

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

GLADYS BOSTIC, CIMERON DuBOSE,
GERALD DYCHA, and HEYWARD COLLINS,
on behalf of themselves and all others similarly
situated,

Index No. _____/17

Plaintiffs,

-against-

VIRGO CAPITAL, LLC; AQUARIUS CAPITAL,
LLC; GOTHAM COLLECTION SERVICES
CORP.; HK RECOVERY GROUP, INC.;
HOUSLANGER & ASSOCIATES PLLC; TODD
E. HOUSLANGER; and DOE COMPANIES 1-10,

Defendants.

Plaintiffs Gladys Bostic, Cimeron DuBose, Gerald Dycha, and Heyward Collins, on
behalf of themselves and all others similarly situated, allege as follows:

INTRODUCTION

1. Plaintiffs are struggling New Yorkers who are harmed by Defendants’ continued
collections of the same judgments challenged as fraudulent in *Sykes, et al. v. Mel S. Harris and
Associates, LLC, et al.*, 09 Civ. 8486 (S.D.N.Y.). These judgments, obtained by numerous debt-
buying entities, are known as the “LR Credit Judgments.” *Sykes* ended in a class action
settlement under which the *Sykes* defendants stopped collecting all the LR Credit Judgments they
owned, and this Court subsequently vacated those judgments. But approximately 25,000 *Sykes*
class members did not have collections stopped or their LR Credit Judgments vacated because
the *Sykes* defendants had sold those judgments to other third-party debt buyers before settling

Sykes. This action is brought on behalf of those *Sykes* class members whose sold judgments remain outstanding and have not been vacated.

2. The Complaint in *Sykes* alleged that Leucadia National Corporation (“Leucadia”) and a New York law firm known as Mel S. Harris and Associates LLC (the “Mel Harris Firm”) engaged in a scheme to buy defaulted consumer credit accounts and obtain default judgments against people by filing false affidavits of merit and service in state court and to use those fraudulently obtained judgments to extract money from them.

3. In 2012, the federal District Court certified the *Sykes* class. In so doing, the court found that “every potential class member’s claim arises out of defendants’ uniform, widespread practice of filing automatically-generated, form affidavits of merit based on ‘personal knowledge’ and, in many instances, affidavits of service, to obtain default judgments against debtors in state court.” *Sykes v. Mel Harris and Assoc.’s, LLC*. 285 F.R.D. 279, 293 (S.D.N.Y. 2012). With respect to the affidavits of merit, the court found specifically that “Fabacher sign[ed] hundreds of affidavits a week, purportedly based on personal knowledge, purporting to certify that the action has merit, without actually having reviewed any credit agreements, promissory notes, or underlying documents, and, indeed, without even reading what he was signing.” *Id.* at 285.

4. Following class certification, the parties settled the *Sykes* lawsuit. As part of the settlement, the *Sykes* defendants agreed to stop all collections and to cooperate in the *Sykes* plaintiffs’ efforts to secure vacatur of the LR Credit Judgments in state court. The *Sykes* defendants stipulated as part of the settlement that all defendants in debt collection actions brought by LR Credit in New York would have been entitled to interpose a defense predicated

upon “fraud, misrepresentation, illegality, unconscionability, lack of due service, violations of law, or other illegalities.”

5. Before final settlement of the case, LR Credit sold approximately 25,000 judgments to various third parties (collectively, the “Sold Judgments”). The current owners of the Sold Judgments all purchased after the filing of Sykes, when its allegations of fraud and evidence in support were in the public record.

6. Following final approval of the class settlement, the New York State Attorney General brought a CPLR 5015(c) proceeding in New York County Supreme Court on behalf of Deputy Chief Administrative Judge Fern Fisher to vacate *all* judgments obtained by LR Credit, including the Sold Judgments. While the Court initially vacated all LR Credit Judgments, including the Sold Judgments, the Court amended its order on July 20, 2017 to exclude the Sold Judgments.

7. Defendants in this action are holders and collectors of nearly all the Sold Judgments. Despite being fully aware of the unlawful circumstances under which the LR Credit Judgments were obtained, Defendants continue every day to garnish people’s wages and freeze their bank accounts in execution of the fraudulently obtained judgments.

8. Accordingly, Plaintiffs bring this class action, on behalf of themselves and those similarly situated, seeking a declaratory judgment that the Sold Judgments were obtained on the basis of fraud, misrepresentation or other misconduct of an adverse party, injunctive relief, and restitution.

