UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MONIQUE SYKES, *et al*.,

Plaintiffs,

- against -

MEL S. HARRIS AND ASSOCIATES LLC, *et al*.,

Defendants.

No. 09 Civ. 8486 (DC)

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement, the Declaration of Matthew D. Brinckerhoff, dated April 18, 2016, with exhibits thereto, and upon all prior pleadings, Plaintiffs and the Certified Classes, by their counsel Emery Celli Brinckerhoff & Abady, LLP, New Economy Project, and MFY Legal Services, Inc., will move this Court before the Honorable Judge Denny Chin, Circuit Judge for the United States Court of Appeals for the Second Circuit sitting by designation, at the United States District Court for the Southern District of New York, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007, Courtroom 519, at 11:00 in the morning on May 11, 2016 or as soon thereafter as counsel may be heard, for an order finally approving the parties' proposed class action settlement and approving the requested attorneys' fees, costs and service awards.

Dated: April 18, 2016
New York, New York

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MONIQUE SYKES, *et al.*, **Plaintiffs,** **- against -** **MEL S. HARRIS AND ASSOCIATES LLC, *et al.*,** **Defendants.**	09 Civ. 8486 (DC)

MEMORANDUM OF LAW IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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INTRODUCTION

The Named Plaintiffs and the Plaintiff class of approximately 390,000 people (collectively "Plaintiffs") seek this Court's final approval of this groundbreaking settlement. Under the terms of the Settlement, which the Court has already preliminarily approved, Defendants will pay over $60 million to settle this case—the largest ever settlement of its kind.

While the monetary amount of the settlement is substantial and important, the non-monetary aspects are equally significant. Since preliminary approval, collection on Class Members' judgments and alleged debts has been suspended. Upon final approval, these judgments and alleged debts, on which more than $1 billion remains outstanding, will be transferred to The Rolling Jubilee Fund ("Rolling Jubilee"), a non-profit organization chosen by Plaintiffs, which will promptly forgive Plaintiffs' debts. Plaintiffs will work with the New York State courts to vacate approximately 200,000 default judgments. The mechanisms for debt forgiveness and mass vacatur contemplated by the settlement are innovative. They provide critically important relief to Class Members that would be difficult to achieve outside of settlement. They are also independently quantifiable, at least in part. Indeed, Plaintiffs' experts have estimated conservatively that the present value to Class Members of ceasing collection is more than $26 million, for a total settlement value of approximately $86 million.

Given the substantial nature of this settlement, it is not surprising that 27% of Class Members eligible to submit claims (31,000 persons) have filed claims and few have objected or opted out. This high rate of participation is a testament both to the overwhelmingly positive response from the class and to Class Counsel's success in simplifying the claims process and crafting notices that encourage Class Members to participate.

Plaintiffs seek approval for distribution of the Settlement Amount as follows:

Description	Amount	Percent
Proposed Amount to Class Members (exclusive of service awards)	$44,103,561.48	73.5%
Proposed Service Awards	$120,000	0.2%
Payment to Einstein Firm	$500,000	0.8%
Administrative Expenses	$339,486.56	0.6%
Attorneys' Expenses	$192,230.30	0.3%
Proposed Attorneys' Fees	$14,401,667	24%
Notice Expenses	$350,000	0.6%
TOTAL	**$60,006,945.34**	100%

Class Counsel's request for $14.4 million in attorneys' fees is reasonable based on any measure. It is even more reasonable when examined in light of the significant risk attendant to proceeding with this litigation, and considering the almost 8,000 hours of attorney time Class Counsel invested securing real relief for Class Members—both in monetary terms and by relieving Class Members of the debts and judgments. Class Counsel withstood motions to dismiss, won a hard-fought class certification decision, and successfully upheld class certification on appeal, not to mention litigating years of discovery disputes, reviewing 500,000 pages of documents, and conducting many depositions. The fee request represents 24% of the monetary component of the common fund, and 16.7% once the quantifiable monetary value of the injunctive relief is added to the fund—well within the range that published studies have determined to be reasonable. The request is also over $5 million *less* than the maximum allowable under the Settlement Agreement.

The Settlement Fund will secure extraordinary monetary relief for Class Members who paid money to Defendants or whose judgments were sold. Based on current estimates in light of the claim forms received, more than 8,300 Class Members with the strongest legal claims (those with three timely claims) will receive 98-100% of their money back, totaling approximately $20 million. More than 7,400 Class Members with somewhat weaker claims (those with two timely claims) will receive 83-85% of their money back, totaling approximately $19 million. And, more than 1,700 Class Members with relatively weaker claims (those with only one timely claim) will receive 68-70% of their money back, totaling approximately $4 million. Beyond that, the settlement provides for a payment of $100 to approximately 14,000 other Class Members—those with only untimely claims, those whose judgments were sold, and those who paid money without a default judgment—totaling approximately $1.4 million. None of the Class Members receiving $100 have timely claims.

Because the proposed settlement satisfies all of the criteria for final approval, the Parties respectfully request that the Court approve:

(i) the Stipulation of Settlement as to Claims Against Certain Defendants ("Original Leucadia Agreement") and the First Amendment to the Stipulation of Settlement as to Claims Against Certain Defendants ("Leucadia Amendment" and, collectively with the Original Leucadia Agreement, the "Leucadia Agreement"), Declaration of Matthew D. Brinckerhoff ("Brinckerhoff Decl.") Exs. 1, 2.[1]

[1] All exhibits identified by number are attached to the Declaration of Matthew D. Brinckerhoff, dated April 18, 2016, filed in support of this motion. A listing of these exhibits is at the end of the Brinckerhoff Declaration. The other declarations are attached as exhibits to the Brinckerhoff Declaration as follows: Coffey Decl. (Ex. 5), Shin Decl. (Ex. 6), Poulin Decl. (Ex. 7), Wright Decl. (Ex. 8), Thompson Decl. (Ex. 9), Schlanger Decl. (Ex. 10), and Pietrafesa Decl. (Ex. 11).

(ii) the Stipulation of Settlement as to Claims Against Mel Harris Defendants and Samserv Defendants ("MH/SS Agreement"), Ex. 3;

(iii) Plaintiffs' proposed plan of allocation, Ex. 4;

(iv) service awards for Named Plaintiffs in the amount of $120,000; and

(v) Class Counsel's request for attorneys' fees, in the amount of $14,401,667, and costs in the amount of $192,230.30.

A proposed order granting final approval is attached to the Leucadia Amendment, and, for ease of the Court, attached separately as Exhibit 16 to the Declaration of Matthew D. Brinckerhoff.

I. BACKGROUND

A. Complaints

On October 6, 2009, Plaintiff Monique Sykes filed a complaint against three sets of Defendants (the Mel Harris Defendants, the Leucadia Defendants, and the Samserv Defendants) claiming violations of the Fair Debt Collections Practices Act ("FDCPA") and the New York General Business Law ("GBL") in connection with the named Defendants' attempts to collect an alleged debt from her in New York City Civil Court. Dkt. 1. Defendants are debt buyers (the Leucadia Defendants), a law firm (the Mel Harris Defendants), and process servers (the Samserv Defendants). The Complaint was subsequently amended three times, adding and removing parties and adding claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO") and the New York Judiciary Law. Dkt. 2, 29, 82.[2] Plaintiffs allege that Defendants filed fraudulent affidavits of service and merit in tens of thousands of debt collection lawsuits with the goal of obtaining default judgments against consumers. Defendants then executed on

[2] A copy of the full docket in this case is attached as Exhibit 14.

those judgments by restraining Plaintiffs' bank accounts, garnishing wages, seizing property, damaging credit, and, in some instances, pressuring people—most if not all of them low-income—into unaffordable payment plans.

B. Motion to Dismiss

All Defendants filed motions to dismiss. Dkt. 35, 39, 42. After extensive briefing, the Court largely denied Defendants' motions and allowed the case to proceed. *See Sykes v. Mel Harris & Assocs., LLC*, 757 F. Supp. 2d 413 (S.D.N.Y. 2010) (dismissing certain claims but permitting the majority of the claims to proceed).

C. Rule 68 Judgments

All of the Plaintiffs named in the second amended class action complaint and jury demand were served with Federal Rule of Civil Procedure 68 Offers of Judgment for $15,000. Brinckerhoff Decl. ¶ 91. Five of them (Ruby Colon, Fatima Graham, Saudy Rivera, Paula Robinson and Enid Roman) accepted those offers and settled with Defendants; judgments were filed with respect to those Plaintiffs on April 18, 2011. Dkts. 73-77. Three of the Plaintiffs (Monique Sykes, Rea Veerabadren, and Kelvin Perez) did not accept the $15,000 offers of judgment and chose to proceed with the case. These Plaintiffs rejected the $15,000 offer despite knowing that their ultimate recovery at trial could be less than $15,000 and that if Plaintiffs received less than $15,000 at trial, they could be personally liable for all of Defendants' costs accrued thereafter under the terms of Rule 68. Brinckerhoff Decl. ¶ 91.

D. Discovery and Information Exchange

Before filing the action, attorneys for Plaintiffs thoroughly investigated the underlying claims and gathered significant factual information through pre-suit research and data gathering. Brinckerhoff Decl. ¶ 9. During discovery, Plaintiffs' counsel diligently pursued all information relevant to establishing Plaintiffs' claims by propounding numerous rounds of

discovery requests, subpoenaing third parties, reviewing over 500,000 pages of documents (320,000 of which were produced by the Leucadia Defendants and over 5,000 by Plaintiffs), participating in 18 depositions, including defending all four Named Plaintiffs' depositions, and consulting with various experts and consultants. *Id.* The Parties also engaged in motion practice and sought the Court's intervention on disputes involving the sufficiency of discovery responses, bifurcation of discovery, third-party discovery, subpoenas, privileged information, and the number of depositions, among other issues. *See, e.g.*, Dkt. 57, 83, 98. The Parties exchanged additional and extensive information regarding their factual and legal positions in connection with settlement negotiations. Brinckerhoff Decl. ¶ 10.

E. Class Certification and Interlocutory Appeal

On April 15, 2011, Plaintiffs moved for class certification, which Defendants vigorously opposed. Dkt. 69. After full briefing and oral argument, on September 4, 2012 the Court issued its opinion granting Named Plaintiffs' motion to certify a Rule 23(b)(2) class and a Rule 23(b)(3) class and appointing ECBA, New Economy Project, and MFY as Class Counsel. *Sykes v. Mel Harris & Assocs., LLC*, 285 F.R.D. 279 (S.D.N.Y. 2012).

Defendants expanded their litigation team, adding Quinn Emanuel Urquhart & Sullivan LLP (for the Mel Harris Defendants) and Proskauer Rose LLP (for the Leucadia Defendants). Defendants then sought "clarification" from the Court about the wording of Plaintiffs' proposed class certification order, which effectively amounted to re-litigating the class certification question. Dkts. 159, 161. After additional briefing, on March 28, 2013, the Court denied Defendants' request to clarify the language submitted by Plaintiffs and entered an order appointing Class Counsel and certifying a Rule 23(b)(2) class "of all persons who have been or will be sued by the Mel Harris defendants as counsel for the Leucadia defendants in actions

commenced in New York City Civil Court and where a default judgment has or will be sought" and a Rule 23(b)(3) class "of all persons who have been sued by the Mel Harris defendants as counsel for the Leucadia defendants in actions commenced in New York City Civil Court and where a default judgment has been obtained." Dkt. 171. This brief will refer to these certified classes as the Rule 23(b)(2) Litigation Class and the Rule 23(b)(3) Litigation Class.

In April 2013, Defendants filed Fed. R. Civ. P. 23(f) petitions with the Second Circuit seeking leave to appeal the Court's class certification order. Plaintiffs opposed interlocutory review, but the petitions were granted on July 19, 2013. Defendants retained Paul Clement, former Solicitor General of the United States, and Miguel Estrada to represent them in this appeal, and the Parties then engaged in extensive merits briefing. The Second Circuit heard oral argument for over an hour in February 2014. Brinckerhoff Decl. ¶ 13. In a February 10, 2015 opinion and judgment (*Sykes v. Mel S. Harris and Assocs., LLC*, 780 F.3d 70 (2d Cir. 2015)), the Second Circuit affirmed the Court's March 28, 2013 class certification order, in a 2-1 decision. *Id.*

F. Mediation and Settlement

1. Mediation

In October 2012, shortly after the Court granted Plaintiffs' motion for class certification, the Parties agreed to mediate before former California Superior Court Judge Daniel Weinstein, now a JAMS mediator. On December 5, 2012, counsel for all Parties participated in a full-day mediation session. The Parties were unsuccessful in reaching a resolution that day. Plaintiffs and Leucadia Defendants met several times after the mediation, with the assistance of Judge Weinstein, in an attempt to reach a resolution but were unable to do so. Brinckerhoff Decl. ¶¶ 11-12.

2. Settlement with the Leucadia Defendants

In October 2014, after oral argument on Defendants' interlocutory appeal, but before the Second Circuit affirmed, counsel for Leucadia Defendants and Class Counsel resumed settlement discussions. The Leucadia Defendants and Class Counsel engaged in lengthy arm's-length settlement discussions, which culminated in the Term Sheet executed on December 14, 2014. Ex. 15; Brinckerhoff Decl. ¶ 14.

These discussions were contentious and each term of the Settlement was hard fought. Brinckerhoff Decl. ¶¶ 15 & 16. The Leucadia Defendants and Class Counsel ultimately reached an agreement on all terms, which they memorialized in the Original Leucadia Agreement, dated March 18, 2015. Ex. 1. The terms of the Settlement are explained below. *See infra* Section II.

