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The Honorable Erika Edwards
Supreme Court Civil Term
80 Centre Street, Room 320
New York, New York 10013

May 15, 2017

Re: *Fisher v. Leucadia National Corp.*, Index No. 452328/2016

Dear Justice Edwards:

We write in response to the May 12, 2017 letter to the Court concerning this case signed by Mr. Matthew D. Brinckerhoff (the “May 12, 2017 Letter”).

As an initial matter, while we appreciate the important work of Mr. Brinckerhoff’s firm as plaintiffs’ counsel in the underlying federal class action, *Sykes v. Mel S. Harris and Associates* (No. 09 Civ. 8486 (S.D.N.Y.)) challenging the validity of the allegedly fraudulently-obtained default judgments obtained by certain debt-collecting entities and their agents (the “Leucadia Entities”), we note that it does not represent any party in the present CPLR 5015(c) action brought by Judge Fisher and therefore has no standing to raise any objections in this case.

Nevertheless, we believe it is important to provide some background for the Court to explain why the default judgments owned by Virgo Capital, LLC, were excluded from the list submitted to this Court on May 9, 2017 (“the May 9, 2017 Judgments List”). After the settlement in *Sykes* providing that the Leucadia Entities would cooperate in the vacatur of the default judgments involved, the State agreed, at the request of the Office of Court Administration (“OCA”), to bring this action for mass vacatur under CPLR 5015(c) on behalf of Judge Fisher. The action was intended to spare the court system the incredible administrative burden that would have resulted had more than two hundred thousand individual judgment debtors brought individual motions or actions to vacate the default judgments implicated in the *Sykes* settlement. At that time, the State understood that all *Sykes* class members were covered by the parties’ stipulation in that case that the class members were “uniformly entitled to interpose a defense predicated upon but not limited to” certain defenses such as “fraud, misrepresentation, illegality, unconscionability, [and] lack of due service” and, thus, were unquestionably entitled to relief under CPLR 5015(c).

It was only after agreeing to bring this action that the State learned that, while the vast majority of the default judgments obtained by the Leucadia Entities were still owned by those

entities at the time of the *Sykes* settlement, some percentage of them had been sold to other companies years prior¹, and that none of these companies were parties to the class action or to the settlement. While this raised questions about whether the *Sykes* parties' stipulation could bind a third-party buyer, given the findings made in the class action, the State nonetheless believed that there was a colorable claim that all class members were entitled to the relief it sought in its Petition.²

Months after the initial filing of the Petition, however, the State was approached by counsel representing Virgo, raising further concerns about whether the judgments purchased by Virgo were properly the subject of relief under CPLR 5015(c). The State has been attempting to resolve this dispute without the need to resort to the Court, and, in order to maintain the status quo during the negotiation process, agreed to exclude the judgments owned by Virgo from its April 28, 2017 filing of the original Petition's Exhibit A in the format directed by the Court (the "April 28, 2017 Judgments List"). The inclusion of judgments owned by Virgo in the April 28, 2017 Judgments List was indeed, as the State's letter accompanying the May 9, 2017 Judgments List stated, the result of a clerical error, which was corrected within a day of the State's learning of it. The State does not believe that the Court's May 2, 2017 Order was intended to prevent the State from correcting such undisputed clerical errors.

For the avoidance of uncertainty, however, the State requests that the Court amend its May 2, 2017 Order to explicitly permit good-faith additions *and* deletions by the State to the Petition's Exhibit A.

Respectfully submitted,

/s Sarah Trombley

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¹ The State, of course, so informed the Court. *See* Verified Petition at 6 n.2; Affidavit of the Hon. Fern A. Fisher ¶ 17. It appears that Virgo purchased the judgments it holds in 2012, after the commencement of *Sykes* but before its settlement.

² The *Sykes* settlement agreement, which, of course, was public, anticipated that a mass vacatur action would be brought concerning the default judgments pertaining to *all* class members. *See* 11/12/15 Settlement Agreement at 14-15, *available at* <https://www.sykesclassaction.com/Content/Documents/Settlement%20Agreement%20with%20Leucadia.pdf>. The State is not aware that any of the third-party buyers ever raised any objection, formal or informal, to such an action prior to Virgo in early 2017. However, since the filing of the May 9, 2017 Judgments List, an additional two purported such buyers have come forward, one of which claims to have purchased judgments as a resale from one of the original buyers from the Leucadia Entities.

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