PARTIES

9. Plaintiff Gladys Bostic is a natural person who resides in Manhattan, NY.

10. Plaintiff Cimeron DuBose is a natural person who resides in Manhattan, NY.

11. Plaintiff Gerald Dycha is a natural person who resides in Buffalo, NY.

12. Plaintiff Heyward Collins is a natural person who resides in Manhattan, NY.

13. Defendant Virgo Capital LLC (“Virgo”) is a New York Limited Liability Company with a principal place of business at 243 Route 100, Somers, New York 10589. Virgo is licensed as a debt collection agency with the New York City Department of Consumer Affairs. Virgo is a debt buyer, and its principal business is buying and collecting defaulted debt, which it accomplishes by use of the means of interstate commerce, such as telephone, mail, wire transfers, and the internet. Virgo collects debts from people in New York County.

14. Defendant Aquarius Capital, LLC (“Aquarius”) is a New York Limited Liability Company with a principal place of business at 243 Route 100, Floor 2, Somers, NY 10589. Aquarius’s agent for service of process is Defendant Houslanger & Associates PLLC, 372 New York Avenue, Huntington, New York 11743. Aquarius is licensed as a debt collection agency with the New York City Department of Consumer Affairs. Aquarius is a debt buyer, and its principal business is buying and collecting defaulted debt, which it accomplishes by use of the means of interstate commerce, such as telephone, mail, wire transfers, and the internet. Aquarius collects debts from people in New York County.

15. Defendant Gotham Collection Services Corp. (“Gotham”) is a New York corporation with a principal place of business at 1 Linden Place, Suite 404, Great Neck, NY 11021. Gotham is licensed as a debt collection agency with the New York City Department of Consumer Affairs. Gotham is a debt buyer, and its principal business is buying and collecting defaulted debt, which it accomplishes by use of the means of interstate commerce, such as telephone, mail, wire transfers, and the internet. Gotham collects debts from people in New York County.

16. Defendant HK Recovery Group, Inc. (“HK Recovery”) is a New York corporation with a principal place of business at 5505 Nesconset Highway, Mt. Sinai, NY 11766. HK Recovery is licensed as a debt collection agency with the New York City Department of Consumer Affairs. HK Recovery is a debt buyer, and its principal business is buying and collecting defaulted debt, which it accomplishes by use of the means of interstate commerce, such as telephone, mail, wire transfers, and the internet. HK Recovery collects debts from people in New York County.

17. Defendant Houslanger & Associates, PLLC (“Houslanger Firm”) is a New York Professional Service Limited Liability Company with a principal place of business at 372 New York Avenue, Huntington, NY 11743. The Houslanger Firm also maintains an office at 243 Route 100, Floor 2, Somers, NY 10589. The Houslanger Firm shares office space, a telephone number, and personnel with Defendants Virgo and Aquarius. The Houslanger Firm’s Director of Recovery Operations, Matthew Blake, is also the managing agent of Defendants Virgo and Aquarius; Mr. Blake is also an owner, partner or corporate officer of Defendant Virgo. The Houslanger Firm is licensed as a debt collection agency with the New York City Department of Consumer Affairs. The Houslanger Firm is a debt collector; the principal purpose of its business is the collection of debts, and it regularly collects or attempts to collect debts owed or due or asserted to be owed or due another, using the means of interstate commerce such as telephone, mail, wire transfers, and the internet. The Houslanger Firm collects debts from people in New York County.

18. Defendant Todd Houslanger (“Houslanger”) is a natural person who is a member, owner, and operator of the Houslanger Firm. Houslanger personally oversees, manages, and is ultimately responsible for the debt collection business of the Houslanger Firm, including its

collection of the Sold Judgments. Houslanger regularly collects or attempts to collect debts owed or due or asserted to be owed or due another, using the means of interstate commerce such as telephone, mail, wire transfers, and the internet. Houslanger collects debts from people in New York County.

19. Together, the Houslanger Firm and Houslanger are called the “Houslanger Defendants.”

20. Doe Companies 1-10 are debt-buying entities whose names are currently unknown, but who are current owners of Sold Judgments.

21. Each and every defendant is a “debt collector” as defined in 15 U.S.C. § 1692a(6).

FACTS

A. The Fraudulent Debt Collection Scheme

22. In 2004, Leucadia National Corporation (“Leucadia”), a multi-million dollar publicly traded corporation, and a New York law firm known as Mel S. Harris and Associates LLC (“Mel Harris Firm”), formed a joint venture to purchase and collect alleged defaulted consumer debts via lawsuits filed in the New York courts. The scheme worked as follows:

23. Leucadia and the Mel Harris Firm formed a series of New York limited liability companies called LR Credit LLC, LR Credit 2 LLC, and so forth.

24. Each LR Credit company purchased, for pennies on the dollar, one or more portfolios of alleged defaulted consumer debts.

25. The debt portfolios consisted of spreadsheets containing names, addresses, and social security numbers of people who allegedly owed money on defaulted consumer debts, such as credit cards, along with the amounts each person supposedly owed.