3. Settlement with the Mel Harris and Samserv Defendants

After signing the Term Sheet with the Leucadia Defendants, Plaintiffs' counsel resumed separate settlement discussions with counsel for the Mel Harris and Samserv Defendants. These negotiations were protracted and contentious and involved both monetary and injunctive terms. Between early April and September 2015, the Parties had multiple sessions and conferences amongst themselves, the Court, and Magistrate Judge Ronald Ellis in an attempt to resolve this case. The settlement negotiations had to address the limited financial assets of these Defendants, which would make impossible payment of the full judgment Plaintiffs would obtain should they prevail at trial. To address this issue, these Defendants provided extensive financial records, and Plaintiffs retained an accountant to analyze this information. After months of exchanging information and settlement demands, Plaintiffs reached financial settlements in

principle with both Mel Harris and Samserv Defendants on September 17 and 18, 2015. Brinckerhoff Decl. ¶ 20.

After reaching an agreement on the monetary provisions, Plaintiffs had extensive negotiations that lasted almost two months with the Mel Harris Defendants and the Samserv Defendants concerning injunctive relief (including the suspension of collections described below) and the agreement's terms. Ultimately, on November 12, 2015, Plaintiffs executed the MH/SS Agreement, Ex. 3, and the Leucadia Amendment, Ex. 2, to reflect the global nature of the settlement.

4. Immediate Suspension of Collection

Throughout the settlement discussions, Plaintiffs had demanded that any settlement include an *immediate* suspension of collections, i.e. no collections to be made pending final approval. Because the Mel Harris Defendants had an ownership interest in the debts, immediate suspension of collections could not occur when there was only a partial settlement with the Leucadia Defendants. Once, however, there was the prospect of a settlement with the Mel Harris Defendants, the Leucadia Defendants agreed to suspend new collections. But affirmative action was required to stop ongoing collections because third parties (marshals, sheriffs, banks, etc.) involved in those collections needed to be contacted and instructed to stop such collections. Additionally, Class Members needed to be contacted and instructed to stop sending payments. Brinckerhoff Decl. ¶ 22.

This aspect of the settlement was complicated by the fact that on September 17, 2015, the law firm of Mel Harris and Associates, LLC, ceased operating, largely due to this lawsuit. The new LR Credit counsel, Stephen Einstein & Associates ("the Einstein Firm"), did not institute new collections, but did process payments received from Class Members both

involuntarily, via the New York City's marshals' offices and New York State sheriffs' offices, and voluntarily, in the amount of approximately $1 million per month. Although the Leucadia Defendants' share of this money was deposited into a fund for the benefit of the class, 25% of all money collected was going to the Einstein Firm as a fee. Plaintiffs contracted with the Einstein Firm to perform the work necessary to suspend the collections operation in order to protect Class Members from further collections pending final approval (including exhaustion of any appeals). Brinckerhoff Decl. ¶¶ 23-25; Ex. 17 (Einstein Agreement). In exchange for suspending collection on approximately 5,200 active accounts, the Einstein Firm was paid a total of $500,000 as an Administrative Expense from the Settlement Amount, or approximately $100 per account. Brinckerhoff Decl. ¶ 26; Poulin Decl. ¶ 1, attached as Exhibit 7 to Brinckerhoff Decl. (detailing the work done to suspend collections). Since the December 10, 2015, effective date of the Einstein Agreement, no further money has been collected from Class Members and any money received has been refunded. Poulin Decl. ¶ 2; *see also* Coffey Decl. ¶ 18 (describing Einstein Firm's role in suspending collections).

G. Preliminary Approval and Certification of Settlement Classes

On November 16, 2015, the Court entered an order that (1) granted preliminary approval of the Leucadia Agreement and the MH/SS Agreement, (2) granted preliminary approval to Plaintiffs' proposed plan of allocation, (3) certified the expanded settlement classes and appointed ECBA, the New Economy Project, and MFY as Class Counsel for the expanded settlement classes, (4) approved the proposed Notices of Class Action Settlement and Claim Forms, and (5) approved the payment of $500,000 as an Administrative Expense to have the Einstein Firm suspend the collection process immediately. Dkt. 236.

II. SETTLEMENT TERMS

A. Overview

Pursuant to the Settlement, Defendants have paid over $60 million in monetary relief to Class Members. The chart below details the payments Defendants have made to date:

Defendant	Settlement Amount	Additional Payments & Interest[3]	Notice Payment	Total
Leucadia	$46,000,000	$5,036,060.92	$350,000	$51,386,060.92
Mel Harris	$7,975,000	$127,057.81		$8,102,057.81
Samserv	$517,500	$1326.61		$518,826.61
		Total:		**$60,006,945.34**

Plaintiffs propose distributing the Settlement Amount as follows:

Description	**Amount**	**Percent of Fund**
Proposed Amount to Class Members (exclusive of service awards)	$44,103,561.48	73.5%
Proposed Service Awards	$120,000	0.2%
Payment to Einstein Firm	$500,000	0.8%
Administrative Expenses	$339,486.56	0.6%
Attorneys' Expenses	$192,230.30	0.3%
Proposed Attorneys' Fees	$14,401,667	24%
Notice Expenses	$350,000	0.6%
TOTAL	**$60,006,945.34**	100%

Brinckerhoff Decl. ¶ 37.

[3] Under the terms of the Parties' settlement agreement, the Samserv Defendants were not required to make additional payments. The chart shows the amount of interest that will accrue by early June 2016, the earliest date of distribution of the Net Settlement Fund.

The principal injunctive relief is that debt collections will end. The Leucadia Defendants agreed to stop seeking default judgments on December 14, 2014, the date the Term Sheet was signed, and on November 12, 2015 agreed to suspend collections. Ex. 15 (Term Sheet) § II.C; Ex. 2 (Leucadia Amendment) § B.

After final approval, LR Credit will transfer all accounts it owns to Rolling Jubilee, a not-for-profit entity chosen by Plaintiffs, and Plaintiffs will continue to work with the New York State courts to vacate all the judgments. Rolling Jubilee will forgive the debts as a gift to Class Members. LR Credit and the Mel Harris Defendants agree not to purchase additional consumer debts and not to initiate litigation on any consumer debts they own or control. The relevant Leucadia entities, the Mel Harris Defendants, and the Samserv Defendants also agree to change their business practices, as detailed further below. *See infra* Section II.C.1. (Ceasing Collections and Vacating Judgments).

B. The Overlapping Settlement Classes

Pursuant to the Settlement, the Parties sought certification, pursuant to Fed. R. Civ. P. 23, of the following settlement classes:

(a) A Rule 23(b)(2) class of all persons or entities who have been or could have been sued by the Mel Harris Firm as counsel for the Leucadia Defendants, including LR Credit, in actions commenced in any court located in the state of New York and where default judgments were or could have been sought ("the Rule 23(b)(2) Settlement Class"); and,

(b) an overlapping Rule 23(b)(3) class of all persons or entities (all of whom are also members of the Rule 23(b)(2) Settlement Class) who have been sued by the Mel Harris Firm as counsel for the Leucadia Defendants, including LR Credit,

in actions commenced in any court located in the state of New York and where Default Judgments were obtained. ("the Rule 23(b)(3) Settlement Class").

Leu. Agr. at 25-26 § I(A)(73); MH/SS Agr. at 3 § I.A (incorporating definition). That is, the Rule 23(b)(3) damages class covers all individuals who Mel Harris obtained judgements against on LR Credit debt, while the Rule 23(b)(2) class, which is significantly broader, encompasses all Class Members whose debt was purchased by LR Credit LLC or its subsidiaries. The Rule 23(b)(2) Settlement Class consists of approximately 390,000 persons of which approximately 199,000 persons are also members of the Rule 23(b)(3) Settlement Class. Thompson Decl. ¶ 8, attached as Exhibit 9 to Brinckerhoff Decl. The Court certified these settlement classes in its November 16 Order. Dkt. 236.[4]

C. Equitable and Injunctive Relief for the Rule 23(b)(2) Settlement Class

1. Ceasing Collections and Vacating Judgments

The Leucadia Agreement provides, as injunctive relief, a mechanism for relieving Class Members of the judgments and alleged debts. This injunctive relief is substantial. The remaining face value of the alleged debts is over $1 billion, and vacating the judgments is conservatively valued at $26.1 million. Wright Decl. ¶ 16.

Specifically, within 30 days after the time to appeal the approval has run, the Leucadia Defendants, with the reasonable cooperation of the Mel Harris Defendants, will transfer all debt portfolios (including but not limited to default judgments) owned by LR Credit, LLC or any of its subsidiaries to an entity designated by Plaintiffs. Leu. Agr. at 48-49 § III(B)(1). Rolling Jubilee—a non-profit 501(c)(4) organization with the exclusive mission of

[4] The Third Amended Complaint alleged claims on behalf of those against whom judgments were or court have been obtained in New York City courts. At settlement, the classes were expanded to include persons against whom judgments were or could have been sought *throughout New York State*.

buying and abolishing debt—has agreed to receive the debt portfolios. This entity has pledged never to collect or sell the debt portfolios and will instead forgive the alleged debts as a gift to Class Members. Brinckerhoff Decl. ¶ 31.

In addition, Plaintiffs will continue to work with the New York State Office of Court Administration ("OCA") to vacate all default judgments entered against Class Members. Brinckerhoff Decl. ¶ 32. Defendants agree to cooperate in this effort. Leu. Agr. at 48-49 § III(B)(1); MH/SS Agr. at 36-37 § III(B)(1). Plaintiffs' counsel have had multiple meetings with representatives of OCA and have determined that the most efficient mechanism to vacate the default judgments entered against Class Members is through a proceeding under N.Y. CPLR § 5015(c), which invokes the broad powers of an administrative judge to vacate improperly granted default judgments *en masse*.[5] Plaintiffs' counsel understands that OCA intends to file such a proceeding. *See* Coffey Decl. ¶ 17.

While Plaintiffs cannot guarantee that OCA will be able to vacate the judgments, Plaintiffs believe they are likely to achieve this relief. In the event that OCA does not go forward with filing a CPLR § 5015(c) proceeding, or the relief sought is not granted, Plaintiffs will seek to vacate the default judgments in other ways. Coffey Decl. ¶ 17.

Prior to engaging in settlement negotiations, Defendants sold a small minority of Class Members' accounts to third parties, including approximately 26,000 accounts where they had already obtained default judgments. *See* Thompson Decl. ¶ 34. Because Defendants no

[5] The statute is derived from its predecessor, former Judiciary Law § 217-a, which was enacted as a means to combat fraud in consumer credit transactions. *See* N.Y. C.P.L.R. § 5015 (McKinney), Practice Commentaries, C5015:13 (2016). "The statute is remedial and was designed to implement orderly procedures by which an expressed public interest can be given representation in the courts where, at first instance, that interest may have been wronged." *Matter of Thompson v. Lincoln Budget Corp*., 88 Misc. 2d 894, 895-96, *aff'd*, 89 Misc.2d 252 (App. Term 1st Dep't 1976) (discussing section 217-a of the Judiciary Law), *aff'd and modified by,* 59 A.D.2d 683 (1st Dep't 1978).

longer own or control these accounts, they cannot stop collections on them and cannot transfer them to Rolling Jubilee, and those debts will not be forgiven. However, Plaintiffs and OCA still intend to seek vacatur of those judgments. Plaintiffs cannot ensure the cooperation of the third-party purchasers, and there is thus more uncertainty about whether their efforts to vacate the sold judgments will be successful (for this reason, the allocation plan provides additional money to Class Members with sold judgments, as detailed below). But because the sold judgments were obtained as part of the same course of conduct as all the other judgments, Plaintiffs believe the sold judgments will likely be vacated as well. Coffey Decl. ¶ 17.

Defendants' agreement to cease collections and allow judgments to be vacated is significant relief for Class Members. Continuing collections often means wage garnishments and frozen bank accounts, forcing low-income consumers to use their limited funds to pay back private debts, rather than pay for necessary expenses, such as rent, medicine, and food. Many of these judgments also appear on Class Members' credit reports, where they prevent Class Members from gaining access to housing and jobs, and cause them to pay more for credit than they otherwise would, and sometimes foreclosing the possibility of obtaining any credit. Relieving Class Members from the judgments—along with the attendant risk that their wages could be garnished and their money and property seized—thus provides substantial, additional economic benefits to Class Members. *See* Coffey Decl. ¶ 6 (detailing the harm from continuing collections and the collateral consequences from default judgments on credit reports).

The direct economic value of this relief to Class Members can be measured in different ways. First, the Settlement will eliminate the outstanding judgment debts against Class Members. Based on the analysis of Plaintiffs' retained accountant Jason T. Wright, the judgment debt has a remaining face amount of over $585 million ($763 million minus $178 million

collected). Mr. Wright projects that, without the Settlement, Defendants would collect approximately $41.5 million more on these judgments, which is presently worth $26 million after applying a 14% discount to account for the time value of money and the relative riskiness in collecting the money. Class Members with judgment debts will therefore be relieved of losing over $41.5 million, which is worth $26 million today. Wright Decl. ¶¶ 7, 16.

Second, the Settlement will stop collections for Class Members with non-judgment debts. The amount of non-judgment debts, including interest, is more than $500 million. Of that amount, $41 million has already been collected, leaving a balance in excess of $459 million subject to collection from Class Members. With the Settlement, Class Members are relieved of this alleged debt. In total, *the face amount of both the non-judgment and judgment debts that will be relieved against Class Members is over $1 billion*. Wright Decl. ¶¶ 15-16.

