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May 12, 2017

***Via NYSCEF***

The Hon. Erika M. Edwards  
Justice of the Supreme Court of the State of New York  
New York County  
80 Centre Street, Room 314  
New York, New York 10013

*Re: Fisher v. Leucadia National Corp., et al., 452328/2016*

Dear Justice Edwards:

Along with MFY Legal Services, Inc. and New Economy Project, we represent the plaintiff class in *Sykes, et al. v. Mel S. Harris and Associates LLC, et al.*, 09 Civ. 8486 (S.D.N.Y). We write in response to the Attorney General's May 9, 2017 letter and ask the Court not to alter its May 2, 2017 Decision and Order ("Order") by substituting the list of judgments contained in Exhibit A that the Attorney General filed April 28, 2017 ("Exhibit A") with the modified list filed on May 9 ("May 9 List"). The May 9 List wrongly removes nearly 15,000 judgments from Exhibit A. Those 15,000 people are entitled to relief from their judgments and should not be deleted from Exhibit A.

### ***The Petition Sought Vacatur of Sold and Unsold Judgments***

As detailed in the Petition, the *Sykes* class action lawsuit alleged that various LR Credit related entities (collectively "LR Credit") used false affidavits of merit and service to obtain default judgments. The federal district court's opinion granting class certification detailed the uniformity of the *Sykes* defendants' troubling practices. As part of the settlement of that lawsuit, LR Credit agreed to cooperate in the instant proceeding.

The Attorney General brought this CPLR 5015(c) proceeding on behalf of Deputy Chief Administrative Judge Fern Fisher to vacate *all* judgments obtained by LR Credit. The Petition explicitly included all judgments LR Credit owned at the time of settlement and approximately 25,000 default judgments that LR Credit obtained but subsequently sold to other

parties. Dkt. 1 (Petition) at n.2. While the Attorney General provided direct notice of the Petition to LR Credit and Rolling Jubilee,<sup>1</sup> it explained that it would be “impractical to name all such parties [i.e. parties that now hold the judgments that LR Credit sold] as respondents in this case, especially as they appear sometimes to have failed to update court records to substitute themselves as plaintiffs for the LR Creditor involved.” *Id.* The Attorney General further explained that “the LR Creditors are best positioned to know the circumstances under which these judgments were obtained and whether, for instance, false affidavits of merit were filed by their agent.” *Id.*

The nearly 15,000 judgments removed from Exhibit A are listed in the *Sykes* defendants’ records as having been sold to “Virgo” in 2012.

### ***Court Granted Relief Sought in Petition, Including Vacatur of Sold Judgments***

This Court granted the relief sought on May 2, 2017, stating that Petitioner’s “petition seeking to vacate and set aside *all default judgments obtained by Respondents* Leucadia National Corp., L-Credit, LLC, LR Credit, LLC, and LR Credit 1-23 against consumers in the State of New York and to stay all marshals and/or sheriffs who hold executions under such judgments from executing to collect such judgments is granted without objection.” Dkt. 15 (emphasis added).

To effectuate its Order, the Court ordered that all default judgments listed on Exhibit A were vacated and their execution stayed. In an April 28, 2017 letter accompanying Exhibit A, the Attorney General had explained that there were errors in the data used to create that list (because the list originated with the *Sykes* defendants); specifically, “the State could not identify judgment courts for a considerable number of individuals eligible for relief under the settlement.” Dkt. 13. Accordingly, the Attorney General explained that “corrections will be required to ensure that as many as possible of those eligible for relief receive it,” and asked that the Court’s order permit such correction. The Court granted this request in its Order, stating that the “parties shall have leave to amend Exhibit A, *List of Default Judgments*, to include updated information regarding the judgment court and case number of each affected judgment where such information is not yet available.” Dkt. 15. The Order does not authorize the Attorney General to remove judgments from Exhibit A.

### ***Attorney General Seeks To Remove Nearly 15,000 Judgments from Exhibit A***

On May 9, 2017, the Attorney General submitted a letter and an “updated” judgment list, “deleting some judgments included as a result of clerical error and making other corrections” (“May 9 List”). Dkt. 18. The May 9 List is 449 pages shorter than Exhibit A and appears to omit approximately 14,813 judgments that the *Sykes* defendants’ records list as having been sold to “Virgo.” While these judgments are listed as purchased by Virgo in the *Sykes* defendants’ records—the same records that the Attorney General stated were replete with errors—official court records continue to list LR Credit as the judgment creditor for all but a fraction of the sold

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<sup>1</sup> As part of the settlement, LR Credit transferred all judgments they owned to Rolling Jubilee, a non-profit, to facilitate vacatur.

judgments. To enforce these 15,000 judgments, Virgo would have been required under CPLR 5019(c) to notify the Court of a change in the judgment creditor, which it did not do.

***There is No Basis to Modify the May 2 Order by Vacating a Smaller Number of Judgments***

This Court's Order explicitly vacated "all default judgments obtained by Respondents." Dkt. 15 (emphasis added). Because the 15,000 judgments were obtained by LR Credit before allegedly being sold to Virgo (if they were, in fact, sold), the Order applies equally to these judgments.


Moreover, the Court permitted amendment of Exhibit A only to add "updated information regarding the judgment court and case number of each affected judgment where such information is not yet available." *Id.* It did not permit removal of any "affected judgment," and certainly not the removal of nearly 15,000 "affected judgments."

The Attorney General's May 9 letter is, in fact, a request to modify this Court's May 2 order by excluding all judgments listed as sold to Virgo. There is no basis for eliminating nearly 15,000 judgments from the relief ordered by the Court.

As an initial matter, CPLR 5015 requires a motion (not a letter) to relieve a party from the terms of an order and requires a showing that one of the listed grounds is met; no such motion or showing has been made by the Attorney General. Similarly, Virgo has not appeared in this action to oppose the vacatur, though it well knows of this proceeding.

More fundamentally, there is no factual basis for carving out the Virgo accounts from this Court's Order. Here, the Court ordered relief because all the judgment debtors—our class members—"would be uniformly entitled to interpose a defense predicated upon but not limited to the foregoing defenses [fraud, misrepresentation, illegality, unconscionability, lack of due service, violations of law, or other illegalities]." As the *Sykes* court found, and as detailed in the Petition and agreed to by the LR Credit Respondents who obtained the judgments—each LR Credit judgment debtor has common defenses of fraud, illegality, and lack of service. *See* Dkt. 1 (Petition) ¶¶ 16, 22; Dkt. 10 (LR Credit Respondents' Answer). That some of those judgments may subsequently have been sold to Virgo—at a time when Virgo was well aware of the allegations and evidence presented in the *Sykes* action—does not in any way alter the applicability of those common defenses, which are predicated on the illegal manner by which the judgments were obtained.

We thank the Court for its consideration of this request.

Respectfully submitted,  
  
Matthew D. Brinckerhoff  
Debra Greenberger

c. All counsel of record, *via NYSCEF*