

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MONIQUE SYKES, et al.,

Plaintiffs,

vs.

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

Defendants.

09 Civ. 8486 (DC)

ALLOCATION PLAN

1. Pursuant to the Settlement Agreements entered into in the above-captioned case (the “Settlement Agreements”), the parties have agreed to seek the preliminary 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; 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) 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.

2. The Settlement Agreements provide for: (a) a settlement fund of \$46 million paid by the Leucadia Defendants plus L-Credit LLC's share of additional moneys LR Credit and its subsidiaries received from debt portfolio assets on or after January 1, 2015; (b) a settlement fund of \$7,975,000 paid for by the Mel Harris Defendants plus Rushmore Recovery Management LLC's share of additional moneys LR Credit and its subsidiaries receive from debt portfolio assets on or after November 12, 2015; and (c) a settlement fund of \$517,500 paid for by the Samserv Defendants. This allocation plan shall govern the distribution of the Net Settlement Fund as defined in the Settlement Agreements. This allocation plan does not set out the additional substantial benefits that the class will receive, including, without limitation: (1) transfer of all accounts that LR Credit owns to a non-profit entity designated by Plaintiffs, which will ensure that no future collections take place on the millions of dollars of debt at issue in this case, (2) class counsel's efforts to vacate the default judgments at issue in this case; and (3) the immediate suspension of all collections upon preliminary approval of the Settlement Agreements by the Court.

3. The Economic Loss Group of the Rule 23(b)(3) Class. The Rule 23(b)(3) Class consists of approximately 192,371 persons. For purposes of distribution of the Net Settlement Fund, the Rule 23(b)(3) Class is divided based on whether Defendants collected money from a class member for whom a default judgment was obtained. Defendants collected money from approximately 74,526 members of the Rule 23(b)(3) Class (the "Economic Loss Group"). Members of the Economic Loss Group who submit a timely claim form will receive a payment as detailed below; members of the Rule

23(b)(3) Class from whom no money was collected will not be eligible for any payment unless they are members of the Sold Judgment Group described below, but will be eligible for other benefits, as mentioned in the previous paragraph and detailed in the Settlement Agreement.

4. The Economic Loss Subgroups. Within the Economic Loss Group, the amount of recovery for each person who submits a timely claim form is based on whether that person has timely claims under the three causes of action asserted against the Leucadia Defendants: (a) FDCPA (one year statute of limitation), (b) GBL § 349 (three year statute of limitation), and (c) RICO (four year statute of limitation). Claim accrual is measured from the first date of economic loss, namely the collection of any money from the Economic Loss Group member (e.g., due to wage garnishment, bank account lien, or payment of any kind). Claim accrual differs depending on whether the default judgment was entered in the New York City Civil Court or any other court.¹ There are four Economic Loss Subgroups, as follows:

(a) 3 Claims Group: Those who have timely claims under the FDCPA, GBL § 349 and RICO. This includes people who (i) had default judgments entered against them in the New York City Civil Court and experienced their first economic loss on or after October 6, 2008; or (ii) had default judgments entered

¹ 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. 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 Plaintiffs and the Leucadia Defendants entered into a binding settlement term sheet.

against them in any other court and experienced their first economic loss on or after December 15, 2013.

(b) 2 Claims Group: Those who have timely claims under GBL § 349 and RICO but not the FDCPA. This includes people who (i) had default judgments entered against them in the New York City Civil Court and experienced their first economic loss between October 6, 2006 and October 5, 2008; or (ii) had default judgments entered against them in any other court and experienced their first economic loss between December 15, 2011 and December 14, 2013.

(c) 1 Claim Group: Those who have timely claims under RICO only. This includes people who (i) had default judgments entered against them in the New York City Civil Court and experienced their first economic loss between October 6, 2005 and October 5, 2006; or (ii) had default judgments entered against them in any other court and experienced their first economic loss between December 15, 2010 and December 14, 2011.

(d) Untimely Group: Those who have no timely claims. This includes people who (i) had default judgments entered against them in the New York City Civil Court and experienced their first economic loss before October 6, 2005; or (ii) had default judgments entered against them in any other court and experienced their first economic loss before December 15, 2010.

5. The Sold Judgment Group. There are approximately 25,748 members of the Rule 23(b)(3) Class whose default Judgments are no longer owned by LR Credit, LLC (“Sold Judgment Group”), and will thus be eligible to receive a payment of \$100, in

addition to any other payment they may be entitled to under this plan of allocation. Class Counsel will also attempt to vacate the default judgments that LR Credit obtained against the Sold Judgment Group. Members of the Sold Judgment Group will receive an extra \$100, in addition to any other payment they may be entitled to under this plan of allocation (such as for payments for collections made prior to the sale of the debt), because there is a higher risk that class counsel may be unable to vacate their judgments, thus allowing the subsequent purchasers of the judgments to attempt to collect from them. Approximately 3,000 members of the Sold Judgment Group will also be included in both the Economic Loss Group and the Sold Judgment Group.