Third, the Settlement provides that Class Counsel will work to vacate judgments on behalf of Class Members. If Class Members were to seek a private attorney to complete this work, it would cost each class member on average at least $1,000 in attorney's fees to resolve. *See* Schlanger Decl. ¶ 4; Pietrafesa Decl. ¶ 5. *See also Kuhne v. Cohen & Slamowitz LLP*, 579 F.3d 189, 192 (2d Cir. 2009) (noting that the plaintiff paid a private attorney $1000 in legal fees to defend a debt collection suit). In total, *this work saves Class Members nearly $200 million*.

The below chart summarizes the different valuations of this relief.

Description	Amount
Face Amount of Vacating Outstanding Judgments	$585,582,850.76
Projected Amount to be Collected on Judgments	$41,571,579.81 ($26,084,007.79 *discounted*)
Amount of Outstanding Non-judgment Debts	$459,022,993.11
Face Amount of All Extinguished Debt after Removing Actual Amount	$1,044,605,843.87

Collected	
Legal Costs to Vacate Judgments	$199,000,000

2. Other Equitable and Injunctive Relief

In addition to ceasing collection, the Leucadia Defendants agree to a permanent injunction barring L-Credit, LLC, LR Credit, LLC or any of their subsidiaries from purchasing or collecting consumer debts in the future. Leu. Agr. at 50 § III(C)(3). Defendants also agreed that, as of the date the Term Sheet was executed, L-Credit, LLC, LR Credit, LLC and their subsidiaries would no longer seek additional default judgments on debt portfolios they own. *Id*. § III(C)(2).

The Mel Harris Defendants agree that the Mel Harris Firm will not engage in the practice of law and Mel Harris, Kerry Lutz, and David Waldman will not act as attorneys in any consumer debt collection proceeding initiated after the Parties' settlement—with the exception of any work done as part of their cooperation in ceasing collections against Class Members. MH/SS Agr. at 38-39 § III(C)(1)(a). The individual Mel Harris Defendants also agree to comply with all applicable debt collection laws and not to purchase any consumer debt portfolios or judgments, or initiate any litigation with respect to any consumer debt (where the Mel Harris Defendants control the entity holding the debt). *Id*. at 39-40 § III(C)(1)(b).

Samserv, Inc. agrees to stop serving process in consumer debt collection cases and to pay process servers for unsuccessful attempts at the same rate as for successful attempts. William Mlotok, to the extent he ever has a controlling interest in a process serving agency or is ever in a position to set policies regarding the hiring or retention of process servers, also agrees to pay process servers for unsuccessful attempts at the same rate as for successful attempts. *Id*. at 43 § III(C)(2). In addition, Samserv, Inc. and William Mlotok agree to, and have, provided a list

of consumer debt collections lawsuits filed in New York City and Westchester County in which Samserv, Inc. served process from August 2011 to the Final Approval Date. *Id.* at 40-44 § III(C)(2)(b). They also agree to provide, upon request, the corresponding Affidavits of Service. *Id*. at 40-41 § III(C)(2)(b). Due to New York Civil Court's backlog in filing Affidavits of Service, as well as the delay in obtaining archived files, it can take months for defendants to obtain the Affidavits of Service filed in their cases. Accordingly, this injunctive relief will help consumers in non-LR Credit cases obtain necessary information to vacate default judgments obtained against them. Finally, Benjamin Lamb, Michael Mosquera, and John Andino agree that when serving process in New York City, they will include in their records a description of the vicinity in which process was delivered under CPLR § 308(1), and a description of the actual place of business, dwelling place or usual place of abode at which process was delivered to a person of suitable age and description under CPLR § 308(2). *Id*. at 43-44 § III(C)(2)(e). This information will make it more likely that they properly serve process and will help consumer defendants determine whether they were properly served.

3. Rule 23(b)(2) Releases; No Opt-Out

In exchange for the equitable and injunctive relief outlined above, Rule 23(b)(2) Class Members waive all claims for injunctive relief against Defendants and related entities as detailed in the release and proposed bar order. Leu. Agr. at 56-57 § III(H)(1)(b); MH/SS Agr. at 51-52 § III(H)(1)(b). The release and bar order, however, does not extend to third-party purchasers, so Class Members whose accounts were sold will retain their ability to pursue any claims they may have against the current owners of their alleged debts. Brinckerhoff Decl. ¶ 34.

Class Members may not opt out of this aspect of the settlement. As detailed below, while Class Members did not receive individualized notice of this aspect of the

settlement, they did receive publication notice. Additionally, Rule 23(b)(2) Class Members who are eligible for monetary relief received individualized notice as discussed below.

D. Monetary Relief for Certain Members of the Rule 23(b)(2) and Rule 23(b)(3) Settlement Classes

1. The Settlement Amount

As detailed *supra* Section II.A. and in the Declaration of Matthew D. Brinckerhoff, the Settlement provides for over $60 million in monetary relief.

The settlement agreements do not provide for any reversion of settlement funds to defendants based on participation in the settlement, or for any other reason. *Id.* ¶ 36. All of the settlement funds will be irrevocably transferred for the benefit of the class. *Id.*; Leu. Agr. at 48 § III(A)(4)(f) (cy pres provision); MH/SS Agr. at 35-36 § III(A)(3)(f) (same). After calculating each class member's individual award, the Administrator will mail settlement checks to Class Members. If settlement checks remain uncashed after they expire, the remaining funds will be redistributed among Class Members who have timely cashed their checks or, if that is not administratively sensible, distributed to a charity under the *cy pres* doctrine. Leu. Agr. at 48 § III(A)(4)(f) (cy pres provision); MH/SS Agr. at 35-36 § III(A)(3)(f) (same).

The settlement funds will cover Plaintiffs' awards, service payments to Named Plaintiffs, attorneys' fees and costs, and administrative expenses; the Leucadia National Corporation has also agreed to pay for the costs of notice to the class. Brinckerhoff Decl. ¶ 35; *see also* Leu. Agr. at 52 § III(D)(4)(a). The chart above summarizes Plaintiffs' proposed distribution of the Settlement Fund. *See supra* Section II.A.

2. Allocation Plan

The goals of the Allocation Plan (Ex. 4), which was reviewed and approved by former California Superior Court Judge Daniel Weinstein[6] and preliminarily approved by this Court, are (1) to provide as much compensation as possible to members of the Rule 23(b)(3) class who had judgments entered against them and collected upon via wage garnishment, bank account levy, or other means (the "Economic Loss Group"); (2) to provide a base level of compensation in the amount of $100 for every person who paid money to Defendants or had their default judgment sold to a non-defendant debt collector; and (3) because the Net Settlement Fund is not sufficient to provide complete recovery to every member of the Economic Loss Group who submits a timely claim form, to provide more compensation to Class Members whose legal claims against Defendants are within the relevant statutes of limitations, as compared to those with fewer—or no—timely claims (based on the most generous possible accrual date). Brinckerhoff Decl. ¶¶ 41, 48.

The Economic Loss group is subdivided according to whether Class Members have timely claims under any of the causes of action asserted against Defendants: (a) FDCPA (one year statute of limitation), (b) GBL § 349 (three year statute of limitation), and (c) RICO (four year statute of limitation) or have no timely claims.[7] *Id.* ¶ 4. Claim accrual is measured from the date that Defendants first collected money and differs depending on whether the default

[6] Judge Weinstein's biography, including his extensive experience mediating complex high-stakes cases, is detailed at http://www.jamsadr.com/weinstein/.

[7] Plaintiffs also asserted a claim under N.Y. Jud. Law § 487, which governs attorney conduct, and was thus asserted only against the Mel Harris law firm and certain individual Mel Harris attorneys. Because this claim was asserted only against a discrete set of defendants, whereas the other three claims were asserted against all defendants, it was not referenced in the Allocation Plan and is not referenced here.

judgment was entered in New York City Civil Court or any other court. *Id.* ¶ 4.[8] As a result, members of the Economic Loss Group can be divided into the (1) Untimely Group, those who have no timely clams, (2) the 3 Claims Group (those with timely FDCPA, GBL and RICO claims), (3) the 2 Claims Group (those with timely RICO and GBL claims), and (4) the 1 Claim Group (those with only timely RICO claims). Brinckerhoff Decl. ¶ 44.

We expect Class Members in various circumstances outlined below to receive the following amounts based on our current claim information. Brinckerhoff Decl. ¶¶ 35-48. The numbers in this section are preliminary. We will provide any relevant updates to the Court prior to the May 11 Fairness Hearing. *Id*. ¶ 42.

- Nominal Restitution Group: Members of the Rule 23(b)(2) Settlement Class from whom Defendants collected money even though no default judgment was ever entered will receive $100 each. There are up to 4,131 such claimants (depending on resolution of incomplete forms). In aggregate, the Nominal Restitution Group will receive no more than $413,000. Ex. 4 ¶¶ 6, 8; Thompson Decl. ¶ 34.
- Sold Judgment Group: Members of the Rule 23(b)(3) Class whose judgments were sold will receive $100 each (in addition to any other amount to which they may be entitled). Ex. 4 ¶¶ 5, 8. There are up to 3,280 such claimants (depending on resolution of incomplete forms). In the aggregate the Sold Judgment Group will receive no more than $328,000. Thompson Decl. ¶¶ 33-34.

[8] This action was filed on October 6, 2009, asserting claims based on default judgments obtained in the New York City Civil Court, and this is the operative date for claim accrual purposes for Economic Loss Group members who had judgments entered against them in the New York City Civil Court. Ex. 4 at 3 n.1. For Economic Loss Group members who had a default judgment entered against them in any other court, accrual dates are measured from December 15, 2014, the date the Parties entered into a binding settlement term sheet. Brinckerhoff Decl. *Id.*

- Economic Loss Group (Untimely Group): Up to 6,701 members of the Untimely Group—i.e. those who had money collected from them but have no timely causes of action—have submitted claim forms (depending on resolution of incomplete forms); each will receive $100. Thus the aggregate recovery for the Untimely Group is $670,100. Ex. 4 ¶ 11; Thompson Decl. ¶ 34.

After subtracting the $100 payments, the Settlement Fund will have approximately $42.7 million remaining to distribute to up to 18,233 claimants with at least one cause of action (depending on resolution of incomplete forms). *See* Brinckerhoff Decl. ¶ 43; Thompson Decl. ¶ 33. Collectively, approximately $49 million was collected from those 18,223 people. Brinckerhoff Decl. ¶ 43. The $42.7 million remaining will be divided among those with timely claims as follows:

- Economic Loss Group (3 Claims Group): Up to 8,480 members of the 3 Claims Group (with about $20.8 million in losses) have submitted claim forms (depending on resolution of incomplete forms); each will receive *98-100%* of the money collected from them. Thus the aggregate recovery for the 3 Claims Group will be approximately $20 million. Brinckerhoff Decl. ¶¶ 45-46.
- Economic Loss Group (2 Claims Group): Up to 7,601 members of the 2 Claims Group (with about $22.3 million in losses) have submitted claim forms (depending on resolution of incomplete forms); each will receive *83-85% or more* of the money collected from them. Thus the aggregate recovery for the 2 Claims Group will be approximately $19 million. *Id.* ¶¶ 45-56.
- Economic Loss Group (1 Claim Group): Up to 1,771 members of the 1 Claim Group (with about $5.9 million in losses) have submitted claim forms (depending on resolution

of incomplete forms); each will receive *68-70% or more* of the money collected from them. Thus the aggregate recovery for the 1 Claim Group will be approximately $4 million. *Id.* ¶¶ 45-46.

In summary, those with three timely claims will receive almost 100% of the amount collected from them, those with two timely claims will receive approximately 85% of the money collected, and those with only one timely claim will receive approximately 70% of the amount collected from them. Those with no timely claims will receive $100 or $200.

3. Rule 23(b)(3) Releases

Rule 23(b)(2) Nominal Restitution Recipients who do not submit Nominal Restitution Declinations and Rule 23(b)(3) Class Members who do not exclude themselves are bound by the terms of their respective releases in the settlement agreements and will release all claims (injunctive and monetary) that they have, could have had, or could have against Defendants and related entities related to the collection of LR Credit's consumer debt or the settlement of this action, as detailed in the release and proposed bar order. Leu. Agr. at 62 § VII; MH/SS Agr. at 57 at VII. Third parties who purchased debt from LR Credit are not included in the release and bar order, however, so Class Members whose debts or judgments were sold retain any claims that they may have against the current holders of their debt, if not LR Credit.

Class Members who decline restitution or exclude themselves, as relevant, will not receive any monetary payment but will still be eligible for the injunctive relief (and be entitled to have collections on their debt stopped and their account transferred to an entity Plaintiffs designate); as such, they will be bound by the terms of the Rule 23(b)(2) Injunction Only Release and the Settlement Release that are found in both settlement agreements. Leu. Agr. at 62 § VII.; MH/SS Agr. at 57 at VII.

E. Settlement Administration, Service Awards, and Attorneys' Fees and Costs

1. Settlement Class Administrator

Under the terms of the settlement agreements, the Settlement Class Administrator's fees will be paid out of the Settlement Amount, except that the Notice Expenses will be paid for separately by the Leucadia Defendants. Leu. Agr. at 53 § III(E); MH/SS Agr. at 47 § III(E)(1). Plaintiffs selected Epiq Class Action & Claims Solutions ("Epiq"), which has extensive experience administering class action agreements. Brinckerhoff Decl. ¶ 65; Thompson Decl. ¶ 3.

