Citi does not have access to the data necessary to determine the precise reason for non-matched POC Accounts which may be the result of, among other things, incomplete data or the purging of aged accounts.

POC Account.

11. Any payments required to be made under this Order shall be deemed made when deposited in the United States mail, postage prepaid and addressed to the most likely address for the individual first listed by the Vendor as the debtor for each Matched POC Account. Citi will utilize a third-party vendor to conduct a software-based address search. This search will utilize the vendor's proprietary software to pull addresses from multiple sources of information, and based on the search results, will identify the most likely address for the individual first listed by the Vendor as the debtor for each Matched POC Account. The search will be conducted within forty-five (45) days before mailing the payments.

12. Any payee's failure or refusal to accept payment shall not be deemed a breach of Citi's obligations under this Order. Uncashed checks shall go to escheat in accordance with Citi's standard policies and procedures, which comply with applicable state and federal law.

13. If notices and payments sent pursuant to the preceding paragraphs are returned as undeliverable, the uncashed checks shall go to escheat in accordance with Citi's standard policies and procedures, which comply with applicable state and federal law.

14. Citi shall complete all affirmative obligations in this Article within 120 days after entry of this Order, unless a later date is agreed to by the Parties in writing.

ARTICLE V

INDEPENDENT COMPLIANCE

15. Within 195 days of entry of this Order, Independent Compliance Risk Management - Compliance Assurance, which is independent of both the line of business that performed the Defined Search and the line of business that performed the actions required pursuant to Paragraphs 8 through 11 herein, will perform the following tasks:

- a. Assess the overall adequacy of the methodology used to perform the Defined Search to confirm that it was executed in such a way as to identify exact triple matches of the Match Criteria as between the information provided by the Vendor and the information contained in Citibank's system of record;
- b. Inspect a sample of the 71,448 Matched POC Accounts resulting from the Defined Search in order to assess the accuracy of the Defined Search, including by independently evaluating the waterfall and other associated documentation, such as the maker checker process;
- c. Validate that Citi mailed notice and payment for each Matched POC Account to the most likely address identified by the third-party vendor's software-based address search.

16. In connection with the tasks set out in Paragraph 15, Compliance Assurance will use the information provided by the Vendor in the form it was provided. Compliance Assurance will similarly use the most likely addresses identified by Citi's third-party vendor software for confirming proper mailing pursuant to Paragraph 15(c).

17. Upon completion of the tasks set forth in Paragraph 15, Compliance Assurance will prepare its findings and submit them to Citi (the "Draft Findings"). The Draft Findings shall be provided to Citi within 225 days of the entry of this Order. Citi will contemporaneously provide a copy of the Draft Findings to the EOUST. Within 45 days of receipt of the Draft Findings, Citi may submit

additional information or comments to Compliance Assurance and/or take steps to cure any issues or errors identified by Compliance Assurance in its Draft Findings. Citi shall copy the EOUST on any such additional information or commentary provided to Compliance Assurance and update the EOUST on any steps taken to cure identified issues or errors. Compliance Assurance shall consider any additional information or comments received from, and/or cure efforts made by, Citi and shall thereafter prepare and finalize a report of its final findings and provide it to Citi within a reasonable time (“Final Report”). Citi shall then file the Final Report with the Court.

18. The USTP or Citi may seek relief from the Court in the event that a dispute develops concerning the Final Report that cannot be resolved through good faith negotiations between the USTP and Citi.

19. If the Final Report indicates that Citi has complied with its obligations under Paragraphs 8 through 11, Citi’s obligations under this Order shall terminate as of the filing of the Final Report. If the Final Report indicates that Citi has not complied with its obligations under Paragraphs 8 through 11, or if the USTP or Citi seeks relief from the Court regarding any dispute as set out in Paragraph 18, Citi’s obligations under this Order shall terminate in accordance with any court order disposing of such issues and/or disputes.

20. Each of the time limits set forth in this Article can be extended if agreed to in writing by the Parties.

ARTICLE VI

RELEASE

21. Upon becoming effective as set forth in Paragraph 33:

a. The USTP consents and agrees to fully and finally release any and all claims, and will refrain from instituting, directing, or maintaining any contested matter or adversary proceeding or participating in any contested matter or adversary proceeding by a third party (except that the United States Trustees may participate in an action to the extent ordered by a court provided that the United States Trustees may not seek such a court order formally or informally) against each of Citibank, DSNB, and FDS, as well as Citibank’s corporate affiliate Citicorp Credit Services, Inc. (USA) (individually a “Released Party” and collectively the “Released Parties”), arising out of or relating to the Covered Conduct; and

b. Citibank, DSNB, and FDS, as well as Citibank’s corporate affiliate Citicorp Credit Services, Inc. (USA), consent and agree to fully and finally release the USTP and its current and former employees from any and all claims arising out of or relating to the Covered Conduct, as well as claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, based on the USTP’s investigation and prosecution of any and all claims arising out of or relating to the Covered Conduct.