6. The Rule 23(b)(2) Class and Nominal Restitution Group. The Rule 23(b)(2) Class consists of 353,320 persons, which include all 192,371 persons in the Rule 23(b)(3) Class in addition to 160,949 persons who did not have default judgments entered against them, but who had an alleged debt purchased by Defendants. Of those approximately 161,000 persons, approximately 19,674 members made payments to Defendants even though no default judgment was ever entered against them (the “Nominal Restitution Group”).

7. Only members of the Economic Loss Group, Sold Judgment Group and the Nominal Restitution Group who submit timely claim forms are entitled to claim money from the Net Settlement Fund. While only these groups are eligible to get money from the Net Settlement Fund, all class members will receive substantial benefits from this settlement because: (1) except for accounts sold by Defendants, there will be no

further collections activity on the millions of dollars of debt at issue in this case, and (2) class counsel will attempt to vacate all default judgments.

8. All members of the Nominal Restitution, Sold Judgment, and Untimely Groups who submit a timely claim form are eligible to receive a payment of \$100, as well as any other payments set forth in this allocation plan. Even if every single member of each of these three groups submits a timely claim form the maximum payout would be \$6.8 million. Because the participation rate will be significantly less than 100%, the amount allocated to these groups is likely less than \$2 million.

9. The Nominal Restitution, Sold Judgment, and Untimely payment amounts will be deducted from the Net Settlement Amount to create the Economic Loss Amount. The Economic Loss Amount will be distributed to those persons who submit timely claim forms that are members of the 3 Claims Group, the 2 Claims Group, the 1 Claim Group, and, if and only if there are sufficient funds, the Untimely Group as set forth below.

10. Payments to the 3 Claims Group, the 2 Claims Group, and the 1 Claim Group are designed to create a 15 cent differential between each of the three groups for every dollar lost (e.g., the 2 Claims Group will receive 15 cents on the dollar less than the 3 Claims Group, and the 1 Claim Group will receive 15 cents on the dollar less than the 2 Claims Group), up to, but not beyond receiving the full amount or 100% compensation. Accordingly, payments will be calculated as follows:

- (a) first, the aggregate amount of dollars collected from class members who submit timely claims forms from each group will be calculated for each group and that amount will be the total loss (“TL”)

(b) second, the difference between the aggregate amount of dollars lost for the 3 Claims Group and the aggregate amount of dollars lost for the 1 Claim Group and will be multiplied by .15 to generate the 15 Cent Differential (“15CentDiff”);

(c) third, if the aggregate amount of dollars lost by the 1 Claim Group is more than the 3 Claims Group, the 15CentDiff will be added to the TL, and if it is less, the 15CentDiff will be subtracted from the TL, and the new number will be the Adjusted TL (“Adjusted TL”);

(d) fourth, the Adjusted TL will be divided by the Economic Loss Amount to derive a cents on the dollar figure for everyone in the 2 Claims Group (the “2 Claims Number”), and the 2 Claims Number plus 15 will be the cents on the dollar figure for everyone in the 3 Claims Group (“the 3 Claims Number”), and the 2 Claims Number minus 15 will be the cents on the dollar figure for everyone in the 1 Claim Group (“the 1 Claim Number”);

(e) fifth, if the 3 Claims Number is more than 100, the excess will be used to proportionally increase the money available to the 2 Claims Group and the 1 Claim Group, proportionally so that the 15 cent differential between groups is maintained, up to no more than 100 for each group;

(f) sixth, if step five is taken and all members of the 3 Claims Group, the 2 Claims Group and the 1 Claim Group have received 100 percent recovery, and there is still money available, that excess will be divided amongst the Untimely Group, in proportion to the amount of their loss until when adding both the payment received pursuant to this paragraph and the \$100 payment described in paragraph

7, the Untimely Group has been allocated an amount equal to 100 percent of the amount lost;

(g) seventh, if step six is taken and all four Economic Loss Subgroups have received 100 percent recovery (including payments pursuant to paragraph 8) and there is still money available, it will be allocated amongst all four Economic Loss Subgroups in proportion to the amount of their loss.

11. In the unlikely event that a member of the Economic Loss Group with timely claims becomes eligible for a payment of less than \$100 pursuant to the formula set forth in paragraph 10, an additional amount will be allocated to that person so that no member of the Economic Loss Group who submits a timely claim form receives less than \$100.

12. If a Class Member had more than one default Judgment that Class Member is entitled to the payment described above for *each* Judgment.

13. If additional distributions are made due to uncashed checks, the same distribution formula above will be followed from whatever point in the formula the prior distribution left off.