To date, Epiq has done the following tasks: mailing the CAFA notice to state Attorneys General; locating Class Members as necessary; mailing notices to Class Members in accordance with the Court's Preliminary Approval Order; receiving and tracking opt-out statements, statements from objectors, and claim forms; developing procedures for and responding to Class Member inquiries; creating and operating a settlement website; and establishing and administering the Net Settlement Fund. Epiq will also do the following tasks after final approval: close the Net Settlement Fund upon conclusion of the settlement process; calculate the settlement awards; distribute the settlement checks to Class Members; respond to further inquiries from Class Members and Class Counsel about the settlement, the notice, and the procedures contained therein; create a database of Class Members who have received and negotiated settlement checks; and complete any other duties and responsibilities necessary to administer the settlement. *See* Thompson Decl. ¶¶ 4-5, 15, 21-22, 27.

Epiq agreed to cap Notice Expenses at $350,000 which shall be paid by the Leucadia Defendants and not out of the Net Settlement Fund. *Id.* ¶ 19.[9] Epiq also agreed to cap

[9] The cap for Notice Costs and Administrative Costs was based on certain assumptions. Because some of those assumptions changed, including a larger than anticipated notice population, the amount of Notice

Administration Expenses, which will be paid for out of the Net Settlement Fund. The cap was variable based on response rate. The cap on Administrative Expenses will be $300,000 because 30% of Class Members filed claim forms, including duplicate and denied claims. Additionally with the Court's approval, Epiq sent a reminder postcard for an additional cost of $39,487. Thompson Decl. ¶ 20; *see also supra* n. 9. The total fees to Epiq are therefore expected to be approximately $690,000 ($350,000 in Notice Expenses, plus $300,000 in Administrative Expenses, and $39,487 for the reminder postcard).

2. Notice

As detailed in the attached declaration by the Administrator, Notice of the Settlement was provided as approved by the Court's November 16, 2015 Order, with a subsequent approved extension. A summary notice was published in several newspapers. Direct customized notices were sent to the 215,855 Class Members, who are members of the Rule 23(b)(3) class, plus those in the Rule 23(b)(2) Nominal Restitution class. The 118,810 Class Members who were entitled to a share of the settlement fund were also sent a claim form. Thompson Decl. ¶¶ 9, 15. To maximize participation, the claim form requires the minimum possible information necessary to verify that the person completing the claim form is the person listed in the Leucadia Defendants' records. *See Id.,* Ex. A (claim form).

The direct notices were customized in two distinct ways: First, eight form notices were created, with language customized to reflect whether the Class Members' judgments were sold or not, whether money was ever collected from them by Defendants (with or without a default judgment), whether their claims are timely, and whether they are entitled to a monetary

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costs and/or Administrative costs may go above the cap. The Leucadia Defendants are responsible for paying all Notice costs (except for the reminder postcard) and the Administrative Costs will be deducted from the Settlement Fund. The Parties will update the Court with the updated Notice costs and Administrative costs before the Fairness Hearing. *See* Thompson Decl. ¶¶ 19-20.

payment. *See Id*. ¶ 12 & Ex. A. Second, where applicable, the form notice was customized to indicate how much each class member would likely receive (based, where relevant, on likely return rates). Specifically, using information from Defendants' records, the notices included (1) the amount of the default judgment (for Rule 23(b)(3) members); (2) the amount of money Defendants collected (for those who had collections); (3) the Class Members' maximum proportionate recovery assuming a highly improbable 100% response rate from Class Members, as well as recoveries using more probable response rates (30%; 20%; and 10%). *See id.* Notices were sent in English and Spanish. *See* Thompson Decl.¶ 6. The chief purpose of the individualized notices and the simple claim forms was to maximize participation by making Class Members recognize it was worth their time to complete the form and making the form easy to complete.

Approximately 27% of those eligible submitted claim forms. Thompson Decl. ¶ 29. The response rate among those with timely causes of action was particularly high, likely because the Notices were designed to inform such Class Members about the extent of their potential recovery. Over 34% of Class Members with at least one timely cause of action submitted a claim. *See* Thompson Decl. ¶ 33. As a result of this high response rate, our assumption in our preliminary approval brief that each class member with timely claims could receive the full amount collected has proved erroneous. Instead, many *more* Class Members will receive money from the settlement, but Class Members will each receive less money.

These percentages reflect a very high response rate in a claims made class action settlement. *See, e.g.*, *In re Initial Pub. Offering Sec. Litig*., No. 21 MC 92 (SAS), 2010 WL 2834894, at *1 (S.D.N.Y. July 7, 2010) (describing a 5.5 percent response rate in a securities action as "not outside the norm"); *Shames v. Hertz Corp.,* No. 07-CV-2174-MMA WMC, 2012

WL 5392159, at *14 (S.D. Cal. Nov. 5, 2012) (overruling objection to settlement of consumer fraud case because of 4.9 percent response rate and citing cases approving settlements that yielded even lower claim rates); *Stoner v. CBA Info. Servs.*, 352 F. Supp. 2d 549, 552 (E.D. Pa. 2005) (approving settlement of consumer class action alleging violations of the Fair Credit Reporting Act and describing a 16 percent response rate as "relatively high response rate" and indicating a "more than favorable class reaction").

This 27% response rate is a testament to the overwhelmingly positive response from the Class and the result of the work Class Counsel and the Administrator (at Class Counsel's direction) did to ensure that Class Members knew of the settlement. *See* Brinckerhoff Decl. ¶ 49 (detailing steps taken to increase response rate).

3. The Einstein Firm

The Court has already approved the payment of $500,000 from the Leucadia Account to the Einstein Firm as an Administrative Expenses. This payment is to compensate the Einstein firm for the significant amount of work needed to suspend collection activity on the Class Members' debts. The Einstein Firm was successful in suspending the collection machinery. *See supra* Section I.F.4 (Immediate Suspension of Collection); Poulin Decl. ¶ 14. By paying $500,000 to the Einstein Firm, the Class will save approximately $5 million that would have been collected in total ($1 million per month), and including the $1,250,000 of that amount that would have been paid to the Einstein Firm for such collections through the date of the fairness hearing.

4. Attorneys' Fees and Costs

The settlement agreements provide that attorneys' fees and expenses shall not exceed one-third of the funds remaining in the Net Settlement Fund after deductions for service

awards, administration expenses, and tax expenses. Leu. Agr. at 59-60 § IV(A); MH/SS Agr. at 56 § IV(A). As detailed below, Class Counsel is applying for an award of $14,401,667 in fees and $192,230.30 in costs, which is $5 million less than the amount Class Counsel is entitled to request under the Settlement Agreements. The fees and costs awarded will be paid from the Net Settlement Fund. *See infra* Section IV.

5. Service Awards

In accordance with the settlement agreements, Plaintiffs request that the Court approve service awards for the four Named Plaintiffs in the amount of $30,000 each, in recognition of the services they rendered on behalf of the class. Leu. Agr. at 61 § V(A); MH/SS Agr. at 2-3 § I(A) (incorporating Service Award definition). Those services included: participating over several years in fact development and discovery, including sitting for depositions; rejecting Rule 68 offers of judgment for $15,000; and, in the interest of the case, publicizing their personal experiences with debt collection. Brinckerhoff Decl. ¶ 89.

III. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

The law favors compromise and settlement of class action suits. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc*., 396 F.3d 96, 116 (2d Cir. 2005) (noting the "strong judicial policy in favor of settlements, particularly in the class action context") (internal quotation marks and citation omitted); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged."). "Courts encourage early settlement of class actions, when warranted, because early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere." *Hernandez v. Merrill Lynch & Co., Inc.*, No. 11 Civ. 8472, 2012 WL 5862749, at *2 (S.D.N.Y. Nov. 15, 2012); *see also Diaz v. E. Locating*

Serv., Inc., No. 10 Civ. 4082, 2010 WL 5507912, at *3 (S.D.N.Y. Nov. 29, 2010) (giving "weight to the parties' judgment that the settlement is fair and reasonable"). The Parties here acted responsibly in reaching a settlement in this case.

The approval of a proposed class action settlement is a matter of discretion. *See Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1078 (2d Cir. 1995). "[C]ourts should give proper deference to the private consensual decision of the parties . . . [and] should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation . . . ." *Clark v. Ecolab Inc.*, No. 07 Civ. 8623, 2009 WL 6615729, at *3 (S.D.N.Y. Nov. 27, 2009) (internal quotation marks and citations omitted). "Fairness is determined upon review of both the terms of the settlement agreement and the negotiating process that led to such agreement." *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 184 (W.D.N.Y. 2005). "Absent fraud or collusion, [courts] should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement." *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240, 2007 WL 2230177, at *4 (S.D.N.Y. July 27, 2007).

Rule 23 (e) requires Court approval of this class action settlement to ensure that it is fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23 (e). The Court's task is to ensure both procedural and substantive fairness. *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 474 (S.D.N.Y. 2013).

A. The Settlement is Procedurally Fair

Evaluation of the fairness, reasonableness, and adequacy of a proposed settlement involves two inquiries: a substantive analysis of the settlement itself, and an examination of the procedural process by which it was reached to ensure that negotiations were fair and conducted

at arms length. *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85-87 (2d Cir. 2001); *McBean v. City of New York*, 233 F.R.D. 377, 382-91 (S.D.N.Y. 2006) ("*McBean II*").

In evaluating procedural fairness, the court must examine "the negotiating process leading to settlement." *Wal-Mart Stores*, 396 F.3d at 116; *see D'Amato*, 236 F.3d at 85. "A court reviewing a proposed settlement must pay close attention to the negotiating process, to ensure that the settlement resulted from 'arm's-length negotiations and that plaintiffs' counsel have possessed the experience and ability, and have engaged in the discovery, necessary to effective representation of the class's interests.'" *Id.* (quoting *Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982)). "A 'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.'" *Wal-Mart Stores*, 396 F.3d at 116 (quoting Manual for Complex Litigation, Third, § 30.42 (1995)).

Here, negotiations between the Parties were lengthy, complex, vigorously contested, and always conducted at arm's length. As set forth in more detail above (*supra* Section I.D.), the Parties engaged in extensive discovery, including exchanging and reviewing thousands of pages of documents, reviewing and analyzing key electronic databases maintained by the Leucadia and Mel Harris Defendants, and conducting 14 depositions including three representatives of the Leucadia Defendants, five representatives of the Samserv Defendants, and two representatives of the Mel Harris Defendants. While discovery is still not complete, the Parties reviewed enough material to have a very good sense of the strength and weaknesses of each others' positions.

As set forth in more detail above (*supra* Section I.F.), the Parties—who were represented by experienced, highly capable counsel—settled this matter only after protracted

settlement negotiations overseen by California Superior Court Judge Daniel Weinstein and Magistrate Judge Ronald L. Ellis. *Cf. D'Amato*, 236 F.3d at 85 ("[A] court-appointed mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."). Judge Weinstein also reviewed and approved the Allocation Plan. Brinckerhoff Decl. ¶ 47.

Because the settlement process was fair, arms-length and collusion-free, the resulting agreement is presumed to be fair, adequate, and reasonable.

B. The Settlement is Substantively Fair

In evaluating a class action settlement, courts in the Second Circuit generally consider the nine factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000) ("*Grinnell*").

The *Grinnell* factors are "(1) the complexity, expense and likely duration of the litigation;" "(2) the reaction of the class to the settlement;" "(3) the stage of the proceedings and the amount of discovery completed;" "(4) the risks of establishing liability;" "(5) the risks of establishing damages;" "(6) the risks of maintaining the class action through the trial;" "(7) the ability of the defendants to withstand a greater judgment;" "(8) the range of reasonableness of the Settlement Fund in light of the best possible recovery;" and "(9) the range of reasonableness of the Settlement Fund to a possible recovery in light of all the attendant risks of litigation." *Grinnell*, 495 F.2d at 463 (internal citations omitted). The *Grinnell* factors weigh in favor of approval of the settlement (although, as to the Leucadia Defendants' only, their ability to withstand a greater judgment (*Grinnell* Factor 7) is likely not in question).

1. Litigation Through Trial Would be Complex, Costly, and Long (*Grinnell* Factor 1).

By reaching a favorable settlement prior to dispositive motions or trial, Plaintiffs seek to avoid significant expense and delay and ensure recovery for the class. "Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000), *aff'd sub nom. D'Amato*, 236 F.3d.

This case is no exception. With a class period dating back over a decade and claims arising under a variety of federal and state statutory provisions – including RICO – this case is extraordinarily complex.

Further litigation here would cause additional expense and delay. Though the case has been pending for six years, Plaintiffs have yet to depose some key witnesses from among Defendants, and discovery is far from complete. Following discovery, the Parties envision summary judgment motions raising many technical and novel issues of law, such as (to name just two of many examples) whether the Fair Debt Collection Practices Act applies to false statements made to court officials, and whether issues of comity, federalism and the Full Faith and Credit Clause of the Constitution bar Plaintiffs' damages claims. Defendants also will likely seek to de-certify the classes, claiming, as they did before the Second Circuit, that individual issues predominate. If Plaintiffs defeat summary judgment and the classes remain certified, a fact-intensive trial would likely be necessary to determine both liability and damages. A trial would be lengthy and complex, would require extensive testimony from expert witnesses, and would consume tremendous time and resources for the Parties and the Court. Any judgment would likely be appealed, further extending the litigation. Even after final resolution of the litigation, Class Members likely would be unable to immediately collect their full judgment

against the Mel Harris and Samserv Defendants, given those Defendants' limited resources and the magnitude of the judgment that Plaintiffs believe they would obtain if they prevailed at trial. There would, therefore, be further delay to engage in judgment collection. Brinckerhoff Decl. ¶ 61. Class Members would not obtain relief for years. The settlement, on the other hand, makes monetary and injunctive relief available to Class Members in a prompt and efficient manner. *Id*. ¶ 57. Therefore, the first *Grinnell* factor weighs in favor of approval.