22. The release set forth in Paragraph 21 is intended to encompass any and all claims arising out of or relating to the Covered Conduct in its entirety, as to all POC Accounts.

23. Notwithstanding the foregoing, nothing in this Article shall be construed as a waiver of, or a restriction or prohibition on, the USTP’s ability:

a. In individual bankruptcy cases, to undertake any formal or informal action not arising out of or relating to the Covered Conduct; or

b. To cooperate with or provide assistance to other governmental agencies in connection with the Covered Conduct, or share information or discovery arising out of or relating to the Covered Conduct with other governmental agencies.

24. The scope of the matters being resolved via this Order is limited to any and all claims arising out of or relating to the Covered Conduct. This Order does not settle, resolve, or prejudice any other rights or claims against the Released Parties. Notwithstanding any other provision of this Order, claims with respect to any criminal liability are especially reserved and are not released.

ARTICLE VII

MISCELLANEOUS PROVISIONS

25. The Court shall retain exclusive jurisdiction over all matters subject to this Order, including disputes arising under this Order, and the construction, interpretation, modification, and enforcement of this Order, and shall retain exclusive jurisdiction to hear and adjudicate any motions related to this Order.

26. This Order (and its contents) is not and shall not be used as an admission of liability, violation, or wrongdoing by Citi or Macy's to any person or entity or on any legal or equitable theory. This Order is made without trial or adjudication of any issue of fact or law and does not contain any injunctive measures against Citi or Macy's. Nothing in this paragraph reduces Citi's obligations under this Order or affects the USTP's authority to enforce any rights hereunder.

27. This Order does not prohibit Citi from making changes to its bankruptcy policies and procedures, provided that such policies and procedures continue to comply with the Bankruptcy Code and Rules.

28. This Order constitutes the entire agreement between the Parties relating to the subject matter reflected herein and may not be modified except in writing executed and delivered by the Parties hereto.

29. This Order will not bind or prejudice the rights and claims of individual(s) associated with the POC Accounts or any other non-party.

30. This Order may be executed by the Parties in one or more counterparts, or via facsimile or electronically scanned signatures, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

31. Citi shall in no event be required to provide any information hereunder to the USTP which shall constitute a violation of any federal or state law, including, but not limited to, privacy laws and the Truth In Lending Act, without an express order compelling such delivery by this Court.

32. In entering into this Order, Citi has not waived, and is not intending to waive, the attorney-client privilege, joint defense privilege or work product doctrine, and nothing contained in this Order shall be construed as a waiver of any such privileges or protections.

33. This Order shall become effective upon the running of any appeal period following its execution by the Parties and its entry by the Court. The Parties hereby waive any right to seek reconsideration of and/or appeal from this Order if the Order is entered as submitted by the Parties.

34. In the event the USTP determines that Citi is in violation of this Order, it shall provide notice of such violation to Citi, and provide Citi with 60 days to cure or otherwise purge the conduct deemed by the USTP to constitute the violation prior to the filing of any motion to enforce this Order with the Court, unless more time is agreed to by the Parties.

35. Citi recognizes that the USTP is entering into this Order in reliance on the material accuracy and material completeness of the factual representations set forth herein and that in the event of fraud or misrepresentation of material facts by Citi, the USTP may seek relief from the final judgment in accordance with Fed. R. Civ. P. 60(b) and other authorities, subject to providing reasonable notice to Citi and an opportunity for Citi to respond. The USTP recognizes that Citi relied upon information provided by other entities in its representations, and is not responsible in the event of fraud or misrepresentation as a result of Citi's reliance upon information provided by Macy's, FDS, or the Vendor.

36. If any time period in this Order is stated in days, the Parties shall: (1) exclude the day of the event that triggers the period; and (2) count every subsequent day, including intermediate Saturdays, Sundays, and legal holidays, and include the last day of the period, but if any time period set forth in this Order expires on a Saturday, Sunday, or legal holiday, such time period shall continue to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

[Signature Pages Follow]

Seen and agreed to:

CITIBANK, N.A.

/s
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**DANIEL M. McDERMOTT,
UNITED STATES TRUSTEE
FOR REGION 21**

/s/ David S. Weidenbaum
David S. Weidenbaum
Georgia Bar Number 745892
United States Department of Justice
Office of the United States Trustee
362 Richard B. Russell Federal Building
75 Ted Turner Drive, S.W.
Atlanta, GA 30303-3367

Solely for the purposes of the mutual releases set forth in Article VI hereof:

FDS BANK

/s/
Teresa Huxel
President
FDS BANK
9111 Duke Boulevard
Mason, Ohio 45040

END OF ORDER