26. The debt portfolios did not include the original credit agreements, nor did they include account statements or any other documentation that could be used to verify the accuracy of the data in the spreadsheets.

27. Many times, such account documentation simply did not exist or could not be obtained by the Mel Harris Firm or LR Credit even upon specific request to the assignor of the portfolio.

28. Moreover, the contracts of sale that accompanied the debt portfolios specifically disclaimed the accuracy of the spreadsheets.

29. The Mel Harris Firm and LR Credit primarily collected debts by filing lawsuits against the people named in the spreadsheets and obtaining judgments against them. In the lawsuits, the Mel Harris Firm was the attorney and an LR Credit company was the plaintiff. The Mel Harris Firm collected on the judgments by freezing people's bank accounts, seizing their money and wages, and intimidating people into making "voluntary" payment agreements. The two companies divided between them the money that they received.

30. Because the Mel Harris Firm and LR Credit did not have and could not possibly obtain proof that any particular person sued actually owed a debt, they could not win judgments in contested cases. Therefore, they concocted a scheme that allowed them to win uncontested, default judgments.

31. At the time, New York law provided that courts would issue default judgments in consumer credit transactions upon the application of the plaintiff when the person sued failed to appear. In order to award the default judgments, New York law required two pieces of paper: an affidavit of service, attesting to service of process upon the person sued, and an affidavit of merit, attesting to personal knowledge of all of the essential elements of the cause of action (in

these cases, that there was a contract, the contract was breached, account statements had been sent to the defendant, and a certain amount of money was owed).

32. In order to ensure that the people sued would not appear and defend themselves, the Mel Harris Firm and LR Credit hired process serving companies that regularly engaged in “sewer service” – the practice of failing to deliver process to the person sued and then filing a false affidavit of service with the court stating that the person sued had been served when they had not.

33. In order to obtain the default judgments, along with the false affidavits of service, the Mel Harris Firm and LR Credit filed false affidavits of merit.

34. These affidavits of merit were all signed by a person named Todd Fabacher, who worked in the Mel Harris Firm’s Information Technology Department and claimed to be “an authorized and designated custodian of records” for each of the accounts.

35. In these affidavits, Fabacher claimed to be “fully and personally familiar with, and have personal knowledge of, the facts and proceedings relating to the within action.”

36. New York law requires affidavits of merit to be made on personal knowledge, and no default judgment can be awarded without an affidavit of merit made on personal knowledge.

37. Though he professed to have personal knowledge that the people sued owed a debt, in fact Fabacher had no such knowledge in any case, nor would it have been possible for him to obtain such knowledge because the Mel Harris Firm did not have access to documentation that could be used to verify the statements in the affidavits.

38. Moreover, Fabacher did not even read the affidavits of merit he was signing. He only reviewed one out of every 50, and then only for consistency with the data contained in the purchased spreadsheets.

39. Fabacher's affidavits of merit were uniformly false.

40. Over a ten-year period, The Mel Harris Firm and LR Credit obtained approximately 200,000 default judgments against predominately low-income New Yorkers. All of these judgments were awarded on the basis of false affidavits of merit, and many also involved false affidavits of service.

41. Armed with the fraudulently obtained judgments, the Mel Harris Firm and LR Credit extracted more than \$100,000,000 from low-income New Yorkers. The judgments also appeared on people's credit reports, preventing them from obtaining housing, employment, insurance, and affordable credit.

B. *The Sykes Litigation*

42. In 2009, Monique Sykes and other individuals filed a federal class action lawsuit against the Mel Harris Firm and its principals, Leucadia and the LR Credit companies and their principals, and a process serving company, Samserv, Inc., its principal and some of its process servers.

43. The lawsuit, known as *Sykes v. Mel Harris*, alleged the fraudulent scheme described above and claimed violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"), the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO"), New York General Business Law § 349, and New York Judiciary Law § 487.

44. On December 29, 2010, the federal District Court denied defendants' motion to dismiss, holding that the *Sykes* complaint stated claims under all of these statutes.

45. In April 2011, the *Sykes* plaintiffs filed their motion for class certification supported by the following evidence: (1) sworn testimony from Todd Fabacher attesting that he

signed each affidavit of merit purely on the basis that data printed on every fiftieth affidavit matched information in the Mel Harris Firm's computer system (which contained fields only for name, contact information, SSN, original creditor, and amount allegedly owed); and (2) sworn testimony detailing numerous instances of documented sewer service contained within defendants' electronic records, which provided "substantial support for plaintiffs' assertion that defendants regularly engaged in sewer service." *Sykes*, 285 F.R.D. at 284.

46. Furthermore, the class certification briefing and supporting documents established that the individual process server defendants had lost or destroyed all of their logbooks pertaining to service on *Sykes* class members and had no particular memory of serving any particular class member. Because of the destruction of the logbooks, it is impossible to prove that those *Sykes* class members were validly served; no such evidence exists or could possibly be discovered.