2. The Reaction of the Class Has Been Positive (*Grinnell* Factor 2).

More than two months after comprehensive Court-approved notice was disseminated to Class Members, the vast majority of the class has approved of the settlement. Approximately 27% of those eligible to submit claims did so. Out of the 390,000 people in the class, only two Class Members have objected to the proposed settlement—an objection rate of 0.0005%. And only 36 people have excluded themselves—an exclusion rate of 0.01%. Thompson Decl. ¶ 18. Although Epiq has received 25,000 calls and 90,000 webpage hits, *id*., and many contacted Class Counsel directly, Brinckerhoff Decl. ¶ 40, other than the two Class Members who objected, none expressed substantive fairness concerns about the settlement. Additionally, all the Named Plaintiffs have expressed their approval of the settlement. Leu. Agr. at 73 § XIII(E); MH/SS Agr. at 68-69 § XIII (C).

"It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy." *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002). Few class member objections "may itself be taken as evidencing the fairness of a settlement." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997) (internal quotation marks omitted).

The favorable response of the class here demonstrates that the class approves of the settlement, which further supports final approval. *See Willix v. Healthfirst, Inc.*, No. 07 Civ. 1143, 2011 WL 754862, at *4 (E.D.N.Y. Feb. 18, 2011) (approving settlement where seven of 2,025 class members objected and two requested exclusion); *Wright v. Stern*, 553 F. Supp. 2d 337, 344-45 (S.D.N.Y. 2008) ("that the vast majority of class members neither objected nor opted out is a strong indication" of fairness). Therefore, this factor weighs in favor of approval.

3. Discovery Has Advanced Far Enough to Allow the Parties to Resolve the Case Responsibly (*Grinnell* Factor 3).

The Parties have completed extensive discovery. "Because much of the point of settling is to avoid litigation expenses such as full discovery, it would be inconsistent with the salutary purposes of settlement to find that extensive pre-trial discovery is a prerequisite to approval of a settlement." *Martens v. Smith Barney, Inc.*, 181 F.R.D. 243, 263 (S.D.N.Y. 1998) (internal quotation marks and citations omitted). The proper question is "whether counsel had an adequate appreciation of the merits of the case before negotiating." *In re Warfarin*, 391 F.3d at 537 (internal quotation marks omitted). "[T]he pretrial negotiations and discovery must be sufficiently adversarial that they are not designed to justify a settlement . . . [, but] an aggressive effort to ferret out facts helpful to the prosecution of the suit." *In re Austrian*, 80 F. Supp. 2d at 176 (internal quotation marks and citation omitted).

The Parties' discovery here meets this standard. As set forth in more detail above (*supra* Section I.D), before filing the action, Class Counsel thoroughly investigated the underlying claims and gathered significant factual information through pre-suit research and formal discovery and data gathering. During discovery, the Parties propounded and responded to numerous discovery requests, subpoenaed third parties, reviewed 500,000 pages of documents (of which 320,000 were produced by the Leucadia Defendants alone), participated in 18

depositions (including three representatives of the Leucadia Defendants, five representatives of the Samserv Defendants and two representatives of the Mel Harris Defendants) and consulted with various experts and consultants. Brinckerhoff Decl. ¶¶ 9-10.

The thoroughness of the discovery performed here favors final approval. *See, e.g.*, *McMahon v. Olivier Cheng Catering and Events, LLC*, No. 08 Civ. 8713, 2010 WL 2399328, at *5 (S.D.N.Y. Mar. 3, 2010) (finding that the parties' "efficient, informal exchange of information" was enough discovery to recommend settlement approval); *Frank*, 228 F.R.D. at 185 (approving settlement of case where parties had exchanged extensive information pertaining to the identities of class members and defendant's practices). Courts often grant final approval of class settlements in cases where the parties conducted less discovery than in this case. *See, e.g.*, *Matheson v. T-Bone Rest., LLC*, No. 09 Civ. 4214, 2011 WL 6268216, at *5 (S.D.N.Y. Dec. 13, 2011) (granting final approval where parties engaged in informal information exchange with no depositions because "Plaintiffs obtained sufficient discovery to weigh the strengths and weaknesses of their claims" and "[t]he parties' participation in a day-long mediation allowed them to further explore the claims and defenses"); *Johnson v. Brennan*, No. 10 Civ. 4712, 2011 WL 4357376, at *9-10 (S.D.N.Y. Sept. 16, 2011) (finding that parties were "well-equipped to evaluate the strengths and weaknesses of the case" and granting final approval where parties engaged in informal discovery and no depositions were taken); *Diaz*, 2010 WL 5507912, at *5 (granting final approval of pre-suit class settlement, where informal discovery consisted of pre-suit document exchange); *McMahon*, 2010 WL 2399328, at *5 (granting final approval where parties conducted informal discovery but no depositions); *Khait v. Whirlpool Corp.*, No. 06-6381, 2010 WL 2025106, at *6 (E.D.N.Y. Jan. 20, 2010) (approving settlement with informal

discovery but no depositions). Here, where Class Counsel engaged in extensive document discovery and consulted with experts, this factor unquestionably favors final approval.

4. Plaintiffs Would Face Real Risks if the Case Proceeded (*Grinnell* Factors 4 and 5).

Although Plaintiffs believe their case is strong, it is subject to considerable risk. "Litigation inherently involves risks." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. at 126. "The proposed settlement benefits each plaintiff in that he or she will recover a monetary award immediately, without having to risk that an outcome unfavorable to the plaintiffs will emerge from a trial." *Velez*, 2007 WL 7232783, at *6.

A trial on the merits would involve significant risks for Plaintiffs as to both liability and damages. Among other things, to recover the maximum possible damages for the maximum possible number of people, Plaintiffs would have to prevail on their RICO claims, including establishing that each Defendant intentionally engaged in racketeering activity. Even if Plaintiffs succeeded in proving their RICO claims, Defendants have argued strenuously and under multiple legal theories that Plaintiffs' largest category of damages—the money that was collected from them via the fraudulently-obtained judgments—is not actually recoverable. While Plaintiffs believe that they could ultimately establish both liability and damages, this would require significant factual development, requiring hundreds of additional hours of discovery, plus the time and resources required to litigate dispositive motions and prevail at trial, and then prevail again on the inevitable appeal. Plaintiffs would further face the risks that any judgment against the Mel Harris or Samserv Defendants will not be collectible. Brinckerhoff Decl. ¶¶ 57-62.

Class Counsel are experienced and realistic, and understand that the resolution of liability issues, the outcome of the trial, and the inevitable appeals process are inherently

uncertain in terms of outcome and duration. The proposed settlement alleviates these uncertainties. This factor thus weighs in favor of approval.

5. Maintaining the Class Through Trial Would Not Be Simple (*Grinnell* Factor 6).

The risk of maintaining class certification through trial is also present. Defendants strenuously opposed class certification on the ground that too many individual issues existed to maintain a class. In particular, Defendants argued that damages could not be determined on a class-wide basis because each class member's entitlement to damages would turn on a fact-intensive inquiry as to whether that class member was served and/or owed the alleged underlying debt. Although Plaintiffs disagree that these questions are relevant to determining damages, these are still open questions in the case. *See Sykes*, 780 F.3d at 88-89 (declining to decide these questions at class certification stage). Accordingly, this factor also weighs in favor of approval.

6. The Mel Harris and Samserv Defendants are unlikely to be able to withstand a greater judgment (*Grinnell* Factor 7).

"[E]vidence that the defendant will not be able to pay a larger award at trial tends to weigh in favor of approval of a settlement, since the 'prospect of a bankrupt judgment debtor down at the end of the road does not satisfy anyone involved in the use of class action procedures.'" *In re PaineWebber*, 171 F.R.D. at 129 (quoting *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 746 (S.D.N.Y. 1985)).

The Mel Harris and Samserv Defendants provided Plaintiffs with detailed financial information as part of the settlement discussions conducted by Magistrate Judge Ellis. Class Counsel carefully reviewed that information with their certified Valuation Analysis. That information demonstrated to Plaintiffs' satisfaction that the Mel Harris and Samserv Defendants

would likely be unable to pay a judgment of the magnitude Plaintiffs would seek at trial. At best, Plaintiffs would only be able to collect a portion of the judgment immediately after trial and would have to continue collection efforts, likely over a period of years, during which the administrative costs of distributing such money to the Class would quickly overwhelm the recovery itself. Brinckerhoff Decl. ¶ 62. This factor weighs in favor of approval.

7. The Settlement Amount is Substantial, Even in Light of the Best Possible Recovery and the Attendant Risks of Litigation (*Grinnell* Factors 8 and 9).

Defendants agreed to settle this case for a substantial amount: approximately $60 million. The amount represents substantial value given the attendant risks of litigation, even though recovery could theoretically be greater if Plaintiffs defeated a motion for summary judgment and defeated motions to decertify the class; succeeded on all claims at trial; survived an appeal; and were able to collect on the judgment they obtained. Brinckerhoff Decl ¶ 52.

This settlement represents a significant percentage of the best possible recovery. Approximately $119 million was collected as a result of default judgments from Class Members with claims that are timely (based on accrual dates that are most favorable to members of the Rule 23(b)(3) Settlement Class). *Id*. ¶ 64. Accordingly, the maximum total likely recovery in this action was approximately $119 million, though Class Members also have claims for treble damages under RICO against all defendants and for treble damages under the N.Y Judiciary Law against the Mel S. Harris law firm and the individual Mel Harris Defendants who are lawyers. With trebling, the maximum total recovery is $357 million. While the maximum total potential recovery would have increased the longer this action was litigated, that increase would have been to the detriment the class because it would be due to more money collected from Class Members. The $60 million monetary settlement represents over *half* of the $119 million LR Credit

collected from Class Members who had timely claims. As detailed above, *Class Members with timely claims will receive the vast majority of the money collected from them* as a result of default judgments, based on the number of claims received. *Id*. ¶ 46.

The Settlement Amount does not represent the sole economic benefit to Class Members. Collections have been suspended while this Court (and any appellate Court) decides whether to approve the settlement. Leu. Amend. at 4(B). And if the settlement is approved, collections will end permanently and Plaintiffs will work with New York State courts to vacate those judgments. Leu. Agr. at 48-49 § III(B)(1). As detailed above and in the Coffey Decl. ¶ 6, Class Members suffer from collateral consequences from these judgments—they prevent Class Members from gaining access to housing and jobs—and face the risk that their wages could be garnished and their money and property seized. *See also* Brinckerhoff Decl. ¶ 55. As detailed above, ending collections on the judgments alone will save Class Members $41.5 million in more collections, which Plaintiffs' accountant conservatively valued at $26.1 million today. Wright Decl. ¶ 14. The total value of the Settlement is therefore at least $86 million ($60 million plus $26.1 million).

The determination of whether a settlement amount is reasonable "does not involve the use of a 'mathematical equation yielding a particularized sum.'" *Frank*, 228 F.R.D. at 186 (quoting *In re Austrian*, 80 F. Supp. 2d at 178). "Instead, 'there is a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.'" *Id.* (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)). "[T]here is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *Grinnell*, 495 F.2d at 455 n.2. "It

is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not *per se* render the settlement inadequate or unfair." *Officers for Justice v. Civil Serv. Comm'n of City and Cnty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) (emphasis added); *see also Cagan v. Anchor Sav. Bank FSB*, No. 88 Civ. 3024, 1990 WL 73423, at *12-13 (E.D.N.Y. May 22, 1990) (approving $2.3 million class settlement over objections that the "best possible recovery would be approximately $121 million").

Here, the settlement is significant and dwarfs the recovery obtained in similar cases. For example, in *Vassalle v. Midland Funding, LLC*, 708 F.3d 747, 753 (6th Cir. 2013), a nationwide class action brought against a debt buyer for filing false affidavits in state court, ultimately settled for $5.2 million, of which each class member received only $17.38, and Midland continued to collect their alleged debt. In this case, by contrast, Class Members from whom Defendants collected money will be entitled to receive refunds in the amount of hundreds or even thousands of dollars, depending on the nature and extent of their injuries. In addition, Class Members will receive the economic benefit of cessation of collections and likely vacatur of their judgments without having to submit a claim form, go to court, or hire an attorney.

C. The Two Objections Do Not Undermine the Fairness of the Settlement

Out of a class of over 390,000 people, two people objected *pro se*. Neither objection counsels rejection of the settlement.

1. Objection to Payment Amounts for Class Members with Untimely Claims

One class member objected to receiving $100, instead of the $700 that Defendants collected from her. Thompson Decl. ¶ 17 & Ex. D. Had the objector brought her own suit she would almost certainly be entitled to nothing under the governing statutes of limitations, so the $100 allocated to her under the Allocation Plan is fair and reasonable.

Specifically, the longest statute of limitations for the claims Plaintiffs brought is RICO's four year statute of limitations.[10] The Allocation Plan measures claim accrual generally from the first date of economic loss, namely the collection of any money from the class member, e.g., due to wage garnishment, bank account lien, or payment of any kind. Ex. 4. Even if the objector did not learn of the debt collection proceeding before or after the entry of the default judgment (for example, because she was never properly served), she would learn of the debt collection lawsuit no later than the point where she had money collected in June 2004.

Because this action was filed on October 6, 2009, and alleged only claims based on default judgments obtained in the New York City Civil Court, Class Members who had judgments entered against them in the New York City Civil Court had to have experienced an initial collection *after* October 5, 2005 to have any timely claims. For Class Members who had judgments entered against them in any other New York State court, claim accrual is measured from December 15, 2014, the date Plaintiffs and the Leucadia Defendants entered into a binding settlement term sheet which included settlement for the expanded State-wide settlement class.