47. On September 4, 2012, the federal District Court granted the *Sykes* plaintiffs' motion for class certification.

48. As part of its decision certifying the *Sykes* class, the federal District Court made certain factual findings as necessary to determine that the class members had common claims. Specifically, the court found that Fabacher signed the affidavits of merit "purportedly based on personal knowledge, purporting to certify that the action has merit, without actually having reviewed any credit agreements, promissory notes, or underlying documents, and, indeed, without even reading what he was signing." *Id.* at 285. Further, the District Court found "substantial support for plaintiffs' assertion that defendants regularly engaged in sewer service." *id.* at 284, as part of a "unitary course of conduct, that is, fraudulently procuring default judgments." *Id.* at 290.

49. Defendants sought interlocutory appeal, and the Second Court affirmed the District Court's decision on February 10, 2015. *Sykes v. Mel S. Harris & Assoc. LLC*, 780 F.3d 70 (2d Cir. 2015).

50. The *Sykes* parties reached a settlement. As part of the settlement, the *Sykes* defendants agreed to stop all collections on the LR Credit accounts and judgments they owned, to transfer all of the accounts and judgments they owned to the non-profit entity, Rolling Jubilee, and to cooperate in the *Sykes* plaintiffs' efforts to secure vacatur in state court of all judgments obtained by LR Credit.

51. The *Sykes* defendants stipulated as part of the settlement that all defendants in debt collection actions brought by LR Credit in New York "would have been entitled to interpose a defense predicated upon fraud, misrepresentation, illegality, unconscionability, lack of due service, violations of law, or other illegalities."

52. The court-approved notice sent to *Sykes* class members with Sold Judgments stated "[T]he company that bought your debt from LR Credit is not released" and "The Settlement does not affect your right to bring a lawsuit against the company that bought your debt from LR Credit."

C. The Sold Judgments

53. According to LR Credit's records, between August 2006 and April 2012, LR Credit sold approximately 25,000 judgments to nine different debt buyers. Specifically, according to LR Credit's records, it sold:

- a. 1,258 judgments to "Great Seneca" in August 2006¹;
- b. 7,114 judgments to "Sherman" between December 2006 and March 2008;

¹ Plaintiffs believe these records refer to a third-party debt buying entity called "Great Seneca Financial Corporation," which dissolved in 2009.

- c. 5 judgments to “Jackson” between November 2006 and June 2010;
 - d. 474 judgments to “Gotham” in December 2009;
 - e. 14,813 judgments to “Virgo” in January 2012;
 - f. 2,089 judgments to “HKR” and “HKR (Replacements)” in April 2012.
54. The purchasers of the Sold Judgments were not parties to the *Sykes* litigation or settlement.
55. After the filing of the *Sykes* litigation, on information and belief, the earliest purchasers of the Sold Judgments, Great Seneca and Sherman, resold the Sold Judgments they allegedly owned to other debt buying entities including Aquarius and Doe Companies 1-10.
56. Defendants in this action purchased Sold Judgments after Plaintiffs had filed their motion for class certification, at a time when evidence in support of Plaintiffs’ claims was available in the public record.
57. On information and belief, some current holders of Sold Judgments, including the Doe Companies 1-10, even acquired those judgments after the federal court approved the *Sykes* class action settlement and have even attempted to re-sell those judgments after the Attorney General brought the vacatur proceeding.
58. On information and belief, Defendant Houslanger closely followed the *Sykes* litigation over the years and was well aware of the *Sykes* plaintiffs’ allegations and the various decisions issued by the District Court and the Second Circuit. The case and settlement was covered in debt industry trade publications as well as The New York Times, New York Post, and other New York media outlets.

59. Because the Sold Judgments were obtained in the exact same manner as all the other LR Credit Judgments, they are as compromised by fraud, misrepresentation or other misconduct as all of the other LR Credit Judgments.

D. The CPLR 5015(c) Proceeding and Attempted Intervention by Sykes Class Members

60. On November 28, 2016, then-Deputy Chief Administrative Judge Fern A. Fisher, represented by the New York State Attorney General, filed a special proceeding under CPLR 5015(c) to vacate every judgment obtained by the LR Credit entities, including judgments subsequently sold, on the grounds that each judgment debtor would be uniformly entitled to interpose a defense of fraud, misrepresentation, illegality, unconscionability, or lack of due service.

61. The Petition explicitly included all judgments LR Credit ever owned, including the Sold Judgments. *Fisher v. Leucadia Nat'l Corp.*, Index No. 452328/2016), Dkt. 1 (Petition) at 6 n.2. While the Attorney General provided direct notice of the Petition to LR Credit and Rolling Jubilee, it explained that it would be “impractical to name all such parties [i.e. parties that now hold the Sold Judgments] as respondents in this case, especially as they appear sometimes to have failed to update court records to substitute themselves as plaintiffs for the LR Creditor involved.” *Id.* The Attorney General further explained that “the LR Creditors are best positioned to know the circumstances under which these judgments were obtained and whether, for instance, false affidavits of merit were filed by their agent.” *Id.*

62. This Court granted the relief sought by the Attorney General on May 2, 2017, stating that Petitioner’s “petition seeking to vacate and set aside *all default judgments obtained by Respondents* Leucadia National Corp., L-Credit, LLC, LR Credit, LLC, and LR Credit 1-23 against consumers in the State of New York and to stay all marshals and/or sheriffs who hold

executions under such judgments from executing to collect such judgments is granted without objection.” *Fisher v. Leucadia Nat’l Corp.*, Index No. 452328/2016), Dkt. 15 (emphasis added).

63. To effectuate its Order, the Court ordered that all default judgments listed on an attached list were vacated and their execution stayed.

64. On May 9, 2017, the Attorney General submitted a letter and an “updated” judgment list, “deleting some judgments included as a result of clerical error and making other corrections” (“May 9 List”). The May 9 List omitted approximately 14,813 judgments that the *Sykes* defendants’ records list as having been sold to “Virgo.”

65. Counsel for the *Sykes* class (the same attorneys who represent Plaintiffs in this action), by letter dated May 12, 2017, challenged the Attorney General’s May 9, 2017 request, and argued that no change should be made to the vacatur order because those 15,000 people were entitled to relief from their judgments. *Fisher v. Leucadia Nat’l Corp.*, Index No. 452328/2016), Dkt. 20.

66. The Attorney General, by letter dated May 15, 2017, stated that it was “approached by counsel representing Virgo” and, as a result, sought the reinstatement of those judgments because it is seeking to “maintain the status quo” while negotiations take place with Virgo. *Fisher v. Leucadia Nat’l Corp.*, Index No. 452328/2016), Dkt. 21. The Court set a hearing for June 8, 2017.

67. Defendant Houslanger was the “counsel representing Virgo.”

68. Prior to the hearing, two *Sykes* class members sought to intervene in the 5015(c) proceeding on behalf of all class members with Sold Judgments to argue that, since all LR Credit Judgments were obtained on the basis of the same fraudulent affidavits of merit, class members

with Sold Judgments were equally as entitled to relief as class members whose judgments were not sold.

69. The court, however, rejected the motion to intervene as untimely, holding that the CPLR 5015(c) proceeding had ended. The Court kept its initial order in place but ordered the Attorney General to submit a new list of vacated judgments in thirty days excluding all Sold Judgments from vacatur under 5015(c).

70. On July 10, 2017, the Attorney General submitted a new list of vacated judgments without the Sold Judgments.

71. On July 20, 2017, the Court entered an order vacating all default judgments listed in the new list of vacated judgments filed on July 10.

E. Ongoing Collection of LR Credit Judgments

72. The Houslanger Defendants and Defendants Virgo and Aquarius, as holders and collectors of the Sold Judgments, continue every day to garnish people's wages and restrain their bank accounts in enforcement of the fraudulently obtained judgments.

73. The Houslanger Defendants and Defendants Virgo and Aquarius take such enforcement action in full knowledge of the fraudulent nature of the judgments.

74. The Houslanger Defendants and Defendants Virgo and Aquarius are not in possession of any evidence establishing that the *Sykes* class members actually owe a debt, nor could they possibly obtain such evidence.

75. The Houslanger Defendants and Defendants Virgo and Aquarius are not in possession of any evidence establishing that any *Sykes* class member was in fact served with process, nor could they possibly obtain such evidence.

76. Prior to taking action to enforce the judgments, the Houslanger Defendants and Defendants Virgo and Aquarius do not review the files of *Sykes* class members to determine whether the judgments were entered based on false affidavits of merit or false affidavits of service. They have taken the position that they have no obligation to review class members' court files prior to enforcing the judgments.

77. The Houslanger Defendants and Defendants Virgo and Aquarius have taken the position that they are entitled to collect on the Sold Judgments *even though they were fraudulently obtained*, simply because the judgments have not yet been vacated.

78. When enforcing and executing on the judgments, the Houslanger Defendants and Defendants Virgo and Aquarius misrepresent to the Court, to marshals, and to Plaintiffs that the tainted judgments are valid.

INDIVIDUAL PLAINTIFF FACTS

Gladys Bostic

79. Plaintiff Gladys Bostic is a single mother of a three-year-old son, who also lives with and helps to support her elderly mother. Ms. Bostic works full time in a retail warehouse and makes \$790 biweekly, which is barely enough to support her family, and she cannot afford to lose any part of her income.