Here, the objector's first collection was in June 2004 based on a default judgment from Orange County, so her claims expired long before the term sheet was signed (and even before this lawsuit was filed).

Plaintiff's allocation plan reasonably allocated more money to those with timely claims and less to those with untimely claims. In settlements such as this, class counsel are entitled to use their discretion in developing a method to allocate a settlement fund, as long as the method is reasonable or has a rational basis. *See Bezio v. Gen. Elec. Co.*, 655 F. Supp. 2d 162, 167 (N.D.N.Y. 2009) ("When formulated by competent and experienced class counsel, an

[10] The GBL § 349 and Judiciary Law claims have three year statutes of limitation. The FDCPA has a one year statute of limitation.

allocation plan need have only a reasonable, rational basis.") (internal quotation marks omitted); *In re Glob. Crossing Sec. & ERISA Litig.,* 225 F.R.D. 436, 463 (S.D.N.Y. 2004) (noting that counsel is entitled to use discretion in formulating an allocation plan). Here, class counsel reasonably chose to prioritize those with timely claims, while still providing at least some compensation to those with untimely claims. This approach is exceedingly reasonable because had this case proceeded, it is likely that those with untimely claims would receive no compensation at all. *See Hicks v. Stanley*, No. 01 Civ. 10071, 2005 WL 2757792, at *6 (S.D.N.Y. Oct. 24, 2005) (noting the reasonableness of the settlement amount in light of the obstacles plaintiffs would face in continued litigation).

Moreover, in addition to the $100 that the objector and other Class Members with untimely claims will receive, such Class Members will also enjoy no further collections on their outstanding judgment and Plaintiffs will attempt to vacate those judgments. Specifically, though she has no timely claims, the objector will not face any further collection on the nearly $15,000 judgment that LR Credit obtained against her ($14,487.37, with interest accruing thereon). Thompson Decl. ¶ 17. That is valuable relief over and above the $100 monetary payment.

2. Objection Based on Attorneys' Fees and Tax Implications

A second objector raised an objection that counsel would receive $20 million and "the Internal Revenue Service will tax moneys awarded though the money stolen had been taxed previously." Thompson Decl. Ex. D. Both of these claims are based on misunderstandings.

First, as detailed *infra*, Class Counsel are not seeking $20 million, but instead are seeking $14.4 million. Section IV details how that amount is consistent with the amounts awarded in similar settlement and fairly compensates Class Counsel for the time they expended

in pursuing a risky and ground-breaking case to secure the largest consumer class action settlement of its kind.

Second, as the settlement website details, no IRS Form 1099s will be issued to Class Members who receive only the amount collected from them, or less. The Administrator consulted with its accountant and determined there is no tax consequence of receiving back money that was wrongfully taken from them. Thompson Decl. ¶ 17. A class member would only have to pay income taxes on any amount received through the Settlement *over and above* what was collected. But more fundamentally, the tax consequences would exist if the case went to judgment. The objector's real complaint is with federal tax law, not the Settlement entered into here.

***

Given the legal and factual disputes that persist, the settlement represents a substantial recovery for Class Members. Because the settlement, on its face, is "'fair, adequate, and reasonable, and not a product of collusion,'" *Frank*, 228 F.R.D. at 184 (quoting *Joel A. v. Giuliani*, 218 F.3d 132, 138-39 (2d Cir. 2000)), the Court should grant final approval.

IV. THE COURT SHOULD AWARD THE REQUESTED ATTORNEYS' FEES AND COSTS

Class Counsel seek an award of $192,230.30 in costs and $14,401,667 in attorneys' fees. The fees requested are 24% of the Settlement Amount, or 16.7% including a conservative estimate for the value of injunctive relief ($26.1 million). Under the terms of the Parties' negotiated Settlement Agreement, Class Counsel are permitted to seek up to "one-third of the funds remaining in the Class Settlement Account after deductions for Service Awards,

Administration Expenses and Tax Expenses."[11] Leu. Agr. at 59-60 § IV.A. One-third of the Class Settlement Account after these deductions is approximately $19,691,000. Class Counsel's request for fees and costs is over *$5 million less* than the Parties' negotiated amount and instead represents less than 25% of the total Class Settlement Account.

As discussed below, the requested amount of fees and costs is reasonable as compared to similar settlements, when crosschecked with the lodestar, and in light of the results achieved for over 350,000 Class Members. The fees requested are particularly reasonable given that Class Counsel litigated this case for six years and the risk of no recovery was high. And Class Counsel will continue to work on this case going forward to ensure that Class Members benefit from the valuable injunctive relief.

A. The Common Fund Doctrine

It is well settled that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). "Fees and expenses are paid from the common fund so that all Class Members contribute equally towards the costs associated with litigation pursued on their behalf." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 585 (S.D.N.Y. 2008). "Awarding counsel fees in such cases also serves the salutary purpose of encouraging counsel to pursue meritorious claims on behalf of a class of individuals who could not afford to litigate their individual claims." *Steiner v. Williams*, No. 99 Civ. 10186, 2001 WL 604035, at *1 (S.D.N.Y. May 31, 2001). The fees awarded "may not exceed what is reasonable under the circumstances[,]" and determining "[w]hat constitutes a reasonable fee is

[11] While there may be some tax expenses attendant to filing tax returns, none have been invoiced to date.

properly committed to the sound discretion of the district court." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000) (internal quotation marks omitted).

A district court, in determining a reasonable fee in a common fund case, may apply either the lodestar or percentage-of-the-fund method. *Id.* at 50. While either method is permitted, "[t]he trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Wal-Mart Stores, Inc.*, 396 F.3d at 121 (internal citation and quotation marks omitted). The Second Circuit also recognized that this method prevents district courts from having to "engage in gimlet-eyed review of line-item fee audits" as required when calculating the lodestar. *Id.* Nonetheless, even under the percentage-of-the-fund method, district courts are encouraged to crosscheck the percentage fee against the lodestar to ensure reasonableness. *Goldberger*, 209 F.3d at 50.

B. The *Goldberger* Factors Support Class Counsel's Fee Application

Class Counsel requests a fee of 14,401,667, which is 24% of the Settlement Amount (16.7% when including the value of injunctive relief). When determining the reasonableness of an attorneys' fees award, the district court must consider the following factors: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Id*. Each of these factors supports the fee requested.

1. Class Counsel's Time and Labor

Class Counsel has spent over six years litigating this complex and novel case. As reflected in counsel's declarations, Class Counsel and staff have spent nearly 8,000 hours

litigating this case, which is the equivalent of one attorney working full-time solely on this matter for four years. Brinkerhoff Decl. ¶ 73. This time includes opposing motions to dismiss raised by all defendants, filing and responding to discovery motions, propounding and responding to discovery, subpoenaing non-parties, reviewing over 500,000 pages of documents, taking 18 depositions, defending all Named Plaintiffs' depositions, and consulting with various experts and consultants. *Id.* ¶ 9. Class Counsel also spent over two years negotiating the settlements with all parties. *Id.* ¶ 22.

Class Counsel also expended a significant amount of time and effort litigating the issue of class certification. The Court granted Plaintiffs' motion for class certification on September 4, 2012, a decision Defendants' appealed. Dkt. Nos. 123, 171, 184. Plaintiffs spent hundreds of hours preparing the brief opposing Defendants' petition for interlocutory appeal and the merits brief defending the Court's order. Brinkerhoff Decl. ¶ 13. Defendants hired highly-skilled appellate lawyers, including Paul Clement, former Solicitor General of the United States, and Miguel Estrada, to represent them in this appeal. The Parties argued the issue nearly a year later on February 7, 2014, and the Second Circuit affirmed the class certification order a year after that.

This case will also require significant future work on behalf of Class Members. Under the terms of the Agreement, Class Counsel agreed to work with OCA to seek to vacate all default judgments entered against over 190,000 Class Members. While Class Counsel cannot guarantee that courts will vacate all of these judgments, efforts to do so will likely require months or even years of the attorneys' time and labor. Based on Class Counsel's experience with class action settlements that require post-settlement work, it will likely take at least 1,000

additional hours of attorney and staff time. *See* Brinckerhoff Decl. ¶ 74. Therefore, the extensive past and future attorney time spent on this case supports the requested fee award.

2. Magnitude and Complexities of the Litigation

This litigation was extensive and complex and will impact the lives of hundreds of thousands of New Yorkers. Plaintiffs raised four claims against numerous defendants, alleging that they engaged in a massive scheme to deprive consumers of due process and to fraudulently obtain default judgments worth millions of dollars. Third Am. Compl. ¶¶ 1, 14-38, Dkt. 82. The suit, by its nature, raised complex legal and factual issues. *See Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 196 (S.D.N.Y. 2012), *aff'd sub nom. Charron v. Wiener*, 731 F.3d 241 (2d Cir. 2013) (describing how litigating claims under RICO statutes and New York's consumer protection laws would be "long, complicated, and expensive"). As described above, the Parties were mid-way through vigorously litigating this case. Continued litigation would have been equally complicated, involving extensive expert discovery, depositions of Defendants' key witnesses, additional dispositive motions, and possibly an argument before the U.S. Supreme Court on the issue of class certification.

The settlement itself indicates the magnitude and complexity of this suit. The stipulated settlements with all Defendants are over 150 pages long in total and include multiple addenda. The settlement covers over 350,000 Class Members with varying levels of damages, requires the assistance of a settlement administrator, and includes extensive injunctive relief for each of the three sets of defendants.

3. Risk of Litigation

While all factors are important, the Second Circuit has made clear that the risk of success is "perhaps the foremost factor to be considered in determining" the reasonableness of an

attorneys' fees request. *Goldberger*, 209 F.3d at 54 (internal quotation marks omitted). *See also In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 139 (S.D.N.Y. 2008); *In re Elan Sec. Litig.*, 385 F. Supp. 2d 363, 374 (S.D.N.Y. 2005); *Steiner*, 2001 WL 604035, at *7. In considering this factor, the risk should be measured at the outset of the case and not at the time of settlement. *Goldberger*, 209 F.3d at 55. Courts typically find that this factor is not met where there is a high likelihood of recovery or settlement based on the nature of the claims or where counsel benefitted from a previous suit or simultaneous government investigation or litigation. *See In re Elan Sec. Litig.*, 385 F. Supp. 2d at 375 (concluding that the risk was low where the government commenced a parallel proceeding contemporaneously with the filing of that suit); *In re Dreyfus Aggressive Growth Mut. Fund Litig.*, No. 98 Civ. 4318, 2001 WL 709262, at *6 (S.D.N.Y. June 22, 2001) (finding low risk recovery where the plaintiff's legal theories "were well established" and where the misconduct was being investigated by federal and state regulators); *In re Interpublic Sec. Litig.*, No. 02 Civ. 6527, 2004 WL 2397190, at *12 (S.D.N.Y. Oct. 26, 2004) (concluding that the plaintiff assumed considerable risk where there was no government investigation and the plaintiff would have to uncover defendant's wrongdoing at its own expense).

In this case, the risk of no recovery was high. Class Counsel committed their time and resources to developing evidence of Defendants' wrongdoing. Class Counsel did not benefit from a previous, similar suit or from any similar government action or investigation. Furthermore, as evidenced by the fact that settlement discussions lasted over two years, there was not a high likelihood of settlement at the outset of filing suit. Indeed, it was only after class certification that Defendants had any interest in coming to the table. For six years, Class Counsel

litigated this case based on their own groundwork and on a contingency basis, risking the possibility of no recovery.

While Plaintiffs are confident in the legal and factual theories asserted in this case, there were several issues Defendants raised that posed a significant risk to recovery. First, Defendants asserted numerous defenses in their motion to dismiss, any of which could have significantly impacted recovery in this case. These defenses included that Plaintiffs' FDCPA claims were time-barred, that the Samserv Defendants were not "debt collectors" under the FDCPA and therefore could not be held liable under that statute, that Plaintiffs lacked standing under RICO, and that the district court lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine. *See* Dkt. Nos. 38, 41, and 43.

Second, Plaintiffs raised novel claims against Mel Harris Defendants, which risked recovery for Class Members and counsel. *See In re Beacon Assocs. Litig.*, No. 09 Civ. 777, 2013 WL 2450960, at *13 (S.D.N.Y. May 9, 2013) ("[A]ll of these matters were taken on contingency, so in view of the novelty of the issues there was some possibility that counsel would recover nothing at all."). As the Court in this case recognized, the law is unsettled with respect to whether Mel Harris Defendants' conduct violated the FDCPA. Dkt. 123 at 26 n.9 (noting the split among the circuit courts on whether a debt collection attorney's misrepresentations to the consumer's attorney or to the court violate the FDCPA). The Court also found that a legal issue existed as to whether Mel Harris Defendants' conduct was sufficient to establish a violation of New York's GBL or Judiciary Law. *Id.* at 27. Because the claims raised against these defendants were not well established, there existed a real risk of no recovery on these claims.

Lastly, Plaintiffs risked the denial of class certification, which would have impacted Class Members' potential for recovery. *See In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) (finding that a denial of class certification in that case would create an "appreciable risk to the class members' potential for recovery"). Although Plaintiffs were successful in obtaining class certification from this Court, Defendants sought leave to appeal this order under Fed. R. Civ. P. 23(f). The Second Circuit then took the rare step of granting this request. *See Sumitomo Copper Litig. v. Credit Lyonnais Rouse, Ltd.*, 262 F.3d 134, 139-40 (2d Cir. 2001) (holding that "petitioners seeking leave to appeal pursuant to Rule 23(f) must demonstrate either (1) that the certification order will effectively terminate the litigation and there has been a substantial showing that the district court's decision is questionable, or (2) that the certification order implicates a legal question about which there is a compelling need for immediate resolution.") Before the Second Circuit, Plaintiffs faced strong opposition from appellate lawyers—Mr. Clement and Mr. Estrada—who argued on Defendants' behalf. Because of the heightened standard necessary for the Second Circuit to grant such an appeal and strong opposing counsel, Plaintiffs faced the real risk of the class being decertified, which would have impeded Class Members' recovery.