80. On February 25, 2008, LR Credit obtained a judgment against Ms. Bostic in the amount of \$1,749.11.

81. Ms. Bostic was never served with any documents in the case and received no notice of the lawsuit or judgment.

82. Process server Benjamin Lamb from Samserv filed an Affidavit of Service falsely stating that he had served Ms. Bostic by delivering the summons and complaint to an individual

of suitable age and discretion named “Mr. Arthur,” described as 51-65 years old and by subsequently mailing the court papers to her. Ms. Bostic does not know anyone named “Mr. Arthur,” nor does she know any man of that description who would have been at her residence at the time of alleged service. Ms. Bostic never received process at her home or in the mail.

83. Benjamin Lamb and Samserv were defendants in *Sykes*. In its decision granting class certification, the federal District Court specifically found that Lamb had made claims of impossible service, such as performing service in two or more places at the same time.

84. After Ms. Bostic did not appear in court, LR Credit moved for a default judgment, supported by an affidavit of merit signed by Todd Fabacher. In the affidavit, Fabacher falsely claimed personal knowledge that Ms. Bostic owed a debt to MCI Communications Services, Inc.

85. Ms. Bostic recalls having an account with MCI, but she closed that account in the 1990s. Even if Ms. Bostic owed anything at all—which she disputes—the statute of limitations had long since passed when the action was filed.

86. LR Credit’s records list Ms. Bostic’s judgment as sold to “Virgo” on January 4, 2012.

87. On or about January 27, 2012, Houslanger, Virgo and The Mel Harris Firm executed a “Consent to Change Attorney” stating that:

- a. “Virgo Capital, LLC as successor of LR CREDIT, LLC hereby represents that it has been duly authorized by plaintiff to act on plaintiff’s behalf as authorized agent for the purpose of the retention and substitution of counsel”; and,
- b. “Todd E. Houslanger, Esq., Houslanger & Associates, PLLC, 372 New York Avenue, Huntington, New York 11743, is hereby substituted as attorney of record for the plaintiff.”

88. Virgo failed to notify the court of the change in judgment creditor and provide proof of its entitlement to enforce the LR Credit judgment as required by CPLR 5019(c).

89. Houslanger has sent an income execution to NYC Marshal Ronald Moses in enforcement of the LR Credit Judgment. That income execution will likely go into effect sometime between late January 2018 and March 2018 if collections are not enjoined. (Exhibits)

90. Losing any part of her income to pay the LR Credit judgment would cause Ms. Bostic to fall behind on bills, including phone payments, childcare expenses, and medical expenses. She would also suffer emotional distress because she would not know how to make ends meet for herself and her child. Getting the wrongly garnished money back potentially years down the road would not cure the harm caused in the meantime.

Cimeron DuBose

91. Plaintiff Cimeron DuBose is 60 years old and disabled. Her only income is \$758 in Supplemental Security Income (SSI). Her food stamps were recently cut to approximately \$160 per month. Ms. DuBose is visually impaired and a cancer survivor. Ms. DuBose lives with and helps to support her five-year-old grandson and her daughter, who has very serious and aggressive cancer.

92. On September 14, 2007, LR Credit obtained a default judgment against Ms. DuBose in the amount of \$1,028.54.

93. Ms. DuBose was never served with any documents in the case and received no notice of the lawsuit or judgment.

94. Process server Barry German filed an Affidavit of Service falsely stating that he had served Ms. DuBose by delivering the summons and complaint to a co-tenant designated as

“Jane Doe” and described as 40-49 years old with black skin and red hair, and by mailing the court papers to her residence. Ms. DuBose does not know anyone who fits this description and had no co-tenants with red hair at the time of alleged service in 2007. She also never received process at her home or in the mail.

95. After Ms. DuBose did not appear in court, LR Credit moved for a default judgment, supported by an affidavit of merit signed by Todd Fabacher. In the affidavit, Fabacher falsely claimed personal knowledge that Ms. DuBose owed a debt to Household Bank.

96. Ms. DuBose has never had an account with Household Bank and has never heard of this company.

97. LR Credit’s records list Ms. DuBose’s judgment as sold to “Gotham” on December 29, 2009.

98. On February 8, 2010, LR Credit and Gotham executed and filed with the New York City Civil Court an Assignment of Judgment and Substitution of Attorney stating that LR Credit had assigned Ms. DuBose’s judgment to Gotham for \$10 and that Houslanger was now the attorney of record.

99. Ms. DuBose has many recurring medical problems and expenses, as does her daughter. Ms. DuBose’s fixed income is not sufficient to cover rent, food, and medical expenses, and she is actively looking for a part-time job to increase her income.