As such, Class Counsel and staff expended significant resources combatting the numerous legal challenges Defendants raised. Class Counsel did so with the likelihood that, if unsuccessful, the resources expended over the last six years (including approximately 8,000 hours and $200,000 in costs) would go uncompensated. This key factor weighs heavily in favor in the requested fee.

4. Quality of Representation

The quality of the representation in this case supports Class Counsel's fee request. Courts, in considering this factor, "review, among other things, the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *Raniere v. Citigroup, Inc.*, 310 F.R.D. 211, 221 (S.D.N.Y. 2015) (quoting *Taft v. Ackermans*, No. 02 Civ. 7951, 2007 WL 414493, at *10 (S.D.N.Y. Jan. 31, 2007)).

Despite the risk of no recovery, the Settlement obtained by Class Counsel is significant. In terms of monetary relief, Class Members with timely legal claims will recover the vast majority of their losses, even after Class Counsel's proposed fee request is taken into account. In terms of injunctive relief, over $1 billion in alleged debt will be forgiven and Class Counsel will seek to vacate approximately 200,000 judgments. The quantifiable part of this injunctive relief is worth conservatively $26 million, bringing the total value of the settlement to more than $86 million. Class Counsel also secured important reforms that will benefit not only Class Members but also the public because the relevant Defendants agree to reform their practices.

The quality of the lawyers involved in this case also heavily supports this factor. Class Counsel consists of experienced attorneys with a strong reputation in the legal community. With respect to the attorneys from Emery Celli Brinckerhoff & Abady, LLP ("ECBA"), courts in this district have repeatedly described ECBA as a "preeminent" firm. *See Betances v. Fischer*, 304 F.R.D. 416, 428 (S.D.N.Y. 2015); *accord Brown v. Kelly*, 244 F.R.D. 222, 233 (S.D.N.Y. 2007), *aff'd in part, vacated in part on other grounds*, 609 F.3d 467 (2d Cir. 2010); *Wise v. City of New York*, 620 F. Supp. 2d 435, 445 (S.D.N.Y. 2008) (taking "judicial notice of ECBA's high reputation, finding it to be one of the most competent, successful, and reputable civil rights firms

practicing in this Court.") (internal citation omitted); *Vilkhu v. City of New York*, No. 06 Civ. 2095, 2009 WL 1851019, at *3 (E.D.N.Y. June 26, 2009) (noting ECBA's "collective experience [and] success rate"), *vacated on other grounds*, 372 F. App'x 222 (2d Cir. 2010); *Harvey v. Home Savers Consulting Corp.*, No. 07 Civ. 2645, 2011 WL 4377839, at *4 (E.D.N.Y. Aug. 12, 2011) (noting ECBA's "excellent reputation"); *McBean v. City of N.Y.*, 260 F.R.D. 120, 132 n.17 (S.D.N.Y. 2009) (finding that "the services . . . provided by [ECBA] in this matter amply demonstrate counsel's ability and determination to represent the class effectively"); *T.E. v. Pine Bush Cent. Sch. Dist.*, No. 12 Civ. 2303 (S.D.N.Y. July 9, 2015) ("I'll join others who recognize [ECBA's] very strong reputation in New York and throughout the country in the work that it does and, in particular, in civil rights work.") (attached as Exhibit 23 to Brinckerhoff Decl.). *See also* Brinckerhoff Decl. ¶¶ 77-83 (describing the individual qualifications of the attorneys involved in this case). The lawyers from MFY Legal Services and the New Economy Project are likewise able and accomplished. Coffey Decl. ¶¶ 7-14, 24-26; Shin Decl. ¶¶ 17-39.

Class Counsel also faced effective and skilled opposing counsel throughout this suit. *See In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12 Civ. 8557, 2014 WL 7323417, at *17 (S.D.N.Y. Dec. 19, 2014) ("Another consideration for assessing the quality of services rendered by Lead Counsel is the quality of the opposing counsel in the case."). Defendants were represented by lawyers from highly reputable firms, including Proskauer Rose LLP and Quinn, Emanuel, Urquhart & Sullivan, LLP. Additionally, as noted above, Paul Clement and Miguel Estrada represented Defendants before the Second Circuit. Brinckerhoff Decl. ¶ 13. The quality of representation in this case, on both sides, was high.

5. Fee in Relation to Settlement

Class Counsel's fee represents 24% of the value of the $60 million monetary settlement. As the chart below demonstrates, when the value of the injunctive relief is considered, the fee represents only 16.7% of the settlement value to the class.

Description	Total Value (including Settlement Amount)	Fee in Relation to Value
Monetary Settlement	$60,006,945.34	24%
Value of Vacating Judgments (Estimated by Accountant)	$26,084,007.79	N/A
Total value of settlement	**$86,090,953.13**	**16.7%**

In analyzing this factor, it is permissible for the Court to consider the value of the injunctive relief. Courts recognize that where the value of injunctive relief can be ascertained, that amount can be added to the monetary relief when calculating the percent of the fund to award in fees. *See, e.g.*, *Sheppard v. Consol. Edison Co. of N.Y., Inc.*, No. 94 Civ. 0403, 2002 WL 2003206, at *7 (E.D.N.Y. Aug. 1, 2002) (valuing non-monetary injunctive relief at "an estimated $5 million," when considering the reasonableness of class counsel's fee request); *Tennille v. Western Union Co.*, No. 09 Civ. 00938, 2013 WL 6920449, at *11 (D. Colo. Dec. 31, 2013) (valuing the injunctive relief when determining the full value of the fund and awarding class counsel 35% of that total value); *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448 (D. N.J. 2008) (valuing the injunctive relief when determining the reasonableness of the attorney fee requests). *See also In re Excess Value Ins. Coverage Litig.*, 598 F. Supp. 2d 380, 387 (S.D.N.Y. 2005) (citing *Staton v. Boeing Co*, 327 F.3d 938, 974 (9th Cir. 2003), for the proposition that courts may consider the value of injunctive relief "only in the unusual instance where the value to individual class members . . . can be accurately ascertained . . .").

In this case, Plaintiffs' retained accountant, Mr. Wright, ascertained the value of ceasing collections on the judgment debts for Class Members. *See* Section II.C.1, *supra*. Based on his conservative analysis, Defendants, without this Settlement, would collect at least $41 million through their illegally obtained judgments, which he calculated to have a present value of over $26 million. When including this conservative calculation of the value of the injunctive relief, Class Counsel's fee represents only 16.7% of the total value of the Settlement.[12]

Under either calculation of the full value of the settlement, Class Counsel's request is reasonable. Numerous courts in this Circuit have found that fee awards representing over 30% of the fund are reasonable. *See, e.g.*, *Velez v. Novartis Pharm. Corp.*, No. 04 Civ. 09194, 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) ("District courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater.") (collecting authorities); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 183-86 (W.D.N.Y. 2011) (granting plaintiff's request for 33% of a $42 million settlement); *Westerfield v. Washington Mut. Bank*, No. 06 Civ. 2817, 2009 WL 5841129, at *4 (E.D.N.Y. Oct. 8, 2009) (awarding 30% of a $38 million settlement fund); *In re Beacon Assoc. Litig.*, 2013 WL 245096, at *14 (noting that this court typically awards attorney's fees between 25-33% of the fund); *In re Apac Teleservs., Inc. Sec. Litig.*, No. 97 Civ. 9145, slip op. at 2 (S.D.N.Y. June 29, 2001) (awarding 33 1/3% of $21 million settlement); *Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar*, No. 06 Civ. 4270, 2009 WL

[12] There is additional injunctive relief with ascertainable values that the Court could consider in evaluation the fee in relation to the settlement. If the Court were to consider the full face value of the extinguished debt, Class Counsel's fee request would represent less than 2% of that full value. This percentage is based on Mr. Wright's calculation that the face amount of all debt against Class Members is over $1 billion, which includes $459 million in outstanding non-judgment debts and $585 million in outstanding judgment debts. Wright Decl. ¶ 16. In addition to the debt being extinguished, Class Members will receive the benefit of Class Counsel working on their behalf to seek to vacate these judgments without paying out of pocket for these legal costs, which would likely total $200 million. Class Counsel's fee request is only 7% of the full value of the settlement with this injunctive relief added to the $60 million settlement fund.

5851465, at *5 n.22 (S.D.N.Y. Mar. 31, 2009) ("Class Counsel's request for 33% of the Settlement Fund is typical in class action settlements in the Second Circuit."). Here, after including a conservative estimate of the value of the injunctive relief, Class Counsel's requested award is approximately half of the amount courts have deemed reasonable in other cases.

This requested amount is also reasonable when compared to settlement funds of a similar size. In *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 348 (S.D.N.Y. 2014), the court recognized that when applying the percentage-of-the-fund method, it is necessary to use "a sliding scale approach." *Id.* (internal quotations marks omitted). The purpose of this approach is to award fees based on the size of the common fund, or, in other words, award a higher percentage for smaller funds and a lower percentage for a larger fund so as to prevent "a windfall to plaintiffs' counsel to the detriment of class members." *Id.* To determine an appropriate percentage based on the sliding scale approach, the court looked at two empirical studies, which both reviewed over 700 class action settlements between 1993 and 2008. *Id.* at 349-50. The studies compiled statistical information, including the mean and median of fee percentages courts awarded based on the size of the fund. *Id.* The court then looked to the median percentage granted in similarly-sized cases and used that as a factor in awarding fees in that case. *Id.* at 350-51. Here, based on the studies cited in this case, the median percentage granted for a common fund in the amount of $60 million is between 21.9% and 24.9%. *See id.* at 350 n.1 & n.2. Class Counsel's request, therefore, falls directly within the range granted in other cases with similar-sized funds and is significantly less than this amount when the full value of the injunctive relief is considered.

6. Public Policy Considerations

Public policy considerations support Class Counsel's fee request. As the Second Circuit in *Goldberger* recognized, "[t]here is [] commendable sentiment in favor of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest." *Goldberger*, 209 F.3d at 51 "In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005).

Here, Class Counsel took on a significant risk by representing, on a contingency basis, consumers, many of whom are low-income, who were victims of Defendants' fraudulent scheme. Class Counsel are requesting less than the amount permitted under the Settlement Agreement. This reduction also increases the likelihood that Class Members will recover a majority of their losses. The requested amount, therefore, does not result in a "windfall to class counsel to the detriment of the plaintiff class[,]" which would not serve public policy. *See In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 130 (S.D.N.Y. 2009). Instead, it provides a financial incentive for other attorneys to undertake these cases despite the fact that compensation is not guaranteed at the outset. Finally, New Economy Project and MFY are both not-for-profit corporations with missions that include representing low-income consumers in class actions such as this one. The attorneys' fees recovered by both entities will be devoted to fulfilling their respective missions. *See* Shin Decl. ¶¶ 4-6, 16; Coffey Decl. ¶¶ 3-4.

C. The Lodestar Cross Check Further Supports the Requested Award

Comparing the requested amount with the lodestar in this case supports the reasonableness of this request. The lodestar is calculated by multiplying the number of hours

expended on the litigation by counsel's hourly rate. *See Wal-Mart*, 396 F.3d at 121. The Second Circuit has made clear that in cases where the lodestar is "used as a mere cross-check," the district court does not need to "exhaustively scrutinize[]" the hours documented by counsel or engage in "the cumbersome, enervating, and often surrealistic process of lodestar computation." *Goldberger*, 209 F.3d at 49-50 (internal quotation marks omitted). Instead, "the reasonableness of the claimed lodestar can be tested by the court's familiarity with this case . . ." *Id*. at 50. In performing the crosscheck, which is solely a "rough indicator of the propriety of a fee request[,]" a district court "must be cautious of placing too much weight" on the numbers underlying the lodestar calculation so as not to reintroduce the problems associated with this method. *Davis*, 827 F. Supp. 2d at 185 (internal quotations and citations omitted).[13]

In this case, as the below charts indicate, the total combined lodestar for Class Counsel is $3,875,809, not including post-settlement work. Because of the length of the case, its magnitude, and the complex issues raised, numerous attorneys have worked on this matter at different times and on different portions of the case. Brinckerhoff Decl. ¶¶ 73-75; Shin Decl. ¶ 8; Coffey Decl ¶¶ 19-20. The hourly rates quoted below for ECBA are current rates the firm charges commercial clients and civil rights clients who pay hourly. Brinckerhoff Decl. ¶ 76. The rates cited below by all counsel are also in line with prevailing market rates. *See, e.g.*, *Barbour v. City of White Plains*, No. 07 Civ. 3014, 2013 WL 5526234, at *10 (S.D.N.Y. Oct. 7, 2013) (approving an hourly rate of $625 for two partners with significant civil rights experience); *Germain v. Cnty. of Suffolk*, 672 F. Supp. 2d 319, 326 (E.D.N.Y. 2009) (awarding hourly rate of

[13] Because an exhaustive review of documented hours is not required here and because of the Court's familiarity with this case, Class Counsel have not attached their lengthy fee documentation. Should the Court desire full documentation, Class Counsel are prepared to immediately produce these records for the Court's *in camera* inspection. Brinckerhoff Decl. ¶ 73; Shin Decl. ¶ 10; Coffey Decl. ¶ 19.