100. If Ms. DuBose lost any part of her income, even temporarily, she would not be able to make ends meet. Getting money back potentially years down the road would not cure the harm she and her family would suffer in the meantime.

101. Moreover, any kind of collection on the judgment would cause Ms. DuBose emotional distress. Ms. DuBose fears receiving debt collection calls because they cause her great

anxiety, and in the past debt collectors have managed to intimidate her into paying them out of her meager income, even though she could not afford the payments.

Gerald K. Dycha, Jr.

102. Plaintiff Gerald K. Dycha, Jr. is 50 years old and works full-time at a scrapyard, taking home only \$279 per week. After paying child support, Mr. Dycha barely has enough money for rent, bus fare, and food.

103. On July 21, 2004, LR Credit obtained a judgment against Mr. Dycha in the amount of \$5,598.23.

104. Mr. Dycha was never served with any documents in the case and had no notice of the lawsuit or judgment until recently.

105. Process server Diana Lentz filed an Affidavit of Service stating that she had served Mr. Dycha on February 13, 2004, by affixing a copy of the summons and complaint to the door of 26 Seneca Parkside, Buffalo, NY 14210, and by mailing the court papers to that address.

106. On the date of alleged service, Mr. Dycha did not reside at 26 Seneca Parkside. He had moved from that address in June 2003.

107. After Mr. Dycha did not appear in court, LR Credit moved for a default judgment, supported by an affidavit of merit signed by Todd Fabacher. In the affidavit, Fabacher falsely claimed personal knowledge that Mr. Dycha owed a debt to Providian National Bank.

108. Mr. Dycha did have a Providian account years ago, but he believes he paid it off.

109. In addition, in 2003 another debt buyer, DAG Financial Trust 2002-A, also sued Mr. Dycha and obtained a default judgment on a Providian account. This happened in 2003, one year before LR Credit brought its lawsuit. Mr. Dycha did not receive any notice of the 2003 lawsuit or judgment either.

110. Mr. Dycha only ever had one Providian account. It is not possible that both DAG Financial Trust 2002-A and LR Credit could rightfully assert ownership of Mr. Dycha's single Providian account (let alone one that does not have an outstanding balance).

111. LR Credit's records list Mr. Dycha's judgment as sold to "Sherman" on March 12, 2008.

112. On May 21, 2008, The Mel Harris Firm and the debt collection firm Eltman, Eltman & Cooper, PC (Eltman) executed a Consent to Change Attorney stating that Sherman Acquisitions LLC was LR Credit's successor and was authorized to retain Eltman as its attorney.

113. On June 21, 2012, The Mel Harris Firm, Houslanger and Aquarius executed a second Consent to Change Attorney stating that Aquarius was LR Credit's successor and was authorized to retain Houslanger as its attorney.

114. In or about May or June 2017, Mr. Dycha discovered that Houslanger was garnishing his wages on behalf of Aquarius, in enforcement of the LR Credit judgment. This was Mr. Dycha's first notice of the existence of the LR Credit judgment.

115. In June 2017, Mr. Dycha visited a pro bono legal clinic for help with the garnishment. An attorney from the clinic wrote a letter to Houslanger, after which the garnishment stopped.

116. Mr. Dycha subsequently received from his employer a copy of a garnishment notice indicating that Houslanger had requested that the garnishment *temporarily* stop. While Mr. Dycha is not currently being garnished, the garnishment could resume at any time.

117. Mr. Dycha cannot afford a garnishment in any amount. His take-home pay of only \$279 per week is barely sufficient to cover rent, bus fare to and from work, and food. Losing any part of his income even for a short period of time would jeopardize Mr. Dycha's housing and job

because he would not have enough money for rent and transportation. Jobs and affordable housing are scarce where Mr. Dycha lives. If he loses his current apartment or job he may not be able to find another one in time to avoid becoming homeless. In addition to financial injury, Mr. Dycha would suffer emotional distress if his wages were again garnished to pay this judgment or if his bank account were frozen or levied. Getting money back potentially years down the road would not cure the harm Mr. Dycha would suffer in the meantime.

Heyward Collins

118. Plaintiff Heyward Collins is 65 and self-employed in the film industry.

119. On May 18, 2007, LR Credit 11 obtained a judgment against Mr. Collins in the amount of \$2,540.23.

120. Mr. Collins was never served with any documents in the case and received no notice of the lawsuit or judgment.

121. Process server Michael Mosquera from Samserv filed an Affidavit of Service falsely stating that he had served Mr. Collins by delivering the summons and complaint to a person named "Maxine," whom he described as a female with black skin and hair, aged 36-50 years old, and by mailing the court papers to her residence. Mr. Collins does not know anyone named Maxine. Nor does he know anyone who fits this description and would have been at his residence at the time of alleged service in 2007. He also never received process at his home or in the mail.

122. After Mr. Collins did not appear in court, LR Credit moved for a default judgment, supported by an affidavit of merit signed by Todd Fabacher. In the affidavit, Fabacher falsely claimed personal knowledge that Mr. Collins owed a debt to "Household – Nobody Beats the Wiz."

123. Mr. Collins never had an account with “Household – Nobody Beats the Wiz” and does not owe this debt.

124. LR Credit’s records list Mr. Collins’s judgment as sold to “HKR” on January 31, 2012.

125. On information and belief, HKR is an abbreviation for Defendant HK Recovery.

126. The records of the New York City Civil Court still list this judgment as owned by LR Credit and the attorney as The Mel Harris Firm.

127. Mr. Collins would suffer financial and emotional injury if this judgment were enforced.

CLASS ACTION ALLEGATIONS

128. Plaintiffs bring this class action pursuant to Article 9 of the New York Civil Practice Law and Rules on behalf of the following: “All persons against whom an LR Credit entity obtained a judgment, where that LR Credit judgment is owned by Virgo Capital, LLC, Aquarius Capital, LLC, Gotham Collection Services Corp., HK Recovery Group, Inc., or where that LR Credit judgment was, is, or will be placed with the Houslanger Defendants for collection.”

129. The Class is so numerous that joinder of all members is impractical. Approximately 25,000 LR Credit judgments were sold to third-party debt buyers and the Defendant debt buyers purchased the vast majority of those judgments. For example, Virgo alone owns approximately 14,813 Sold Judgments; Aquarius now owns many of the 7,114 Sold Judgments originally sold to Sherman; HK Recovery owns approximately 2,089 Sold Judgments; and Gotham purchased approximately 474 Sold Judgments from LR Credit in 2009 and may have acquired more Sold Judgments since then. Moreover, over 15,000 Sold Judgments have

been placed with the Houslanger Firm for collection, and the Houslanger Defendants have collected or attempted to collect hundreds, and possibly thousands, of such judgments.

130. There are common questions of law and fact that predominate over questions affecting only individual members, including but not limited to:

- a. Whether the Sold Judgments were obtained by fraud, misrepresentation, or other misconduct of an adverse party;
- b. Whether Defendants' conduct was "consumer-oriented" under the GBL;
- c. Whether the Defendants violated GBL 349 by enforcing judgments they know or reasonably should have known to be fraudulent;
- d. Whether Defendants violated GBL 349 by engaging in deceptive acts and practices by and while collecting the Sold Judgments;

131. The claims of the class representatives will advance the interests of the absent class members. The class representatives will fairly and adequately protect the interests of the class.

132. There are no conflicts of interest between the class representatives and the class members, and the class members will vigorously prosecute this action on behalf of the class.

133. A class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

FIRST CAUSE OF ACTION
Pursuant to CPLR 3001
All Plaintiffs – All Defendants

134. Plaintiffs seek a declaration that the Sold Judgments were obtained by fraud, misrepresentation, or other misconduct of an adverse party.

SECOND CAUSE OF ACTION
Injunctive Relief Pursuant to GBL 349
All Plaintiffs – All Defendants

135. New York prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state. . . .” N.Y. Gen. Bus. Law § 349(a).

136. An individual “injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. *Id.* § 349(h).

137. Defendants violated GBL 349 by using deceptive acts and practices in the conduct of their business. Specifically, Defendants engaged in deceptive acts and practices by and while enforcing and collecting on the Sold Judgments.

138. Defendants’ conduct has a broad impact on consumers at large.

139. Defendants committed the above-described acts willfully and/or knowingly.

140. Defendants’ deceptive acts and practices have caused injury and damages to Plaintiffs and class members and unless enjoined, will cause further irreparable injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek as follows:

- (a) Certification of this action as a class action pursuant to Article 9 of the CPLR;
- (b) Issuance of a declaratory judgment that the Sold Judgments were obtained by fraud, misrepresentation, or other misconduct of an adverse party;
- (c) Enjoining the use of any enforcement procedure to collect the Sold Judgments pursuant to CPLR 5240;
- (d) Issuance of an order prohibiting the Defendants from selling, assigning, purchasing, or facilitating the sale, assignment, or purchase of any Sold Judgment;

- (e) Issuance of an order vacating and setting aside the Sold Judgments owned by any Defendant; staying all marshals and/or sheriffs who hold executions under such judgments from executing to collect such judgments; and ordering restitution plus interest for each class member pursuant to CPLR 5015(d);
- (f) Issuance of an order awarding attorney's fees and costs pursuant to CPLR 909 and GBL 349; and,
- (g) Granting such other and further relief as this Court deems just and proper.

Dated: December 21, 2017
New York, New York

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