$450 to partner-level attorney).[14] *See also Blum v. Stenson*, 465 U.S. 886, 895 (1984) (holding that non-profit legal service organizations are entitled to receive reasonable fees based on the prevailing market rates).

Calculated Lodestar for Class Counsel

Firm/Organization	Attorney Hours	Intern/Paralegal Hours	Lodestar
Emery Celli Brinckerhoff & Abady, LLP	5102.8	259.5	$2,731,192.50
MFY Legal Services	1084.4	21.3	$455,806.50
New Economy Project	1396	n/a	$688,810
Total to Date	7,583.2	280.8	$3,875,809
Estimated Future Work	1,000	n/a	$475,000
Total Including Estimated Future Work	**8,583.2**	**280.8**	**$4,350,809**

This calculated lodestar, however, does not include the number of hours that Class Counsel will spend vacating judgments on behalf of the class. As noted above, Class Counsel estimate that attorneys will engage in an additional 1,000 hours of post-settlement work, at a minimum. After multiplying those hours by the average hourly rate of the attorneys listed above, which is approximately $475, Class Counsel estimates that the lodestar of the post-settlement work alone is approximately $475,000. Brinckerhoff Decl. ¶ 74. *Therefore, the total lodestar, including post-settlement work, is likely to be approximately* ***$4.35 million***.

After the lodestar is calculated, a district court should "divid[e] the proposed fee award by the lodestar calculation, resulting in a lodestar multiplier." *Davis*, 827 F. Supp. 2d at 184. The purpose of the multiplier is to compensate counsel for the risk taken to represent the

[14] *Harvey*, 2011 WL 4377839, at *8-9 (awarding ECBA partners their full requested rate of $450 and $400 and awarding full requested rate of $325 for associate who graduated law school in 2005); *Chan v. Sung Yue Tung Corp.*, No. 03 Civ. 6048, 2007 WL 1373118, at *5 (S.D.N.Y. May 8, 2007) (noting that paralegal rates up to $150 are reasonable in the Southern District of New York); *Genger v. Genger*, No. 14 Civ.5683, 2015 WL 1011718, at *1 (S.D.N.Y. Mar. 19, 2015) (noting that in recent years, New York district courts have approved experienced law firm partners in the range of $500 to $800 per hour, law firm associates between $200 and $450, and paralegals up to $200 per hour).

class without the guarantee of compensation. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 668-69 (S.D.N.Y. 2015). As discussed above, the risk to Class Counsel in this case was high, which justifies the multiplier of 3.3 here ($14,401,667 fees / $4,350,809 lodestar).[15]

A multiplier of 3.3 is reasonable as compared to other common fund cases. The Second Circuit has found that "multipliers of between 3 and 4.5 have become common." *Wal-Mart Stores*, 396 F.3d at 123 (2d Cir. 2005). Several cases since *Wal-Mart* have further confirmed this trend. *See, e.g.*, *Davis*, 827 F. Supp. 2d at 185 (awarding a multiplier of 5.3 times the lodestar); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d at 590 ("In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court."); *Sewell v. Bovis Lend Lease Inc.*, No. 09 Civ. 6548, 2012 WL 1320124, at *13 (S.D.N.Y. Apr. 16, 2012) (granting plaintiff's request for a lodestar multiplier of 3, while noting that "[c]ourts commonly award lodestar multipliers between two and six."); *Ramirez v. Lovin' Oven Catering Suffolk, Inc.*, No. 11 Civ. 520, 2012 WL 651640, at *4 (S.D.N.Y. Feb. 24, 2012) (granting a lodestar multiplier of 6.8); *Aboud v. Charles Schwab & Co., Inc.*, 2014 WL 5794655, at * 5 (S.D.N.Y. Nov. 4, 2014) (granting plaintiff's request for a lodestar multiplier of 4.4).

Accordingly, the lodestar crosscheck further supports Class Counsel's request for $14.4 million in fees.

D. Class Counsel's Expenses Should Be Reimbursed

With respect to expenses, "[i]t is well established that counsel who obtain a common settlement fund for a class are entitled to reimbursement of expenses that they advance to a class." *Hart v. RCI Hospitality Holdings, Inc.*, No. 09 Civ. 3043, 2015 WL 5577713, at *18 (S.D.N.Y. Sept. 22, 2015). Courts recognize that in cases where expenses are incurred without

[15] If the Court is inclined not to include the post-settlement work in the lodestar calculation, the multiplier is 3.7.

guarantee of recovery, there is a "strong incentive to keep them at a reasonable level," as counsel did here. *See In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12 Civ. 8557, 2014 WL 7323417, at *19 (S.D.N.Y. Dec. 19, 2014). Indeed, it is common for courts in the Second Circuit to "grant expense requests in common fund cases as a matter of course." *EVCI Career Colleges*, 2007 WL 2230177, at * 18. The requested reimbursement is for $192,230.30 in expenses. These expenses include costs for filing fees, postage, messenger services, e-discovery vendors, a forensic accountant, a data consultant, and mediation expenses. *See* Brinckerhoff Decl. ¶ 87-88. Each of these expenses was reasonable and necessary to litigate this lengthy and complex case and was expended without guarantee of recovery. *See deMunecas v. Bold Food, LLC*, No. 09 Civ. 440, 2010 WL 3322580, at *10 (S.D.N.Y. Aug. 23, 2010) ("Class Counsel's un-reimbursed expenses – mediation fees, telephone charges, postage, transportation and working meal costs, photocopies, and electronic research – are reasonable and were incidental and necessary to the representation of the Class.") As such, the Court should grant Plaintiffs' request for expenses.

V. THE NAMED PLAINTIFFS SHOULD BE AWARDED SERVICE AWARDS UNDER THE SETTLEMENT AGREEMENT

In accordance with the Settlement Agreement, Plaintiffs respectfully request that the Court approve service awards for the four Named Plaintiffs in the amount of $30,000 each, in recognition of the services they rendered on behalf of the class. Leu. Agr. at 61 § V(A); MH/SS Agr. at 4 § I(A) (incorporating definition). Those services included: participating over several years in fact development and discovery, including being subjects of depositions; rejecting Rule 68 offers of judgment for $15,000; and, in the interest of the case, publicizing their personal experiences with debt collection. Brinckerhoff Decl. ¶ 90.

"Serving as a class representative sometimes requires significantly greater effort, and sometimes greater risk, than is required of the absent Class Members. In addition, the class

representative's willingness to serve in that capacity enables the litigation to be brought in the first place."[16] Courts acknowledge that service awards are important to compensate plaintiffs for the contributions they make to advance the prosecution of their case. *See Diaz v. Scores Holding Co., Inc.*, No. 07 Civ. 8718, 2011 WL 6399468, at *3 (S.D.N.Y. July 11, 2011); *Parker v. Jekyll & Hyde Entm't Holdings, LLC*, 2010 WL 532960, at *1 (S.D.N.Y. Feb. 9, 2010) ("Enhancement awards for class representatives serve the dual functions of recognizing the risks incurred by named plaintiffs and compensating them for their additional efforts."); *In re Sinus Buster Products Consumer Litig.*, No. 12-CV-2429, 2014 WL 5819921, at *19 (E.D.N.Y. Nov. 10, 2014) ("In a class action, plaintiffs can request an 'incentive award' to compensate them for 'efforts expended for the benefit of the lawsuit.'") (citing *In re Colgate–Palmolive Co. Erisa Litig.*, No. 07–CV–9515 (LS), 2014 WL 3292415, at *8 (S.D.N.Y. July 8, 2014)). "The guiding standard in determining an incentive award is broadly stated as being the existence of special circumstances including the personal risk (if any) incurred by the plaintiff applicant in becoming and continuing as a litigant, the time and effort expended by that plaintiff in assisting in the prosecution of the litigation or in bringing to bear added value (e.g., factual expertise), any other burdens sustained by that plaintiff in lending himself or herself to the prosecution of the claims, and, of course, the ultimate recovery." *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 200 (S.D.N.Y. 1997) (citing cases).

A. Significant Time and Effort

When determining the reasonableness of service awards, courts will look at the time and effort expended by the representatives. *See Sewell v. Bovis Lend Lease, Inc.*, No. 09

[16] National Association of Consumer Advocates, Standards and Guidelines for Litigating and Settling Consumer Class Actions, 29 (2014), available at http://www.consumeradvocates.org/sites/default/files/NACA%20Class%20Action%20Guidelines%20Updated%20May%202014.pdf.

Civ. 6548, 2012 WL 1320124, at *15 (S.D.N.Y. Apr. 16, 2012) (granting service awards to named plaintiffs who "provided detailed factual information to class counsel for the prosecution of their claims and made themselves available regularly for any necessary communications with counsel"); *Dornberger v. Metro. Life Ins. Co.*, 203 F.R.D. 118, 125 (S.D.N.Y. 2001) (awarding incentive award to plaintiff who communicated regularly with class counsel, provided various documents and information, participated in a deposition, and contributed to the settlement of the action).

The Named Plaintiffs contributed significant time and effort to the investigation and prosecution of the case by providing Class Counsel with detailed factual information regarding their experiences with Defendants' debt collection scheme and the enforcement of default judgments against them individually. They also helped Class Counsel prosecute their claims by responding to multiple discovery requests from all three sets of Defendants, providing hundreds of responsive documents—many of them containing personal financial information—answering and reviewing numerous sets of interrogatories, and participating in depositions that delved into sensitive questions about their credit history. Further, the Named Plaintiffs were involved with the lengthy settlement negotiations, and made themselves readily available to communicate with Class Counsel at all times. Brinckerhoff Decl. ¶ 91.

The time and effort contributed by the Named Plaintiffs for the benefit of the class and the additional burdens they sustained thus support the requested service awards.

B. Significant Risks

Named Plaintiffs took on significant risks by being part of this lawsuit, both by refusing to accept Rule 68 Offers of Judgment and by sharing and publicizing their personal experience with debt collection in furtherance of the case.

By rejecting Defendants' Rule 68 Offers of Judgment of $15,000 per Plaintiff (which three of the four Named Plaintiffs did in 2011), Named Plaintiffs opened themselves to possibly significant exposure. If a plaintiff rejects a Rule 68 offer of judgment and he or she ultimately obtains a judgment less favorable than the offer, he or she is liable for costs incurred after the offer was made. Fed. R. Civ. P. 68(d); see also, e.g., *Stanczyk v. City of New York*, 752 F.3d 273, 280 (2d Cir. 2014). All Named Plaintiffs are low-income consumers for whom the prospect of having to pay Defendants' costs was a significant risk and grave concern.

Named Plaintiffs also risked the stress and stigma of sharing their personal experience with debt collection. Incentive awards are appropriate when considering "the sacrifice of [Plaintiffs'] anonymity" and where lead plaintiffs are required to "expose[] their private financial affairs." *In re Am. Investors Life Ins. Co. Annuity Mktg. & Sales Practices Litig.*, 263 F.R.D. 226, 245 (E.D. Pa. 2009) enforcement granted in part, denied in part, 695 F. Supp. 2d 157 (E.D. Pa. 2010) and enforcement granted, No. Civ. A. No. 05-MD-1712, 2013 WL 3463503 (E.D. Pa. July 10, 2013) (granting incentive awards to named plaintiffs in case involving annuities scheme, where the named plaintiffs, among other actions on behalf of the class, participated in depositions in which they revealed private financial information). Named Plaintiffs subjected themselves to sharing and publicizing their private financial information by participating in the action, including the depositions, and helping to prosecute the claims.

Named Plaintiffs deserve to be rewarded for remaining in the case instead of accepting early settlement offers and for helping to obtain relief for the entire class, which they have achieved with the settlement agreement.

C. Ultimate Recovery

The service awards requested here of $30,000 for each Named Plaintiff are comparable to awards made in other cases where the lead plaintiffs were able to effect substantial relief for Class Members. *See, e.g.*, *McBean v. City of New York*, 228 F.R.D. 487, 494-95 (S.D.N.Y. 2005) (approving payments of $25,000 incentive awards to each named plaintiff); *Roberts*, 979 F. Supp. at 203-04 (awarding named plaintiffs who had initiated class action incentive awards of $85,000 and $50,000); *see also Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming an incentive award of $25,000 based on the risks the named plaintiff faced and the time he spent pursuing it); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 373-74 (S.D. Ohio 1990) (awarding $55,000 incentive payments to two class representatives and $35,000 to three class representatives in a case alleging scheme to fraudulently sell credit information in violation of RICO).

Further, the awards amount to 0.2% of the total monetary recovery, and are therefore eminently reasonable in view of the overall relief obtained for Class Members. *See, e.g.*, *Dornberger*, 203 F.R.D. at 125 (granting incentive awards in part because they were "small in relation to the . . . fund from which the awards will be made"). In terms of proportion, the awards suggested here are within the range awarded by courts. *See, e.g.*, *Parker*, 2010 WL 532960, at *2 (stating that service awards totaling 11% of the total recovery were reasonable "given the value of the representatives' participation and the likelihood that class members who submit claims will still receive significant financial awards"); *Reyes v. Altamarea Grp.*, No. 10 Civ. 6451, 2011 WL 4599822, at *9 (S.D.N.Y. Aug. 16, 2011) (approving awards representing approximately 16.6% of the settlement); *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187 (W.D.N.Y. 2005) (approving award of approximately 8.4% of the settlement).

Thus, Plaintiffs' requests for service awards—which are miniscule in light of the overall recovery that will be made to Class Members—should be granted in recognition of the breadth of services they rendered on behalf of the class and the risks they took to be publicly named as plaintiffs.

CONCLUSION

Plaintiffs, joined by all Defendants, respectfully request that the Court grant Plaintiffs' motion for final approval of the settlement agreements.

Dated: April 18, 2015
New York, New York

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